National Defense Committee

Continued Problems with Military Voter Registration and Absentee Ballot Applications

Testimony before the Senate Committee on Rules and Administration Hearing on Voter Registration: Assessing Current Problems

Bob Carey, Executive Director
3/11/2009

www.NationalDefenseCommitte.org

Summary

Successful military voting is extremely dependent on successful voter registration and absentee ballot application. Unfortunately, that process is overly complex, error prone, and subject to substantial mail delays. Because of these inherent problems, only 22% of the military voted in 2006, as compared to 40% of the general population.[1] Similarly, military voter registration rates are far below that of the general population's: 64.86% for the military but 86% for the general population. Because of that, fewer military voters receive their absentee ballots, have difficulty navigating the process in time to complete and return the ballot by the varied State-set voting deadlines, and therefore have far lower absentee ballot cast rates than the general population: only 26% of military personnel cast their absentee ballot in 2006 compared to 85% of the general population. This represents 484,000 military personnel that requested absentee ballots in 2006 but did not cast them. It's not simply that the registration and absentee ballot application process lowers military registration rates, it also prevents them from fully participating in the election, and significantly reduces military voter participation rates.

Claims that current requirements to send ballots for two additional election cycles to prior military and overseas citizen voting applicants overstates and misses the more pressing problems of election official noncompliance with federal mandates to send ballots to military and overseas voters (regardless of how many election cycles previously they requested absentee ballots), and to send them in a timely manner. National Defense Committee does not believe the minor cost of those absentee ballots returned as undeliverable comes near the benefit of what is essentially automatic registration and absentee ballot application in future election cycles, especially given the poor record of election officials to deliver absentee ballots to these voters.

Recommendations

To allow military voters adequate time to navigate the complex and variable registration and absentee ballot application process, National Defense Committee makes the following recommendations:

- Mandate that all States accept Federal Post Card Applications by fax, e-mail and postal mail, at the voter's discretion.
- Expand and mandate the acceptance of the Federal Post Card Application for voter registration and absentee ballot application for all State and local elections
- Extend the automatic absentee ballot delivery requirement for two additional general election cycles to all State and local elections as well as for federal elections.
- Mandate a single registration and absentee ballot application deadline (based on the later of the two, given the difficulties Voting Assistance Officers have in properly advising military voters) for all military voters in each State.
- Prohibit notarization or additional witness requirements for military voter Federal Post Card Applications.

---

[1] Defense Manpower Data Center [DMDC], Human Resources Strategic Assessment Program, *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010 (Washington, D.C.: May 7, 2007), table 1.

Introduction

Mr. Chairman, Senator Bennett, distinguished members of the Senate Rules Committee, thank you for allowing National Defense Committee to testify before this hearing today. Mr. Chairman, I respectfully request that the full text of my testimony appear in the record of this hearing.

National Defense Committee is a grass-roots military-service organization focusing on the individual rights of service members and strengthening the civil-military relationship. The Committee started the Military Absentee Voting project in 2003, and produced what I believe to be the first comprehensive, non-governmental, statistical analysis of military voting patterns in 2005. That study indicated significant problems for military personnel being able to successfully navigate the complex, varied, and user-unfriendly absentee ballot voting process, and gave credence to decades of anecdotal reports of such problems.

I personally became involved in this in 2006 after my mobilization with the US Navy Reserves just prior to the 2004 general election, and my subsequent unplanned extension on active duty just prior to the 2005 New York City elections, where I lived at the time. Being mobilized two weeks before Election Day, I was unable to apply for an absentee ballot, and it was only by my taking leave at my mobilization preparation site, flying at my own expense back to New York City, and voting in person, was I able to guarantee my right to vote. When I was unexpectedly extended on my mobilization three weeks prior to the 2005 New York City election, I again found it too late to request an absentee ballot. Simple changes to the registration and absentee ballot application processes would have allowed me to vote without having to take leave and fly back to New York City, but such necessary, but minor changes, have been very difficult to enact. Therefore, Mr. Chairman and members of this Committee, it is time for Congress to act, and to do so decisively.

Nature of the Military Voter

Texas and Florida Together Home to 30% of Military and Dependents

Because Texas and Florida share the distinction of having a large concentration of military facilities, and not having a State personal income tax, many military personnel change their home of residence to those two States if and when they are stationed there. These two States, therefore, have almost 30% of the total military population claiming residence in them; 228,000 in Texas[2] and 194,000 in Florida,[3] representing respectively 15.5% and 13.2% of the total military populations. Florida's military resident population is larger than the next two States combined, California and New York, who share only 192,000 military residents between them.[4]

---

[2] J. Scott Weidmann to Phil Wilson, September 14, 2007, Letter to Texas, at "Legislative Initiatives" Web page, Federal Voting Assistance Program Web site http://www.fvap.gov/services/init-pdf/tx08init.pdf, accessed February 20, 2008.

[3] J. Scott Weidmann to Kurt S. Browning, September 17, 2007, Letter to Florida, at "Legislative Initiatives" Web page, Federal Voting Assistance Program Web site, http://www.fvap.gov/services/init-pdf/fl08init.pdf, accessed February 20, 2008.

[4] Mr. Weidmann, Deputy Director of FVAP, wrote letters to each State detailing their military, military dependent, and overseas civilian populations. All States' letter can be found at the FVAP website,

Equally significant, the dependents of those service men and women are disproportionately residents of those States, with an estimated 171,000 (or 15.7% of the national total) military dependents claiming residency in Texas,[5] and 146,000 (13.4%) military dependents claiming Florida.[6] And again, Florida's military dependent resident population is also the same size as the next two States' combined (again California and New York).

