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COMPILATION OF HEARINGS AND MARKUPS

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BEFORE THE

COMMITTEE ON RULES

AND ADMINISTRATION

UNITED STATES SENATE

ONE HUNDRED ELEVENTH CONGRESS

FIRST SESSION

February 11, 2009; March 11, 2009; May 13, 2009; June 10, 2009;
June 10 and 11, 2009; and July 15, 2009



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BUSINESS MEETING

WEDNESDAY, FEBRUARY 11, 2009

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, DC.

The committee met, pursuant to notice, at 10:37 a.m., in Room 301, Russell Senate Office Building, Hon. Charles E. Schumer, Chairman of the committee, presiding.

Present: Senators Schumer, Durbin, Nelson, Pryor, Udall, Warner, Bennett, and Roberts.

Staff present: Jean Bordewich, Staff Director; Jason Abel, Chief Counsel; Veronica Gillespie, Elections Counsel; Adam Ambrogi, Counsel; Carole Blessington, Assistant to the Staff Director; Brenna Allen, Professional Staff; Lynden Armstrong, Chief Clerk; Justin Perkins, Staff Assistant; Mary Jones, Republican Staff Director; Shaun Parkin, Republican Deputy Staff Director; Paul Vinovich, Republican Chief Counsel; Michael Merrell, Republican Elections Counsel; Abbie Platt, Republican Professional Staff; Trish Kent, Republican Professional Staff; Rachel Creviston, Republican Professional Staff.

OPENING STATEMENT OF CHAIRMAN SCHUMER

Chairman SCHUMER. The Rules Committee will come to order and I want to wish everyone good morning to our first Rules Committee meeting of the 111th Congress.

The first thing I want to do is express appreciation to Senator Feinstein for the fabulous job she did and hard work. She is moving on to the Intelligence Committee. They are lucky to have her.

I also want to thank the outgoing staff director, Howard Gantman, for all his hard work and the staff is, I have learned at the early stages, is just truly a professional group and so professional that they handle most things without bothering the chairman, the ranking member or the other members, and that is great. So I thank all of you for the great work that you have done, and since we are keeping almost all of the staff, that you will do.

I would also like to say how much I am going to look forward to working with Senator Bennett during this Congress. He is just one of the finest people around here, and Senator Roberts, you are lucky to be mistaken for him from time to time and maybe you will grow a few inches.

The Committee, this year we have a number of important issues to consider, election administration, campaign finance, oversight of the Senate, legislative branch functions, executive agencies and a host of other important issues, so it is going to be a busy year. The

ranking member and I look forward to dealing with these issues as well as working with all of you.

Good morning. Thank you for coming, Senator Udall. The freshmen members of the Committee, I believe the new members of the committee have 100 percent attendance.

Senator BENNETT. Yes.

Chairman SCHUMAN. Which is very good. Wish we could say that for the rest. Anyway, so it is going to be a good—it is going to be a good year and I want to welcome both Senator Roberts of Kansas, our new Republican member, and our two new members from the Democratic side, Tom Udall and Mark Warner. Thank you both for being here. It is three great new members who have lots of experience in many different ways and I know they will contribute well to the Committee.

Now I am going to turn it over to Senator Bennett to make a few remarks.

OPENING STATEMENT OF SENATOR BENNETT

Senator BENNETT. Thank you very much, Mr. Chairman, and I certainly echo and associate myself with your comments with respect to Senator Feinstein and her staff. This was as pleasurable a committee assignment as I have had in the Senate and as congenial a relationship as I have had with a chairman. I want to look forward to the same relationship with you. I think our personal friendship suggests that that will be the case.

Chairman SCHUMER. Agreed.

Senator BENNETT. Even when we may disagree on policy issues. I say welcome to the new members and as I have commented, service on this Committee will do you no good whatsoever in terms of your relationship with your constituents, who do not care at all about the issues of administration of the United States Senate, but when people want rooms or other accommodations, it makes you very, very popular with your colleagues.

Chairman SCHUMER. Until the decision is made.

Senator BENNETT. Until the decision is made. But it is an interesting committee. It has an interesting jurisdiction and I think particularly with respect to some of the election issues, it might turn out to be one of the more stimulating experiences you have in this Congress.

So we welcome you and appreciate your participation. With that, Mr. Chairman, I am prepared to proceed with the agenda where we adopt our rules for the year.

Chairman SCHUMER. Great, that will be terrific. I wonder if any of our colleagues would like to make any statements? Senator Udall? Senator Warner?

Senator UDALL. My staff sent me over with an one-hour speech and I am going to forego that.

Chairman SCHUMER. By unanimous consent the entire speech will be placed in the record.

Senator UDALL. Okay, thank you.

Chairman SCHUMER. However long it may end up being. Senator Warner?

Senator WARNER. Mr. Chairman, I am happy to be on the Committee. I do not know if this shows that I drew the long straw or the short straw, but I am happy to be here.

Chairman SCHUMER. Senator, you always seem to draw both. Senator Roberts?

OPENING STATEMENT OF SENATOR ROBERTS

Senator ROBERTS. I have the dubious privilege of being the longest serving member on the Ethics Committee in the history of the United States Senate. I was wondering if I could switch with somebody?

Thank you, Chuck, and it is good to be on the Committee. I did not expect this privilege, but I will try to do my very best and I have already received the donut and a cup of coffee, just like that, so things could not be any better. I look forward to working with you.

Chairman SCHUMER. Thank you, Senator, and Senator and I know each other from our House days when we played in the gym everyday and he set the best picks. He is the most solid and subtle pick, picker—I do not know what the word is—maker of picks on the basketball court. I think many a Democrat was injured crashing into him.

Senator ROBERTS. I think you called it a foul at the time.

Chairman SCHUMER. Yes, indeed. I was trying to be polite. Okay, well why don't we get started? I want to thank you.

Our agenda this morning is the adoption of the Committee Rules of Procedure and then the approval of an original resolution which will fund the Rules Committee during the 111th Congress.

As for the rules of procedure, they are virtually the same as last Congress and I do not think there is any dispute. Senator Bennett and I have agreed that they worked well last year and we ought to just keep them.

The second item is the approval of the budget. As many members are aware, the Rules Committee recently sent a letter to the Committee chairman, ranking members regarding their budgets for the 111th Congress and the letter included guidance from the leadership on the amount of funds that would be available for expenditures and I am pleased to report that the Rules Committee resolution is within the guidelines set by Senators Reid and McConnell.

Most of the committees got very nice allocations. I am also pleased to inform the Committee that the other committees will be reporting resolutions that were within the leadership guidelines, so everyone is pretty happy. We do not have anybody protesting and that is all to the good.

According to the Committee's rule procedures, we need seven members to begin discussing Committee business and we need ten members to conduct the Committee business for today. We want to welcome Senator Pryor, who is the sixth member, so one more, and Senator Feinstein is on her way. Good.

We need 10 members to report legislation, but when seven members are present, we can begin to discuss the agenda items and at that time, I am going to entertain a motion to adopt the rules of procedure and approve the original resolution authorizing expenditures for the Rules Committee for the 111th.

So we do not have a quorum, but if the members would indulge and wait a few minutes and see if Senator Feinstein comes by, we can then just at least move the resolutions. Here is Senator Nelson, and we are truly privileged to have Senator Nelson here because I was in Senator Reid's office just about a half hour ago and he was on the phone with Senator Nelson talking about the important work Senator Nelson is doing on the economic recovery package.

So we appreciate your taking the time to being here Ben, and we have been joined also by Mark Pryor, great member. Would either of you like to say anything? Senator Nelson?

Senator NELSON. I would say, Mr. Chairman, thank you. Ever since you took over my public relations effort and taken over officially, my coverage has been increased dramatically and I just want to thank you.

Chairman SCHUMER. You have done a great job and you deserve it. Senator Pryor, how is your coverage?

Senator PRYOR. I'll always [inaudible] improved.

Chairman SCHUMER. Great. Okay, just for Mark and Ben, we need seven.

Senator ROBERTS. We have seven.

Chairman SCHUMER. We have seven. Thank you, Senator Roberts. You are already contributing in a very material—

Senator ROBERTS. Mr. Chairman, I move that we adopt the rules and resolution.

Chairman SCHUMER. We can move them, but we cannot vote on them until we have 10 members. But we will—

Senator NELSON. Second.

Chairman SCHUMER. Second. Thank you, Senator Nelson. We will try to just convene a vote right off the floor to get the 10 members to adopt the rules. So we have the motion. It is seconded and we will let you know when we will meet on that.

We are expecting both Senators Durbin and Feinstein, which will bring us to nine, so if members wouldn't mind waiting a couple of minutes. Let's say if we don't have nine by 10 of 11, we will just adjourn; how is that? Because if we have nine, we will just somehow dragoon the 10?

Senator BENNETT. Mr. Chairman, it is my understanding that with seven we can adopt the resolution, the rules, but we cannot adopt the funding resolution.

Chairman SCHUMER. Is that correct? That is correct. Good. Okay, well then let me ask, does anyone wish to have a roll call vote on the rules of the Committee? If not, let me just ask all in favor, say aye.

[A chorus of ayes.]

Chairman SCHUMER. Opposed, nay. And the motion is agreed to, so the rules of procedure adopted. The original resolution is approved and reported.

Now we will just wait for the funding resolution.

Senator BENNETT. That is correct.

Chairman SCHUMER. Let me, while I am doing that, introduce our new chief of staff, Jean Bordewich. Please say hello to everybody.

Ms. BORDEWICH. Hello. It's nice working with everyone.

Chairman SCHUMER. Jean is one of the most capable people I have met and we know each other since we were 19 years old and we were interns here in Washington. You will be happy to know on this side of the aisles, I was an intern for a Republican senator, Senator Charles Goodell, of Jamestown, New York.

Senator BENNETT. I remember him.

Chairman SCHUMER. He was a fine person. His son is now the commissioner of the NFL and still remembers the Buffalo Bills and how important they are. And Jean Bordewich worked for Congressman Richardson Pryor, who was a Democrat from Greensboro?

Ms. BORDEWICH. Greensboro, North Carolina.

Chairman SCHUMER. Greensboro, North Carolina, and we became friends then and have stayed in touch. I am really privileged that she decided to take this job and I think we will all be lucky.

Our counsel is Jason Abel, another very, very capable person. Those are the two new people and the rest of the staff are all from Senator Feinstein and Senator Bennett's tenure because they did such a great job there was no need to change staff.

Senator Warner?

Senator WARNER. As a new member of the committee and of the Senate, and if you have two minutes to kill, can you give us a little quickie overview of—I think I understand the jurisdiction of the Committee, but if you could explain it again and what you think we might be taking on.

Chairman SCHUMER. The Committee, of course, has jurisdiction, I guess you divide it into two parts, one is the legislation jurisdiction, one is the administrative jurisdiction.

The administrative I think everyone is familiar with in the sense that it deals with budgets, it deals with rooms, it deals with parking spaces. But the amazing thing is, it deals with many, many other issues that we never have to really worry about because the staff does such a great job.

I mean, for instance, they are in charge of all of the Capitol grounds, the Visitor's Center, the restaurants, things like that. Some meet with the police chief every few days just to make sure everything is going correctly there.

One of the issues that we might face, some have wanted to—Senator Durbin, thanks for coming, Dick. Somebody has said we have an old coal burning heating facility and some have moved that we upgrade it. Of course, it is a large expense.

So there are those kinds of issues that come before us, the Smithsonian, so many others. The Library of Congress is in our jurisdiction. They are very interesting issues; I did not realize them until the other night. We had a briefing and the number of different issues that say Jean has to deal with everyday that we do not have to bother. These are not partisan issues. These are just sort of picking up the garbage, as they say.

The other is the legislative issues which are very, very interesting. It is in a few areas. Anything to do with elections. There is obviously all kinds of issues of election law reform. President Obama has been interested in these issues and I expect we are going to be pretty active in that area this year in terms of elections, in terms of voting and things like that.

Second obviously is campaign finance reform, another issue that always seems to bubble up. That is an issue again that we have jurisdiction over and probably there are things that have to change in terms of campaign finance reform, places where it is broken.

And the third, which is sort of legislative, is an issue I think we are going to be talking about more and more, is the rules of the Senate and how the Senate works and how it is governed. And again, cannot do anything if you cannot come to bipartisan agreement on rules of the Senate because the rules need two-thirds change. But there may be a need to change some of those rules.

Those, I would say, would be the three major areas of jurisdiction and I think each of them will sort of be bubbling this year, election law reform clearly, campaign finance reform and even rules of the Senate in terms of how we function.

So that is basically the jurisdiction of the Committee, and if you can come up with any new jurisdictions that will not get our fellow Committee members angry on other committees, feel free.

Dick, do you want to say anything?

Senator DURBIN. It is an interesting committee and does have some important considerations, issues to consider, I should say. I had a public financing proposal with Senator Specter in the last Congress that we would like to return to. I hope that that will be part of the conversation.

Senator Feinstein was kind enough to give us a hearing. I would like to see in light of the intervening Supreme Court decision if we can go back to this and see if it needs to be modified.

Chairman SCHUMER. Right, the whole area of public finance with the law that was passed, McCain-Feingold, a couple of years ago, does need a review because there were certain things they thought would happen did not, certain other unexpected consequences that occurred, and then some like Senator Durbin and Senator Specter think the whole thing should be changed around and we ought to move to public financing. These are very important issues and certainly it is something we are going to look at.

We have now three, six, eight.

Senator BENNETT. We have nine.

Chairman SCHUMER. We have nine?

Senator BENNETT. We have nine.

Chairman SCHUMER. No, we don't. One, two.

Senator BENNETT. We have eight.

Chairman SCHUMER. Eight?

Senator BENNETT. Eight.

Chairman SCHUMER. You know, even if Senator Feinstein—is anyone else expected? I am not going to keep us here.

Well, I think I am not going to make people wait. We will try to have the vote on the funding off the floor. It was nice of all of you to come. We did adopt the rules. We only needed seven for those before Dick and Ben came in, but thank you for coming and we will just try to convene a quick little meeting on the floor to adopt the funding resolution, if that is okay. I think it is unfair to make people wait any further.

So thanks very much for coming and we will continue to have muffins, because it brought a pretty good turnout. Thank you.

[Whereupon, at 10:53 a.m., the committee was adjourned and reconvened at 5:27 p.m. in the Capitol on this same day. Present: Senators Schumer, Dodd, Feinstein, Durbin, Murray, Pryor, Udall, Bennett, Hutchison, Chambliss, Alexander and Roberts.]

Chairman SCHUMER. The Rules Committee will come to order. Earlier today, we approved our Rules of Procedure, and now that we have at least 10 members, I will entertain a motion to adopt the original resolution authorizing biennial expenditures for the Rules Committee. Is there a motion?

Senator BENNETT. I move, Mr. Chairman.

Chairman SCHUMER. Is there a second?

[A chorus of speakers.] I second.

Chairman SCHUMER. Since there has been no request for a roll call vote, this will be a voice vote. All in favor, say aye:

[A chorus of ayes.]

Chairman SCHUMER. Opposed, nay.

[No response.]

Chairman SCHUMER. The motion is agreed to—the original resolution is approved and ordered reported. Since there is no further business, the Committee is adjourned subject to the call of the chair.

[Whereupon, at 5:35 p.m., the Committee was adjourned.]

VOTER REGISTRATION: ASSESSING CURRENT PROBLEMS

WEDNESDAY, MARCH 11, 2009

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The Committees met, pursuant to notice, at 10:08 a.m., in Room SR-301, Russell Senate Office Building, Hon. Charles E. Schumer, Chairman of the Committee, presiding.

Present: Senators Schumer, Pryor, Udall, Warner, and Bennett.

Staff present: Jean Bordewich, Staff Director; Jason Abel, Chief Counsel; Veronica Gillespie, Elections Counsel; Adam Ambrogi, Counsel; Carole Blessington, Assistant to the Staff Director; Brenna Allen, Professional Staff; Lynden Armstrong, Chief Clerk; Matthew McGowan, Professional Staff; Mary Jones, Republican Staff Director; Shaun Parkin, Republican Deputy Staff Director; Paul Vinovich, Republican Chief Counsel; Michael Merrell, Republican Elections Counsel; Trish Kent, Republican Professional Staff; and Rachel Creviston, Republican Professional Staff.

OPENING STATEMENT OF CHAIRMAN SCHUMER

Chairman SCHUMER. The Rules Committee shall come to order, and good morning to one and all. And I would like to thank my colleague, Senator Bennett, I look forward to a close and amiable working relationship, whether we agree or disagree on issues, as is his way, in the future.

Anyway, this morning our topic is voter registration. If voting is the heart of democracy, registering Americans is the lifeblood of our Republic. But it seems as if we have had some serious circulation problems. What the butterfly ballots and hanging chads were in 2000 is what voter registration problems are today.

Today we will hear new groundbreaking reports of astounding problems with our voter registration system. Hidden from the excitement of the past election was the fact that millions of voters, through no fault of their own, were shut out of this process due to deeply-rooted problems that need to be fixed.

We will hear from our witnesses and more details, but the numbers are staggering. Professor Ansolabehere's research reveals that as many as 7 million eligible and registered voters were denied the right to vote, whether it was a photo ID requirement, list purges, no match, no vote comparisons, or simply because they moved from one home to the other and their registration did not follow. His astonishing report also estimates that as many as 9 million additional people were prevented from registering due to deadlines and change of residency requirements.

Now, each one of these alone does not seem like an egregious violation, although to the person it might be, but put together, you get massive disenfranchisement, and this is undemocratic, unacceptable. And, of course, as we know, 7 million is often enough to swing a federal election.

Since World War II, the popular vote in 8 of 16 presidential elections could have swung the other way, and hundreds of times over, states could have swung as well if 7 million people who were supposed to vote did not.

Voter registration errors know no party or ideology, so listen to a few stories.

There is the serviceman and his wife who move from base to base and are not allowed to vote because they did not arrive at their new residence to meet the deadline to register. In other words, the Army tells them October 15th you have to be somewhere else November 1st. And yet, the voter registration deadline was October 15th in the new place where they are going. They cannot even vote for their commander and chief, who will determine whether or not the soldier is sent off to war.

Then there is the hardworking father holding down two jobs to put food on the table for his kids, who skips dinnertime to go and vote, only to be turned away simply because his name was confused with that of an ineligible convicted felon.

There is the tradesman who finds his name is not on the list because his handwriting was not clear on his voter registration form. So an A becomes a U, and there is no match for his drivers license, and no vote.

In fact, Joe the Plumber of the 2008 election fame was nearly denied the right to vote last November because his name was misspelled on the voter list. Now, it was a hard name to spell, so I am not blaming anybody, but it is just a fact.

There is a student who attends a university in Virginia only to be told he cannot register to vote at his new domicile, and if he does, he could lose financial aid.

There is a woman who shows up to vote only to find out she was not even registered due to an error made by a third party registration organization who misplaced the form or sent it in too late.

I cannot tell you how many times in New York I have heard the refrain, I registered to vote, and when I showed up, I was told my name was not on the list. So we seem to be stuck in the mud on certain issues.

As I said, each of these stories, they are a little bit poignant, but, you would think, okay, that happens. But when you add them up to 7 million, or 9 million names, it is a lot more troubling than that.

In the 21st century, people should not be denied their constitutional right to vote because of problems caused by an antiquated voter registration system that was set up in the 19th century by the Whig Party. That is who set up our voter registration system, which we still use today. And, of course, the Whigs are not even around anymore.

It is truly remarkable that with the technology we have today that someone could be turned away at the polls simply because he or she has moved to a different county or has bad handwriting. If they move to a different country, they should not vote. But if they move to a different county, they should, or if there is bad handwriting.

It is not to blame our local election officials who work hard to make sure the trains run on time on Election Day. In fact, just yes-

terday, two secretaries of state, Carnahan, Democrat from Missouri, and Greyson, a Republican from Kentucky, very clearly described the problem state election officials face with voter registration.

I ask unanimous consent their column and roll call be entered into the record. So without objection, it is.

[The information follows:]

Chairman SCHUMER. The question of last minute registration, the massive amount of data entries involved, are a lot to place on local county officials with limited resources. And additionally, the amount of money spent on maintaining current voter registration lists places a strain on state governments already struggling with the current economic crisis. Part of the problem may be that the states and counties need more resources to ensure that all eligible voters can be registered and all those registered can vote.

So today we examine these problems. I cannot imagine what it was like for millions of voters, some of whom attempting to vote for the first time last year, were told they were not registered correctly and could not cast a ballot, particularly after waiting in line for an hour or two, maybe on a cold or rainy evening. I cannot imagine what it was like for these folks to be denied the right to vote in this historic election. So this should not happen, not in the United States of America.

We are not going to talk about solutions today; we are just going to talk about anyone can talk about what they want, but the focus of the hearing is just on the problem. And there are other problems as well. I know my colleagues on the other side of the aisle talk about schemes to defraud and register people who should not be registered. And that is something we are going to want to look at as well because I think we have to address both sides of the problem.

But today we are going to look at this particular problem. And I thank all our witnesses and want to turn things over to, first, my colleague, Senator Bennett for a statement, then Senator Warner after him.

OPENING STATEMENT OF SENATOR BENNETT

Senator BENNETT. Thank you very much, Mr. Chairman, and I appreciate your calling a hearing. I think it is appropriate that we hear these issues. And I would take slight issue with one comment you made in your opening statement. I think there are still Whigs around.

[Laughter.]

Senator BENNETT. I will go no further as to identify where or who, but my study of history and the attitude of the Whig Party leaves me to believe that there are those who still hold that ideology.

Now, we have two compelling and sometimes competing interests with respect to this whole question. We want everyone who is legally qualified to vote to be able to vote. And we want him or her to be able to vote as easily and smoothly as we possibly can. At the same time, the whole purpose for having people register in advance is to create some kind of mechanism that will allow election offi-

cials to prevent those who are not legally qualified to vote from voting, and sometimes this becomes a trade off.

In an effort to get everyone to vote, we relax registration requirements and, thereby, open the door to vote fraud; or, conversely, in an effort to prevent vote fraud, we tighten registration requirements, and thereby run the risk of keeping people away who belong there.

This is not a new issue. When I was a member of the Governmental Affairs Committee, we held a hearing on this issue and one of the witnesses on that occasion was Dr. Larry Sabato, the director of the University of Virginia Center for Governmental Studies, and one of the more well recognized names when it comes to these issues.

I would like in my opening statement to quote a few things from Dr. Sabato, and then would ask unanimous consent that his entire opening statement be included in the record.

Chairman SCHUMER. Without objection.

[The statement of Dr. Sabato follows:]

Senator BENNETT. He makes the same point I just made. He said when we look at the registration system and voting process, we have to balance two conflicting values. One, the goal of full and informed participation in the electorate, and, two, the integrity of the system. And he goes on to say, to the extent we keep expanding the participation right and make it easier and easier for people to register to vote, we almost certainly increase the chances for voter fraud. So, in a sense, it is a trade off. To move completely in the direction of one value as opposed to the other is foolhardy.

Then he goes on to list a number of examples of people in the 2000 election who cast illegal votes. If I might, there are the corresponding, one-on-one personal observations of the kind you have just cited of people who ran into difficulty with registration. And he says, it does not stop with Florida and Wisconsin. As I suggested, fraud did not just appear during the 2000 presidential election. Just a glance at the past decade shows many examples of electoral fraud.

Then he goes on to list some. Extensive absentee ballot fraud in Alabama; hundreds of phony registrations in California; nearly a thousand illegal votes in New Jersey, including some people who are unregistered and others who are dead; significant absentee ballot fraud in Philadelphia; votes stolen from the elderly and infirm in Texas, and the list goes on and on.

Then he says in separate quotes, whether fraud is Democratic or Republican, or located in the north or the south or the west, the effect on American democracy is similar. While electoral hanky-panky affects the outcome in only a small proportion of elections, mainly in very tight races, one fraudulent ballot is one too many for the integrity of the system and the confidence that people have in the system.

