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

September 14, 2007

The Honorable Phil Wilson
Secretary of State
P. O. Box 12887
Austin, TX 78711-2887

Dear Secretary Wilson,

I would like to thank you for the work you and the state of Texas 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 Texas's existing election code and procedures, I have identified six initiatives that the Texas 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 Texas's citizens covered by the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*. Information available to FVAP indicates that there are 228,163 Uniformed Services members, an estimated 171,000 family members and approximately 272,000 overseas citizens that claim Texas as their voting residence.

As you review the enclosed initiatives for possible inclusion in Texas's 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:
2008 Legislative Initiatives and Suggested Wording

Texas 2008 Legislative Initiatives and Sample Language

Electronic Transmission of Election Materials

Since the 1990 general election, faxing has proven to be a valuable alternative method for facilitating the enfranchisement of military persons and overseas citizens serving their country who may have otherwise been unable to vote. This initiative has helped ensure these citizens were not disenfranchised by allowing them to cast a ballot when they would not otherwise have been able to vote due to time and location constraints.

Throughout an election year cycle, various circumstances exist that require the need for this alternative procedure in order for citizens to vote. The basic concept of electronic transmission of election materials is to secure high-speed delivery of election materials to and from the voter and local election officials. Thus, we request your support **to develop acceptance in Texas for the electronic transmission of the blank and voted ballots to all *UOCAVA* voters**. With proper controls, this would cut the ballot transit time at least in half, reduce a major obstacle to voting absentee and allow local election officials more administrative flexibility regarding election materials.

Please consider expanding the use of this modern technology in the absentee voting process. We realize that Texas provides for the electronic transmission of the FPCA for registration and early voting ballots. Additionally, in 1997, Texas enacted legislation to allow the electronic transmission of the voted ballot by members of the U.S. Armed Forces on active duty overseas, or their family members, if the Armed Forces members are casting the ballot from an area where the members are eligible to receive hostile fire pay or imminent danger pay, or that has been designated by the President of the United States as a combat zone. However, we continue to encourage expanded use of this alternative to include electronically sending the blank ballot to all Texas *UOCAVA* voters who request it and accepting the voted ballot where circumstances would otherwise disenfranchise a citizen.

Sample Language

An election official may send blank ballots and accept voted ballots from eligible electors who are members of the United States Uniformed Services, merchant marine, or family members, or qualified electors living outside the United States via electronic transmission.

Emergency Authority for Chief Election Official

During a period of a declared emergency or other situation where there is a short time frame for ballot transmission, we recommend that instead of the Texas Governor, Texas' **Chief Election Official have the authority in law to designate alternate methods for handling absentee ballots** to ensure voters have the opportunity to exercise their right to vote. The Federal Voting Assistance Program is in closer contact with the Chief Election Official and could mutually 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, 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.

Late Registration Procedures

Even though Texas has enacted a 30-day registration deadline as a safeguard to prevent fraud, we still encourage Texas to **allow persons recently separated from the Uniformed Services or overseas employment, and their family members, to be able to register late, e.g., up to the day of the election, or be exempt from registration**. Many members of the Uniformed Services and overseas citizens go through a transition period when they first leave the Uniformed Services or overseas employment and may reside in your state just prior to an election (within 30 days of the election). This time frame does not meet your state's current registration requirements. Further, the date of discharge or termination of overseas employment and the Texas registration requirement may combine to disenfranchise a discharged military member or overseas citizen returning home after employment abroad. Special procedures to allow these persons to register and vote would solve this problem. **Twenty-seven** states currently have such procedures.

Sample Language

An individual, or accompanying family member who has been discharged or separated from the Uniformed Services or from employment outside the territorial limits of the United States, too late to enable him or her to register by the regular state deadline for registration, shall be entitled to register for the purpose of voting at the next ensuing election after such discharge, separation, or termination of employment.

State Write-In Absentee Ballot

We realize that Texas provides a state special write-in absentee ballot to Uniformed Services members if they are unable to cast a ballot on election day or during the early voting period because of a military contingency. We recommend expansion of this state write-in absentee ballot to **provide a method for voting by other persons overseas who, due to special circumstances such as those faced by Peace Corps volunteers, missionaries or others in remote areas, will be out of communication for extended periods of time and unable to receive the regular ballot from your state in the normal time frame**. A voter could request a state write-in absentee ballot 90 days in

advance and write in the names of the candidates or party preferences. The voter knows in advance that he or she will not be able to receive, vote, and return the regular ballot from the state in time to be counted. **Twenty-seven** states now provide state write-in absentee ballots.

This state write-in absentee ballot should not be confused with the Federal Write-In Absentee Ballot (FWAB) that is prepositioned at Embassies and Consulates, military installations, overseas organizations and corporations. In comparison, the FWAB is generally only available to military stationed overseas and overseas citizens who have already applied for a regular ballot from the state. They do not know in advance that they need the FWAB. However, if the regular ballot from the state does not arrive in sufficient time for the voter to return the voted ballot and meet the state deadline, these voters may obtain, vote, and return the FWAB to the local election official.

It is also important to note that a state write-in absentee ballot usually provides a "full" slate of offices to be voted upon including Federal, state, and local offices. On the other hand, the FWAB generally allows voting for Federal offices. There are presently thirteen states that have expanded the use of the FWAB beyond Federal law. The revised FWAB was designed to accommodate its use beyond the general election and Federal offices only.

Sample Language

If the voter is a U.S. citizen residing outside the United States or a member of the United States Uniformed Services, merchant marine, or family member and a qualified elector, he or she may request, not earlier than 180 days before an election, a state write-in absentee ballot. The voter must submit with the request a statement that provides that due to military or other contingencies that preclude normal mail delivery, the elector cannot vote an absentee ballot during the normal absentee voting period. The ballot will be available 90 to 180 days before the election.

Expand Use of Federal Write-In Absentee Ballot

We recognize that Texas recently passed a law that expanded the use of the Federal Write-In Absentee Ballot (FWAB) to any special, primary or runoff election for Federal offices. 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 ballot transit time and help ensure enfranchisement. It should be noted that the information requested on the FWAB transmission envelope is basically the same as the information requested from the voter on the Federal Post Card Application (FPCA). We recommend the FWAB transmission envelope and FWAB be accepted simultaneously as a registration form and ballot by the state for general elections and Federal offices if:

(1) the information submitted complies 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

- 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) transmission envelope 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.

Enfranchise Citizens Who Have Never Resided in the U.S.

There are many U.S. citizens who have never resided in a state and under current law are not entitled to vote. These are usually first or second-generation citizens who are subject to U.S. income tax and all other requirements of citizens. Except for the fact that they have never resided in a state, they would be eligible to vote in elections for Federal office. Some local election officials make exceptions and allow these citizens to vote. **Fifteen** states have passed legislation allowing these citizens to claim the legal residence of a parent. **We recommend these citizens be allowed to vote in elections for Federal offices** where either parent is eligible to vote under UOCAVA.

Sample Language

If a U.S. citizen outside the United States who has never lived in the United States has a parent who is a qualified elector, then that person is eligible to register and vote where his or her parent is a qualified elector.