Preponderance of Absentee Voting for Military

The form that military personnel use or voter registration, the Federal Post Card Application (FPCA), is mandated by the Uniformed and Overseas Citizen Absentee Voter Act of 1986 (UOCAVA) to be accepted simultaneously as an Absentee Ballot application. For the military voter, the registration and absentee ballot application are essentially one in the same because of the preponderance of absentee voting by military voters. Although about one-third of the military voters that did vote in 2006 did so by voting in person,[7] more than 90% of those who voted in person did so because they were physically located in the United States. For those military personnel located overseas only 1% of that total voted in person (likely while on leave or temporary duty back in the United States). Therefore, for most military personnel, absentee ballots are the overwhelming method of voting.

Military Voter Registration and Absentee Ballot Application Process

Comparing the general voter population and UOCAVA voter population surveys conducted by the Election Assistance Commission (EAC) in 2006 is illuminating. First, EAC is careful to define its definitions of voter participation specifically, so as to be precise in its estimations. Unlike many other voter registration estimates, EAC uses the Citizens of Voting Age Population (CVAP) instead of simply the entire population, or even the entire Voting Age Population (VAP) as other estimates may. Given the large number of non-citizen immigrants in the United States, this is a significant difference: 299,398,484 total U.S. population, approximately 225,664,000 VAP, and about 206,286,000 CVAP for the 2006 elections,[8] an 8.6%, or more than 19.3 million person, difference between VAP and CVAP. This gap between VAP and CVAP, presumably made up of non-citizen immigrants and felons who have lost their franchise, also represents 6.58% of the total U.S. population.

---

http://www.fvap.gov/services/stateinitiatives.html. Director Polli Brunelli wrote similar letters in September 2008, but the changes in total and proportional military populations were insignificant.

[5] Weidmann, Letter to Texas.

[6] Weidmann, Letter to Florida.

[7] Seven percentage points of the 22% total active component military personnel that voted, voted in person. *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010 (Washington, D.C.: Defense Manpower Data Center, Human Resources Strategic Assessment Program, May 7, 2007), Table 1, p. 2.

[8] U.S. Election Assistance Commission, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings* (Washington, D.C.: December 2007), figure 1, p. 3.

With approximately 31,000 non-citizen immigrants serving on active duty in the U.S. military,[9] the military CVAP for the 2006 election was about 1.325 million men and women.[10] From this population, the EAC 2006 survey found that 992,034 Federal Post Card Applications (FPCAs) were requested from all three UOCAVA populations – domestic military (including dependents), overseas military (including dependents), and overseas civilians.[11] However, only 374,679 of those UOCAVA ballots requested were actually categorized in the data collected and reported by the States to the EAC.[12] Of those that were categorized, 141,317 were from domestically-stationed military voters, 107,449 were from military personnel stationed outside the United States. Overall, 66.5% of the total categorized UOCAVA ballots requested were from military voters.[13] Extrapolating this percentage to the entire UOCAVA ballot request population indicates that approximately 659,000 military voters requested absentee ballots under the UOCAVA system.

This 659,000 represents 52.5% of the military CVAP, and is roughly comparable to the absentee ballot request rate for military voters. However, the Defense Manpower Data Center estimated that seven per cent of the total military population voted in-person in the 2006 election.[14] Assuming an equivalent in-person voter turnout for the military as a percentage of registered voters as reported by the EAC for the general population in 2006 (47.5%[15]), the total military population of registered voters is approximately 859,000 service men and women.[16] That represents a total registration rate for the U.S. military CVAP of 64.86%, substantially below the 83.8% registration rate for the general population.[17]

---

[9] Valerie Alvord, "Non-citizens fight and die for adopted country," *USA Today* (April 8, 2003), http://www.usatoday.com/news/world/iraq/2003-04-08-noncitizen-usat_x.htm, accessed 10 March 2008

[10] David Chu, *2006 Population Representation in the Military Services* (Washington, D.C.: Office of the Under Secretary of Defense, Personnel and Readiness, February 1, 2008), tables B-22 and B-30, (from http://www.defenselink.mil/prhome/PopRep_FY06/ (accesses March 4th, 2008)) minus 31,000 non-citizen military service members.

[11] U.S. Election Assistance Commission [EAC], *UOCAVA Survey Report Findings* (Washington, D.C.: September 2007), p. 1.

[12] Ibid., Table 22.

[13] Ibid., Table 22.

[14] Defense Manpower Data Center [DMDC], *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010, table 1, p. 2.

[15] EAC, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings*, p. 12.

[16] 659,703 military personnel requesting UOCAVA ballots + 199,903 directly registered military voters. The second number was calculated by taking the seven per cent of military population voting in person (7%*1,356,201 military CVAP = 94,934), and dividing it by the turnout per cent of registered voters amongst the general population (94,934/47.49% = 199,903).

[17] EAC, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings*, p. 12.

Military Voter Registration Process

The military voter registration process is exceptionally complex, varies in its deadlines from State to State, is tied in with the absentee ballot application process, and is subject to exceptional opportunities for errors.

Step 1. Starting the Process – Getting a Federal Post Card Application.