So this is the balance that we have to address. We want, as I said, registration to be as open and as easy as it can possibly be for those who are entitled to vote, but at the same time, we want registration to be effective enough that those who are interested in controlling fraud have the tools that they need to deal with that.

That is the balance that I hope we will strive to strike as our legislative activity goes forward following this hearing and other hearings that you may have scheduled. And I appreciate your diligence in addressing the problem and will do whatever I can to see that we have as productive and probing a hearing as possible.

Chairman SCHUMER. I want to thank Senator Bennett, and I agree with the thrust of his statement. Both are problems, and I think we have to address both. And there is sort of a yin and yang here that you have to find the happy balance to.

Senator Warner?

OPENING STATEMENT OF SENATOR WARNER

Senator WARNER. Thank you, Mr. Chairman. I want to add my voice as well and say thank you for calling this hearing and echoing both what you and Senator Bennett have said, this yin and yang between registration and fraud.

I am not going to be able to stay for the whole hearing, but I do want to point out two issues that I hope the panel will address and would love to pursue. One, and the chairman mentioned this in his opening comments, Virginia has become a little bit of ground zero for the battle between local registrars trying to determine what is appropriate for college students, sometimes out-of-state college students, who choose to registrar in their college hometown rather than their parents' hometown. We have, perhaps, in the Commonwealth given a little bit of disjointed guidance.

So I would love to hear from the panel, what appears to be both trends in the law and best practices, on how you get that balance. We clearly want students to participate; if they are living 9 or 10 months a year in a certain locale, what kind of residency requirements are looked at. On the other hand, if they are simply passing through and often time there are concerns at the local government level that you may end up having, in fact, undue influence because of the student population in the community. So I would love to hear comments on that issue.

The second and this is Virginia also. Like other states, but I think Virginia because we are proud to have some of the highest concentration of military of any state in the country, we have lots and lots military families who continue to be challenged with not only registration but unclear rules about when and how they have to get their ballots posted, when and how registrars would receive those ballots.

As recently as the 2008 election cycle, again, this proved to be quite a bone of contention. And I would love to hear any comments from the panel on how we can better grapple with the very unique challenges that our military families, particularly those who are posted overseas, can make sure that, one, they get registered in the first place, and two, that there is no undue burdens on them participating in the electoral process.

So, again, while I am not going to be able to stay for the hearing, I do appreciate the chairman calling this and anxious to hear comments on those two questions.

Thank you, Mr. Chairman.

Chairman SCHUMER. Thank you. And I think those are two very important issues that we hope to explore.

Senator Udall?

OPENING STATEMENT OF SENATOR UDALL

Senator UDALL. Thank you, Chairman Schumer and Ranking Member Bennett. Thank you both for your statements. And let me just say that I think you have reached the right balance here in terms of talking about the direction we should go. I think we all want everybody to fully participate and we want to get people registered and give them that opportunity. But we want to make sure that we have fair elections without fraud, and that is really the way to go.

Two of the issues in New Mexico that I think are of some concern have to do with provisional ballots and absentee ballots. And I notice across the country, we are seeing the same thing. When you get into the area of how you make sure that absentees are handled in such a way that it is uniform and, as the Supreme Court would say, you had equal protection in these kinds of situations, that is a concern. And then the provisional ballots are also growing to a significant degree. I hope that you have an opportunity to comment on both of those and give us some guidance as to where you think we should head.

Once again, I think the chairman is right-on in holding this hearing and proceeding on this, and I anxiously await the testimony of our very distinguished panel.

Thank you, Chairman Schumer.

Chairman SCHUMER. Thank you for your excellent statement, Senator Udall.

Now we are ready for the witnesses. I am going to briefly introduce each one, ask them to each put their entire statement in the record, speak for five minutes, and then we will have time for questions. So if you could try to tailor your remarks to meet the five-minute goal, we would appreciate it.

First, Stephen Ansolabehere—I know that is a hard one to say—is a professor of government at Harvard University and political science at MIT. Formerly, he served as co-director of the Caltech/MIT Voting Technology Project. He is an expert on American elections, public opinion and voting behavior.

Curtis Gans is the director of the Center for the Study of the American Electorate within the Center for Democracy and Election Management at American University. In addition to being a professor at American University, he often appears as a recognized expert on talk shows to discuss a variety of voting issues.

Nathaniel Persily is a professor at Columbia Law School. He is a nationally recognized expert on election law and is the founder and director of the Center for Law and Politics at Columbia Law School.

The Honorable Chris Nelson. Mr. Nelson has been serving as South Dakota's Secretary of State since his election in 2002. Before being elected to this position, Secretary Nelson served as South Dakota's state election supervisor.

Kristen Clarke is co-director of the Political Participation Group at the NAACP Legal Defense and Education Fund. Before joining the NAACP, Ms. Clarke worked for the Civil Rights Division at the U.S. Department of Justice.

Last but not least, Mr. Jonah Goldman. Mr. Goldman is director of the National Campaign for Fair Elections at the Lawyers' Committee for Civil Rights. His responsibilities include leadership in the Election Protection Coalition, the National Network for State Election Reform, and the Lawyers' Committee election reform advocacy and litigation docket.

Mr. Ansolabehere, Professor, thank you. And, again, your entire statements are introduced into the record, so you may begin.

**STATEMENT OF STEPHEN ANSOLABEHHERE, PROFESSOR,
DEPARTMENT OF GOVERNMENT, HARVARD UNIVERSITY**

Mr. ANSOLABEHHERE. Thank you, Mr. Chairman and members of the Committee, for holding this hearing and paying attention to this issue.

In 2001, the Caltech/MIT Voting Technology Project found that 4 to 6 million Americans tried to vote but could not, or did not have their votes recorded, owing to problems with voting equipment, registration, absentee balloting and polling place operations. The largest of these problems was registration followed closely by voting technology.

The Help America Vote Act facilitated the upgrading of voting technology throughout the United States, punch card and lever machines were phased out, and the Federal Government assisted states and counties with their purchase of optical scan and electronic voting equipment.

Voting technology accounted for about 1.5 to 2 million lost votes in 2000, and today that figure appears to be around 500,000. That is a substantial improvement thanks to the intervention of the Help America Vote Act. That is the good news.

Registration, unfortunately, remains as large a problem as ever. In 2008, to put the matter in perspective, there were 230 million people of voting age in the United States, an estimated 212 million eligible voters, that is citizens, non-felons who are also voting age, an estimated 168 million registered voters, and 133 million people who actually voted. To put matters another way, 44 million Americans were not registered to vote, though they could have been, and another 35 million Americans were registered to vote but did not vote.

The registration and authentication system in the United States remains a significant source of difficulty for many voters. Of the 79 million Americans who are eligible but did not vote, most certainly did not vote because they chose not to vote for lack of interest. Even still, administrative problems prevented or discouraged millions of Americans from voting.

Based on the results of the Cooperative Congressional Election Study, which Senator Schumer discussed, I project that 9 million Americans did not vote because they had recently moved or because the date for registering to vote had already passed and they were not registered. Two to 4 million Americans were discouraged from attempting to vote because of various administrative problems relating to the authentication of voters and registration, and another 2 to 3 million Americans were registered to vote, attempted to vote, but could not vote because of problems with registration, acquiring absentee ballots, or voter identification. All totaled, it ap-

pears that 4 to 7 million Americans could not vote, even though they attempted to vote or wished to vote in the 2008 election.

There are other chronic problems as well related to the system, especially accessibility of the system for the disabled and for military personnel, and there are emerging problems, especially the growing number of people who have trouble getting absentee ballots. This is of particular note because absentee balloting is on the rise, especially in the American west. In 1972, roughly 5 percent of Americans voted with absentee ballots. In 2008, roughly 30 percent voted with absentee ballots.

My written testimony focuses on the problems associated with the system for voter registration and authentication. The conclusion is a discouraging one, as many of us in this community, both as scholars and policymakers, just a short while ago took major steps to improve these systems. Even still, many people encounter problems with voter registration and voter authentication today, and those problems appear to be as large as eight years ago.

Currently, the states are in the middle of a major upgrading of voter registration systems in the United States begun under the Help America Vote Act. Some have completed this process but many have not. Most communities have yet to see the benefits of those systems, but there is certainly the possibility, as statewide registration systems are implemented properly, we may eventually observe the gains in registration systems similar to what occurred with voting technology.

Based on my experience over the past eight years, I fully believe that a cooperative effort of local election officers, secretaries of state and the federal government can reduce, substantially, the difficulties that millions of Americans encounter when trying to register and vote. Thank you.

[The prepared statement of Mr. Ansolabehere follows:]

Chairman SCHUMER. Thank you, Professor, and thank you for your excellent report as well. We are honored that you released it at the committee.

Mr. Gans?

STATEMENT OF CURTIS GANS, DIRECTOR, CENTER FOR THE STUDY OF THE AMERICAN ELECTORATE

Mr. GANS. I want to thank the Chairman and the Ranking Minority Member for, a) holding this hearing and, b) inviting me to participate in your deliberations. Anything I say here will not reflect on the men and women who run our elections, the secretaries of states and chief election officers, down to the people who man the polls on election night. They are all decent, they all want to help, both with the integrity and the voting process.

I agree strongly with both the Chairman and Ranking Minority Member as to what the purpose of our election law ought to be. It ought to maximize voter participation, it ought to maximize the integrity of the process, and it ought to maximize citizen faith in that process.

I am going to give you three sets of numbers that say we are a long way from that. One is 74 and 50. A ballpark estimate of the percentage of eligible Americans is 74 percent, and that in turn

means that there are 50 million Americans who are not registered and cannot vote.

The second I am going to have to read. It is 115, 104.2, 103.6, 100.3, which is the number of names—the percentage of names on the registration list of the eligible voters in the District of Columbia, Alaska, Illinois and South Dakota. Ten other states have registration lists of 95 to 100 percent. And if anybody believes those numbers, there is a bridge across the East River in the state of our chairman that I would like to sell you. There are at least 20 million names on the registration list who should not be there, who have died or moved or are not legitimate voters.

The last set of figures is 139 and 172. The United States ranks 139th out of 172 democracies in the world. That is not a great picture of a voting system that works.

We also have each year a series of problems, voter lists that do not contain names that should, do contain names that should not be on them, zealous registration people on the liberal side putting people on lists that should not be, zealous people on the other side discarding registrations of people that do not agree with them.

We have millions of dollars spent for people like Jonah to monitor elections for poll watches and for lawyers willing to move at the drop of a hat to challenge any deviation. We call it fraud and we call it intimidation and suppression, and all of them have a grain of truth.

We will not, so long as we have a list based system, remedy any of these problems fully. We should consider what has worked in Mexico. And what has worked in Mexico is a government provided and paid for national, mandatory, biometric identification card and system. That would enfranchise everybody who is eligible, and it would get rid of every one of the problems people have raised with the electoral system, except vote buying and election administration malfeasance.

The objections to those are money and privacy. This will cost \$14 billion. We do not do \$14 billion for our voting system, but we do it for national defense, and it could be justified on national defense because we should know who is coming into the country and who is in the country. And if we establish it, it would eliminate or reduce identity theft. It would provide for accurate census without enumeration. It could help with criminal prosecution and wrongful conviction exoneration. It could do a variety of things except get rid of the common cold and halitosis. It also would rationalize the various identity systems that are already being mandated or in place.

This is a far-out idea, but I think people ought to consider it because I think it is the way that we can actually deal with all of these problems.

[The prepared statement of Mr. Gans follows:]

Chairman SCHUMER. I thank our witnesses for both interesting, informative testimony within the time limit, two out of two.

Professor Persily?

STATEMENT OF NATHANIEL PERSILY, PROFESSOR, COLUMBIA LAW SCHOOL

Mr. PERSILY. Let me echo the thanks of my fellow witnesses to this committee. It is always a pleasure to be an election law pro-

fessor who is giving testimony not in the middle of a meltdown, and it gives us a chance to think in a sober way about some of these problems that we have already been discussing.

I just want to make three brief points, and I have given you longer testimony for the record. First I want to look at the effect of registration laws on turnout, and then, secondly, to look at registration problems that we saw on Election Day. And then, finally, to talk a little bit about the litigation as a description of the magnitude of the registration problem.

First, the effect of registration on turnout. The effect of registration on turnout is not simply by the registration system itself. The United States continues to make it more difficult than any other industrialized democracy to vote. And the reason is not because we simply have registration; other countries have registration. It is the combination of that registration system with the high mobility of our population and the fact that the government does not take an affirmative role in registering people to vote. Those are the factors that make the United States unique. The incredible mobility of the U.S. population is one of the chief reasons that we see relatively low voter turnout.

To give you some sense of the relationship between the variables: 90 million eligible voters move every five years. All of those voters, if they want to vote at their new address, assuming they are not in an EDR state, have to take an affirmative step in order to register to vote. It is not a surprise, then, that people who have lived in their residence for five years or more turn out at rates of about 75 percent. Those who are recent movers to a new state or new county: only about half of those people tend to turn out to vote.

But the effect of mobility, or the combination of mobility and registration laws, is not seen just in the aggregate numbers. You can see it on discrete populations, and several members of this committee have already mentioned military voters. Congress has spent a lot of time looking at uniformed and overseas voters in this context because of the problems that those voters face.

You can also get a sense of this—and this is also from Steven Ansolabehere's Cooperative Congressional Election Survey, which is the effect on military voters even inside the United States, who face registration problems and voting problems at a higher rate than the general population. And that is because they are more likely to be moving before Election Day than the average population.

Most political scientists have spent a lot of time looking at the discrete effects on low-income groups, or particularly the relationship of registration laws on education. But when we look, for example, at these military voters who experience about 1.7 times the rate of registration problems when they go and attempt to vote and that also turn out at a rate 10 percent lower than the general population, we get a sense of the nature of this problem.

Secondly, let me talk a little bit about the registration problems at the polls in this past election. Unfortunately, we do not have the kind of concrete data that we would really like in order to assess the magnitude of the problems in this past election. We know, for example, that between 20 and 31 percent of the election related incidents that happened at the polls this year were registration re-

lated. You can get a sense of that from, say, the CNN incident reports or some of the other incident reports that different election protection organizations were running.

We know, for example, that in the 2004 election, that 1.9 million provisional ballots were cast and that the secretaries of state say that the chief reason behind the non-counting of a third of those provisional ballots was because of a registration problem.

We only really have data now from about 14 states on the rate of provisional ballot usage in the 2008 election, but we even know from just those 14 states that 800,000 provisional ballots were cast. And that gives you some glimpse as to the possibility of the relationship of the registration problem to the number of provisional ballots.

Then, finally, let me talk a little bit about the litigation in this past election. This is sort of a statement against interest because this is how we election law professors make our living. Let me talk about three categories of litigation that happened in this election, all related to this problem that you are investigating here today.

The first is what I think was the most common form of litigation, at least during this election cycle, and that was lawsuits dealing with purges and mismatch lists when you compare the voter registration lists to some other lists, whether it is drivers licenses, social security lists, et cetera, where you found a dramatic number of mismatches.

The second is the very famous now set of cases dealing with third-party registration drives, the kind that Senator Bennett was talking about, dealing with ACORN and some of these other groups that allegedly had registered voters who did not exist.

Then the final type of litigation that we saw were sort of the garden variety registration lawsuits, those cases where there is a technical defect in registrations or that there are problems such that people do not get to vote.

Between the litigation and the voter turnout and these registration problems at the polls, I think we get a sense at least the magnitude of the problem in the 2008 election.

[The prepared statement of Mr. Persily follows:]

Chairman SCHUMER. Thank you again. Excellent testimony.
Mr. Nelson?

STATEMENT OF THE HONORABLE CHRIS NELSON, SECRETARY OF STATE, STATE OF SOUTH DAKOTA

Mr. NELSON. Mr. Chairman, members of the Committee, it is truly a privilege to be before this committee and I appreciate the opportunity. I think it is vital that you hear from the perspective of a state election official.

November 4, 2008 was a historic day in America; nearly 133 million cast their vote. That is 9 million more than voted in 2004 and 25 million more than voted in the Year 2000. Voter registration systems across this country, managed by state and local election officials, handled that increase in registration and turnout, and they stand ready to handle future increases in registration and turnout.

I want to spend just a few moments talking about what I believe is right about our current voter registration system. The purpose of that system, obviously, is to provide a list of those eligible to

vote in each precinct. Voter registration provides order to our election system. I believe there are nine elements in our system that are crucial, and I would like to visit briefly about each one of those. They contribute to the reliability of the system.

Number 1. Voter registration is easy and accessible. Voter registration is available at election offices, driver license agencies, public assistance agencies, other public agencies, military recruitment offices, and on the Internet.

Number 2. The system relies on a paper card or form that is signed by the voters. Questions about the accuracy of the system can be taken back to that original registration card. Much has been talked about having a paper trail of the ballot on Election Day. It is equally important that we have a paper trail of the voter registration process with each person that registers.

Number 3. The registration card contains an oath which must be signed by the citizen, swearing to their eligibility and their citizenship. State and local officials have very little access to citizenship information. We rely heavily on the oath signed by the voter.

Number 4. The voter registration system is local. Voter registration cards are maintained as official records at the local agency. Those local officials know that each of those registrations represent somebody's right to vote, and if there is information that is missing on those cards, local officials do everything they can to get that resolved.

Number 5. Voter registration data is verified. The Help America Vote Act requires verification against drivers license lists or social security data. Incorrect information or simple typos can be caught and easily corrected.

Number 6. Voter registration is aggregated into a statewide voter registration file that assists us in eliminating duplicate voter registrations. It also allows states, such as South Dakota, to use that data to allow citizens to, through the Internet, verify their registration status, find their polling place, and view their sample ballot.

Number 7. The current registration system establishes a chain of responsibility for that data. Local officials know where to find the original registration information, they know how the data is incorporated into the registration file, they know how that file is used to create the precinct registration lists, and with that knowledge, they can track down and answer questions about why someone is on the list or is not on the list.

Number 8. The voter registration system is transparent. The public, the candidates, the media, the political parties understand how names are added to the list and how names are removed from the list. And I would suggest that any attempt to remove that transparency from the current system will create and lead to deep suspicion about the integrity of the system.

Number 9. Voter registration is part of the fabric of our American political system. The requirement for voters to be registered causes political parties and other groups to do voter registration drives. Those drives heighten the awareness about the upcoming election, and I believe that is good.

The voter registration system in America today is the best and cleanest that it has ever been, despite some of the issues that we have heard about. The nine elements that I have talked about play

an important part in our successful registration system. The removal of any one of these elements risks the integrity of the system.

With rights come responsibilities. In the area of voter registration, state and local election officials have the responsibility of maintaining an accurate and clean election registration list. Individual citizens have the simple but powerful responsibility of filling out a voter registration card to avail themselves of their right to vote. It is a system that works and works well.

Mr. Chairman, members of the Committee, thank you again for this opportunity and your consideration.

[The prepared statement of Mr. Nelson follows:]

Chairman SCHUMER. Thank you very, very much, Mr. Nelson. Again, I think excellent outline.

Ms. Clarke?

STATEMENT OF KRISTEN CLARKE, CO-DIRECTOR, POLITICAL PARTICIPATION GROUP, NAACP LEGAL DEFENSE FUND AND EDUCATIONAL FUND

Ms. CLARKE. Chairman and distinguished members of the Committee, thank you for the opportunity to come and speak with you today about some of the problems that continues to plague our nation's voter registration system.

The final data that emerged in the 2008 election cycle reveals that only 61 percent of Americans eligible to vote cast ballots in this historic election. That is 1 percent more than in 2004. LDF believes that many more people would have liked to participate and we should undertake to see that in future elections they have the opportunity to do so.

Almost 13 percent of all eligible voters in our country are not registered at present. If we are to be regarded as the world's leading democracy, we must work to fix the breaks in the system and ensure that we reach the millions of eligible but not yet registered voters who are locked out of the system. I want to take my time to highlight some of the key problems by focusing on some of the issues and problems happening on the ground.

First, purge programs and unreliable database matching systems have created enormous obstacles for voters. As states have moved to implement the requirements of the Help America Vote Act, we are witnessing the technological advancements themselves being used and abused to match and remove voters from registration lists.

Let me point to an example. A recent purge program carried out in Louisiana resulted in a purge program that matched voters by using interstate databases to compare the first name, last name and date of birth of Louisiana voters with individuals from other states. Predictably, the system proved unreliable, yielding a number of false matches. And at the end of the day, more than 12,000 voters were purged from the state's rolls. A significant number of them were African American voters, many of them impacted by Hurricanes Katrina and Rita.

The study confirmed that these kinds of matching programs are extremely error prone and not based on sufficiently unique criteria that would prevent voter disenfranchisement. Most purge programs

like Louisiana's disregard the fail-safe provisions that are built into the National Voter Registration Act that generally require election officials to give proper notice and wait two federal election cycles before striking voters from the rolls.

In addition, poorly designed state voter registration applications and arbitrary rules by local election officials also pose a substantial threat. During our advocacy efforts this election cycle, we identified a number of jurisdictions in which officials rejected registration applications for reasons that have no bearing whatsoever on eligibility. Immaterial omissions often resulted in a number of the rejections.

In Indiana, for example, election officials were directed to reject registration applications if an applicant failed to mark a check box confirming their citizenship or their voting age. This was done despite the fact that voters sign an affirmation under penalty of perjury at the bottom of the form confirming that they are citizens and confirming that they are of voting age. These actions prompted successful litigation to stop officials from acting on these grounds, but the problem continues.

Another example emerges out of Alabama where the Secretary of State instructed local election officials to reject applications from persons who possess drivers licenses but chose instead to list the social security number of the voter registration form. Thus, voters who provided a social security number were rejected for not listing their drivers license number when registering.

The take away here is that voters should not penalized for poorly designed voter registration applications that capture duplicative information from applicants. We need to streamline the design of registration applications and eliminate the game of gotcha that leads to the rejection of so many would-be voters.

Another example emerges out of Louisiana where officials reported rejecting as much as 20 percent of new registration applications because a database match revealed inconsistencies with the spelling of a name or in the full drivers license or social security number. Potential voters should not be penalized for administrative errors like these that have no bearing on voter eligibility.

The challenge we now face is determining how to reform and repair the system in a way that will be more inclusive and provide opportunities for broad and meaningful participation for the millions of eligible but not yet registered citizens among us. While we turn now to corrective action, we must remain mindful of the particular challenges faced by those who are among the most vulnerable among us, the poor and our nation's racial and ethnic minorities. The future of American democracy remains tied to our ability to resolve some of the barriers that I have discussed today. Thank you.

[The prepared statement of Ms. Clarke follows:]

Chairman SCHUMER. An exquisite sense of timing. You ended exactly at five minutes.

Ms. CLARKE. Thank you.

Chairman SCHUMER. Mr. Goldman?

And you gave very good testimony, more importantly.

**STATEMENT OF JONAH GOLDMAN, DIRECTOR, NATIONAL
CAMPAIGN FOR FAIR ELECTIONS**

Mr. GOLDMAN. Thank you, Mr. Chairman. I am a little bit intimidated by the example. I will make sure that I am inside the five minutes also.

I want to thank you and Senator Bennett also for not only bringing this hearing together, as Professor Persily said, at a time when it is not in the middle of an election cycle, but when we have the opportunity to deliberate on these really important issues, which are policy issues and not political issues.

As you suggested, our voter registration system needs modernization. At the dawn of the 19th century, long before Alexander Graham Bell made the first phone call, as you suggested, Mr. Chairman, the Whig Party was first advocating for our current voter registration system. And despite whether there are or there are not currently Whigs around, we know one thing, that both the registration system and the Whig Party are relics of the past.

