FEDERAL VOTING ASSISTANCE PROGRAM
DEPARTMENT OF DEFENSE
WASHINGTON, DC 20301-1155

December 18, 2006

The Honorable Alvin Jaeger
Secretary of State
Office of the Secretary of State
600 East Boulevard, Department 108
Bismarck, ND 58505-0500

Dear Secretary Jaeger,

I would like to thank you for the work you have done over the past several years to promote and support the legislative initiatives the Federal Voting Assistance Program (FVAP) has recommended. The 2006 elections pointed out the importance of the states enacting these legislative initiatives. In particular, the provision of 45 or more days for ballot transit; electronic transmission of Federal Post Card Applications, blank ballots, and voted ballots; and, authorization for the state chief election official to implement emergency measures. States with these provisions were able to support a greater number of situations faced by our brave men and women serving in combat areas such as Iraq and Afghanistan, and other U.S. citizens worldwide. I would ask you also to consider alternative methods that these citizens could use to request their absentee ballots such as phone, email or by proxy, and utilizing digital signatures with electronically transmitted materials.

After reviewing North Dakota's existing election code and procedures, I have identified four initiatives that the North Dakota legislature might consider during the upcoming legislative session. These initiatives are discussed in detail with suggested wording in the enclosed legislative initiatives document. If these initiatives are enacted and signed into law, they would significantly help to facilitate the absentee voting process for North Dakota's citizens covered by the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*. Information available to FVAP indicates that there are 3,380 Uniformed Services members, 2,535 family members and approximately 8,045 overseas citizens that claim North Dakota as their voting residence.

As you review the enclosed initiatives for possible inclusion in North Dakota's 2007 legislative agenda, please do not hesitate to contact us for assistance. We can provide legislative wording that other states have enacted to implement similar measures and provide written or in-person testimony, if desired. We have come a long way in simplifying the absentee voting process since the enactment of the *UOCAVA*—let's continue our joint efforts to achieve the simplest possible absentee voting process while maintaining its integrity.

Sincerely,

J. Scott Wiedmann
Deputy Director

Enclosure:
2007 Legislative Initiatives and Suggested Wording

North Dakota 2007 Legislative Initiatives and Sample Language

Emergency Authority for Chief Election Official

During a period of a declared emergency or other situation where a short time-frame for ballot transmission is created, it is recommended that **North Dakota's Chief Election Official have the authority to designate alternate methods for handling absentee ballots** to ensure voters have the opportunity to exercise their right to vote. The Chief Election Official and the Federal Voting Assistance Program could establish expeditious methods for handling absentee ballots including electronic transmission.

Sample Language

If a national or local emergency or other situation arises which makes substantial compliance with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, such as a natural disaster or an armed conflict involving United States Armed Forces, or mobilization of those forces, including State National Guard and Reserve components of this state, the Chief Election Official may prescribe, by emergency orders or rules, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in the state.

The Chief Election Official shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

Reference to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) in the State Election Code

Title 16 of the North Dakota Election Laws makes no reference to Federal law. In 1986, Congress updated and consolidated the provisions of the Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975 into the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). **Reference to UOCAVA in the state election code** will help election officials and interested citizens find guidance to applicable Federal law and increase their familiarity with the statute and its application.

Sample Language

This language is usually found under the chapter in the State Election Code that makes reference to Federal elections:

It is the intent and purpose of this Legislature that the provisions set forth in this chapter are designed to facilitate the Federal mandate of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff et. seq.).

Expand Use of Federal Write-In Absentee Ballot

Currently the Federal Write-In Absentee Ballot (FWAB) may be used only in general elections for Federal offices only. This ballot is prepositioned worldwide at Embassies and Consulates, military installations and overseas organizations and corporations with American membership. By **expanding its use to include special, primary and runoff elections for Federal offices**, citizens would not be disenfranchised because regular ballots are not received in a timely manner. Frequently, there is insufficient time between the call for a special election and the actual election and between primary and runoff elections. Allowing use of the FWAB in these elections would reduce the possible need for legal action when insufficient time exists for the ballot to be received, voted and returned to be counted. During the 1996 primaries, on an *ad hoc* basis, several states and jurisdictions allowed the FWAB to be used for offices other than Federal offices. Thirteen other states have legislatively expanded its use beyond the Federal law.

In addition, for those citizens that desire to vote in elections for Federal office only, the acceptance of the FWAB voter declaration as **a request for registration simultaneously with the submission of the FWAB** would further simplify the process, improve on transit time and help ensure enfranchisement. It should be noted that the information requested on the voter declaration is basically the same as the information requested from the voter on the Federal Post Card Application (FPCA). We recommend the FWAB be accepted simultaneously as a registration form and ballot by the state for general election and Federal offices if:

(1) the information submitted complied with the state's registration requirements;

(2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted;

(3) the request is received by the appropriate state election official not less than 30 days before the election or by the registration deadline established by the state.

The adoption of this initiative would save the state money and alleviate administrative responsibilities on the part of the local election official.

Sample Language

- Expanded use of the FWAB:

If the voter is residing outside the United States or a member of the United States Uniformed Services, merchant marine, or a family member and a qualified elector, he or she may use the Federal Write-In Absentee Ballot in general, special, primary, and run-off elections for local, state and Federal offices.

- Use of FWAB as a Combined Request for Registration and Ballot Submission:

If the voter is residing outside the United States, or is a member of the United States Uniformed Services, merchant marine, or a family member, and a qualified elector, he or she may use the Federal Write-In Absentee Ballot (FWAB) voter declaration as a request for registration simultaneously with the submission of the FWAB if:

> *(1) the information submitted complies with the registration requirements of the state;*
>
> *(2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted; and*
>
> *(3) the request is received by the appropriate state election official not less than 30 days before the election or by the registration deadline established by the state.*

Acceptance of a Signature and Date on Ballot as Evidence of Time of Completion

We recommend that **North Dakota accept the signature and date on a ballot envelope as evidence of the time the ballot was completed by a uniformed service or overseas voter in lieu of a postmark**. Although UOCAVA voters may have voted and mailed their ballot in a timely manner, the ballot envelope may not have been postmarked on that date. By signing and dating the ballot the voter, under penalty of perjury, is certifying that their ballot was voted prior to the close of polls on election day.

Sample Language

If the voter is residing outside the United States, or is a member of the United States Uniformed Services, merchant marine, or a family member, and a qualified elector, the ballot shall be counted if it is signed and dated by the voter prior to the close of polls on election day and received by the absentee ballot deadline.