If the service member decides to participate in the election through the UOCAVA process, the first step is to get Federal Post Card Application (FPCA). FPCAs are supposed to be hand-delivered by individual unit Voting Assistance Officers (VAOs), to every service member, every year by January 15th (to cover the primary season), and in even numbered years by September 15th as well (to cover the general election). The main advantage of using UOCAVA's Federal Post Card Application (FPCA) is that the Uniformed and Overseas Citizen Absentee Voting Act of 1986 (UOCAVA) requires each State to accept "the official post card form … for simultaneous voter registration application and absentee ballot application."[18]

The problem is that annual Department of Defense Inspector General reports show a persistent failure of the Voting Assistance Program, particularly at the unit VAO level, to provide adequate assistance to military voters. Table 1 shows a trend analysis of the DoD Inspector General's annual report on a number of key elements of the Voting Assistance Program.

Table 1 [19]

Voting Assistance Program Requirement	2004	2005	2006
FPCAs delivered by 15 January	21%	24%	25%
Aware of FPCA Use and Purpose	55%	25%	33%
Aware of FWAB Use and Purpose	36%	25%	31%
FWAB received	35%	21%	21%

Most alarmingly, the number of personnel even aware of the FPCA form has fallen even while the Department of Defense attempts to strengthen the Voting Assistance Program. Further, the Inspector General found that in 2006, only 5% of the unit VAOs surveyed had actually distributed the FPCAs by the January 15th deadline.[20] Given these persistent problems, the Inspector General concluded the Voting Assistance Program was "Not Effective" and that because, "voting assistance will always be a secondary duty, senior leadership can expect significant improvement only if a radically different approach is applied."[21]

---

[18] 42 U.S.C. 1973ff-1(a)(4).

[19] 2004 data: U.S. Department of Defense Inspector General [DoD IG], *Evaluation of the Voting Assistance Program*, Report No. IE-2005-001 (Washington, D.C., March 31, 2005); 2005 data: U.S. Department of Defense Inspector General, *Evaluation of the Voting Assistance Program*, Report No. IE-2006-001 (Washington, D.C., March 31, 2006); 2006 data: U.S. Department of Defense Inspector General, *2006 Evaluation of the Federal Voting Assistance Program in the Department of Defense*, Report No. IE-2007-004 (Washington, D.C., March 31, 2007).

[20] DoD IG, *2006 Evaluation*, p. 7.

[21] DoD IG, 2004 *Evaluation*, p. 17, 26.

Even if the FPCAs were consistently delivered by January 15th, such a late date disenfranchises 455,000 military voters, and 350,000 military dependent voters, from participating in eight States' and the District of Columbia's primaries, all of which required absentee ballot applications by January 15th, 2008. This included Florida, New York, Virginia, and Michigan. Additionally, four more States, including California, required FPCAs to arrive to the LEOs only a week later, January 22nd. All together, these 12 States and the District of Columbia represent about 40% of the total military population, all of whom were effectively unable to participate in the Presidential Preference Primary elections because of the late date FVAP established for distributing FPCAs.[22]

Alternatively, the military service member can download a copy of the FPCA from the Federal Voting Assistance Program website, but while 62% of the military personnel the Inspector General surveyed in 2004 were aware of the FVAP website, only 18% were in 2005 and only 24% were in 2006.[23]

Step 2. Read the Voting Assistance Guide.

FVAP produces each year the Voting Assistance Guide, a 460 page instruction that details the State-by-State procedures for filling out, executing, and sending in the FPCA and the Federal Write-in Absentee Ballot (FWAB). Once the service member gets a copy of the FPCA, he or she must then go to his or her State's five to ten pages of instructions to determine which FPCA blocks to fill out. While perusing the Voting Assistance Guide, the military voter must determine:

- Which blocks on the FPCA to fill out for his or her State;
- Whether a witness or notary is required by his or her State;
- The date by which the FPCA must be received in order to receive an absentee ballot for the primaries and/or the general election;
- After that receipt date is determined, the military voter must make a personal estimate of how long it will take for the FPCA to get to the local election official through the Military Postal System and the US Postal System, in order to determine by when the FPCA must be sent;
- Whether alternative methods of delivering the FPCA are allowed by his or her State, such as faxing or e-mail;
- Whether or not a physical copy of the FPCA must follow an electronically transmitted copy;
- The mail address, fax number, or e-mail address to which the FPCA must be sent.

Surprisingly, Overseas Vote Foundation found only 18 of 2,975 UOCAVA applications (0.6%) rejected. However, that analysis goes on to show that 1,746 of their survey respondents, or 59%, did not hear back at all from their local election official whether their application was even received.[24] Considering that over 7% of all their survey respondents never received a ballot, the

---

[22] U.S. Department of Defense Federal Voting Assistance Program, *2008 – 2009 Voting Assistance Guide*, (Washington, D.C.: n.d.) at "Voting Assistance Guide" Web page, http://www.fvap.gov/pubs/vag.html, accessed March 10, 2008.

[23] DoD IG, 2004, 2005, and 2006 *Evaluations*.

large number of applications that were never confirmed may mask a larger FPCA rejection problem.

Significant evidence indicates that despite the training and assistance provided by unit VAOs, and the availability of the Voting Assistance Guide, UOCAVA voters have considerable difficulty filling out the FPCA correctly. Both the Federal Voting Assistance Program and Overseas Vote Foundation (OVF) have surveyed local election officials (LEOs) regarding FPCAs, and both surveys show sizeable problems. Table 2 details their findings.