Our registration system is inefficient. It sets election officials up for failure by diverting resources and energy from crucial tasks and it prevents more eligible voters from casting a ballot than any other part of the election process.

As governments at all levels fight to stretch every penny, this Congress has recognized that streamlining essential process is critical for moving forward in this new economy. Counties and states across the country are wasting millions of dollars every election cycle administering an outdated and expensive paper-based voter registration process that puts our election system at risk. Modernizing the registration system will improve democracy and allow communities to reinvest resources in critical functions like keeping more teachers in the classroom and more cops on the street.

There are two culprits, paper and timing. Each registration requires an individual paper form. A third to a half of these forms arrive in registrars' offices just before the deadline. The inefficiency of the registration system has a domino effect, causing confusion at the polls and infecting every aspect of the voting process.

The biggest impact is on voters. We have already heard up to 9 million voters are prevented from voting at one stage or another because of the registration process. Registration problems affect everyone, but also, as we have heard already, it is felt more distinctly in some communities. Military and overseas voters have terrible access to registration facilities. Older voters and those with disabilities cannot get absentee ballots unless registration rules are updated. And young voters are frequently left off rolls because they move often but also because they are unfamiliar with the process.

The current system of voter registration is a bureaucratic nightmare. In an election system with more than 7,000 local election offices, just getting the paper application to the right place is no small feat.

Last year, Mr. Chairman, in your state of New York, for example, a hundred thousand forms collected by third-party registration groups were mistakenly sent to the State Board of Elections in Albany. The board had to sort through those forms and forward them to the correct local offices. Some 3,500 of those forms were found

in the New York City Elections Office after Election Day. Of course, those voters were not on the registration list.

Registration deadlines have caused significant issues. Adam, an active serviceman from Mississippi, submitted his registration before the deadline as he was leaving for his tour. When he came home, there was no record of his registration, the deadline had passed, and he could not vote.

Purges often have removed long-time voters from registration rolls. James, he had been voting at the same poll location in Alabama for decades, but when he got to the polls on Election Day, he was told that he was not registered. An election official told him that his office had received calls from about 20 other voters who had similar problems. These experiences were shared by countless voters across the country.

Through Election Protection, I have had the honor to interact with hundreds of talented election officials. In jurisdictions of all sizes, whether run by Republicans, Democrats or nonpartisan professionals, the story remains the same. The inefficiencies of the registration system are a fundamental concern because they undermine election officials' ability to effectively serve their voters.

All that manual data entry cost money and adds opportunities from the states. Often more than half the registration budget goes to hiring temporary employees and assigning full-time staff to capture information from handwritten applications and eliminate duplicate registrations. This process costs even small jurisdictions, like Forsyth County, Georgia, hundreds of thousands of dollars. The cost grows to over a million dollars in medium sized jurisdictions like Franklin County, Ohio and is a multimillion dollar endeavor in large counties like Los Angeles.

Even with these extraordinary measures and costs, the system is far from foolproof. Voters can show up at the polls and find their name has been wrongly entered or dropped, forcing them to cast, as we have heard before, provisional ballots. Election officials then must reconcile the mistake by using other data to identify the voter before counting the ballot, which adds further costs and delayed certification.

These costs have a debilitating effect on the rest of the election system. For example, in Columbia, Ohio, the Board of Elections stopped notifying registrations with incomplete applications of the opportunity to correct them because it just cost too much. Even then, as Matt Damschroder who oversees elections in Franklin County says, phones that would otherwise be picked up are not, leaving voters' questions unanswered. Because of the inherent delays in processing paper registration forms, Los Angeles has to spend \$56,000 in every countywide election to send supplemental voter rosters to poll inspectors by overnight mail. That delay makes it difficult to order and distribute ballots.

Again, Mr. Chairman, thank you for all you are doing to move us towards a more efficient and equitable process to exercise our vote. Each election in the voter registration system, this relic of our pre-Civil War past, blocks millions of Americans from casting a ballot, distracts election officials, and needlessly wastes millions of dollars at a time when state and local budgets are stretching every

penny. Congress has the power and the opportunity to modernize this antiquated system. Thank you for taking the first step today.

[The prepared statement of Mr. Goldman follows:]

Chairman SCHUMER. Good job, Mr. Goldman; seven seconds off. Not bad, not too shabby, given how it usually is around here.

Okay. I want to thank the six witnesses. I thought the testimony was excellent from the witnesses that I asked to come and that Senator Bennett asked to come, and very much appreciated.

Now, to me, the astounding fact here was the reports both by Professors Ansolabehere and Persily, that large numbers of people just could not vote. And this is not relegated to a state; it shows the problems are everywhere. And I am certainly mindful of what Mr. Nelson said, that there is a lot that works with the system. Most people do vote and vote well, but in democracy, everybody has to vote.

So I would like to ask the witnesses whether they agree, each of you, just with the statement that we have substantial numbers of eligible voters being excluded from the rolls. It is a simple statement. I will just ask each of you for a yes or no answer, and then I am going to let anybody say whatever they wish. Okay?

Go ahead, Mr. Ansolabehere.

Mr. ANSOLABEHHERE. Yes.

Chairman SCHUMER. Mr. Gans?

Mr. GANS. Yes.

Chairman SCHUMER. Mr. Persily?

Mr. PERSILY. Yes.

Chairman SCHUMER. Mr. Nelson?

Mr. NELSON. No.

Chairman SCHUMER. Ms. Clarke?

Ms. CLARKE. Absolutely.

Mr. GOLDMAN. Yes.

Chairman SCHUMER. Okay. Then we will first ask Mr. Nelson. You disagree with the other five witnesses. You think that—do you think—I mean, I guess explain. Their studies are pretty good. They are not biased or political, so explain to me your answer. I am not asking the percentage. I am asking just that we have, at least by their reports, in the millions of people who are eligible to vote, want to vote and cannot.

Mr. NELSON. I do not believe that anybody is excluded. There are obviously millions that have been testified to that are not on the list for various reasons, but I do not believe that we have a system that purposely excludes anybody.

Chairman SCHUMER. Oh, I agree with that.

Mr. NELSON. And are there issues within the system that need to be looked at and addressed? Absolutely. And there are a number of things that have been brought up here that I would love to question the witnesses on because they do not make sense with what I know about how the system works.

Chairman SCHUMER. But the instance of, say, the military soldier who was assigned, wants to vote, and did not. Now, the system is not purposely excluding him. And Ms. Clarke focused on Louisiana and Georgia, and there are allegations that some of these rules are done to deliberately exclude people.

But let's leave that aside. Let's assume that we are not talking about intent here. We are just talking about the fact that the way the system works that there are people who want to vote, try to do what they can to vote, but cannot. You do not disagree with that.

Mr. NELSON. There may be some. But let me use your example of the military voter—

Chairman SCHUMER. Sure.

Mr. NELSON. —that is transferred on October 15th to a new location, gets to their new location too late to register. They can certainly vote absentee prior to leaving their current location. They are opened to do that in any state.

Chairman SCHUMER. Well—

Mr. NELSON. So they are not excluded from the process.

Chairman SCHUMER. You know, I have voted by absentee ballot. It is not so easy. You have to call—you have to get the form from the election board. It sometimes takes a long period of time. It is cumbersome. And in New York, I think we have a pretty good absentee ballot system.

You also have—the example I gave is the soldier is told—let's just say he is registered to vote, or she is registered to vote, at the military base in which they live. On October 15th, they are told they have to be somewhere else by November 1st, and the deadline for absentee ballots is over.

Mr. NELSON. If I might—

Chairman SCHUMER. We do not have—every state, am I correct, does not allow people to decide to vote absentee within a week or two. You sometimes have to apply for that absentee ballot in advance.

Mr. NELSON. I am not aware of any state that would have a two-week restriction on absentee balloting. In South Dakota you can absentee vote up until 3:00 on election day. I am not aware of any state that has a two-week black out.

Chairman SCHUMER. I am not sure, but somebody check me. In New York, you have to apply for the absentee ballot in advance.

Is that right?

Professor Persily, you are from New York.

Mr. PERSILY. I cannot remember exactly what it was in New York. I should say that I tried to vote and I was actually told I was not on the registration list only two years ago in New York. And it was the night before the election official—having an election law professor be the one being turned away from voting.

But with respect to absentee ballots, there are several states where, first of all, you have to have cause, obviously, in some states to request an absentee ballot. And there is huge variety on different states.

Chairman SCHUMER. Yes. I think, in all due respect, Mr. Nelson, there are states that would not allow that military voter to vote; not through intent, but in others.

Mr. Goldman, would you sum up—tell us the restrictions on that particular situation? I know you have studied this a lot.

Mr. GOLDMAN. Absolutely, and thank you, Mr. Chairman.

I think that we all do agree that, generally, a system that was created in the 19th century was created in a way that should be

fair. The problem is that it was created in the 19th century when there were horse and buggies dragging folks from place to place to try to register voters; now we are on learjets. And I think that that is something that we need to understand, is that we are really talking about a 21st century political process in a 19th century system that, as you say, is the lifeblood of the process.

The voters who call us are voters who want to vote. They want to vote desperately. And in 2008, we received 240,000 calls. Over 300,000 more people were serviced by Election Protection through our Web site. And they were telling us stories, military voters, telling us about how they—

Chairman SCHUMER. So the example that I gave is not an unusual—or is not an out of the question one, right?

Mr. GOLDMAN. No, it is not unusual at all.

Chairman SCHUMER. It probably happens hundreds of times.

Mr. GOLDMAN. Sure. It happens—

Chairman SCHUMER. At least hundreds, probably more.

Mr. GOLDMAN. It happens more than hundreds of times. We get those calls from all over the country, from service members who have moved, who are transferred right at the end of the deadline. But also, as I suggested in the testimony, from service members who register before the deadline as they are supposed to, and then come home from their tour of duty to get to the polling place excited to, as you suggested, vote for their boss, their commander and chief, and get to the polling place and their names are not on the rolls.

Chairman SCHUMER. Right.

Let me just ask, before I turn it over to my friend and colleague, Senator Bennett, to both Mr. Persily and Mr. Ansolabehere—because I do think while there is bad intent maybe, there are some people on either side, some who want to exclude people from voting, some who want to falsely register people.

But would it be right to say that most of the people who are excluded are not excluded by intent, by design, but rather because of the cumbersomeness of the system, the system is not modernized and things like that?

Do you agree with that, Professor Persily?

Mr. PERSILY. I do.

Chairman SCHUMER. How about you? Does your study show that?

Mr. ANSOLABEHERE. Yes, and other studies we have conducted.

Chairman SCHUMER. Would you disagree with that, Ms. Clarke?

Ms. CLARKE. No, I agree with that. I think that—part of the problem is that election officials have too much discretion, and they abuse that discretion, or you have a case in South Dakota where it appears that Mr. Nelson enforces rules very liberally and other states where similar rules are enforced in a very restrictive manner that locks voters out.

We need to figure out a way to make these rules more uniform across the board.

Chairman SCHUMER. But you would agree there is not a grand conspiracy on either side. There are some people who have bad intent, but mostly this occurs because we have not modernized or are

just negligent. There are new examples that keep coming up that we do not realize.

Is that fair?

Ms. CLARKE. I agree with that.

Chairman SCHUMER. Senator Bennett?

Senator BENNETT. Thank you very much, and thank you all for your excellent testimony. I do have some quibbles here and there that I would like to do my best to deal with.

Mr. Goldman, stop talking about a 19th century system. We have changed it. I had to fill out a provisional ballot in Utah, and in the 19th century there were no provisional ballots. I had applied for an absentee ballot and forgot it. So I showed up at the polls and they said, you cannot vote because you have already voted absentee. I said, well, I never mailed it in. Okay. You come over here, fill out a provisional ballot and we will see.

That is a system that is not in the 19th century. There have been an awful lot of changes in this. So you have valid points. Do not diminish their validity by that kind of pejorative statement.

Chairman SCHUMER. But just to quibble with my good friend, in the first half of the 19th century, nobody voted in Utah.

[Laughter.]

Senator BENNETT. That is true. We were infested with Mormon crickets, if I could use another term that has been in the news.

Mr. Ansolabehere, I would like to know more about your methodology because we have had a lot of numbers thrown out here. You use the number 7 million. In your written testimony, you are talking about 4 to 5 million who could not or did not vote. Mr. Goldman said 9 million. Mr. Persily said we do not have concrete data.

We are using numbers, and in Washington the tendency is, once a number is thrown out, regardless of how tentative it may be, it gets locked in. The press picks it up; it ends up in a headline. Having been in the headline, it then ends up in a bunch of speeches and it becomes gospel.

Right now, you are the only source that I can find, and I would like to understand your methodology a little better. You talk about 33,000 respondents. I want to know how that sample was drawn and how it was verified. And all of your extrapolations come from those 33,000; is that correct?

Mr. ANSOLABEHHERE. I followed two methods. One is—I also follow—we have the survey that we did in fall of '08, which is the only publicly available survey at this moment. The other survey that we are waiting on is the Current Population Survey that the Census produces. We follow the Current Population census' methodology in terms of question design and also the methodology for projecting from the survey out to figures on total number—

Senator BENNETT. I am sure you do. I am more interested in the sample.

Mr. ANSOLABEHHERE. The sample was part Internet and part phone to validate. And we also validated the study by comparing the statements of how many people voted for each candidate against the total vote shares that those candidates received in every state. And all of the states, except one, were within the margin of error, and the one was Kansas. So there was something about the sample in that state. But that will happen sometimes.

Senator BENNETT. Whom did you go after? How did you know to call 33,000 people? Were they self-selected?

Mr. ANSOLABEHERE. It is a national random sample. In some sense, all surveys are self-selected because all surveys are voluntary. But, yes, national random sample of the population in the United States, the adult population in the United States.

Senator BENNETT. You called them? And how many of the 33,000 you called said I did not have any problem and lived in South Dakota?

Mr. ANSOLABEHERE. How many of the 33,000 said I did not have any problem?

Senator BENNETT. Yes.

Mr. ANSOLABEHERE. Well, let's focus on the 4 to 5 million number. So the 4 to 5 million are the number of people projected out from the survey who said that they had tried to vote but could not, for whatever reason.

Senator BENNETT. I understand that, but you are talking 33,000 people. What percentage of them lived in Mr. Nelson's state and said they had no problem?

Mr. ANSOLABEHERE. I do not know how many in South Dakota.

Senator BENNETT. No, I am not saying specifically South Dakota, but what percent said they had no problem?

Mr. ANSOLABEHERE. What percent said they had no problem? Probably about 96 percent said they had no problem.

Senator BENNETT. So you are extrapolating—let's say 4 percent of the 33,000, of the 4 percent, you are extrapolating the 7 million figure you gave us here.

Mr. ANSOLABEHERE. Right, and that is about what Census does when they do the Current Population Survey projection as well.

The Current Population Survey, when you look at the statistical abstract of the United States or the reports produced by CPS through the Census Bureau, give you projections for how many million people are registered. That is where the number 142 million people registered comes from, from the last election cycle and so forth. That is where they get the citizens voting age population numbers. There is no official record of how many citizens there are in the United States; it all comes from those surveys.

Senator BENNETT. Oh, I understand that.

Can you not get the number registered by contacting all 50 states?

Mr. ANSOLABEHERE. Actually, no you cannot. Even the National Association of Secretaries of States produce a report, and all that was given from some states, like Texas, were ballpark numbers.

Senator BENNETT. Mr. Nelson, can you tell him how many are registered in your state?

Mr. NELSON. Five hundred and thirty-three thousand.

Mr. ANSOLABEHERE. Yes, some states you can, but you cannot get it in all—

Senator BENNETT. I will not pursue it any further.

Mr. ANSOLABEHERE. On top of that, there are problems of duplications, which South Dakota, as was testified, had more people on the rolls than they had in the citizens voting age population. So there is an impossibility there, and it is just because people move. There is no requirement that somebody update their registration.

Very quickly, as Nate testified, the registration lists become obsolete. Currently I am doing a study in L.A. County where we are auditing the rolls there, and it looks like about 6 to 10 percent of the names on the list, just the names, are no longer valid addresses. In addition, there are another 10 percent where the registration seems to be incorrect, according to the—

Senator BENNETT. Your written testimony suggests that there are 30 million obsolete and duplicate answers on the list. And you agree that these 30 million should be removed?

Mr. ANSOLABEHERE. Something should be done to reduce them. I do not know how to do that. That is I think an issue with how to do purges properly. I think there has been huge improvements in the states since 2001.

Senator BENNETT. Well, I do not want to drill any further on this or take more time.

Mr. Gans, I am interested in your solution, which is basically calling for a national ID card for everything, for social security, for immigration, for everything. And that is probably a bigger issue than we are going to deal with here.

Chairman SCHUMER. My Ranking Member, I also chair the Immigration Subcommittee. Who knows?

Senator BENNETT. Okay.

Mr. GANS. Mr. Chairman, I have run this one by Doris Meissner, who sort of likes it for the immigration purposes.

Senator BENNETT. Yes.

Chairman SCHUMER. May I interrupt, Lindsey Graham and I put in a proposal for a biometric social security card to deal with the immigration problem a couple of years ago. So the two actually do dovetail. It gets opposition from a variety of places, but it also gets some support.

Senator BENNETT. Yes, both of those are true.

Just one last—you are aware that in Australia, they solve this problem by making voting mandatory. If you do not vote, you get fined.

Now, I do not quite know how they handle the lists, but this was brought home dramatically when an Australian politician came to see me some years ago to talk about strategies. And having been one who had run campaigns in Utah, I immediately said, well, the first thing you have to do is identify who your voters are to get them out. And he said, no, that is not a problem. I said, what do you mean that is not a problem? He said, we have mandatory voting; everybody gets out.

I think the fine is 50 Australian dollars or something. I cannot remember. Do not take that, if there is anybody noting this down, because that was a lot of years ago. But when the Australians did some government reform some years ago, one of the reforms they put in place was mandatory voting.

Does anybody have a reaction?

Mr. GANS. Yes, I do.

Senator BENNETT. Okay.

Mr. GANS. I have two reactions. One reaction is that I think the right to vote implies the right not to vote. And I also—three reactions. I also think if we boost the numbers, we will hide the problems. And the third thing is, even if you have mandatory voting,

you would still have a list that you have to make accurate. The thrust of my testimony is essentially to start conceiving of another paradigm because otherwise you will be in Rube Goldberg Number 27.

Senator BENNETT. Okay. Well, I agree with you that the right to vote also includes the right not to vote, and I am not advocating for the Australian system. And this gets back to the question of extrapolating numbers; how many people did not vote because they chose not to vote as opposed to an assumption that if they did not vote, it was because of some breakdown in the system.

Now, Mr. Persily, you are nodding your head. Do you want to comment on that?

Mr. PERSILY. Well, let me first—since I have a little knowledge of Australia, I have to at least give my two seconds on that, which is that although they have mandatory voting there and they have fines, almost no one gets prosecuted, and yet they have extremely high voter turnout. About 4 percent, I think, of the ballots are cast for no candidate. They are called donkey ballots, which we would call undervotes here in the U.S. I guess here a donkey ballot means something completely different.

Chairman SCHUMER. They should call them kangaroo ballots.

Mr. PERSILY. But one thing I think you are getting a sense of from the testimony here is how much we do not know. I mean, we do have a good glimpse of, I think, the problem, both through litigation, from the number of respondents who are saying they faced problems, the number of people who call into these help lines, et cetera, and the number of provisional ballots, which gives you a sense of the registration and voting gap.

So the first step here is to—we do not actually even know how many people voted in this last election. We have 12 states that do not even provide certified vote totals. So you hear this number 133 million bandied about. There is a significant margin of error even in that. And then as previous witnesses were saying, with respect to the registration lists, yes, there is going to be a gap between, say, 20 million people who are on the registration rolls and the number of people who say that they are registered.

What we really need is to have a census of election administrators. We need to know at the precinct level how many people vote for which candidates by which method, military, Internet, provisional, et cetera, and then we can really get a handle on the scope of all these problems.

Senator BENNETT. And then we have the problem Mr. Gans talked about, where there are more names on the lists than there are people living in the jurisdiction.

Mr. PERSILY. Yes.

Mr. GANS. We have that. And the other thing, in response to your question of my colleague here, is whether you take my colleague's figure on my right or my figures, we either have 44 million or 50 million people who are not registered who are citizens eligible 18 and over. And that is a problem, as is the problem of 20 million names that are on registration rolls that should not be on. Both of those need to be dealt with.

Senator BENNETT. Thank you all very much.

Chairman SCHUMER. Let me go to a second round. And, of course, I afford that to my colleague.

Just one point, Mr. Nelson, just making the point of Mr. Ansolabehere here, Professor, you said there were 533,000, did you say?

Mr. NELSON. Correct.

Chairman SCHUMER. How many total people are there in South Dakota?

Mr. NELSON. Adults, about 750.

Chairman SCHUMER. Adults?

Mr. NELSON. No, total population about 750.

Chairman SCHUMER. Right. So how many adults are there, 18 and over who are citizens? I will bet it is less than 533.

Mr. NELSON. If I might address that because it was mentioned we have over a hundred percent registration.

The percentage of registered voters on the active registration list is 87 percent. The way they come up with the over 100 percent number is by adding in the inactive registered voters, that inactive list. And I will tell you, when the National Voter Registration Act was passed in 1993, the restrictions that it places on voter lists maintenance, I said at that time, this is going to guarantee in excess of 100 percent registration, and that is where we are at—

Chairman SCHUMER. This illustrates the point I think that both Mr. Ansolabehere and Mr. Gans were making.

Let me go back because my friend, Senator Bennett, talked about 4 million, 5 million. All those numbers are consistent. They represent different categories. So would you just—both you and Professor Persily, Mr. Ansolabehere, just go over what each of those numbers represents. They are not inconsistent numbers; they are not just bandied about numbers. They are serious numbers based on a study, obviously, on statistical methods. But they are not inconsistent given those statistical methods.

Go ahead.

Mr. ANSOLABEHHERE. The 4 to 5 million number is based on the number of people in the survey, projected out based on the number of citizens voting age population who said that they tried to vote but failed, for whatever reason.

Chairman SCHUMER. And they were registered.

Mr. ANSOLABEHHERE. And they were registered.

Chairman SCHUMER. Right. And give a couple of examples of those. Just give a couple of examples of those.

Mr. ANSOLABEHHERE. Actually, I cannot say anything that is a specific example from the survey because it violates confidentiality—

Chairman SCHUMER. Well, you do not have to give the name; somebody who showed up, waited on line for two hours, and went home because it was pouring rain, right? Would that be—

Mr. ANSOLABEHHERE. Yes. There are people who went home because the lines were too long. There were people on that list who said they were sick or disabled, they had transportation problems, they were out of town and so forth.

Chairman SCHUMER. Okay.

Mr. ANSOLABEHHERE. The 4 to 5 million is the percentage—sorry. The 2 to 3 million of those people, that 4 to 5 million, said that

they could not vote because of lack of registration, because they had requested an absentee ballot but did not receive one, or because they were asked for voter identification and they did not have it. That is the two to three.

Then there is an additional set of people who did not try to vote but said, when they were asked why you did not vote, that they encountered a registration—they were not—they had a problem with their registration, they had a problem getting an absentee ballot and so forth. And that looks like it is in the range of 2 to 4 million, so that comes—

Chairman SCHUMER. Right. Let's just clarify that. We could always say, well, they should have registered. That is probably what Mr. Nelson would say, right?

Mr. NELSON. Correct.

Chairman SCHUMER. Let me give you the other side. I mean, this was sort of interesting to me, and make what you can of it.

This was back in 1973 and Herman Badillo was running for mayor of New York City. He was the first Hispanic mayor running. And I was a political junkie. I was not an elected official then, but I was at the polling places. And there were large numbers of Hispanic people who came to the polling place and said, I want to vote for Herman Badillo.

