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

September 14, 2007

The Honorable Gary R. Herbert
Lieutenant Governor
State Capitol Complex
Suite E-325
Salt Lake City, UT 84114-0607

Dear Lieutenant Governor Herbert,

I would like to thank you for the work you and the state of Utah 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 Utah's existing election code and procedures, I have identified six initiatives that the Utah 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 Utah's citizens covered by the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*. Information available to FVAP indicates that there are 6,045 Uniformed Services members, an estimated 4,000 family members and approximately 25,000 overseas citizens that claim Utah as their voting residence.

As you review the enclosed initiatives for possible inclusion in Utah's 2008 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

Utah 2008 Legislative Initiatives and Sample Language

Electronic Transmission of Election Materials

Since the 1990 general election, electronic transmission 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. Your support in developing the **acceptance of electronic transmission for all aspects of the process**, with proper controls, would cut the ballot transit time at least in half. This would reduce the major obstacle to voting absentee and allow local election officials more administrative flexibility in preparing election materials.

Currently, acceptance of electronic transmission of election materials varies from county to county in Utah. Consideration should be given to more uniform use of modern technology in the absentee voting process. We encourage statewide adoption of procedures to allow for electronic transmission of the Federal Post Card Application (FPCA) for registration and ballot request, electronically sending the ballot to the voter, and accepting the voted ballot from the voter where circumstances would otherwise disenfranchise a citizen.

Sample Language

An applicant who is a member of the United States Uniformed Services, a family member of a Uniformed Service member, or is a qualified elector living outside the United States, may apply for registration and an absentee ballot by electronic transmission if otherwise qualified to apply for and vote by absentee ballot. An auditor or clerk may send and receive absentee ballot applications and accept voted ballots from eligible electors via electronic transmission.

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 **Utah'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.

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.

State Write-In Absentee Ballot

We realize Utah provides a Special Military Write-In Absentee Ballot if the citizen will be unable to vote by regular ballot. We recommend expanding use of this ballot to **provide a method for voting to 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 regular absentee ballots sent in the normal time frame**. A voter could request a state write-in 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 absentee ballot in time to be counted. **Twenty-seven** states have implemented state write-in absentee ballots for this purpose.

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 11 states that have expanded the use of the FWAB beyond Federal law. The revised FQAB 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 or family member of a Uniformed Service member, and a qualified elector, he or she may request, not earlier than 180 days before an election, a special 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 state will make the ballot available "90 to 180" days before the election.

Expand Use of Federal Write-In Absentee Ballot

Currently the Federal Write-In Absentee Ballot (FWAB) may be used only in the general election. 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**, 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. On an *ad hoc* basis, during past primaries, 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 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 is a member of the United States Uniformed Services, or a family member of a Uniformed Service member, and is 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, or a family member of a Uniformed Service member, and is 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.

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

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

We recommend that **Utah 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 day before 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.