Table 2 [25]

FPCA Problem	FVAP	OVF
Incomplete Forms	-	36%
Invalid Information	17%	10%
Illegible Information	22%	12%
Received Too Late	11%	49%
No Signature	11%	29%
No Political Party Preference	11%	-
No Social Security Number	7%	-

The end result is that at least 6% of military FPCAs received by LEOs in 2004 (or 11,182 total FPCAs) were not processed due to some error.[26] If that rate held into the 2006 election, applying it only to the military ballot requests categorized as such by the Election Assistance Commission in their 2006 UOCAVA survey, would mean more than 14,000 military FPCAs would be rejected. But more than two-thirds of UOCAVA ballot requests identified by LEOs in that survey were not categorized as either military or overseas civilian. Extrapolating the military proportion across the uncategorized ballot requests as well indicates that more than 41,000 military ballot requests were rejected.[27]

Clarifying this data as to the actual number of FPCAs rejected, categorized by military or overseas civilians, instead of simply the percentage of LEOs that had this problem regardless of scale or trying to extrapolate across incompletely collected data, should be a future priority for data collection refinement.

---

[24] *OVF 2006 Post Election Survey Results* (Arlington, VA:Overseas Vote Foundation, February 8, 2007), found at https://www.overseasvotefoundation.org/files/2006_OVF_Post_Election_Survey_Report.pdf, (accessed March 6, 2008), p. 13.

[25] FVAP: Brunelli, *The Federal Voting Assistance Program, 17th Report* , Chart 11, p. 14; OVF (Invalid information and missing information categories): Susan Dzieduszycka-Suinat and Thad Hall, *2006 Post Midterm Local Election Official Survey Report* (Arlington, VA: Overseas Vote Foundation, 8 May 2007), p. 4; (all other categories): Claire M. Smith, Susan Dzieduszycka-Suinat, and Marina Mecl, *2008 OVF Post Election UOCAVA Survey Report and Analysis: A Detailed Look at How Overseas and Military Voters Fared in the 2008 General Election and What To Do About It* (Arlington, VA: Overseas Vote Foundation, February 2009), p. 19.

[26] Brunelli, *The Federal Voting Assistance Program, 17th Report*, p. 21.

[27] EAC, *UOCAVA Survey Report Findings*, Table 22, p. 36.

Step 3. Execute the FPCA.

FVAP's data suggests a large number of FPCAs are rejected for lack of the military voter's signature (a problem which would be eliminated if FPCAs could be transmitted electronically through military computer networks that already use "Smart Cards" with automatic digital signatures). But beyond that, nine States, American Samoa, Guam, and Puerto Rico all require in some or all circumstances a witness or notary signature on the FPCA.[28] FVAP has legally designated all VAOs as notaries, as are all unit Legal Officers. Many States also allow any commissioned or non-commissioned officer to serve as a notary. Regardless, given the small number of States that require this, it is easy for a VAO or military voter who does strictly utilize the Voting Assistance Guide to miss this important requirement.

Step 4a. Send in the FPCA: Determine How to Send In the FPCA.

Thirteen States allow military voters to send their FPCA in by e-mail, and 30 States and territories allow fax transmission.[29] But some require the paper copy to also be sent in after the electronic copy (but still by original deadline), some only allow overseas military to do so, and some only allow such electronic transmissions with emergency declarations. Probably because of this difficulty, 84% of military voters in 2006 stayed with postal mail in requesting absentee ballots, while 11% availed themselves of the e-mail alternative, 3% by fax, and 2% using FVAP's Electronic Transmission Service[30] (ETS – which takes fax or e-mail transmissions from military voters and forwards them to LEOs in either the fax or e-mail format required by that government). Again, the only way for a military voter to know if he or she can take advantage of methods other than the post is to refer to the Voting Assistance Guide.

Step 4b. Determine When to Send in the FPCA.

This is a common problem for the Presidential preference primaries, additional primaries, and general elections, but is most complex for primaries as they are not on a common date like the general election. 22 States and territories don't require the FPCA to be submitted to participate in the Presidential preference primary, and 11 don't require it for the general.[31] Most of those that do require generally require about a month prior to the election. Finally, although UOCAVA mandates that the FPCA serves as both a voter registration and absentee ballot request, many States still have different voter registration and absentee ballot request deadlines. For all of these, however, the only way to know is to refer to the Voting Assistance Guide.

A major factor or the military voter to determine by when he or she much have their FPCA in the mail to be received by the election official before the deadline is accounting for the delays inherent in military mail delivery. For the 75% of military personnel still located in the United States, this is not an issue, as domestic mail service is relatively uniform and quick. But overseas

---

[28] American Samoa, Hawaii, Minnesota, Puerto Rico, South Dakota, and Vermont. *2008-2009 Voting Assistance Guide,* http://www.fvap.gov/pubs/vag.html, accessed March 10, 2008.

[29] Federal Voting Assistance Program, "Electronic Transmission Alternatives by State," Web page, http://www.fvap.gov/ivas/fvap_state_menu.html, accessed March 10, 2008.

[30] DMDC, *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, p. 36.

[31] *2009-2009 Voter Assistance Guide.*

military mail is transferred from the US Postal System to the Military Postal System Agency at three transfer gateways: New York, Miami, and San Francisco. Once transferred to military control, it is shipped through military logistics channels, and can be placed in a position of competing against military supplies for space. Furthermore, operational, hostile, and remote locations can delay mail delivery further. Because of that, the military standard for delivering mail to and from military personnel in combat zones is 12 to 18 days.[32]

Department of Defense officials claim that mail is transiting smoothly, even to remote operational sites in Iraq and Afghanistan, citing 11-13 day transit times.[33] However, the General Accountability Office determined that the methodology the Military Postal Service Agency used to compute that average mail delivery time was fundamentally flawed,[34] and weighted to underestimate actual average transit times. Because of this weighting error, a 23-day operational hold that was put on all military mail during the height of the initial Operation IRAQI FREEDOM invasion, was "not reflected in the transit time data, as the 'weighted average' methodology masks the calculation, thus significantly understating actual transit time."[35] In GAO's survey of military personnel in Iraq, "Nearly half said that, after arriving in theater, they waited more than 4 weeks to get their mail, and many commented that some mail took as long as 4 months to work its way through the system."[36] For the 2008 election, the Military Postal System Agency urged military voters in Iraq or Afghanistan to have their voted ballots back in the mail 28 days prior to the election, and all other overseas personnel 21 days, implying similar timelines for Federal Post Card Applications to be returned to local election officials, and also implying that the 11-13 day transit time is by no means the norm.