They were citizens. They had not registered because a month before I guess they had not focused on the election or whatever, but they truly wanted to register then. Now, we can get into a sort of moral argument; well, they should have and it is their fault, or they should be able to, it is the system's fault. But they would fit into that category of people who wanted to vote but were not registered.

Is that fair to say, Mr. Ansolabehere?

Mr. ANSOLABEHERE. Yes.

Chairman SCHUMER. Okay. I did not even know, by the way, in some of these precincts, that there were any Hispanic people living there. It was so amazing. It was sort of like a magnet. It showed me the power of elections and—it was very interesting.

Yes, Mr. Persily?

Mr. PERSILY. Sort of one point on that, which is in the 2004 election, we had about 1.9 million provisional ballots that were cast. About half were cast on what are called Section 203 covered jurisdictions. These are areas with high language minority populations under the Voting Rights Act.

But what is happening in the registration system is that it is falling disproportionately on certain communities who, for example, when they get to the polling place are confronted either with a registration problem or with someone who does not understand their name or it does not match up because it is in a different language. And then they end up casting provisional ballots, which is one of the reasons why looking at provisional ballots gives us a glimpse of the problem.

Chairman SCHUMER. Right. I interrupted. Go ahead. Did you finish all the numbers that you have thrown out?

Mr. ANSOLABEHERE. No.

Chairman SCHUMER. Keep going.

Mr. PERSILY. I am fine.

Chairman SCHUMER. Okay. But you had additional numbers that do not contradict—nothing in your study and Mr. Ansolabehere's study contradict one another, do they, Mr. Persily?

Mr. PERSILY. As in most things in life, I take my numbers from Harvard, so I will defer to Stephen Ansolabehere on this.

Chairman SCHUMER. Okay, right.

Now, I just wanted to ask you, because my friend, Senator Bennett, talked about the statistics, the source of your data is the Cooperative Congressional Election Study, right?

Mr. ANSOLABEHERE. That is correct.

Chairman SCHUMER. And is that generally regarded by the academics on both sides as a reliable, reputable source of data?

Mr. ANSOLABEHERE. Yes, in fact BYU is one of the major participants in this study.

Chairman SCHUMER. Oh, now you are talking, Mr. Ansolabehere. Senator BENNETT. I went to the University of Utah.

[Laughter.]

Mr. PERSILY. Can I say one other thing on this?

Chairman SCHUMER. Yes.

Mr. PERSILY. We will get more data in a month, and I suspect the Census data will confirm this, and also that the Election Day Survey from the Election Assistance Commission will also give us some confirmation of those numbers, so we do not need simply to rely on those.

Mr. ANSOLABEHERE. And there was a separate study that the Pew Foundation sponsored.

Chairman SCHUMER. So we do not have a dispute, even among those on either side of the aisle here, so to speak—Mr. Gans, as one of the witnesses, you do not dispute those statistics at all.

Mr. GANS. No.

Chairman SCHUMER. And do you, Mr. Nelson?

Mr. NELSON. I do not have enough insight into the methodology.

Chairman SCHUMER. Okay. But Mr. Gans, just for the record, is a witness chosen by Senator Bennett.

Mr. GANS. Yes, but not because I am a Republican.

Chairman SCHUMER. No, I know. But you know I understand that completely. I met you—you do not remember, but I met you in the Eugene McCarthy campaign in 1968, when I was a freshman.

Mr. GANS. You exhibited great wisdom.

Chairman SCHUMER. Yes. Well, no. In retrospect, I did not.

[Laughter.]

Chairman SCHUMER. But in any case, I wanted to ask you, Professor Ansolabehere, on page 17 of your written testimony, you indicate that 3.8 percent of all respondents showed up to the polls and found they had problems with voter registration. In other words, they showed up, they wanted to vote, and had problems.

If those numbers remain consistent nationally, how many voters would that be?

Mr. ANSOLABEHERE. I would have to—it is like teaching—

Chairman SCHUMER. Okay, you can provide that—

Mr. ANSOLABEHERE. 3.8—if you just take 3.8 of the number of—

Chairman SCHUMER. People who showed up.

Mr. ANSOLABEHERE. —people who showed up, the 133 million.

Chairman SCHUMER. Yes. So it would be 3.8 of 133 million—

Mr. ANSOLABEHERE. Right.

Chairman SCHUMER. —which is 1, 3 times—a little less than 4, about 5 million.

Mr. ANSOLABEHERE. Four or 5 percent—5 million.

Chairman SCHUMER. Right, okay.

Another question. Are you measuring the substance and extent of voter registration problems for the 44 million eligible voters who were not registered in 2008? How do we begin to determine who these people are and why they are not registered to vote?

Mr. ANSOLABEHERE. We are going to look closely at the CPS Study because they do have a pretty extensive battery of questions having to do with the reasons for non-registration. From past studies that they conducted in 2000 and 2004, those data look like they are quite similar to the extent to which people are not registering because they are not interested. That is the major source of the problem. But, you know, about 20 percent are not registering because of these other issues, such as registration dates and mobility.

Chairman SCHUMER. Okay.

Professor Gans, you had mentioned before that the U.S. ranks 139 out of 172 countries in voter participation. I think that is counterintuitive to most of us here in this country.

Can you elaborate a little on that? What is the country above us, what is the country below us, why are we so low? Is it, Third World countries are better than us; those who have democracies?

Mr. GANS. Several Third World countries are better than us. Back in 1976, we did a survey of nonvoters. Peter Hart did the survey and his line was that we have a higher percentage only than Botswana. And then Botswana had an election, which had a higher turnout than we did.

Chairman SCHUMER. Why do you think that is?

Mr. GANS. Well, it is a lot of reasons.

Chairman SCHUMER. Is it just the registration?

Mr. GANS. Oh, no, not at all. But it is true that we are—as far as advanced democracies are concerned, one of the very few that put the burden on the citizen to qualify him or herself via registration and requalify when they move. Most of the other countries—the government does in one way or another—create the list of eligible voters.

Chairman SCHUMER. What is your view? Does the system we saw in Iraq, where people put their finger—they put some kind of indelible ink on their finger. Does that work better or worse than our system?

Mr. GANS. Iraq comes closer to my biometric than our system. But do I want to emulate Iraq? I do not think so.

Chairman SCHUMER. But seriously—

Mr. GANS. We have lots of different problems. I mean, part of the reason our voting is lower than most other democracies is we do not have a parliamentary democracy and, therefore, we, a) do not have a very class oriented society as other democracies do; we do not have class oriented parties; we have a complex system of government; we have a multiplicity of officers that we elect, all of

which makes people's vote feel less instrumental than voting for one person who represents your point of view.

Chairman SCHUMER. Let me ask you this question.

Mr. GANS. Yes, sir?

Chairman SCHUMER. Let's just assume for the moment we could develop a system where people would not have to register, could show up that day and yet it would have no fraud, just hypothetically.

Mr. GANS. Okay. That is what I am proposing.

Chairman SCHUMER. You are trying—I know.

Do you think turnout would go up a great deal?

Mr. GANS. I think turnout would go up. I mean, in our recent history, you can look less at registration and more at motivation as to the reasons why we have higher or lower turnout. What this would do, would enhance the possibility and high turnout—in high motivation election; that we would have substantially more people than we already have, and it may or may not make much difference in low motivation elections.

Chairman SCHUMER. Right.

What do you say, Ms. Clarke and Mr. Goldman, on that?

Ms. CLARKE. One thing I would note is that there are some things that are compulsory in our society. Jury service, for example, no choice, you have to do it. So this idea about mandatory voting, I kind of like the notion of really encouraging as many citizens as possible to participate.

Chairman SCHUMER. Support a fine?

Ms. CLARKE. I am sorry?

Chairman SCHUMER. Would you support a fine like in the Australian system?

Ms. CLARKE. Sure, particularly if it were accompanied by low prosecution.

[Laughter.]

Ms. CLARKE. But I think we want to figure out how we can tear down barriers.

I am concerned—and I just want to note this concern for the record about proposals, about national ID requirements, which I think only erect additional barriers, unnecessary barriers, that would lock out even greater numbers of people from the process.

A final point I want to underscore is that we really should focus on the design of voter registration forms, which varies tremendously across the board. I have a copy here of Louisiana's voter registration form, probably designed with a 6-point font.

Chairman SCHUMER. Hold it up. Hold it up.

Ms. CLARKE. You need a magnifying glass to get through it. And it is terribly unfortunate that it requires voters to list information over and over and over again. And election officials can reject the forms if somebody fails to check the box that they are a citizen, but, nevertheless, signs the affirmation at the bottom, under penalty of perjury, where they swear that they are citizens. We have really got to streamline these forms and make it easier for all who want to participate to register.

Chairman SCHUMER. Do you want to say something, Mr. Goldman, in reference to Mr. Gans, the comment I asked Mr. Gans?

Mr. GOLDMAN. Thank you, Mr. Chairman. I think that we already saw that this would increase turnout if we had a better registration system. I mean, we were just talking about 3.8 percent of voters who tried to go to the polls and tried to vote but were not able to because of registration. Those voters are not included in tallies, whether they are exact or inexact tallies of how many voters did show up. And I think 3.8 percentage points in an American election is actually an enormous amount.

Australia actually has an automatic and permanent voter registration system, so they do not have the same problems that we do. While we can quibble about whether or not it is a 19th century system or not, the provisional balloting system and the problems with absentee balloting are largely a symptom of a problem with the registration system. We would not have—for instance, in California, in Los Angeles County, 85 percent of provisional ballots that do not count are not counted because of the registration system, which is an enormous amount of ballots, since each one of those takes time and money to be able to distribute them and count them. And they delay certification and things like that.

So we are talking about the correlative costs on the rest of the election system and making election officials doing basically three or four times the work that they would otherwise have to, spending half of their registration budget. That adds up to millions and millions of dollars because of a system which was conceived in the 19th century has not been much updated other than a couple of band-aids that have basically just really illustrated how bad the system is to begin with.

Chairman SCHUMER. Senator Bennett will get the last round of questions.

Senator BENNETT. Thank you very much. This has been a very interesting morning. I appreciate it. I think kind of a potpourri of reactions here.

You get all of your data from Harvard?

Mr. GANS. No, I do not.

Senator BENNETT. No. Mr. Persily.

Mr. PERSILY. The Cooperative Congressional Election Survey.

Senator BENNETT. Oh, okay.

Mr. PERSILY. I mean, without belaboring the point, it is a coalition of 30 universities. Steve is instrumental in running it. Stanford's Doug Rivers, is instrumental in running it. So I might have been a little loose there, but it is a broad-based coalition.

Senator BENNETT. We are all being a little bit flip here in one way or another.

There is a book that I remember. I should have brought it here because I should quote it exactly. But it comes out of my memory bank as we are having this conversation, entitled, *The Vanishing Voter*, and it was written from Harvard. And the two primary reasons, according to the book, why voter participation has been going down in the United States were, number one, the declining power of political parties. Political parties exist, whether they are the Whigs or whoever, to get people to the polls. And the declining power of political parties is one of the reasons why, according to this book, voters are vanishing. The second was the attitude of the media, that the media is constantly denigrating politics and politi-

cians to the point that people feel, why have anything to do with it.

I remember another piece, random out of my database, of a woman who was asked how do you vote, and she said, I never vote; it only encourages them. And that, again, is manifestation of the attitude that the media has for politics. And if you listen to the late night shows, you find that there is constant, constant, dripping of acid on all politicians. We are all stupid; we are all corrupt. And we are all objects of constant downgrading attacks until, of course, we have left office. And then we might, in some ways, be brought up at these late night shows as an example of how the present politicians are all stupid and corrupt because this one who has passed from the scene is not. This has nothing to do with registration. So let's not view this whole thing in a silo that says that registration is the sole cause of our various problems.

I thank you for the information about your methodology. It gives me a greater sense of security in depending on your numbers than I had when I came in to this. But I would just say to the press that is around here, if you are going to say the registration problem has kept people from the polls, we go to the 2 to 3 million number that comes out of your study instead of the 9 million number that we heard later. And I welcome the idea that there are further studies that are going on and we will get more statistical information about this.

I appreciate the work you have all done. The only one last comment I would leave—

Mr. Nelson, you have a registration system in South Dakota.

Mr. NELSON. Correct.

Senator BENNETT. North Dakota does not.

Mr. NELSON. Correct.

Senator BENNETT. You have a higher turnout in South Dakota than they have in North Dakota.

Mr. NELSON. Correct.

Senator BENNETT. I do not know what that proves, but it is an interesting thing to lay down—

Chairman SCHUMER. It is warmer.

Senator BENNETT. I have never been to either one, so I will leave you to say that.

But the registration system has not produced in your state a lower vote turnout or a non-registration system in as close a control as we can find in a neighboring state. So, again, I say that to underscore my point that decisions not to vote or voter participation at low levels is not entirely a factor of the registration challenge that we face.

Having said that, I think the panel has demonstrated that we have work to do here, and I appreciate the view of the academics who have studied it carefully. I appreciate the view of the man who is on the firing line who has to deal with it, and I hope we pay attention to all of this.

Mr. Gans, I am very interested in your solution. I will not publicly endorse it at this point, but I will say I am very interested in it.

Mr. GANS. Thank you.

Chairman SCHUMER. I want to thank both Senator Bennett and our panel. I think it was really a great start for this committee for the year. So I want to thank all of you for coming. We have a number of statements for the hearing record. Without objection, I request that a series of statements, which I will submit to the record, be added in.

The record will remain open for five business days for additional statements from members and the public. And if the witnesses have no objection, I would also request the record remain open for five days for additional questions that we on the panel might submit to you, and you can answer in writing, if that is okay. Good.

All right. Since there is no further business before the Committee, we are adjourned, subject to the call of the chair.

[The information for the record follows:]

[Whereupon, at 11:41 a.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

Testimony Before the Senate Rules Committee

Professor Stephen Ansolabehere

March 11, 2009

Executive Summary

In 2001, the Caltech/MIT Voting Technology Project estimated that 4 – 6 million votes were lost owing to administrative problems. These people tried to vote but could not because of difficulties with polling place operations, voting equipment, absentee ballots, or registration. The largest sources of the problem lie evidently in the voter registration system, which accounted for roughly half of all lost votes.

Eight years later, we have witnessed significant improvement in election administration. Updating of voting equipment has cut the rate of residual votes in half. States have put in place provisional balloting and other checks to prevent lost votes. Voter registration, however, remains problematic. State efforts to improve registration in compliance with HAVA are underway, but limited resources might hamper the ability of states and counties to implement fully computerized registration systems.

This testimony examines the experiences of the electorate in 2008 with the voting systems, especially registration and other parts of the authentication process. In 2008, there were approximately 230 million people of voting age, 212 million eligible to vote, 168 million registered, and 133 million who actually voted. These facts demonstrate the pivotal importance of voter registration. Approximately 79 million eligible voters did not participate. Of these, 44 million were not registered, and 35 million registered citizens did not vote. According to data from the Cooperative Congressional Election Study, 4 to 5 million people report administrative procedures as the reason for not registering, and approximately 4 million of registered voters did not vote because of administrative problems, approximately the same magnitude as we saw in 2000. Improving registration and authentication systems ought to remain a high priority.

Introduction

I am Stephen Ansolabehere, Professor of Government at Harvard University and Elting Morison Professor of Political Science at MIT. I served as the co-director of the Caltech/MIT Voting Technology Project from its inception through 2004. I am on the Board of Overseers of the American National Election Study, the longest running social science research project in the United States, and Principal Investigator of the Cooperative Congressional Election Study, a consortium of over 50 research teams that develops large-sample surveys. The CCES conducted sample surveys of 36,000 respondents in 2006 and 33,000 respondents in 2008, aimed partly at gauging voters' experiences on Election Day or in the absentee and early voting process. I also consult with CBS News Election Decision Desk to make projections of winners in state and federal elections. Through these research activities I have had the opportunity to work with a large number election officials and to observe closely the performance of the electoral process in the United States.

In 2001, the Caltech/MIT Voting Technology Project sought first to measure the extent of problems in the voting systems in the United States and to provide as much information as we could assemble to policy makers at that time. We quickly realized that although voting machine problems certainly affected the ability of Americans to make sure that their preferences were recorded, even bigger problems existed in the voter registration system. We estimated that between 4 and 6 million votes were lost in the 2000 election owing to administration or technology problems, and that problems with

voter registration accounted for about half of that.¹ The problems were not uniformly distributed across the country. Some states showed little evidence of difficulties, while others had problems in many parts of their election systems. Florida was not alone.

Our observations were based on state and county election reports, data provided by the Current Population Surveys Election Supplement, and information provided by county election officials and from state election reform commissions. Our objective over the past 8 years has been to do as much as possible to assist local, state, and federal officials in making decisions about the . Our main contribution has been provision of information and expertise in areas ranging from computer security to ballot design to statistical assessment of election performance. One of the central missions of this effort has been the collection of better data on election administration over time so that we can gauge where the systems are improving, where they are having difficulties, and what sorts of practices and laws seem to have worked.

There have been tremendous improvements in voting technology over the past eight years. In 2000, residual votes (the difference between total votes cast and total votes for a given office, and a commonly used measure of voting technology problems) averaged approximately 2 percent. Counties using punch card equipment in 2000 and 2004 averaged the highest residual vote rate. In 2008, after phasing out punch card ballots and lever machines, residual votes averaged less than 1 percent. Were American states still using punch cards, the higher rate of residual votes would translate into an

¹ Caltech/MIT Voting Technology Project, *Voting: What Is, What Could Be*, July, 2001.

additional 1.5 million votes lost.² Upgrading technology led to significant improvements in the recording of votes.

I remain concerned about the voter registration systems in the states. The United States is in the middle of the technology transition, from paper-based registration systems in most local election offices to computerized systems, and from town and county systems to systems that can track voters' moves statewide. There are considerable challenges in making this transition, and registration remains the largest source of problems for voters.

The electoral universe in 2008

Analysis of the voter registration process begins with a few simple facts about the electoral universe. How many people may vote? How many are registered and, therefore, in the system? How many people actually do vote? The numbers for the 2008 election break out as follows:

- 230 million people of voting age in the United States.
- 212 million eligible (citizens, non-felons).
- 168 million registered voters.
- 133 million voters in the 2008 General Election.

In other words, 57% of the voting aged population voted in the 2008 general election. That translated into 62% of the eligible electorate and 79% of the registered electorate.

² Stephen Ansolabehere and Charles H. Stewart III, "Residual Votes Attributable to Voting Technology," *Journal of Politics* 2005.

Each of these figures is an estimate, with the voting-aged population being perhaps the most accurate. A comment is in order about each. The Census estimates the voting aged population using the last decennial census and annual data on population changes. Researchers, such as Professor Michael McDonald, estimate the eligible electorate using information on citizenship from the Current Population survey and on felons to project the eligible population.³ The Census itself makes a projection of the eligible electorate based on the CPS.

Voter registration is perhaps the most difficult figure to gauge. Secretaries of State and state election boards report total registration and other statistics in their annual reports and press releases. Voter registration from the state reports totaled 172 million in 2004⁴ and approximately 187 million in 2008.⁵ These figures overestimate the number of registered voters, as there are obsolete and duplicate listings on official lists. Registration lists can become obsolete quickly because many people move and fail to update their registration information. When it created the Qualified Voter File, the state of Michigan estimated that one-in-eight of the names on the lists were no longer valid. Audits conducted in Los Angeles County put the figure between 5 and 10 percent in that county. States and counties do have procedures for updating rolls, but it is difficult and expensive to keep the lists current.

A second estimate of the number actually registered comes from the Census Bureau's Current Population Survey. Using the CPS Election Supplement, the Census

³ See, for example, Michael McDonald and Samuel Popkin, "The Myth of the Vanishing Voter," *American Political Science Review* 95 (2001).

⁴ Figures reported by the Election Assistance Commission. See, for instance Table 4 in the EAC report *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2003-2004*. June 30, 2005. http://www.eac.gov/clearinghouse/docs/reports-and-surveys-nvra-2004-survey-table4/attachment_download/file

⁵ NASS Survey: State Voter Registration Figures for the 2008 General Election, November 3, 2008.

projects that 142 million people were registered in 2004, rather than the 172 million reported on the rolls. The 142 million figure suggests that the number of duplicates and obsolete entries on registration lists is approximately 17 percent ($=30/172$). The 2008 CPS is not yet available, but estimates based on other surveys project that there are 168 million registered voters in 2008. Throughout the discussion below, I will use the 168 million figure as the estimate of registered persons. Using the much higher 187 million person figure will change estimates, but in a way that increases the estimated number of people who could not vote because of registration difficulties. Clearly, more extensive and accurate information on registration is needed.

The final component above is total turnout consists of the total number of people who went to the polls or sent in absentee ballots in the 39 states that report total numbers of voters in their states' certification of the votes; 11 states still do not report total numbers of voters. Total votes cast reflects the total votes in those states where that is reported plus the votes for the office that received the most ballots in states that do not certify total voters. The incompleteness in vote reports and potential errors in voter registration lists make these the least precisely estimated of these figures. Although these figures are somewhat imperfect, they are still very revealing about the place that registration holds in the voting process.

Approximately 44 million eligible Americans were not registered in 2008 and therefore could not vote in the general election. Another 35 million registered voters did not vote. There are a variety of reasons for non-participation. Through the Current Population Survey and the Cooperative Congressional Election Study we may gauge how

many people were unable to register or to vote because of administrative difficulties related to registration and the voter authentication process.

Voter Registration in the Electoral Process

One may think of election administration as a system with three key components – voter authentication, vote preparation, and vote management (including tabulation). Vote management includes securing votes and maintaining their privacy, tabulation, and certification of results. Vote preparation involves the individual recording his or her preferences, and consists largely of ballot design and the act of voting. Voter authentication is the process through which election officials verify that the individual is indeed eligible to vote, has not already voted in the given election, and is given the correct ballot on which to record vote preferences.

The essential function of voter registration today is authentication. Voter registration consists of a list, maintained and managed by the election office of all eligible people (non-felon citizens over 18) who have filed valid registration applications. The election office uses that list to assign people a ballot-form and precinct. It is used to check the individual in at the polling place or when a request for absentee ballot is received, and it is used to block others from voting in the person's stead or the person from voting more than once or in the wrong set of offices.

There are other key parts of the authentication process, especially the actions of poll workers on Election Day and voter identification requirements. It is the responsibility of poll workers to verify that the voter is who he or she claims to be and

has not already voted. State laws determine what sorts of information the poll worker may use to authenticate voters, ranging from simply stating one's name and address, as in Massachusetts, to requiring that all voters present government-issued photographic identification.⁶

Development and maintenance of the registration system is a challenging task. The registration system has many points of entry, as people may file applications through a variety of avenues. According to figures compiled by the Census in the Current Population Survey in 2004, the most common means of registration are at the local election office (24%), at the registry of motor vehicles (19%), through the mail (12%), at the polls on Election Day (6%), and at schools (6%).⁷ The local election office receives all registration applications and verifies them. The town or county office then compiles the list of all registrants and uses this information to construct precincts, plan inform people of elections, and authenticate voters at the polls on Election Day or who request absentee or early ballots.

The system was not designed on a fresh slate to meet the needs of authentication. Rather it evolved out of 19th century mechanisms for party building. Lists were originally developed and maintained by the parties in cities like New York and Boston so that parties could determine who were their supporters, and could challenge the eligibility of others. Over the course of the 19th and 20th Centuries towns and counties assumed the responsibility for voter registration. This development occurred piecemeal, and many

⁶ For more on this see Stephen Ansolabehere and Nathaniel Persily, "Vote Fraud in the Eye of the Beholder," *Harvard Law Review* 121 (2008): 1737.