The bottom line is that the military voter cannot reliably estimate when his FPCA will get to the local election official, or even if it will. FVAP does encourage military voters to submit FPCAs early, and recommends they use e-mail, fax, or the ETS where possible. But given the overwhelming proportion of military voters that still use post mail, and the significant numbers of LEOs that report FPCAs arriving after the absentee or registration request deadline, this information effort is failing. This follows with the Department of Defense Inspector General's finding that, "despite a good effort on the part of the VAOs, they only reach about 40 to 50 percent of their uniformed target audience, and considerably less of the dependent audience. This could be why voters are not aware of the procedures or deadlines."[37]

---

[32] Army Field Manual 12-6 states, "the standard of service for first class mail is 12 to 18 days from the point of origin to individual soldiers worldwide." Chapter 6, "Doctrinal Requirements and Standards of Support" section, at http://www.globalsecurity.org/military/library/policy/army/fm/12-6/Ch6.htm#top, accessed February 29, 2008.

[33] Barbara Barrett et. al., *Military Postal Service Task Group, Report to the Secretary of Defense*, Report FY05-5 (Washington, D.C.: Defense Business Board, December 2005), Part I, p. 5.

[34] Neal P. Curtin, *OPERATION IRAQI FREEDOM: Long-standing Problems Hampering Mail Delivery Need to Be Resolved* (Washington, D.C.: General Accountability Office, Defense Capabilities and Management, April 14, 2004), p. 2.

[35] Ibid., p. 12.

[36] Ibid., p. 15.

[37] DoD IG, *2004 Evaluation*, p. 22.

Step 5. Await Confirmation of Registration and Absentee Ballot Request.
UOCAVA only requires the local election official to notify the military voter if his or her FPCA is rejected.[38] That will leave the vast majority of military service members unaware if or if not they are registered, and whether or not they will receive an absentee ballot. Only 42% of the Overseas Vote Foundation 2006 survey respondents said they were notified one way or another on their application by their local election official.[39] Many States and local election officials have, "Am I Registered?" websites, but only 4% of the OVF survey respondents used them, if they were even available.[40] It did not appear that election official notification improved at all for the 2008 election cycle, as the voter notification rate stayed at 42% in the OVF 2008 survey.[41]

What is even more striking is that without that confirmation, military voters are unable to determine if they should even expect an absentee ballot, not an insignificant concern given that more than 13% of military and overseas voters surveyed in OVF's 2008 survey did not receive a ballot at all after sending in their FPCA by regular mail. That ballot delivery failure rate climbed to over 21% for those that faxed in their FPCA directly to election officials, 27% for those that e-mailed their FPCA directly to election officials, almost 26% ballot delivery failure for those that mailed their FPCA to the Federal Voting Assistance Program for forwarding, and a remarkable 39% of those FPCAs e-mailed to the Federal Voting Assistance Program's Electronic Transmission Service did not result in a ballot being sent to the military or overseas voter.[42]

Without some type of confirmation that the local election official, the individual military voter has no idea, without personally contacting the election office, as to his or her registration and absentee voter status. Given the vagaries of military mail detailed above, it is not reasonable for a military voter to assume that the rejection-only notification requirement under UOCAVA is sufficient, or that they can assume their registration a absentee ballot application have been accepted. Further, only by submitting an FPCA to the election official at least 30 days prior to the election does a UOCAVA voter have the legal right to use a Federal Write-in Absentee Ballot (FWAB).[43] Therefore, ensuring receipt and acceptance is vital not only to receiving a full absentee ballot, but also to even maintaining the right to vote in the federal elections alone with an FWAB.

---

[38] 42 U.S.C. 1973ff-1(d)

[39] *OVF 2006 Post Election Survey Results*, p. 13.

[40] Ibid., p. 12.

[41] Claire M. Smith, Susan Dzieduszycka-Suinat, and Marina Mecl, *2008 OVF Post Election UOCAVA Survey Report and Analysis: A Detailed Look at How Overseas and Military Voters Fared in the 2008 General Election and What To Do About It* (Arlington, VA: Overseas Vote Foundation, February 2009), p. 19.

[42] Claire M. Smith, Susan Dzieduszycka-Suinat, and Marina Mecl, *2008 OVF Post Election UOCAVA Survey Report and Analysis: A Detailed Look at How Overseas and Military Voters Fared in the 2008 General Election and What To Do About It* (Arlington, VA: Overseas Vote Foundation, February 2009), p. 17.

[43] 42 U.S.C. 1973ff-2(b)(2)(B)

Registration Process Doesn't Give Military Voters Time to Vote

The Pew Center on the States recently issued an exhaustive study on the ability of overseas military voters to navigate the entirety of the absentee ballot voting process, from registration and absentee ballot application, to receiving the absentee ballot, to casting the absentee ballot. Pew's analysis broke down each step in the voting process for time to completion, State deadlines, and minimum mail transit times. It assumed that every stage of the process worked perfectly and according to standard.