⁷ Another 6 percent said "some other place or way"; 1 percent registered at public assistance offices; and 16 percent did not answer the question. Kelly Holder, "Voting and Registration in the 2004 Election," *Current Population Report*, P20-556, March 2005, <http://www.census.gov/prod/2006pubs/p20-556.pdf>.

areas, especially rural counties, did not rely on voter lists until quite recently. For example, New York required registration in all counties in 1965; Minnesota, in 1973, and Ohio, in 1978.⁸ Today, voter registration is required in every county in 49 states, North Dakota being the exception.

Even though nearly universally used, voter registration varies considerably across states and counties in its implementation. Every state adheres to its own laws defining registration requirements, and county and town offices have developed their own routines for managing and deploying the lists. Variation in the administrative capacity of the counties is particularly important in this regard. Most urban and suburban counties have professional, full-time election administration, while many rural counties and towns have part-time election administration and very small budgets.

Maintenance of voter lists is one of the biggest responsibilities and challenges of local election offices. According to Caltech/MIT Voting Technology Project's survey of election office budgets in the United States, approximately one-third of the local office budgets are devoted to the registration lists.⁹ There are a variety of problems in keeping the lists current, especially the mobility of voters and the failure of many people to inform the office of changes of address and the difficulties checking information on the voter files against other databases, such as drivers' licenses. Before the Help America Vote Act registration files were typically paper-based systems, making the clerical tasks even more tedious. The lack of computerization was especially common in rural areas, where local election officers have other full-time responsibilities. The Help America

⁸ Stephen Ansolabehere and David Konisky, "The Introduction of Voter Turnout and Its Effect on Turnout," *Political Analysis* 14(2006): 83-100.

⁹ Caltech/MIT Voting Technology Project, "Voting: What Is, What Could Be," July 1, 2001.

Vote Act provided incentives to states to create statewide voter registration lists by 2006 as a way to improve the technology used to manage the lists, especially in rural counties.

It should be stressed that the local election offices put considerable effort and resources into the maintenance of their lists. The administrative staff verify the validity of registration applications, carry out the clerical tasks associated with creating and updating lists, identify names that ought to be removed from the rolls in accordance with state and federal laws (though sometimes private firms do this), prepare the lists for use on Election Day, and collect the information from the lists used at polling places, such as total number of people voting. They also keep track of vote histories of individuals, which are used to flag registrants on the list who are active and those who are inactive, in accordance with NVRA.

Like any large complicated data system, voter registration lists have errors or are used incorrectly. People may fill out their registration forms incorrectly or incompletely, making them ineligible to vote even though they have filed an application. Clerical errors may record the incorrect name, address, birth year, or party. Administrators may misplace registration applications. Poll workers may check off the wrong person as having voted or forget to record that someone voted. There may also be attempts at fraudulent registrations, such as registering in multiple jurisdictions or voting for someone else. Perhaps the most obvious and observable problems trace to the mobility of the society. People move and often fail to notify the election office of a change in their status.

Types of errors in rolls may be classified as False Positives and False Negatives. False positives correspond to names that should not be on the rolls but are. This is

inevitable because of population mobility. Studies of jury lists and drivers' license lists find as much as 20 percent of the names on these data bases are no longer valid, either because the person moved or died. There has been little systematic study of duplications or invalid entries on voter lists. Through the Pew Foundation, my colleague Alan Gerber at Yale and I are conducting a pilot study in California and Connecticut. Our analysis of Los Angeles County finds that approximately 6 percent of the entries on the voter files are no longer valid because the person is no longer at the address. We are currently documenting other sorts of errors as well, such as discrepancies in addresses, names, and party registrations.

False positives have been of greatest concern when questions of fraud arise, as it is commonly thought that voters might impersonate someone on the list who is no longer a valid registrant. I have encountered no such instances in my own research. A further problem with duplicate applications and registrations emerges from the increasing difficulty managing the lists, especially in large counties.

False negatives are a second type of error; these occur because names are not on the rolls but should be or are incorrectly recorded by the election office. Such errors arise from a wide variety of causes, such as clerical errors, illegible forms, misplaced or undelivered applications. The volume of new registrants toward the end of the general election can tax local election office staff and lead to errors.

False negatives have become controversial when they allegedly result from improper purges. NVRA attempted to regulate the rules of purges and make them more standard across states. The difficulty for the county office is when to decide when an

entry on the list is no longer valid and should be dropped, and when the entry represents a person who is still at the address and might show up at the polls on Election Day.

In addition to errors that include names that ought not be on the rolls and exclude those that ought to be, there are barriers to registration that make it difficult to register in the first place. The NVRA and state laws have sought to make registration easier and more accessible.

Voters Experiences in 2008

The Current Population Survey (CPS) provides an important resource for studying the electoral experience in the nation. The CPS is a much larger scale survey than most other studies, which allows researchers to measurement of relatively low frequency events. In addition, the Election Supplement of the CPS consists of a questionnaire tailored to measuring the size of the electorate and the reasons for not voting.

Building on the CPS, the Cooperative Congressional Election Study (CCES) in 2006 and 2008 developed extensive instrumentation to measure registration, voting, and a variety of difficulties voting and barriers to participation. The study asked in the pre-election survey and in the post election survey whether the respondent is registered. The survey's vote question distinguished among those who simply did not vote, those who definitely voted, those who thought about it and those who usually vote, and those who tried to vote but were not allowed ("did not or could not"). The CCES samples exceed 30,000 respondents, allowing for fairly precise measurement of even relatively rare

events, and the questionnaire ascertained particular election experiences, including many not asked in the CPS.

Using the survey data, we may gauge the magnitude of the problems that voters encountered when trying to vote. Specifically, we may estimate the number who attempted to vote but could not or did not. Of CCES respondents who reported being registered, 86 percent reported that they voted (compared with a projected 79 percent in the population), and 11 percent reported that they did not attempt to vote. The remaining 3 percent reported that they “attempted to vote but could not or did not.” Three percent of all registered voters translates into 4 to 5 million registered voters who attempted to vote but could not.¹⁰

Why don't people register and vote? Extensive research on voting behavior has documented that most of the reasons for not registering and not voting are sociological and political, such as dislike of the candidates or general antipathy toward politics. But, administrative difficulties have also been found to keep people out of the political system.¹¹

Consider first reasons for non-registration. According to the 2004 CPS, half of all non-registrants cited their lack of interest in politics (46.6%) or that their vote doesn't matter (3.4%) as the reason for not registering. One fifth of the respondents cited administrative issues – deadlines (17%) and residency (4%). Those two administrative

¹⁰ According to the survey, 2.7 percent of the 168 million registered voters reported that they attempted to vote but could not. With 24,046 respondents who reported registration and answered the vote question, the margin of error on the proportion .027 is .002. That projects to a 95-percent confidence interval on the estimated number of registered non-voters who attempted to vote ranging from 4.2 to 4.9 million. The CPS does not ask whether someone attempted to vote.

¹¹ The classic work in this line of research is Raymond Wolfinger and Steven Rosenstone, *Who Votes?* Yale, 1980.

factors combined account for approximately 9 million people nationwide failing to register in 2004. Again, these figures should be compared with the 2008 data when they become available, but I have little reason to expect a marked change as deadlines and residency requirements have not changed much since 2004. Assuming these administrative barriers have the same effect in 2008, then 11 million people will have failed to register because of deadlines and changes in residency.

The next step is the decision of registered people to vote. A variety of problems in voter authentication can prevent those who try to vote from participation or can deter those who would like to vote from attempting to do so. Such problems take many forms, including failure to receive absentee ballots, disallowed from voting at the polls, lack of appropriate identification, and not actually being registered or registered correctly.

The CCES data are instructive of the reasons for non-voting among registered voters during the 2008 election. The CCES asked people whether they are registered and also whether they voted, attempted to vote, or did not vote (and did not try). The survey then asks non-voters why they did not participate and voters about their experiences at the polls. Table 1 presents the reasons for not voting among Registered Non-Voters in the 2008 CCES. The first column isolates those people who reported being registered but did not try to vote, which is revealing about the first stage of the process. The second column isolates those who tried to vote but failed, which is the second stage of the process. The third column corresponds to the sample as a whole.

Overall, 82 percent of registered non-voters cited a reason not connected in anyway to administration, especially dislike of the candidates. The remainder cited a range of administrative problems: 2 percent of all registered non-voters said they lacked

appropriate identification, 5 percent said they were not in fact registered, 4 percent said the lines were too long, 2 percent said they were disallowed at the polls, 4 percent said that they requested but did not receive absentee ballots, and 2 percent did not know where to vote. All told, 17 percent of the 44 million registered, eligible voters who did not turn out in 2008 stated that they did not vote for administrative reasons.

The survey reveals that the authentication process and registration create barriers four ways -- lack of ID, not registered, failure to receive an absentee, and disallowed at the polls. These parallel the reasons for non-voting measured by the CPS in 2000 and 2004, with the addition of the ID category. All four combined were cited by 13 percent of registered non-voters as the reason for not participating in the 2008 general election. This implies that 4 million (without the ID category) to 5 million (with the ID category) registered voters could not vote because of problems with registration or authentication or getting an absentee ballot.¹² That figure is higher than estimates from the CPS in 2000; at the very least it appears that the problems arising from voter authentication are not appreciably smaller than eight years ago.

It is worth distinguishing further those who tried to vote and those who did not, as their experiences and reasons for not voting differ in important ways.

Of registered non-voters who attempted but failed to vote, 38 percent cited some form of administrative failure, including lines, ID, polling place location, absentee ballots, registration, and being disallowed at polls. The remaining 62 percent cited reasons such as being out of town, being sick or disabled, or not being interested in the election. Two-fifths, then, of the 2.7 percent who attempted to vote but failed equals 1

¹² The CPS includes getting an absentee ballot and registration problem in the same category.

percent of all eligible voters, which projects to 2 million people who attempted to vote but failed because of administrative problems.¹³

The CCES further point to specific problems with absentee voting that need to be addressed and with lingering questions of access for disabled and sick people. Table 1 presents the reasons for non-voting among registered non-voters who attempted to vote and those who did not attempt to vote. Of those who tried to vote the three most common reasons for non-voting are Sick or Disabled (19.6%), Out of Town (15.1%), and Requested but Did Not Receive Absentee Ballot (13.6%). Of those who did not try to vote, the most common reasons were Not Liking the Candidates (28.8%), Sick or Disabled (11.4%), and Out of Town (9.1%).

The difficulties with absentee voting are notable because of the steady growth of absentee voting over the past three decades. Absentee votes cast in presidential elections have grown from 5 percent of ballots cast in 1972 to 25 percent of ballots cast in 2008. Reliance on voting by mail or absentee is especially pronounced in the West, where approximately half of all votes came through the mails.

Taking these data literally, the reported problems suggest that actual denial of the vote at the polling places is rare. Eight percent of those who attempted to vote but could not said that they “attempted to vote at the polls but were not allowed.” That works out to about 300,000 people out of 133 million voters nationwide. Another 4 percent of registered non-voters who tried to vote, or 150,000 people, said they couldn’t vote for lack of ID, and 14 percent of those who tried but failed to vote requested but did not receive an absentee ballot. All three categories total slightly more than 1 million people.

¹³ The CPS does not clearly distinguish intentions to vote and it does not clearly distinguish different sorts of problems.

An alternative way to gauge problems encountered at the polling place is to ask directly whether people attempted to vote and encountered problems in the voter authentication process. Again the answer is that these problems affected about 1 percent of eligible voters, or about 2 million people.

The survey asked respondents who voted or attempted to vote whether they encountered problems with their voter registrations or were asked to show photographic identification. Half of all voters (55%) were asked to show identification, while a small fraction (3.8%) of all voters reported problems with their registrations. Of those asked to show identification and of those who reported registration problems, the survey followed up with a question asking whether the respondent was allowed to vote.

Those with registration problems, which account for just under 4% of those who tried to vote. Half of these voters were allowed to vote a regular ballot and another quarter voted a provisional ballot. However, one-fourth of those with registration problems (1 percent of the voters) reported that they were not allowed to vote. Add to that another set of people who experienced problems with voter identification. Of the half of all voters asked to show voter identification, 3.4 percent said that they then voted provisional ballots and 1.2 percent said that they were not allowed to vote at all. Registration problems and exclusions due to voter identification overlap considerably. Eighty-four percent of those not allowed to vote because of a registration problem were asked for identification. Hence, the exclusions due to authentication (identification or registration) problems comes to just over 1 percent of the electorate, which is slightly lower than the figure implied by the percent of non-voters who cited registration and other authentication problems as the reason for not voting.

Administrative failures, then, appear to have prevented approximately 2 to 3 million people who tried to vote from actually voting in 2008.

Finally, we turn to those who did not attempt to vote at all. Election administration may also affect participation by discouraging voters. Potential voters may view the hassles of registration, obtaining a ballot, or waiting in line as sufficient reason for not voting. Table 1 is instructive about these issues as well. Approximately 12.7 percent of registered, eligible voters chose not to vote in 2008. The second column of Table 1 suggests that the lion's share of these respondents cited non-administrative reasons: 14.4% identified registration, ID, lines, access to polls, and absentee ballots as reasons for not voting in 2008, and 85.6% had some other reason. Excluding people who admitted that they were not registered those who stated administrative reasons for non-participation shrink further, to less than 10 percent. So an additional 1 to 2% of the eligible electorate might have chosen not to vote because of the prospect of administrative hassles, such as long lines, voter identification, difficulty getting an absentee ballot and the like. That figure translates into that another 2 to 4 million people stayed from the election away because of the hassle or the prospective administrative problems. This is a much more subjective number as these are people who stated an administrative reason even though they did not have that particular experience during the election.

Overall, 4 to 7 million registered voters were prevented or discouraged from voting by the administrative process of elections.

Summary

Research on the performance of the election systems during the 2008 election indicates that there were

- 79 million people eligible to vote who did not,
- 2 to 3 million voters *prevented* from voting because of registration or other authentication problems,
- 2 to 4 million *discouraged* from voting because of administrative problems, and
- 9 million not registered because of residency rules or registration deadlines.

These problems are of the same magnitude as observed in previous elections. There remain important weaknesses in the reporting of election data in the United States, including total numbers of registered voters and total numbers of voters in every state. Registration continues to create significant barriers to getting into the electoral system and to voting on Election Day. There is evidence of emerging problems, as well. Most notably, there appears to be an uptick in the numbers of people having difficulty obtaining absentee ballots, a problem usually associated with registration and authentication procedures.

Table 1. Reasons for Non-Voting, Registered Non-Voters, 2008 CCES

Reason	Did Not Try	Tried to Vote	All
I forgot	1.8%	0.2%	1.5%
Not interested	5.2	0.0	4.3
Too busy	6.0	5.1	5.9
Not Like Cands.	28.8	2.3	23.1
Not registered	5.2	2.7	4.6
Lack ID	1.5	3.9	2.0
Out of town	9.1	15.1	10.4
Sick/disabled	11.4	19.6	13.2
Transportation	2.1	2.9	2.3
Bad weather	0.9	0.5	0.8
Long line at polls	3.0	8.1	4.0
Not allowed at Polls	1.0	8.2	2.4
Request, Not receive			
Absentee Ballot	2.1	13.6	4.3
Not Know Where	1.6	3.1	1.8
Not Know Enough	5.1	2.0	4.3
Other	13.0	12.8	13.0
Don't Know	2.3	0.0	2.0

Stephen Ansolabehere is Professor of Government at Harvard University and Elting Morison Professor of Political Science at MIT. He served as the co-director of the Caltech/MIT Voting Technology Project from its inception through 2004. He is a member of the Board of Overseers of the American National Election Study, the longest running social science research project in the United States, and Principal Investigator of the Cooperative Congressional Election Study, a consortium of over 50 research teams that develops large-sample surveys. He consults with CBS News Election Decision Desk to assist in projection of election outcomes on election night, design of exit polls, and analysis of election data. He is member of the board of directors of the Reuters' Institute School of Journalism at Oxford University, as well as several editorial boards, and he is editor of the Cambridge University Press book series on Political Economy of Institutions and Decisions. He has published extensively in academic research journals in Political Science, Economics, Law, and Statistics. In 2007, he was inducted in the American Academy of Arts and Sciences.

SUMMARY

TESTIMONY OF CURTIS GANS, DIRECTOR

CENTER FOR THE STUDY OF THE AMERICAN ELECTORATE

U.S. SENATE RULES COMMITTEE

March 11, 2009

The central thrust of this testimony is that the current system of individually-generated registration is fatally flawed:

- That there are more than 50 million eligible citizens who are not registered and cannot vote.
- That there are as many as 20 million names on registration rolls who have died or moved or are in other ways invalid.
- That the United States' turnout rate is rated 139th among 172 democracies in the world.
- That we have a biennial circus of errors – claims of fraud, intimidation and suppression, voting lists which contain names that should not be on them, voting lists which omit names which should be on, citizens voting in two places, among other ills.
- And that the sum of these problems undermines citizen faith in the operation of elections and poses serious problems to the electoral health of American democracy.

The hope of this testimony is that, in this committee's and Congress' deliberation of remedy, serious consideration should be given to the system which has proven successful in Mexico – a system based on a mandatory, government-provided biometric identification card and system.

It is also predicated on the belief that such a system would be helpful in many other ways, including national security and homeland defense, immigration reform, identity theft, medical records, among several others.

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TESTIMONY

by

CURTIS GANS

DIRECTOR

of

AMERICAN UNIVERSITY'S

CENTER FOR THE STUDY OF THE AMERICAN ELECTORATE

before

THE SENATE RULES COMMITTEE

MARCH 11, 2009

On

"Voter Registration: Assessing Current Problems"

My name is Curtis Gans. For the past 33 years I have directed, first a non-partisan independent committee and for the past three and a half years a center at American University both devoted to providing data, analysis, public education and, where bi-partisanly possible, public policy approaches to dealing with citizen political engagement and disengagement. The data I have published has been the staple for coverage and analysis of registration and voting for three decades. I have testified frequently before both houses of Congress. I gave research assistance to the Carter/Baker Commission on electoral reform. And in the late 1980s, I created a commission headed by the chairs of the two major parties which provided sufficient consensual agreement on registration confirmation issues to make possible the initial passage of the National Voter Registration Act in the House by a two-thirds majority vote.

I am honored and grateful that the chair and ranking minority member have invited me to testify at this hearing and hope that my testimony will be helpful as you move from deliberation to public policy. I want to make one thing clear at the outset. While I will be highly critical of aspects of our electoral system under consideration today, my comments are in no way to be considered a reflection on the many dedicated men and women who oversee, administer and, in other ways, carry out our elections, the overwhelming majority of whom want to do the very best to ensure both high levels of participation and honorable elections.

The goal of any democratic electoral system is to make possible the maximum voting participation of the citizenry while protecting the integrity of the political process – engendering public faith in both the system and its outcomes.

How far the United States is from those ideals can be seen in three sets of figures.

The first are the numbers 74 and 50. If one corrects for all the anomalies in official registration figures, an educated estimate of the percentage of eligible citizens who are registered is 74 percent. This, in turn, means that more than 50 million American citizens are not registered and cannot vote.

The second set of numbers are 115, 104.2, 103.6 and 100.3. These are the percentage of eligible citizens who are listed on the official registration rolls of the District of Columbia, Alaska, Illinois and South Dakota. Official registration numbers exceed 95 percent in ten other states (Colorado, Delaware, Indiana, Iowa, Maine, Michigan, Missouri, New York, North Carolina and Ohio). If anyone believes these “official” numbers are accurate, I have a bridge to sell you which crosses the East River in the chairman’s home state. There are as many as 20 million names on the registration lists of the several states and the District of Columbia that do not belong on these lists – because they have died or moved or, in a indeterminate number of cases, are not eligible citizens.

The third set of figures are 139 and 172 – the United States rank at the last accounting as 139th in the rate of participation among the 172 democracies in the world.

None of these sets of figures can inspire public confidence that our system of registration and voting is anywhere close to the best it can and should be.

Nor can we take comfort in what we have seen in recent elections, including but not limited to:

–Individuals working for non-partisan but Democratic-oriented registration groups who in an excess of partisan zeal place fraudulent names on the registration rolls.

–Individuals working for non-partisan but Republican-oriented registration organizations who in an excess of partisan zeal discard collected registrations if the registrants listed themselves as Democrats.

–Some residents of northern states with homes in Florida registering and voting in both places.

–Registration list purging conducted by non-governmental agencies focused largely only on certain segments of the population.

-Legitimate and long-time voters finding their names removed from registration lists by inaccurate purging.

-Michael Mouse and Richard Tracy appearing on registration lists along with a number of real individuals who are not legally qualified to vote.

-Arbitrary decision-making in very close elections, as in Florida in 2000 and presently in Minnesota, because of uncertainty as to who was entitled to cast ballots and whose ballots should be counted.

-Seven-figure election-day expenditures for monitors, poll watchers and lawyers all primed to swing into aggressive action at the slightest sign that anything might advantage one side or the other.

-Biennial claims of fraud by Republicans, intimidation and suppression by Democrats, all with their grains of truth, all eroding trust in the electoral system.

The Help America Vote Act (HAVA) has propelled modest improvements. Beyond beginning to establish standards for methods of voting, it did mandate the computerization of voting lists that may, at some future date when they are all in place and interoperable, make it more difficult for duplicate registrations and double voting. And it did provide for provisional ballots for those who feel unjustly left off registration lists, but there is no uniform standard for who gets these ballots, which ballots will be counted or who bears the responsibility for the effort and cost of verifying the claim of enfranchisement entitlement

But what we have been doing is patching up a fundamentally flawed system which cannot in its present form be perfected, which is wasting enormous amounts of money and well-meaning human effort and which will not majorly boost enrollment and turnout nor majorly diminish the inaccuracy of the voting lists.

There is a better way which is currently in practice within our neighbor to the south which has transformed what had been one of the most corrupt electoral systems anywhere into one that is respected and trusted by its citizenry..

If we, like they, had a government-provided mandatory biometric identification card and system, every citizen aged 18 and over would be enfranchised and none of the putative fraud (and intimidation and suppression) associated with the current registration system could occur. Voting would be, in this nation as in most other nations, a one-step act. Citizens would no longer need to qualify themselves through registration. All they need do is vote with confidence that their vote will be counted accurately.

This would also substantially reduce the cost of election administration and the complexity of registration list maintenance and verification. And it would likely but not certainly lead to at least a noticeable increase in turnout

The obstacles to such a system are cost and fears, I believe irrational fears, of undue invasion of privacy.

When I investigated these issues and this system for the Carter/Baker Commission, I ascertained that the up-front cost would be \$14 billion. In the best of all possible worlds, we would invest this amount for the betterment of the electoral system of the nation which prides itself on being the greatest democracy in the world.

In the real world, such a level of expenditure tends only to be justified on the grounds of national defense. On the other hand, I believe it can be justified on national defense grounds. For the sine qua non of national defense and homeland security is to know who is in this country and coming into this country.

If this system were adopted, it could have other beneficial applications. It could be a better way of dealing with the immigration issue – the sorting out of who should be given green cards, be on a citizenship track or sent home – then random arrests and a border fence. It could provide for a fully accurate Census without the cost of physical enumeration. It could substantially reduce or eliminate identity theft. It could help with both accurate criminal prosecution and exoneration of those wrongfully prosecuted or incarcerated. It could be used for medical records, social security, medicare, drivers' licenses, selective service registration and, perhaps, even for commerce. It could unify the many and varied identification programs in place, contemplated or mandated. It will not, however, serve as a cure for halitosis or the common cold.

With respect to privacy concerns, there are three answers. The first is that we have lost almost all of our privacy already, beginning when we allowed our social security numbers to be used for identification in realms other than social security and now much more broadly through the Internet. The second is that for most uses – other than national defense and law enforcement – there are technologies that put a person's information on the card rather than a database and readers can be programmed to take only the information needed for a given person (i.e. for voting: name, address, citizenship status and, where relevant, party registration). The only way to prevent privacy abuse with respect to national defense and law enforcement is what we already have inadequately in place – criminal penalties for abuse made more detailed and adequate.