Even then, the Pew report found, Alabama, Arkansas, Connecticut, District of Columbia, Georgia, Maine, Massachusetts, Michigan, New Hampshire, New York, Oklahoma, South Dakota, Tennessee, Texas, Utah and Wyoming did *not* providing enough "time to vote" for overseas military voters. Three other states, Minnesota, Pennsylvania, and Vermont were deemed "at risk" with less than 5 days extra time to complete the voting process.

While the recommendations of the Pew report focused on the post-registration process, it did point out that while many States do not provide enough time for overseas military voters to navigate the process, allowing the absentee ballot voting process to be conducted by fax or e-mail, including the registration and absentee ballot application process. For example, in the State of Texas, the Pew research concluded that overseas military voters did not have enough time to navigate the absentee balloting process, but because of the post-registration portions of the process, and not the registration and absentee ballot application portions of the process. The reason why the inability to navigate the process lies entirely in the post-registration process is because Texas allows FPCAs to be faxed to local election officials, thereby reducing the entire length of this portion of the process to only six days out of the 60 total days required. Six more days are needed for this post-registration process for Texas overseas military voters to be able to successfully navigate the absentee voting system.[44]

Alternatively, New York overseas military voters require 82 days to navigate the absentee voting process, and need 13 more days to have enough time to vote. The 22 day difference between Texas and New York is largely due to New York requiring FPCAs to be sent to election officials by postal mail only, with no allowance for electronic transmission. Simply allowing FPCAs to be e-mailed by overseas military voters would reduce the time required by 18 days, and thereby provide the New York overseas military voter with enough time to vote.[45]

Electronic Transmission Is a Viable Option

The electronic transmission of FPCAs from voter to election official can significantly accelerate the registration and absentee ballot application process for military voters, and should be widely mandated. As the Pew *No Time to Vote* analysis shows, simply allowing for the electronic transmission of FPCAs from military voters to election official will reduce that step in the process from 22 days to four days for overseas military voters.

---

[44] The Pew Center on the States, *No Time to Vote: Challenges Facing America's Overseas Military Voters – Texas Fact Sheet* (Washington, DC: January 2009).

[45] The Pew Center on the States, *No Time to Vote: Challenges Facing America's Overseas Military Voters – New York Fact Sheet* (Washington, DC: January 2009).

Furthermore, the National Institute of Standards and Technology (NIST) just reported in December 2008 that although significant security and election integrity risks may exist for the electronic transmission of voted ballots from military and overseas voters back to election officials (besides the fact that such transmission requires the military or overseas voter to give up their right to a secret ballot), those concerns do not exist for the electronic transmission of registration and absentee ballot applications from voters to election officials:

> Voter registration and requests for a blank ballot by the UOCAVA voter can be reliably facilitated and expedited by the use of any of the electronic transmission options. The associated threats can be mitigated through the use of procedural and technical security controls and do not pose significant risks to the integrity of elections.[46]

Together, these two reports are powerful indictments of any registration and absentee ballot application process that does not allow military and overseas voters to make send in such an application by e-mail or fax. Continued reliance on postal mail to deliver these forms to local election officials will perpetuate military voters' disenfranchisement and inability to overcome the myriad of obstacles put before them by existing registration and absentee ballot application processes, obstacles that are entirely avoidable.

Requirements to Continue to Send Ballots to Military Voters Useful

State and local election officials have decried UOCAVA requirement to continue to send absentee ballots to military and overseas voters for two general election cycles after the first absentee ballot request, claiming that the large number of ballots returned as undeliverable is wasteful and counterproductive. For the 2006 election, the Election Assistance Commission reported that at least 35,000 military and overseas citizen absentee ballots were returned to local election officials as undeliverable.[47] From those results, the Election Assistance Commission recommended repealing that requirement in federal law.

But the Election Assistance Commission survey did not seek to find out how many military voters received absentee ballots because of this measure, and so missed the key measure of benefit to compare against the cost of undeliverable ballots. In 2004, just over 1.1 million absentee ballots were sent to military and overseas voters, but in 2006, only 990,000 were sent, indicating that local election officials failed to follow the requirements of the federal law for at least 100,000 military voters. That likely grossly underestimates this problem. The Overseas Vote Foundation found in 2008 that 43% of the election officials surveyed failed to follow requirements of the federal law to automatically send an absentee ballot to military and overseas

---

[46] Andrew Regenscheid and Nelson Hastings, *A Threat Analysis on UOCAVA Voting Systems*, NISTIR 7551 (Gaithersburg, MD: National Institute of Standards and Technology, Information Technology Laboratory, December 2008), p. 2. This report also made nearly identical claims as to the security and election integrity protection of electronically transmitting blank ballots from election officials to military and overseas voters.

[47] EAC, *UOCAVA Survey Report Findings*, p. 3.

voters who requested such ballots in previous general election cycles.[48] From the voters' perspective, the Overseas Vote Foundation survey was even direr, with only 7.3% of voters reporting that they received a ballot without filing a new form.[49] That is down from 25% in 2006,[50] which would indicate a worsening problem of non-compliance by local election officials from 2006 to 2008.

Therefore the National Defense Committee believes the cost objections raised by the Election Assistance Commission are based upon a false calculus. Even assuming that only 50% of the election officials responded to the Election Assistance Commission survey, and assuming a $5 per ballot printing, handling and postage cost, that still only represents a cost of $350,000 for the more than 7,000 local election officials across 55 States and territories, or about $50 per local election district. $50 per local election district is a small price to pay for promoting the rights of military personnel to vote, especially in a time of war. Given the high registration and absentee ballot application failure rate for military personnel, the poor performance of election officials in informing those voters of those failures, and the poor performance of election officials in carrying out even this legislatively mandated requirement to continue to send ballots to military voters in future election cycles, such objections are ill-placed – election officials should ensure their performance is actually in accordance with the law before attempting to repeal it after only one election cycle of experience.