The downside risks of such a system are small. The upside benefits great. And, with respect to the issues before this hearing, it would solve virtually all of them and remove all the remaining barriers to full citizen political participation.

Two final points:

I was asked by the minority staff to address the issue of the nexus between registration law and turnout. The broad answer is that this relationship has grown increasingly tenuous. At one time, it could accurately be said that one of the reasons for the lower turnout of the United

States as compared to almost all advanced democracies (Switzerland, which referends all its issues of consequence, excepted) was that we were the only nation other than France that made voting a two-step act. In all the other nations, government has been responsible for creating the list of eligible voters, all the citizen had to do was vote. Our citizens (other than those living in North Dakota) had to qualify through registration and, if addresses changed, through re-registration before one could vote. That was once a major barrier which has become profoundly less so now as we have made it progressively easier to both register and vote.

There are many indicators of the increasing lack of connection between registration and voting. We just held an election which produced the third highest turnout since women were given the vote in 1920. Yet, thirteen states recorded lower turnout, including five of the eight states which have election day registration. When election day registration was instituted in four states in 1976, turnout went up by between one and three percentage points in those states. By 1988, turnout was lower than in 1972 prior to the initiation of election day registration in the three states which continued to have election day registration (Oregon had repealed it). When the NVRA was enacted in 1995, registration went up in the two subsequent elections (1996 and 1998) but turnout went down. In the next two elections (2000 and 2002), registration went down but turnout increased. Prior to the voting surges (which I believe to be temporary) in 2004 and 2008, North Dakota which has no registration and thus no registration barriers had a greater turnout decline over the previous three decades than the average for the rest of the nation. In 2008, my home state of Virginia had a record high turnout. Under the same laws this year, a municipal election in the largest town in my home county saw a turnout of 1300 of 25,000 registered citizens. The 2008 presidential primaries produced the third highest turnout ever. The statewide primaries – for governor and U.S. Senate – which were not held on the same day as the presidential primaries produced the lowest turnout ever. It is incandescently clear that the primary determinant of turnout is no longer procedure but motivation. (It should also be noted that France, even with its system of personal registration, has a substantially higher turnout than we do.)

That said I would still prefer that government be responsible for registration, that voting be a one-step act and that the fail-safe way of accomplishing both would be a biometric ID.

My last point is about partisanship. It has been axiomatic among Democrats that because of the demographic profile of those who don't vote, greater turnout benefits them. It has been equally axiomatic among a majority of Republicans that the best electoral event that could happen to them is rain on election day – that the lower the turnout the better their chances. There may have been a time when these axioms were valid, but that time has long passed. Both axioms are demonstrably wrong. Three of the highest turnout presidential elections in the last 75 years occurred in 1952, 1968 and 2004 when the GOP won. Two of the lowest turnout elections during the same period were 1948 and 1996 when the Democrats won. There is a similar pattern for mid-term elections. In 1980, 1984 and 2004, there could have been 10 million additional voters and the winners of those elections – Ronald Reagan and George W. Bush – would have won by even larger margins.

Elections are now decided by political and societal conditions, perceptions of the candidates and their respective records and messages.

When, in 1988, the ad hoc commission that I created, headed by the chairs of the two major parties, reached agreement on a bi-partisanly acceptable method of cleaning the registration lists, that result was handed to the chair and ranking minority member of the House Election Subcommittee of the House Administration Committee, Reps. Al Swift and Bill Thomas. Within a matter of days, what had been seen as a partisan bill sponsored by Rep. Swift became the Foley-Gingrich bill, sponsored by the speaker of the House and its minority whip and it passed by a two-thirds vote. That bill was the framework for NVRA. It achieved its high-level bi-partisan sponsorship not simply because there was a resolution to the registration confirmation issue, but because Gingrich and Thomas believed and, I think, still believe that the Republican Party would not achieve a durable majority status without appealing to the whole of the electorate.

What I hope is that as this committee and its counterpart in the other house deliberate legislative changes to the current registration and voting system, they do so in the same spirit of bi-partisanship which existed in 1988 – one in which partisan interests are not sacrificed but cooperation for the common good is emphasized. We are, after all, talking about the electoral underpinnings of the most important democracy in the world.

* * *

(I have appended a few illustrative charts and one explanation of the difficulty one finds in dealing with "official" registration statistics.

Turnout Trend: The number and percentage of eligible citizens who voted for President in elections since 1920.

YEAR	Citizens Eligible	Vote	Percent of Eligible Voted	Pct. Pt. Dif.	Adj Pct * Voted
2008	208,323,000	131,257,542	63.0	2.4	
2004	201,780,000	122,265,430	60.6	6.4	
2000	194,327,000	105,399,313	54.2	2.8	
1996	187,437,000	96,277,872	51.4	-6.9	
1992	179,048,000	104,428,377	58.3	5.0	
1988	171,855,000	91,594,805	53.3	-2.6	
1984	165,727,000	92,659,600	55.9	1.2	
1980	158,111,000	86,515,221	54.7	-0.3	
1976	148,419,000	81,555,889	55.0	-2.1	
1972	136,228,000	77,718,554	57.1	-3.9	
1968	119,955,000	73,211,875	61.0	-1.0	
1964	113,979,000	70,645,592	62.0	-2.8	64.9
1960	106,188,000	68,838,219	64.8	3.6	67.8
1956	101,295,000	62,026,908	61.2	-2.5	63.9
1952	96,607,000	61,550,918	63.7	10.5	66.8
1948	91,689,000	48,793,826	53.2	-2.2	56.2
1944	86,607,000	47,976,670	55.4	-6.8	58.8
1940	80,248,000	49,900,418	62.2	1.3	66.1
1936	75,013,000	45,654,763	60.9	3.5	63.5
1932	69,295,000	39,758,759	57.4	0.5	61.4
1928	64,715,000	36,805,951	56.9	8.6	61.2
1924	60,334,466	29,095,023	48.2	0.1	51.9
1920	55,441,000	26,762,613	48.3		52.2

* Prior to 1964, African-Americans in the south were considered eligible voters but were almost universally unable to vote until the Voting Rights Act became law in 1965 because of Jim Crow laws. The percentages in this column are based on subtracting the Census Bureau's estimate of southern African-Americans from the overall citizen-eligible population for the nation and interpolating between Censuses and dividing the vote for President by these interpolated figures. This probably provides a more accurate turnout percentage of those who could actually vote but for the purposes of consistency, all percentage in the text are based on citizen-eligible vote as explained in the notes below without this adjustment.

3. Convenience Voting and Turnout

State	2008			2004			2008 - 2004		Early Voting	No Excuse Absentee	EDR
	VAP	Turnout	% VAP	VAP	Turnout	% VAP	Pt Diff	% Diff			
DC	371,000	265,853	71.66	388,000	227,586	58.66	13.00	22.17			
NC	6,423,000	4,310,789	67.11	6,161,000	3,501,007	56.83	10.29	18.11	X	X	
SC	3,224,000	1,920,969	59.58	3,102,000	1,617,730	52.15	7.43	14.25			
GA	6,302,000	3,924,440	62.27	6,028,000	3,298,790	54.72	7.55	13.79		X	
VA	5,560,000	3,723,260	66.97	5,339,000	3,198,360	59.91	7.06	11.78			
MS	2,151,000	1,289,865	59.97	2,107,000	1,139,826	54.10	5.87	10.85			
AL	3,394,000	2,099,819	61.87	3,343,000	1,883,415	56.34	5.53	9.81			
IN	4,586,000	2,751,054	59.99	4,509,000	2,468,002	54.74	5.25	9.60			
CO	3,219,000	2,401,349	74.60	3,118,000	2,129,630	68.30	6.30	9.22	X	X	
NV	1,642,000	967,848	58.94	1,500,000	829,587	55.31	3.64	6.58	X	X	
MD	4,064,000	2,630,947	64.74	3,906,000	2,384,214	61.04	3.70	6.06	X	X	
NM	1,346,000	830,158	61.68	1,296,000	756,204	58.35	3.33	5.70	X	X	
DE	630,000	412,398	65.46	603,000	375,190	62.22	3.24	5.21			
AZ	4,117,000	2,293,475	55.71	3,800,000	2,012,585	52.96	2.74	5.18	X	X	
NJ	5,904,000	3,868,237	65.52	5,787,000	3,611,691	62.41	3.11	4.98	X	X	
RI	790,000	469,767	59.46	771,000	437,134	56.70	2.77	4.88			
MT	731,000	490,109	67.05	703,000	450,434	64.07	2.97	4.64		X	
MO	4,328,000	2,925,205	67.59	4,227,000	2,731,364	64.62	2.97	4.60			
MA	4,625,000	3,080,985	66.62	4,556,000	2,905,360	63.77	2.85	4.46		X	
CA	22,319,000	13,561,900	60.76	21,306,000	12,419,857	58.29	2.47	4.24		X	
TX	14,886,000	8,077,795	54.26	14,189,000	7,410,749	52.23	2.04	3.90	X		
IL	8,540,000	5,523,051	64.67	8,466,000	5,275,415	62.31	2.36	3.79			
TN	4,512,000	2,598,749	57.62	4,378,000	2,437,319	55.67	1.95	3.50	X		
FL	12,923,000	8,390,744	64.93	12,124,000	7,609,810	62.77	2.16	3.44	X	X	
ID	1,024,000	655,032	63.97	967,000	598,376	61.88	2.09	3.37		X	X
PA	9,450,000	5,995,107	63.44	9,318,000	5,765,764	61.88	1.56	2.53			
KS	1,968,000	1,235,872	62.80	1,939,000	1,187,756	61.26	1.54	2.52		X	
CT	2,518,000	1,649,399	65.50	2,466,000	1,578,769	64.02	1.48	2.32			
NE	1,243,000	801,281	64.46	1,233,000	778,186	63.11	1.35	2.14		X	
WA	4,489,000	3,036,878	67.65	4,313,000	2,859,084	66.29	1.36	2.05	X		
NY	12,653,000	7,594,813	60.02	12,563,000	7,391,036	58.83	1.19	2.03			
HI	918,000	453,158	49.36	885,000	429,013	48.48	0.89	1.83	X	X	
WY	388,000	254,658	65.63	376,000	243,428	64.74	0.89	1.38	X	X	X
MI	7,490,000	5,001,766	66.78	7,323,000	4,839,252	66.08	0.70	1.05			
IA	2,201,000	1,537,123	69.84	2,175,000	1,506,908	69.28	0.55	0.80	X	X	X
AR	2,065,000	1,086,617	52.62	2,015,000	1,054,945	52.35	0.27	0.51			
ND	485,000	316,621	65.28	481,000	312,833	65.04	0.24	0.38	X	X	
VT	495,000	325,046	65.67	477,000	312,309	65.47	0.19	0.29	X	X	
OH	8,562,000	5,698,260	66.55	8,458,000	5,627,903	66.54	0.01	0.02		X	
NH	1,016,000	710,970	69.98	988,000	677,662	70.01	-0.03	-0.04			X
KY	3,147,000	1,826,508	58.04	3,085,000	1,795,860	58.21	-0.17	-0.30			
AK	476,000	326,197	68.53	453,000	312,598	69.01	-0.48	-0.69	X	X	X
MN	3,824,000	2,910,369	76.11	3,685,000	2,828,370	76.75	-0.65	-0.84			X
LA	3,338,000	1,960,761	58.74	3,278,000	1,843,106	59.28	-0.54	-0.91			
OK	2,561,000	1,462,661	57.11	2,528,000	1,463,758	57.90	-0.79	-1.36		X	
UT	1,578,000	952,370	60.35	1,511,000	927,844	61.41	-1.05	-1.71		X	
WI	4,183,000	2,983,417	71.32	4,061,000	2,998,007	73.82	-2.50	-3.39		X	X
SD	573,000	381,975	66.66	562,000	388,215	69.08	-2.42	-3.50		X	
OR	2,615,000	1,827,864	69.90	2,528,000	1,836,782	72.66	-2.76	-3.80	X		
ME	1,048,000	731,163	69.77	1,010,000	740,748	73.34	-3.57	-4.87		X	X
WV	1,428,000	713,362	49.96	1,415,000	755,659	53.40	-3.45	-6.46	X		

Overall Registration: The chart below represents CSAE's best estimate of the number and percentage of eligible citizens who were registered this year and in past years. (See note 3.) 10

Year	Estimated Number and Percent Registered	
2008	154,576,000	74.2
2004	143,000,000	71.0
2000	133,780,000	68.0
1996	132,000,000	70.0
1992	123,649,000	68.4
1988	116,820,000	67.0
1984	114,750,000	68.8
1980	103,500,000	65.9
1976	95,850,000	66.0
1972	92,700,000	68.7
1968	81,000,000	70.3
1964	78,300,000	72.1
1960	74,250,000	70.9

Total Registration as a Percentage of VAP - Citizen 2008vs 2004 - 2000

Registration Races

State	2008 VAP	2008 Turnc	2008 % VAI	2004 VAP	2004 Turnc	2004 % VAI	+/-08-04 Pct	2000 VAP	2000 Turnc	2000 % VAI	+/-08-00 Pct
AL	3394000	3010638	88.7	3343000	2843111	85.05	3.65	3284000	2889772	88	0.7
AK	476000	495731	104.15	453000	469042	103.54	0.61	425000	581347	136.79	-32.64
AZ	4117000	3441141	83.58	3800000	2896748	76.23	7.35	3437000	2654700	77.24	6.34
AR	2065000	1684290	81.56	2015000	1685527	83.65	-2.09	1959000	1555809	79.42	2.14
CA	22319000	17304091	77.53	21306000	16557273	77.71	-0.18	20154000	15707307	77.94	-0.41
CO	3219000	3203583	99.52	3118000	3065227	98.31	1.21	3007000	2858239	95.05	4.47
CT	2518000	2097635	83.31	2465000	2102941	85.28	-1.97	2408000	2031626	84.37	-1.06
DE	630000	602726	95.67	603000	553917	91.86	3.81	571000	503672	88.21	7.46
DC	371000	426761	115.03	388000	383919	98.95	16.08	408000	431816	105.84	9.19
FL	12923000	11247634	87.04	12124000	10301290	84.97	2.07	11205000	8752717	78.11	8.93
GA	6302000	5755750	91.33	6028000	4248802	70.48	20.85	5718000	4648205	81.29	10.04
HI	918000	691356	75.31	885000	647238	73.13	2.18	847000	637349	75.25	0.06
ID	1024000	861869	84.17	967000	684936	70.83	13.34	900000	728085	80.9	3.27
IL	8540000	8849117	103.62	8466000	7499488	88.58	15.04	8393000	8940544	106.52	-2.9
IN	4586000	4514804	98.45	4509000	4286858	95.07	3.38	4421000	4000809	90.5	7.95
IA	2201000	2169682	98.58	2175000	2106658	96.86	1.72	2147000	1969199	91.72	6.86
KS	1968000	1749756	88.91	1939000	1687896	87.05	1.86	1906000	1623623	85.18	3.73
KY	3147000	2906809	92.37	3085000	2794286	90.58	1.79	3013000	2722557	90.36	2.01
LA	3338000	2945619	88.25	3278000	2889981	88.16	0.09	3207000	2782929	86.78	1.47
ME	1048000	1027585	98.05	1010000	1023956	101.38	-3.33	965000	1064368	110.3	-12.25
MD	4064000	3430364	84.41	3906000	3105370	79.5	4.91	3723000	2980950	80.07	4.34
MA	4625000	4220488	91.25	4556000	4098634	89.96	1.29	4479000	4000218	89.31	1.94
MI	7490000	7470764	99.74	7323000	7164047	97.83	1.91	7131000	6861342	96.22	3.52
MN	3824000	3203835	83.78	3685000	2975125	80.74	3.04	3525000	2801077	79.46	4.32
MO	4328000	4205774	97.18	4227000	4206423	99.51	-2.33	4110000	3676664	89.46	7.72
MT	731000	672961	92.06	703000	638474	90.82	1.24	671000	698260	104.06	-12
NE	1243000	1157034	93.08	1233000	1160199	94.1	-1.02	1221000	1085272	88.88	4.2
NV	1642000	1446027	88.06	1500000	1071101	71.41	16.65	1339000	878970	65.64	22.42
NH	1016000	954913	93.99	968000	855861	88.42	5.57	910000	856519	94.12	-0.13
NJ	5904000	5378792	91.1	5787000	5005969	86.5	4.6	5659000	4710768	83.24	7.86
NM	1346000	1192969	88.63	1296000	1051536	81.14	7.49	1238000	928931	75.03	13.6
NY	12653000	12031312	95.09	12563000	11837068	94.22	0.87	12474000	11262816	90.29	4.8
NC	6423000	6287992	97.9	6161000	5502937	89.32	8.58	5862000	5186094	88.47	9.43
OH	8562000	8302900	96.97	8458000	7979630	94.34	2.63	8337000	7537822	90.41	6.56
OK	2561000	2184084	85.28	2528000	2143978	84.81	0.47	2491000	2233602	89.67	-4.39
OR	2615000	2166866	82.86	2528000	2141243	84.7	-1.84	2428000	2136719	88	-5.14
PA	9450000	8758031	92.68	9318000	8315974	89.25	3.43	9166000	7781997	84.9	7.78
RI	790000	680651	86.16	771000	687488	89.17	-3.01	749000	661295	88.29	-2.13
SC	3224000	2553923	79.22	3102000	2256745	72.75	6.47	2960000	2349863	79.39	-0.17
SD	573000	574632	100.28	562000	552441	98.3	1.98	547000	520881	95.23	5.05
TN	4512000	3977586	88.16	4378000	3730058	85.2	2.96	4224000	3400487	80.5	7.66
TX	14886000	13575062	91.19	14189000	13098329	92.31	-1.12	13404000	12365235	92.25	-1.06
UT	1578000	1432525	90.78	1511000	1278251	84.6	6.18	1435000	1303603	90.84	-0.06
VT	495000	454466	91.81	477000	444077	93.1	-1.29	456000	427354	93.72	-1.91
VA	5560000	5034660	90.55	5339000	4517980	84.62	5.93	5086000	4071471	80.05	10.5
WA	4489000	3629898	80.86	4313000	3514078	81.48	-0.62	4114000	3335714	81.08	-0.22
WV	1428000	1212117	84.88	1415000	1168694	82.59	2.29	1400000	1067822	76.27	8.61
WY	388000	244818	63.1	376000	232396	61.81	1.29	362000	220012	60.78	2.32
Overall:	2.02E+08	1.81E+08	90.03	1.95E+08	1.69E+08	86.85	3.19	1.88E+08	1.62E+08	86.45	3.58

Adjusted Registration:

ADJUSTED REGISTRATION
(Gross Registration Minus Inactive Lists Comparison 2008 – 2004)

State	2008 Nov Citizen VAP	2008 Gross Reg.	2008 Gross Reg. % VAP	2004 Gross Reg. % VAP	% Pt Diff 2008-2004	2008 Gross Reg. Registration	2008 Inactive Registration	2008 Adjusted Registration	2008 Adjusted % VAP	2004 Adjusted % VAP	% Pt Diff 2008-2004
AL	3,394,000	3,010,838	88.70%	85.38%	3.33	169,443	2,841,195	83.71%	78.30%	5.42	
AZ	4,117,000	3,441,141	83.58%	76.21%	7.37	453,690	2,987,451	72.56%	69.53%	3.03	
AR	2,065,000	1,684,240	81.56%	84.36%	-2.8	319,499	1,364,741	66.09%	74.23%	-8.14	
CO	3,219,000	3,203,583	99.52%	99.49%	0.04	621,394	2,582,189	80.22%	77.14%	3.07	
GA	6,302,000	5,755,790	91.33%	85.14%	6.2	570,838	5,184,912	82.27%	73.47%	8.8	
IL	8,540,000	8,825,639	103.34%	103.76%	-0.42	1,125,384	7,700,255	90.17%	85.00%	5.17	
NY	12,653,000	12,031,312	95.09%	94.22%	0.86	1,214,612	10,816,500	85.49%	84.66%	0.83	
SD	573,000	574,632	100.28%	98.30%	1.99	45,170	527,830	92.12%	89.37%	2.75	
TN	4,512,000	3,977,586	88.16%	85.62%	2.54	395,845	3,581,741	79.38%	76.57%	2.81	
TX	14,886,000	13,575,062	91.19%	92.31%	-1.12	1,898,044	11,677,018	78.44%	77.53%	0.91	
UT*	1,578,000	1,584,669	100.42%	100.78%	-0.36	266,575	1,318,094	83.53%	84.84%	-1.11	
VA	5,560,000	5,034,660	90.55%	84.58%	5.97	121,689	4,912,971	86.36%	78.28%	10.08	
WA	4,489,000	3,629,898	80.86%	78.15%	2.71	401,651	3,228,247	71.91%	67.72%	4.19	
Total	56,445,000	54,853,614	93.51%	92.48%	1.03	6,911,251	47,740,731	81.68%	79.35%	2.33	

Registration: The registration figures for the individual states in the back of this report are final, official, certified by the chief election officer of each state and totally unreliable. At least four states have reported registration levels in excess of their eligible population. Several more are close. (Note there are no figures for North Dakota which has no registration and Mississippi and Wisconsin whose statewide figures always come late and the figures for Iowa and Maine, both election day registration states, are almost final and unofficial).

In any given election the official registration figures provided by the states are inaccurate because they contain the names of people who have either died or moved but have not been removed from the registration rolls. The degree of inaccuracy in any given state would pend both on when they conducted a list cleaning and how thorough such a list cleaning was. A state which conducted a thorough list cleaning close to an election would likely have fewer names that were not eligible. Prior to the enactment of the National Voter Registration Act (the so-called motor-voter law), it was at least possible to make a national estimate of registration which would be, on the average, ten percent lower than the official figures provided by the states.

But the NVRA mandated that states must keep even those who have moved or died on their registration rolls for at least two federal elections, even if the people whose names have remained on the rolls have been determined to have moved or died. And, this, in turn, accounts for the substantially higher official figures than prior to the NVRA's implementation.

While states cannot remove names, they can transfer those for whom they have evidence have died or moved to an inactive list, which they are required by the NVRA to report each biennium by March of the year following a national election. A truer picture can be gleaned from the chart above which compares registration rates based on official figures and rates based on official figures minus those kept on inactive lists. The charts on registration and partisan registration in the summary charts below represent the Committee's best estimate of what actual registration is likely to be, based on the states which have provided final and official registration figures at the time of this report. (Three additional considerations when looking at these statistics: 1. Only 28 states and the District of Columbia have partisan registration and the partisan registration percentages estimated below are based on the raw registration figures. There are no similar corrective inactive lists for partisan registrants and it is likely that were there, the estimates for partisan registration percentages below would be smaller in each category. 2. The percentages of Democratic, Republican and Other registrations do not add up to 100 percent. The balance is unregistered. 3. The partisan percentages are taken from raw official data and thus do not yield the same totals as do the overall percentages).

BIOGRAPHICAL SKETCH

CURTIS B. GANS

Curtis Gans is presently the Director of the newly created Center for the Study of the American Electorate within the Center for Democracy and Election Management at American University and is a Research Scholar in residence at that institution. He was the co-founder and has been the director for nearly 32 years of the non-partisan Committee for the Study of the American Electorate whose work is being carried forward and expanded by the new American University Center. As director of the Committee, Gans is an acknowledged ranking expert on voter turnout and participation. On matters of voting, he has become the primary source of information for most newspapers, wire services, news magazines and columnists. His writings have appeared in a number of major publications and he has appeared on various talk shows, including TODAY, Good Morning America, All Things Considered, PBS' Newshour, Morning Edition, CBS Morning and CBS, ABC, and NBC Evening news, Fox News, CNN, BBC, CBC, among others. He has spoken in various capacities on more than 200 college campuses and before political and trade associations. He has testified before Congress on several issues on numerous occasions. Until 15 years ago, he wrote a self-syndicated column which appeared in more than 20 newspapers in major urban centers.