National Defense Committee's analysis of the performance by local election officials in Virginia during the 2008 general election shows that compliance with the federal law is very poor. Data from Virginia's VERIS database provided subject to the order of the court hearing the McCain-Palin campaign lawsuit against the Commonwealth of Virginia indicated that of the 2,189 military and overseas voter absentee ballot applications received from 2004 to 2007, 1,047 absentee ballots were not sent to those voters at least 30 days prior to the election, or a 47% non-compliance rate.

Overall, given election officials historical non-compliance with the UOCAVA requirements to advise FPCA applicants of rejected registration and absentee ballot applications, their historical failure to send absentee ballots in a timely manner, and their historical failure to send military and overseas voters their ballots even when proper registration and absentee ballot application is made, it is premature to consider repealing the UOCAVA requirement to automatically send absentee ballots to military voters in subsequent election cycles. Only when comparable benefit data for absentee ballots sent to and received by military voters (especially if compared against the failure numbers of absentee ballots requested, but not sent), should such legislative changes be entertained.

---

[48] Claire M. Smith, Susan Dzieduszycka-Suinat, and Marina Mecl, *2008 OVF Post Election UOCAVA Survey Report and Analysis: A Detailed Look at How Overseas and Military Voters Fared in the 2008 General Election and What To Do About It* (Arlington, VA: Overseas Vote Foundation, February 2009), p. 29.

[49] Claire M. Smith, Susan Dzieduszycka-Suinat, and Marina Mecl, *2008 OVF Post Election UOCAVA Survey Report and Analysis: A Detailed Look at How Overseas and Military Voters Fared in the 2008 General Election and What To Do About It* (Arlington, VA: Overseas Vote Foundation, February 2009), p. 29.

[50] Overseas Vote Foundation, *OVF 2006 Post Election Survey Results* (Arlington, VA: Overseas Vote Foundation, February 7, 2007), p. 10.

Conclusion and Recommendations

Successful military voting must start, by definition, with successful registration and absentee ballot applications. Historical performance data shows conclusively, however, that

- military voters' registration and absentee ballot applications are rejected at a much higher rate than those made by absentee voters in the general population;
- election officials fail to properly notify the majority of rejected military applicants; and
- election officials fail to send timely absentee ballots to military voters who make proper and timely application.

To give military voters the opportunity to overcome these barriers that exclusive to them as a military and overseas voters, the National Defense Committee believes the Committee should undertake the following UOCAVA voting reforms:

1. **Mandate that all States accept Federal Post Card Applications by fax, e-mail and postal mail, at the voter's discretion, and regardless of e-mail domain**. States have been painfully slow at adopting effective electronic transmission for even FPCA submission by military voters to local election officials – while 43 States allow some form of electronic transmission of FPCAs, only 13 allow it by e-mail. Yet e-mail is the overwhelmingly available method for most military voters: while 77% of military personnel have daily access to either personal of military e-mail accounts,[51] only 43% have daily access to fax machines.[52] Further, such survey results, being for all service members both in garrison in the United States and deployed operationally overseas, is an average that does not adequately describe the dearth of fax machines for the operationally deployed, and especially for the junior enlisted who do not have easy access to headquarters administration departments and operations centers. Given the unequivocal assurances provided in the December 2008 National Institute of Standards and Technology report on the security and integrity of electronic voting support for military and overseas voters,[53] the only effective alternative is to allow for the e-mail transmission of Federal Post Card Applications at the voter's request.

2. **Expand and mandate the acceptance of the Federal Post Card Application for voter registration and absentee ballot application for all State and local elections**. UOCAVA only guarantees FPCA acceptance for federal elections. But military service does not exclude military personnel from State and local taxation, jury duty (if reasonably available), or other responsibilities of citizenship. It also implies that military personnel are less responsible or engaged citizens simply because of their military service, an implication that would seem to be countered by the fact that military personnel

---

[51] DMDC. 52% report having daily access to their military e-mail (p. 12), and 53% report having daily access to their personal e-mail accounts (p. 14). The probability that they would have access to one or the other is

$$(P[email_{military}] + P[email_{personal}]) - (P[email_{military}] * P[email_{personal}])$$

or in this case

$$(0.53+0.52) - (0.53*0.52) = 1.05 - 0.28 = 77\%$$

[52] Ibid., p. 47.

[53] Regenscheid and Hastings, *A Threat Analysis on UOCAVA Voting Systems.*

volunteered for this ultimate civic duty and community service. In potentially requiring military voters to fill out different registration and absentee ballot application forms for State and local elections, simply because they have been involuntarily ordered by federal authority from their place of voting residence, is to deny military equal representation or equal protection under the law. Furthermore, given the poor historical performance of local election officials in protecting military voting rights with a single federal registration and absentee ballot application form, it follows that such failures would be accentuated with a second State or local registration or absentee ballot application form.

3. **Extend the automatic absentee ballot delivery requirement for two additional general election cycles to all State and local elections as well as for federal elections.** Again, UOCAVA only guarantees that federal ballots will be sent for two additional election cycles after the initial application. Given local election officials poor historical performance with federal ballot requirements, it is unlikely that they would do any better, or even as well, with a separate State or local absentee ballot application and delivery process. Better to mandate all ballots be delivered under the same authority and protect the full spectrum of military voting rights. In these cases, the historically poor performance of local election officials indicates that Congress' traditional reluctance to preempt the States' Constitutional first rights to set voting procedures should be set aside in favor of protecting military voters' rights.