In a career that straddles both politics and journalism, Gans is also well known for leading the effort against the re-election of President Lyndon Johnson in 1967 and serving as staff director of the Presidential campaign of Senator Eugene J. McCarthy the following year. He is former member of the Democratic National Policy Council and its Foreign Policy Subcommittee. He has served as a consultant to the Woodrow Wilson Center for International Scholars, the National Committee for an Effective Congress, and has managed a number of political campaigns.

He has also been a newsman for the Miami News, and United Press International and has written numerous articles and reviews for such publications as The Atlantic, Public Opinion, The Washington Monthly, The Nation, The New Republic, Social Policy, The New York Times Book Review, Book World, and the opinion pages and sections of many newspapers. He has also contributed to many books and anthologies.

A 1959 graduate of the University of North Carolina with an A.B. degree in English. Gans is an honorably discharged member of the United States Marine Corps Reserve.

He is an avid baseball fan and is noted for planning his vacations and business travels to coincide with the flights of the St. Louis Cardinals.

Executive Summary of Testimony of**Professor Nathaniel Persily****Charles Keller Beekman Professor of Law and Political Science****Columbia Law School**

The United States has made great strides in the area of voter registration in recent years, but the 2008 election displays how much further we must go. Controversies surrounding voter registration appear to have been *the* problem in the 2008 election, producing more litigation than any other single topic. Many of these problems are a product of the progress made in this area, for example, with the innovation of statewide voter registration databases that have now been used to create purge or challenge lists. In other respects, the problems have been known to political scientists for a generation, such as the effect of registration on depressing voter turnout among residentially mobile populations.

The United States continues to make voting more difficult than any other industrialized democracy. This is not the result of registration, per se – many other countries require registration. Rather, the effect of the registration system comes from its interaction with the high mobility of the American population and the lack of any affirmative government effort to register voters who change their address. 90 million eligible voters (45 percent of the population) move every five years. Given that each voter is required to re-register each time he or she moves, it comes as no surprise that the longer someone resides at an address, the more likely they are to be registered and vote. This requirement has a disproportionate impact on certain populations, such as active military servicemembers residing in the United States. Because they are more likely to be recent arrivals at their residence, they are also less likely to vote and more likely to experience problems with their registration on Election Day.

Both Election Day complaints and the litigation leading up to Election Day illustrate the problems of the registration system. Registration problems represented 31 percent of the incidents reported to CNN on its Election Day hotline, for example. The number of provisional ballots cast also hint at the failings of the registration system. 1.9 million such ballots were cast in the 2004 election and a third went uncounted. Although we do not know how many such ballots were cast in 2008, the Associated Press reports 800,000 provisionals were cast in just 14 states alone. Finally, the litigation in 2008 over mismatch lists, third party registration efforts, and disputes over registration applications indicates the evolution and magnitude of the registration problem.

With all that said, we still need to learn much more about the scope of the registration problem. We do not really know how many voters are registered or even how many, in fact, voted in 2008. In order to assess problem areas and evaluate reforms, analysts need data at the precinct level concerning the basic metrics of how many people are registered and voted, whom they voted for and by what mode (early, absentee, in-person, military, or provisional ballot). Such data gathering would be a first step toward describing the registration problem in full and prescribing a direction for reform.

**Testimony of Professor Nathaniel Persily
Charles Keller Beekman Professor of Law and Political Science
Columbia Law School**

**Before the United States Senate Committee on Rules and Administration on
“Voter Registration: Assessing Current Problems”**

Submitted March 9, 2009

Thank you, Mr. Chairman and Members of the Committee, for inviting me today to testify on the problems with the nation’s current system of voter registration. My name is Nate Persily. I am the Charles Keller Beekman Professor of Law and Political Science at Columbia Law School. I teach and write in the areas of voting rights, election law, constitutional law and the regulation of politics. Perhaps of most relevance to my testimony here today is my ongoing research on Americans’ experience and opinions with respect to the fundamental workings of our electoral system.

Whereas punch card ballots were the problem for the 2000 election and long lines were the problem for the 2004 election, the voter registration system appears to have been the problem for the 2008 election. Whether one judges election law problems by the amount of litigation they produce or the volume of complaints by voters, registration appears to have been at or near the top of the list for 2008. This most recent election revealed the serious shortcomings of the registration in its attempt to achieve its most basic goals. Moreover, the registration system provides a lens through which we can view many of the current dysfunctions of our electoral system: in particular, the difficulties discrete populations face in voting, the problems with provisional ballots, and the need for data to assess the geography of election-day problems.

By way of introduction, we should recognize that we have made great gains in terms of registration with legislation such as the National Voter Registration Act and the Help America Vote Act. In fact, most recent estimates suggest an increase in voter registration from 2004 of about 5.4 percent, or ten million names.¹ Despite these gains, however, the United States continues to make it more difficult to vote than any other industrialized democracy. The registration system is largely responsible for our comparatively low voter turnout. This is not because of the mere fact of requiring registration – many other countries do so. Rather, it is the interaction of our registration system with the high mobility of our population, the requirement that voters re-register

¹ See Michael McDonald, 2008 General Election Voter Registration Statistics, available at http://elections.gmu.edu/Registration_2008G.html (last visited March 7, 2009) (noting the total number of people listed as registered as 187 million). Registered voter numbers are notoriously inflated due to “deadwood” on the rolls – that is, duplicate registrations, registrations of dead voters and registrations of those no longer living in the given state. Survey data suggest that the number of voters reporting themselves to be registered is closer to 168 million, which is probably more accurate.

each time they change address, and the limited role that the government takes in affirmatively registering voters.

The effect of registration on specific populations illustrates this interaction between the legal system and the mobility of the American population. According to Census figures, approximately 45 percent of the U.S. population moves every five years. This translates into about 90 million eligible voters moving every five years—many, more than once. If they wish to vote, virtually all of those 90 million “movers” must re-register when they change their address. The mere fact that these movers must re-register is the chief reason that the longer someone has lived at a given residence the more likely they are to be registered and to turn out to vote.² The 2004 Election Supplement to the Census Current Population Survey demonstrate this linear relationship. Whereas only 53 percent of respondents who lived in their residence for less than a year reported voting, 76 percent of those who have lived in their residence for five years or more reported voting.³

It should come as no surprise then, that the population groups most likely to move are therefore less likely to be registered and therefore vote. Much has been made about the effect of registration laws on turnout of the young and less educated (both groups that are more likely to change residence), but other groups, such as active military, are also disproportionately affected by registration problems. According to the 2008 Cooperative Congressional Election Survey (CCES) servicemen and women living in the United States report voting at a rate 10 percent lower than the general population. And those who do vote cite having registration problems at 1.7 times the rate of those not in the military. These figures are completely separate from the often severe registration problems that military voters stationed overseas experience.

As the experience of military voters delineates, the registration “problem” extends well beyond the fact of requiring registration or the effect of registration on turnout. The problems with the registration system extend further to the experience of voters on Election Day and the likelihood that their votes will be counted. In incident reports to CNN on Election Day this past November, for example, 31 percent of the reported complaints involved problems with registrations – far larger than any other individual category.⁴ As Professor Stephen Ansolabehere’s testimony before this Committee also reports, the results from the 2008 CCES confirm registration problems as both a major reason for a failure to turn out to vote and as a source of major problems for those who, in fact, turned out and tried to vote on Election Day. The aggregate effect is hard to pin down, but the data suggest such problems account for several million votes not being cast.

² See Benjamin Highton, “Residential Mobility, Community Mobility, and Electoral Participation,” *Political Behavior* (22:109), June 2000 (demonstrating that the chief effect of mobility on turnout derives from the need to register at a new address, not movers’ lack of connectedness to a new community).

³ Kelly Holder, Current Population Reports, *Voting and Registration in the Election of November 2004 Available*, March 2006, available at <http://www.census.gov/prod/2006pubs/p20-556.pdf> (noting also that 68 percent of respondents who lived in their residence for less than a year report being registered, whereas 84 percent of those living in their residence for five years or more report being registered).

⁴ See CNN, Voter Hotline, available at <http://www.cnn.com/ELECTION/2008/voter.hotline/> (last visited March 7, 2009).

Even among those ballots cast, registration problems account for a sizable number not being counted. One way to get a handle on such a problem is to examine the number of provisional ballots cast and counted in an election. Complete data for the 2008 election will only be available in a few months. However, the Associated Press reports that in just fourteen states, the number of provisionals amounted to over 800,000 ballots. In the 2004 election, 1.9 million provisional ballots were cast, which represented about 2.5 percent of the total ballots cast.⁵ Fully a third (or over 670,000) went uncounted. However, the rate of rejection of provisional ballots varied considerably between states, with Delaware, Hawaii and Oklahoma rejecting more than 90 percent of provisional ballots and Alaska and Maine rejecting less than five percent of provisional ballots. Unfortunately, we do not know for sure how many such ballots went uncounted because of a registration problem; we only know that the most frequently cited reason by state officials as the cause for not counting such ballots was to say the voter was not registered.

One other useful metric to gauge the magnitude of the voter registration “problem” is the amount of registration-related litigation surrounding an election. On that score, the 2008 election may have broken records. Although the lawsuits surrounding the 2008 election revolved around a variety of state-specific concerns, three general categories account for much of the litigation: (1) problems concerning purges or mismatch-lists generated by comparisons with the voter registration database; (2) problems associated with third-party registration drives; and (3) complaints against technical defects in voter registration applications.⁶ Litigation of the first category occurred in Colorado, Florida, Ohio, Georgia, Michigan, Montana, Washington, and Wisconsin, among other states. The complaints in such cases ranged from allegations of wrongful or overinclusive purges of voters to threats of unwarranted challenges on Election Day due to questioned registration status. The lawsuits involving third party registration drives included an investigation by the Department of Justice, as well as legal action taken in Florida, Indiana, Louisiana, and Nevada with the intended effect of restraining the actions of such groups or questioning the authenticity of the registration of voters such groups gathered. The final category, which included lawsuits filed in Indiana, Michigan and Ohio, among other states, encompasses what might be seen as run-of-the-mill litigation concerning voter registration applications. In such cases, voters or parties argue about the defects in particular voter registration applications.

The amount of litigation concerning voter registration indicates both the progress and shortcomings of the relevant law. The much-needed innovation of statewide voter registration databases brought about by the Help America Vote Act has proven to be a mixed blessing. On the one hand, the requirement and development of statewide databases has allowed for greater centralization and consistent administration of voter registration at the state level. It has provided for much-needed reform in the direction of

⁵ Kimball W. Brace and Michael P. McDonald, Final Report of the 2004 Election Day Survey: Submitted to the U.S. Election Assistance Commission, September 27, 2005, available at <http://www.eac.gov/clearinghouse/2004-election-day-survey>.

⁶ For a review of these lawsuits and others see Daniel P. Tokaji, “Voter Registration and Institutional Reform: Lessons from a Historic Election,” *Harvard Law and Policy Review Online*, Jan. 22, 2009, available at http://www.hlpronline.com/Tokaji_HLPR_012209.pdf; Daniel P. Tokaji, “Voter Registration and Election Reform,” *William and Mary Law Review* (17(2): 453-506), Dec. 2008.

addressing error-prone and duplicative lists managed by localities, which applied often inconsistent and sometimes nonexistent standards in maintaining their lists. On the other hand, ambiguities in HAVA and the NVRA have led to great variation between states concerning the latitude they exercise in purging the rolls or creating mismatch lists that serve as a basis for challenging a voter's registration status. As is true with many government databases, the information the voter database assembles can be used for functions the law may not have intended.

It would be unfortunate if the litigation that indirectly grew out of the development of these databases retarded additional efforts to gather much-needed data on the workings of our electoral system. Indeed, the bottom line when it comes to assessing the problems with our registration system is that we need to know much more. We do not know how many voters are actually registered to vote; the estimates differ by close to twenty million. We do not even know – and may never know – how many people actually voted in the 2008 election, given that twelve states do not provide certified vote totals. Most importantly, states rarely provide the data at the precinct level – vote totals for each candidate for federal office, the number of registered voters, or the number of early, absentee, military, and provisional ballots cast – which would be necessary to identify problem areas, to generate the correlations of electoral data with census data, or to evaluate the success of reforms.

The 2008 election brought into full view the problems with our voter registration system. As we have known for some time, the requirement of re-registration of voters who change their address decreases turnout given the high mobility of the American population, and does so unequally among population subgroups. The problems with the registration system do not limit themselves to the failure to register or turn out, however. Voters who do attempt to vote often experience problems due to dysfunctions in the registration system. In some cases, it might lead to voters leaving the polls without voting or in others to the casting of a provisional ballot. The large number of provisional ballots cast in the last two presidential elections provides some glimpse into the magnitude of the registration problem. Moreover, if rates of litigation are any indicator of shortcomings in the registration system, the 2008 election illustrated the number of unsettled questions left open by well-meaning developments in federal law. Finally, the 2008 election has indicated how much we do not know and how much we need to know about the workings of the voter registration system. The first stage in any effort to understand the full extent of the registration problem ought to be the collection of the data necessary to identify the precise dysfunctions and to assess the geographic and demographic patterns in the shortcomings Americans experience in their attempts to participate in the democracy.

Bio for Nathaniel Persily

Nathaniel Persily is the Charles Keller Beekman Professor of Law and Political Science at Columbia Law School. He is also the founder and director of the Center for Law and Politics at Columbia Law School. Professor Persily is a nationally recognized expert on election law and a frequent practitioner and media commentator in the area. He has published dozens of articles on voting rights, political parties, redistricting, election law, American politics, and public opinion. He has been appointed by courts as a nonpartisan expert to draw legislative redistricting plans in New York, Georgia, and Maryland, has testified before both the House and Senate Judiciary Committees, and this year alone, has filed amicus briefs on behalf of himself and other political scientists in two voting rights cases before the Supreme Court. Professor Persily received a B.A. and M.A. in political science from Yale, his J.D. from Stanford, where he was president of the *Stanford Law Review*, and his Ph.D. in political science from U.C. Berkeley.

**Senate Rules and Administration Committee Hearing on March 11, 2009
Executive Summary of Testimony of Chris Nelson, South Dakota Secretary of State**

Thank you for the opportunity to offer testimony on the subject of voter registration. It is a privilege for me to come before this honorable committee. It is vital that you hear the perspective of a state election official who has experience in conducting elections.

November 4, 2008 was a historic day in America. 132,600,000 citizens voted. That day saw nine million more voters than participated in the 2004 presidential election. Voter registration systems carefully managed by state and local election officials across this country handled the tremendous increase in registration and turnout on November 4. Those systems stand ready to handle further increases in years to come. Election officials anticipate and welcome this expansion of interest by the American people.

What is Right with Our Voter Registration System

The purpose of voter registration is to provide a listing of those eligible to vote in each precinct. Voter registration provides order to our election system. There are nine elements of our voter registration system which each contribute to the reliability of that system.

One: Voter registration is easy and accessible.

Two: The system relies on a paper card or form signed by the voter. There is a solid paper record of who registered to vote. Questions about the accuracy of information for any voter on the registration list can be answered by accessing the original card signed by the voter.

Three: The registration card contains an oath which must be signed by the person registering. The oath contains an affirmative statement that the person is a United States Citizen.

Four: The registration system is local. Voter registration cards are maintained as official records by county and other local election officials. If data is missing or unclear, election officials work diligently to contact the person by phone or mail or use whatever other means is necessary to get the needed data.

Five: Voter registration data is verified. The Help America Vote Act requires verification of data with driver license or social security records. The addition of these verifications has made huge strides toward cleaning up bad data on the registration file.

Six: Voter registration data is aggregated into a statewide voter registration file. This file facilitates the removal of duplicate voter registrations and serves as a single source of official voter registration data for federal elections.

Seven: The current voter registration system establishes a "chain of responsibility" for voter registration data.

Eight: The current voter registration system is transparent. The public, the candidates, the political parties, and the media know how names are added to the registration list and how they are removed.

Nine: Voter registration is part of the fabric of our American election system. The requirement for voters to be registered drives political parties and activist groups to conduct registration drives. Those drives heighten awareness among the public about the upcoming election.

In the area of voter registration, state and local election officials have the responsibility of maintaining an accurate and clean voter registration list. Individual citizens have the simple but powerful responsibility of filing out a voter registration card to avail themselves of our right to vote. It's a system that works and works well.

**Senate Rules and Administration Committee
Testimony of
Chris Nelson, South Dakota Secretary of State
March 11, 2009**

Mister Chairman and Members of the Committee:

Thank you for the opportunity to offer testimony on the subject of voter registration. It is a privilege for me to come before this honorable committee.

Allow me to introduce myself. My name is Chris Nelson. I am the Secretary of State of South Dakota. From 1989 until 2002 I served as the State Election Supervisor for South Dakota. I was elected Secretary of State in 2002. In 2006 I ran for reelection unopposed. One of the reasons I was unopposed is that I have earned a reputation in my state of being able to lead the conduct of elections in a manner that is fair to all parties and independents, open to the fullest participation and instilled with integrity. I serve as the co-chair of the National Association of Secretaries of State Elections Committee.

I think it is vital that you hear the perspective of a state election official who has experience in conducting elections and who understands what works and what doesn't in the area of election administration.

November 4, 2008

November 4, 2008, was a historic day in America. 132,600,000 citizens went to their polling places or submitted an absentee ballot to vote their choice for President of the United States, U.S. Senator, U.S. Representative, and state and local officials.

That day saw nine million more voters than participated in the 2004 presidential election. That nine million voters nearly equals every adult in the State of Ohio. What an incredible increase in participation!

That day saw twenty-five million more voters than participated in the 2000 presidential election. The percentage of the Voting Age Population which turned out to vote in 2008 was the highest since the 1960s.

Voter registration systems carefully managed by state and local election officials across this country handled the tremendous increase in registration and turnout on November 4th. Those systems stand ready to handle further increases in years to come. Election officials anticipate and welcome this expansion of interest by the American people.

Electoral Reality

Any discussion regarding voter registration must be premised with the stating of several realities. I offer these based on my many years of involvement with election administration.

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First, citizens vote when they are interested in the races on the ballot. It's very simple. When folks identify with a race or a candidate or feel passionately about either, they vote. Unfortunately when citizens don't make that connection with a race or a candidate, some choose not to vote. That's reality.

In 2008, citizens found that connection and turned out in record numbers. There will be future elections where turnout will diminish and others where it will again soar. Such is the cycle of human interest in electoral involvement.

I saw this cycle firsthand in South Dakota in 2004 during the John Thune, Tom Daschle Senate race. This was an election with which "everybody" connected. Some on one side, some on the other. Sixty-eight percent of the voting age population turned out to vote in that election. This was our highest turnout since 1972, which happened to be the year another South Dakotan, George McGovern, made the national ballot.

Put simply, interest drives turnout regardless of what type of voter registration system is in place.

There is one other reality that needs to be mentioned. This one is hard for those of us who are elected officials to understand or accept. It is this: Some people don't want to vote. I've had more conversations that I care to admit with people who simply don't want to cast a ballot. There are many different reasons but none involve choosing not to vote because of the current voter registration system.

We need to be willing to respect that decision. In America we are free to make choices. One of those is the choice not to vote. We may not understand that choice and we may not like someone making that choice, but it is their choice. We have to accept that.

What is Right with Our Voter Registration System

The purpose of voter registration is to provide a listing of those eligible to vote in each precinct. Some states choose to allow citizens to register at the polling place on election day, while others establish a cut-off deadline.

Voter registration provides order to our election system. It ensures that voters can't vote in multiple locations. It provides contact information for campaigns.

There are nine elements of our voter registration system, each of which contribute to the reliability of our voter registration system.

One: Voter registration is easy and accessible. Voter registration forms are available at election offices, driver license stations, agencies which provide public assistance, military recruitment stations, other public agencies, and on the internet. A person registering to vote completes a simple one page form. At driver license and some social service agencies, the form is combined with the agency's form. Overseas and military voters can fill out a special combined voter registration and absentee ballot form.

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Two: The system relies on a paper card or form signed by the voter. There is a solid paper record of who registered to vote. Questions about the accuracy of information for any voter on the registration list can be answered by accessing the original card signed by the voter. Much has been said about the need for a “paper trail” when balloting and the same logic applies to the need for a “paper trail” for each person registering to vote. A paper record – or optical image of that record – with the voter’s signature is essential for the integrity of a voter registration system.

Three: The registration card contains an oath which must be signed by the person registering. The oath contains an affirmative statement that the person is a United States Citizen. Because citizenship is difficult for state or local election officials to verify, heavy reliance is given to this signed oath to prevent non-citizens from being added to the voter registration list. The oath also contains statements affirming current residence location, age qualifications, and felony conviction restrictions. The oath is another critical part of ensuring the eligibility of the names added to voter registration lists.

Four: The registration system is local. Voter registration cards are maintained as official records by county and other local election officials. Local election officials do not view voter registrations as mere data. They know and understand that each of these registrations represents a person’s right to vote. These officials are dedicated to maintaining these records with accuracy. Voter registrations are reviewed by election officials. If data is missing or unclear, election officials work diligently to contact the person by phone or mail or use whatever other means is necessary to get the needed data. Applicants are notified in writing when their registration has been added to the voter registration list. This work prior to election day is vital to minimizing problems on election day.

Five: Voter registration data is verified. The Help America Vote Act requires verification of data with driver license or social security records. Additional verification is done against records of current disqualifying felony convictions and those that are deceased. Incorrect information or simple typos can be caught and corrected. The addition of these verifications has made huge strides toward cleaning up bad data on the registration file.

Six: Voter registration data is aggregated into a statewide voter registration file. This file facilitates the removal of duplicate voter registrations and serves as a single source of official voter registration data for federal elections. Many states, including South Dakota, have used this state file as the basis for web access portals allowing citizens to verify their voter registration status, find their polling place, and view their sample ballot.

Seven: The current voter registration system establishes a “chain of responsibility” for voter registration data. Local election officials know where to find the original registration information for a voter, they know how that data is incorporated into the voter registration file, they understand how the file creates election day precinct lists, and with that knowledge can deal effectively with any questions that may arise regarding why a name is on the list – or not on the list.

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Eight: The current voter registration system is transparent. The public, the candidates, the political parties, and the media know how names are added to the registration list and how they are removed. That data, along with the originating voter registration card, is public and transparent. Any attempt to remove transparency of this system by creating voter registration data from other government data bases will lead to deep suspicions regarding the integrity of the voter registration list.

Nine: Voter registration is part of the fabric of our American election system. The requirement for voters to be registered drives political parties and activist groups to conduct registration drives. Those drives heighten awareness among the public about the upcoming election. Are those voter registration drives sometimes messy? Yes. Are there attempts to introduce fraudulent registrations into the system? Yes. Despite those answers, the voter registration system in America today is the best and cleanest it has ever been.

These nine elements each play an important part in our successful voter registration system. The removal of any of these elements risks the integrity of our voter registration system.

Federalization

Contemporary talk about further federal mandates for voter registration in America continue an unfortunate path toward a federalized voter registration system.

In 1993 Congress mandated new opportunities for the availability of voter registration cards and restricted how voter lists could be purged through the National Voter Registration Act.

In 2002 Congress mandated states compile statewide voter registration files and verify voter registration data in a certain manner through the Help America Vote Act.

Now there is talk of mandating “national universal registration” through the use of existing government databases and further limiting the ability to maintain clean registration lists.

State and local governments are doing a good job of managing today’s voter registration system. Are there occasional issues and problems? Yes. Will state and local government officials rest until those problems are resolved? No. Our country is fortunate to have state and local election officials who are committed to the cause of accessible and accurate voter registration.