4. **Mandate a single registration and absentee ballot application deadline for all military voters in each State.** A single deadline for both registration and absentee ballot applications is clearly called for given the unique circumstances under which military voters must make application for absentee ballots. Slow mail delivery, the systematic inability of Voting Assistance Officers to properly advise military voters, and the confusing patchwork of State and local deadlines seemingly at odds with the combined capability of the FPCA to serve as both registration and absentee ballot application, make such differing deadlines anachronistic for military voters.

5. **Prohibit notarization or additional witness requirements for military voter Federal Post Card Applications for federal, State or local elections.** The Federal Voting Assistance Program,[54] the Pew Center on the States,[55] and the Overseas Vote Foundation[56] all call for the elimination of notarization or additional witness requirements for military voters. Besides the difficulty and delay involved in getting a notarization or witness on registration and absentee ballot applications, it does little to prevent fraud, instead simply preventing military voters from participating in the electoral process.

---

[54] Federal Voting Assistance Program, "State Legislative Initiatives," at http://www.fvap.gov/reference/laws/state-initiatives/index.html, accessed March 10th, 2009.

[55] Pew Center on the States, *No Time to Vote*, p. 29.

[56] Smith, Dzieduszycka-Suinat, and Mecl, *2008 OVF Post Election UOCAVA Survey Report and Analysis*, p. 7.

Save
Student Association
for Voter Empowerment

1615 L Street NW, Suite 400
Washington, D.C. 20036
e-mail: info@savevoting.org
phone: 847.502.5012
fax: 847.835.3128

The Honorable Charles Schumer
United States Senate
313 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Bob Bennett
United State Senate
431 Dirksen Senate Office Building
Washington, D.C. 20510

March 10, 2009

Dear Chairman Schumer & Ranking Member Bennett,

I thank you for holding a hearing today on access to voter registration. Under our current election system, voting is a two-step process, voter registration and casting a ballot. Without completing the first step, citizens are unable to engage the political process and express their democratic opinion; therefore, increasing opportunities for voter registration is of critical importance.

I am the executive director of the Student Association for Voter Empowerment (SAVE), a national non-profit organization committed to increasing young voter participation by removing access barriers and promoting stronger civic education. We currently have over 30 chapters on campuses across the country and represent a constituency of more than 10,000 young voters. During the 2008 election season, we worked with individuals on the ground and partner organizations nationwide to monitor barriers to young voter participation closely.

Obstacles to voter registration and, as a result, casting a ballot appeared in a variety of forms in the recent election cycle. Young voters, specifically college students, faced a unique set of challenges, which complicated voter registration and decreased the likelihood of electoral participation. Such challenges manifested in three specific ways.

First, several instances occurred where local election officials misled students to the potential consequences of registering to vote at their schools. Registrars, whose jurisdictions included Virginia Tech and Colorado College, issued statements to the student body indicating if they chose to register at school, their parents could no longer claim them as dependants for tax purposes. Civil rights lawyers and the IRS declared the claim inaccurate, which led each registrar to issue a correction to the students. In addition to warnings about taxes, the registrars cautioned that students could lose scholarships, car insurance, or health insurance after registering to vote. Since the false claims originated with election officials, disputing their accuracy was even more difficult. Despite efforts to correct the record, it is unknown how many students did not register due to fear of false consequences.

Second, students attempting to register at their school address were repeatedly denied the opportunity because they listed a dormitory room for their address. Students at Radford University, Jackson State University, and Mary Washington College all experienced difficulty while attempting to register using a dormitory address. The dilemma results from vague and confusing definitions of domicile, which registrar's may interpret to allow or not allow a dormitory. Different styles of housing (dorm, apartment, house, etc.) should not be a determining factor in allowing or disallowing registration. The question of housing is a unique challenge to students and an element frequently used as a hurdle in the registration process.

Third, voter caging resulted in the removal of an unspecified number of young voters from the voter rolls. A prominent example of voter caging, specifically targeting students, occurred in Montana. Republican Party officials intended to use change of address forms to remove voters from registration rolls despite the fact that students routinely use change of address forms to forward mail during temporary absences. Certainly, a temporary absence is not a legitimate reason for removing a potential voter from the rolls. After several groups, including SAVE, brought significant public pressure against party officials, the voter-caging plan was abandoned. Had the voter caging continued unchecked, thousands of young voters could have been removed from the registration lists without their knowledge and left with little recourse.

Beyond these specific examples, empirical evidence suggests that voter registration is the greatest hurdle to young voter participation. According to a 2004 study by CIRCLE, 22% of 18-29 year olds who did not vote did so because they missed the registration deadline. An additional 10% of that age group did not know where or how to register to vote. Therefore, a combined 32% of 18-29 year olds who did not participate in the election did so because of uncertainties in the registration process.

In the face of numerous obstacles to voter registration, SAVE has several proposals aimed at alleviating the burden on young citizens. The foremost idea, and overarching ideology, is the need to institutionalize voter registration in this country. We recognize that today is not intended as a forum to discuss solutions, yet we look forward to participating in that dialogue.

In our collective effort to ensure greater access for all voters, especially young voters, voter registration reform must be our highest priority. We are encouraged by the opportunity to address the registration process and hope the dialogue that results will yield positive results.

Sincerely,

Matthew Segal
Executive Director
Student Association for Voter Empowerment