Further federalization of this historically local system is not the right answer.

Universal Registration

A recent Brennan Center policy paper entitled “Voter Registration Modernization” advocates for this Congress to adopt a mandate for a universal permanent voter registration system. Such a system would aggregate existing government databases to create a new voter registration list and would augment that data by conducting local enumeration operations.

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Such a suggestion presumes that existing government databases contain accurate and current name and address data and that these databases could be combined in a manner to effectively eliminate duplicate names and non-citizens. This universal registration concept would be very difficult to implement with the level of accuracy and transparency demanded by our election system.

Simply aggregating existing databases would not provide each person included on the database with the option of designating their political party. In some states this is not an issue, but in others such as South Dakota which conducts a closed primary, lack of political party data is a critical defect in such a system.

This proposal also lacks the crucial component of the qualification oath contained on a voter registration form.

The report further suggests that these databases be augmented with local enumeration. The enumeration concept creates another government bureaucracy attempting to marshal a street-by-street, farm-to-farm army of enumeration workers tasked with finding every legal voter in America and adding them to the registration list. The cost of such a project would be enormous. The methodology of such a project would always be subject to partisan question. Did the enumerators spend too much time in a Republican area? Did they spend too much effort on Democratic areas? Government enumeration to create a voter registration file would be a gold mine for legal attack.

An additional component of this proposal is the idea that voter registration be "permanent". This would prohibit removing names from the registration list for anything other than death or felony conviction. This proposal ensures that the voter registration list will grow over time to include more than one hundred percent of the voter age population of each state.

There is no perfect method for removing names due to death or moving to a new location. Current systems do a moderately good job of capturing death records and a fair job of capturing moves. Anytime a deceased person or someone who moves is not removed at the time of death or the time of the move, their names stays on the list. The Brennan Center proposal is that they would remain on the list forever. That is absolutely unworkable. Election officials need the ability to remove names after a period of non-voting following the proper attempts to locate the voter. On a side note, the current NVRA restrictions on list maintenance have already caused many counties to exceed one hundred percent of the voting age population registered. (See attachment #1- House Administration Subcommittee on Elections testimony from October 23, 2007).

Allowing the voter registration list to grow without an effective method for removing names will lead to a list of names of people who are no longer in the jurisdiction. Those names will be a ripe attraction for voter fraud. Anything we do to hinder the proper cleaning of voter registration lists is an invitation to fraud.

An additional component to the concept of universal permanent registration is the fact that several states conduct their elections entirely by mail. Ballots are mailed to every person on the

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registration list. Universal permanent registration would create a voter registration list of questionable quality containing names of persons who may no longer be alive or in the jurisdiction but who will all be sent a ballot. This is a further invitation to ballot fraud with many excess ballots floating throughout the state.

From a personal perspective, there is one additional problem with this concept. Some voters move to a new location but want to continue voting at their former home. This happens frequently in South Dakota. My widowed mother is a very good example. Several years ago she moved from the farming community where she had spent most of her adult life to the largest city in South Dakota. She chose not to reregister to vote in her new community because she didn't know the candidates or the issues there. She wants to continue voting "back home" where she is familiar with those on the ballot. Someday she may chose to move her registration. That will be her decision. A universal registration system would take away her right to choose when to move her registration. That is wrong.

There is one final pertinent thought regarding universal permanent registration. There is at least one state, Minnesota, where the Secretary of State is looking at this concept for his state. While I do not agree that it can be successfully implemented without the downsides I have mentioned, we may well have a state give it a try and then we will know. We will see the successes and will we see the failures on the relatively small scale of a single state. We can all learn from that experience and be able to make much more informed decisions regarding this concept in the future.

Shifting a Private Responsibility to the Government

Perhaps the most salient point that I can make regarding any proposal for a universal registration system is that it moves what has been a private responsibility to the government. This shift in voter registration responsibility is unnecessary and unwise.

Our nation was built on the idea of individual responsibility with government stepping in only when necessary. The proposal for universal registration turns that idea on its head. It eliminates a fully functional registration system based on individual responsibility and replaces it with a system entirely driven by the government. Such is not right.

Our nation faces many challenges today which demand the fullest attention of our government. Taking any steps to turn our voter registration system from one driven by the people to one driven by the government should not be among the priorities of this Congress.

Any such shift to a new system will have immeasurable start-up and ongoing costs. A Congress which has not yet fully funded the requirements of HAVA should not be looking at additional costly mandates.

Has our country made access to voter registration cards very easy through the National Voter Registration Act? Yes.

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Has our country provided the tools for maintaining an accurate voter registration list through the Help America Vote Act? Yes.

Do we need to eliminate personal responsibility for voter registration in favor of a government originated list? No.

With Rights Come Responsibilities

In America we cherish our history of liberty. We cherish our rights. We fight for our right to vote – or not vote, if we so choose.

With rights come responsibilities.

In the area of voter registration, state and local election officials have the responsibility of maintaining an accurate and clean voter registration list. Individual citizens have the simple but powerful responsibility of filing out a voter registration card to avail themselves of the right to vote. It's a system that works and works well.

I respectfully submit that to fundamentally change the responsibilities in this system would be a disservice to the integrity of the election system in America.

Thank you for your consideration.

Testimony of Chris Nelson, South Dakota Secretary of State, March 11, 2009

Attachment #1

**House Administration Subcommittee on Elections
Testimony of
Chris Nelson, South Dakota Secretary of State
Regarding Voter Registration List Maintenance
October 23, 2007**

Madam Chairwoman and Members of the Committee:

Thank you for the opportunity to offer testimony on the subject of voter registration list maintenance. It is a privilege for me to come before this honorable committee.

Allow me to introduce myself. My name is Chris Nelson. I am the Secretary of State of South Dakota. From 1989 until 2002 I served as the State Election Supervisor for South Dakota. I was elected Secretary of State in 2002. In 2006 I ran for reelection unopposed. One of the reasons I was unopposed is that I have earned a reputation in my state of being able to lead the conduct of elections in a manner that is fair to all parties and independents, open to the fullest participation and instilled with integrity. I serve as the co-chair of the National Association of Secretaries of State Elections Committee.

I think it is vital that you hear the perspective of a state election official who has experience in conducting elections and who understands what works and what doesn't in the area of list maintenance.

The Scope

Successful voter registration list maintenance hinges on a crucial balance between several key areas.

First, the law must clearly define the processes for list maintenance. The policy must define the criteria and requirements that must be met for voter eligibility and ineligibility. It must specify that those no longer eligible to vote such as the deceased or adjudicated as felons or incompetent be removed. The law must also clearly define the removal of voters who have registered to vote in other jurisdictions and those no longer involved in the election process.

Well defined law is the first step to ensuring that voter registration lists are kept clean without the disenfranchisement of voters being improperly removed.

The second balance is in the area of execution of the list maintenance process. Election officials must have the technical ability, resources and training to follow the list maintenance law. This ensures that those names which should be removed are actually taken off the list and that no voter's name is removed which should remain on the list.

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For an effective list maintenance process and for the protection of the rights of voters, there is no room for error in either of these areas of balance. Lawmakers must get it right and election officials must perform flawlessly.

Some of these list maintenance procedures are biennial and comprehensive, conducted in the “off” election year. Other procedures are daily or weekly such as the removal of voters who have registered in other jurisdictions, removal of the deceased, removal of duplicate registrations, and removal of those adjudicated as felons or incompetent depending on a state’s policy. I will address both of these types of list maintenance in my testimony.

Biennial List Maintenance

The National Voter Registration Act (NVRA) provided significant restrictions and specific procedures to voter registrars for the conduct of biennial list maintenance.

Why do we refer to list maintenance as biennial? NVRA prohibits comprehensive list maintenance within 90 days of a federal election. That essentially relegates comprehensive list maintenance to the “off” election year, hence biennial. That timeframe works. Election officials conduct this maintenance when they are not crushed with other election conduct responsibilities and in ample time to produce a “clean” voter registration list for the next federal election.

The purpose of biennial list maintenance should be to identify voters who are no longer living at the address in which they are registered or are no longer interested in participating in the election process.

The NVRA allows two options for identifying voters who are no longer living at their registration address.

The first option is to match voter registration names and addresses to the postal service National Change of Address system to identify reported address changes.

The second option is to mail voters a non-forwardable address verification notice. Notices returned undeliverable would indicate a possible address change.

Any voters identified through either of these avenues would then be sent a forwardable double postcard confirmation mailing. If the voter receives the postcard at a new address, the voter can use the card to update their voter registration address. If the card is undeliverable, the voter can be moved to an inactive list for the next four years.

The process sounds perfect. It is easy to run. It allows voters to update their address. It moves voters off the list if they are no longer “findable”. What more could we ask?

Unfortunately it doesn’t work in the real world. This NVRA process is premised on several incorrect assumptions.

Why NVRA List Maintenance Doesn’t Work

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The first assumption made in NVRA is that a person who moves will file a change of address notice with the post office which will identify the person when the voter registration list is compared to the NCOA list. Not true.

South Dakota limits our NCOA comparison to voters who have not voted or had any contact with the voter registrar in the last four years. During our 2007 NCOA comparison, only 17.6% of the voters were identified as having filed a postal change of address. This is a very low percentage of voters who can then be sent the forwardable confirmation notice double postcard. It also means that 82.4% of these non-voters must be sent the nonforwardable address verification notice as a backup to NCOA.

The purpose of the nonforwardable address verification mailing is to find out, "Is the voter there?" If the voter is at the address and the notice is delivered, the voter's name is not removed and no further contact is attempted.

What should we expect with this mailing? If the voter is at the address, the notice is delivered. If the voter is no longer at the address, the notice is returned undeliverable. In reality it doesn't work that way.

Why does this mailing fail to accomplish the NVRA objective? The success and failure of this mailing is ENTIRELY dependent upon the knowledge of and handling by the postman or postwoman on the delivery route. The postal delivery person must:

1. Know with 100% certainty whether the person still lives at the address on the notice. Postal workers tell me that they do not know with certainty the names of each person who currently resides at each address.
2. Not deliver the notice based on the address without checking the name of the person. Our experience has shown that postal workers "want to deliver" the mail to an address even if the name of the addressee doesn't match the current resident of the address.
3. Not forward the notice to a new address even though the postal indicia says to not forward. Our experience has shown that postal workers will forward mail which is designated as non-forwardable.
4. Not make the inevitable mistake of simply putting the notice in the wrong mail box. We've all had the experience of getting someone else's mail.

In order for the NVRA prescribed list maintenance process to be effective, NONE of these errors can occur. Real life experience has shown us that they do happen and with great regularity. My office has taken the step of working with our state's postal leadership to emphasize the importance of following this process perfectly. While the postal service has been very cooperative, unfortunately too many mistakes are still being made at the delivery level.

The NVRA prescribed system places the entire success or failure of biennial list maintenance in the hands of the postal worker.

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What is the Result?

When the postal delivery person makes a mistake in any of the four areas outlined above, a name stays on the active voter registration list for another two years. The NVRA prescribed list maintenance system will fail to remove names which can be legally moved to the inactive list because of the likelihood of postal worker errors. That is a fact and it must be changed.

That same voter will be sent another address verification notice in two years and the cycle repeats itself. The possibility exists of this being a revolving cycle in which the name is never removed.

Statistical Reality

4000 registered voters in South Dakota on the active voter registration list have not voted in at least ten years. That represents 0.8% of all the names on our statewide voter file. In one county, 2.5% of the names on the active list have not voted in at least ten years.

These are counties which have followed the NVRA prescribed list maintenance process but the process has failed to be effective.

If it weren't for our state's photo ID requirement, these names of perpetual non-voters would serve as an invitation for election fraud.

Department of Justice

The Department of Justice has identified South Dakota as one of ten states which have counties with more names on the voter registration list than are in the voting age population. Eight South Dakota counties have greater than 100% registration.

In responding to the DOJ, I have pointed out there are several reasons for this situation one of which is the failure of the NVRA list maintenance system. I predicted in 1993 when NVRA was passed that the methodology for list maintenance would ensure greater than 100% voter registration. It was built into the NVRA language. That prediction has come true and now states are being scrutinized for greater than 100% registration.

The Solution

A solution to the incomplete list maintenance process outlined in NVRA [42 USC § 1973gg-6(b)] is achievable without disenfranchising voters. The NVRA list maintenance process should be supplemented to allow voters on the active voter registration list who have not voted or had any contact with the voter registrar to be moved to the inactive voter registration list after a set number of years. I would suggest six years.

NVRA requires that voters on the inactive list remain on that list for another two general elections. This scenario would allow a name to remain on the voter registration list for ten years of non-voting and no contact before the name would be ultimately removed.

Testimony of Chris Nelson, South Dakota Secretary of State, March 11, 2009

This removal process would serve as a backup to catch any failures in the current postal service oriented list maintenance process. This change would ensure that voters are not prematurely removed from the list but allow election officials to keep their lists reasonably clean.

Daily and Weekly Removal

One of the positive outcomes of the Help America Vote Act (HAVA) was the emphasis on linking the state voter registration database with felon and death record databases. These linkages prevent registration of deceased people or persons under a disqualifying felony conviction. Prior to the HAVA verifications, South Dakota experienced attempts to register deceased persons and had no way of discovering felons registering to vote.

Since implementing the HAVA verification system, no registrations for deceased persons have been received. We have caught about 150 persons with disqualifying felonies who have attempted to register to vote. The system is effective.

The same system can be used to identify persons on the current voter list who die or are convicted of disqualifying felonies. In South Dakota these names are removed on a weekly basis.

In designing our HAVA verification system, the reported problems with felon removal in Florida in the year 2000 were fresh in our minds. We designed a system that would require rigorous verification prior to any voter removal. The tolerance for error is zero.

Our verification system uses a three tiered ranking system for matches based on likelihood of the match being the exact person who has died or been convicted of a felony. The system identifies matches as "perfect", "probable", or "possible". The amount of election official verification required before a name is removed is specified depending upon which of these classifications the match is deemed.

This system has been very effective in properly sorting those names which should be removed from the voter registration list without erroneous removals.

The process for daily and weekly list maintenance is working to maintain the integrity of our voter registration list without disenfranchising voters. I would not recommend any change to this system.

Provisional Ballots

One last thought. The universal requirement for the availability of provisional ballots serves as a safety net to prevent disenfranchisement from erroneous voter removal. It is an effective provision which can be modified within a broad scope by each state to meet the needs of voters in each state.

Testimony of Chris Nelson, South Dakota Secretary of State, March 11, 2009

In South Dakota, my goal is for the number of counted provisional ballots to be zero. Zero provisional ballots would mean that each person coming to the polling place is legally entitled to vote a regular ballot.

We aren't there yet. In the last general election we had 341 provisional ballots in the state. Of those, 90 were countable meaning there were 90 mistakes in the registration list across the state. We will do everything we can to further improve our processes and hopefully drive that number to zero. Despite the importance of provisional ballot availability, we want every legal voter to get a regular ballot, not a provisional ballot.

Final Thought

As this committee examines voter list maintenance procedures, I would encourage adding a provision to federal law allowing states an additional maintenance mechanism to serve as a backup for the current failing NVRA list maintenance process.

I would encourage no change to the current HAVA verification process which is working well to identify the deceased and disqualified felons.

Thank you for your consideration.

Biography

Chris Nelson

Chris Nelson is currently serving as South Dakota's Secretary of State having been elected in the 2002 general election. He was unopposed for reelection in 2006 which was the first time this office was unopposed in the history of South Dakota.

Prior to becoming Secretary of State, Chris held the position of state election supervisor in the secretary of state's office for 13 years and was uniform commercial code supervisor in the same office for two years.

As Secretary of State, Chris received the 2003 Excellence in South Dakota Municipal Government award from the SD Municipal League and the 2004 Hazeltine/Taylor award from SD Kids Voting. In 2005 Chris was appointed as a National Governors Association representative on the United States Election Assistance Commission Board of Advisors. Secretary Nelson serves as co-chair of the National Association of Secretaries of State Elections Committee.

Following graduation from White Lake High School, Chris graduated from South Dakota State University in 1987 with highest honors receiving a bachelors degree in Animal Science.

He also maintains a part-time cattle operation. Chris, his wife Penny and daughter Rebekah reside in Pierre.

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Co-Director, Political Participation Group
NAACP Legal Defense and Educational Fund, Inc.**

**Hearing on
Voter Registration: Assessing Current Problems
United States Senate Committee on Rules and Administration**

March 11, 2009

EXECUTIVE SUMMARY

The most recent 2008 presidential election was one of our most closely followed. The entire country was excited and engaged. Many local election officials were overwhelmed by the spikes in the number of submitted voter registration forms and countless scores of voters endured long lines throughout the primary and general election season. Yet, the final data indicates that only 61 percent of all Americans eligible to vote cast ballots in the November 2008 election -- 1% more than in the 2004 election. LDF believes that many more people would have liked to have voted in this historic election. And, we should undertake to see that in future elections they will have that opportunity.

During the 2008 presidential election cycle and the preceding period, we have witnessed a range of problems which illustrate that our voter registration system is broken and in need of repair. Among the problems observed include the development and implementation of purge programs that resulted in the removal of substantial numbers of voters from registration rolls; widely disparate practices among local election officials concerning the processing of voter registration applications; varied approaches towards the implementation of the Help America Vote Act's (HAVA) database matching requirements; confusion regarding the impact of felon disenfranchisement laws on voter eligibility; efforts to chill voter registration drives and outreach programs; and non-compliance with the mandates of the National Voter Registration Act at departments of motor vehicles and other designated state agencies. Together, these problems frustrate efforts to achieve full and equal participation in our political process. Indeed, new or re-emergent barriers to voter registration move the nation in the wrong direction.

Given these problems, the challenge we now face is determining how to reform and repair the system in a way that will be more inclusive and provide affirmative opportunities for broad and meaningful participation to the millions of eligible but not yet registered citizens throughout our country. While we turn our attention to exploring the corrective action that must be taken, we must remain mindful of the particular challenges faced by those who are among the most vulnerable and marginalized in our society — the poor, those incarcerated, and our nation's racial and ethnic minorities. Indeed, the future of American democracy remains tied to our ability to address the persisting barriers that exclude millions of citizens from being able to register and vote on Election Day.

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**Before the United States Senate Committee on Rules and
Administration**

March 11, 2009

Chairman Charles E. Schumer and distinguished Members of the Committee, I am Kristen Clarke, Co-Director of the Political Participation Group of the NAACP Legal Defense and Educational Fund, Inc. (LDF). Founded under the direction of Thurgood Marshall, LDF is the nation's oldest civil rights law firm and has been very active in Congressional efforts regarding all of the major legislation affecting minority voting rights over the last several decades. Prior to joining LDF, I served for several years in the Civil Rights Division of the U.S. Department of Justice. Part of that time was spent as a Trial Attorney in the Voting Section of the Civil Rights Division. I am honored to have the opportunity to appear before you for this important hearing which seeks to identify ongoing challenges with respect to our nation's voter registration system.

Introduction

The most recent 2008 presidential election was one of our most closely followed. The entire country was excited and engaged. Many local election officials were overwhelmed by the spikes in the number of submitted voter registration forms and countless scores of voters endured long lines throughout the primary and general election season. Yet, the final data indicates that only 61 percent of all Americans eligible to vote cast ballots in the November 2008 election -- 1% more than in the 2004 election. LDF believes that many more people would have liked to have voted in this historic election. And, we should undertake to see that in future elections they will have that opportunity.

Significant evidence reveals that our voter registration system remains broken and in need of reform and repair. Approximately 213 million voting-age citizens were eligible to vote in the 2008 presidential election but only 186 million of them were registered to vote. Those figures mean that almost 13 percent of all eligible voters in our country remain excluded from participation in our political process. Many pre-election and Election Day voter complaints related to problems with voter registration. Around the country, voters turned out for early voting, sought to vote by absentee ballot or turned out to the polls on Election Day only to learn that their names did not appear on the registration rolls. Some of these individuals submitted registration forms that were never processed while others learned that their names were purged from the rolls. Beyond this category of would-be-voters are those who never had the opportunity to register because they lack access to prevailing registration methods, missed registration deadlines which vary by state, or have not been provided accurate information about their eligibility perhaps because of a felony conviction.

Working now to identify and address the problems that plague our voter registration system can help move us towards a more inclusive system and help us achieve a more robust democracy characterized by higher levels of participation among all eligible citizens. If we are to be regarded as the world's leading democracy, we must continue to study the problems and make affirmative efforts to ensure that we reach the millions of eligible citizens in our country who are not presently registered to vote.

Overview of the Problems Plaguing our Nation's Voter Registration System

During the 2008 presidential election cycle and the preceding period, we have witnessed a range of problems which illustrate that our voter registration system is broken and in need of repair. Among the problems observed include the development and implementation of purge programs that resulted in the removal of substantial numbers of voters from registration rolls; widely disparate practices among local election officials concerning the processing of voter registration applications; varied approaches towards the implementation of the Help America Vote Act's (HAVA) database matching requirements; confusion regarding the impact of felon disenfranchisement laws on voter eligibility; efforts to chill voter registration drives and outreach programs; and non-compliance with the mandates of the National Voter Registration Act at departments of motor vehicles and other designated state agencies. Together, these problems frustrate efforts to achieve full and equal participation in our political process. Indeed, new or re-emergent barriers to voter registration move the nation in the wrong direction.

Registration Barriers Faced by Persons with Criminal Convictions

Third party voter registration drives and voter education programs have long played an important role in reaching many eligible but not yet registered citizens. However, restrictions and bans on these efforts continue to be commonplace. Indeed, these efforts can help capture those eligible persons who may not have access to other more prevailing voter registration methods. On September 30, 2008, LDF filed a lawsuit on behalf of Reverend Kenneth Glasgow, a former offender who initiated a program aimed at identifying and registering eligible voters currently incarcerated in Alabama's correctional facilities.¹ On the eve of the close of registration for the 2008 election cycle, his voter outreach program was terminated by the Commissioner of the Alabama Department of Corrections.

While the Commissioner initially provided support for Reverend Glasgow's non-partisan voter registration effort, he rescinded access after succumbing to apparent political pressure. Glasgow's efforts were limited in scope and targeted at more than 6,000 inmates convicted only of simple drug possession crimes, offenses for which one does not lose his or her voting rights under Alabama's constitution and laws. Many of the individuals on the list were simply unaware of their eligibility to register to vote.

As we work to identify ways to capture the millions of eligible but not yet registered voters throughout the country, particular attention should be paid to widely varying state laws concerning the impact of a felony conviction on the right to vote. Many officials are unfamiliar with the laws concerning voting for persons with felony convictions which can unfairly exclude or deny otherwise eligible persons access to the ballot box. Programs such as Glasgow's play an important role in helping to resolve that confusion by specifically identifying and targeting eligible voters who currently sit on the margins of our political process.

¹ See Complaint, *Glasgow v. Allen, et al.*, available at https://www.naacpldf.org/content/pdf/felon/glasgow_v_allen/complaint.pdf.

Challenges Faced by Homeless Persons and Other Transient Individuals

The National Coalition for the Homeless estimates that there are more than 744,000 homeless individuals throughout the country of whom only one-third are registered to vote. Most certainly, these numbers are likely to increase in the coming years as our country faces a foreclosure crisis of unprecedented proportions. Here, state laws vary on the requirements that must be satisfied by those homeless and other transient individuals seeking to register to vote. Some states require that individuals list a permanent address on the voter registration form and provide some form of identification while other states allow individuals to list the address of a local shelter or outreach center. During the 2008 presidential election cycle, LDF learned of a group of homeless individuals whose registration applications were rejected by a local Louisiana Registrar because their forms failed to identify a permanent address. The unique registration challenges faced by those without permanent addresses and by other transient individuals present additional barriers that must be eradicated in order to make our political process a more inclusive one.

Purge Programs

Throughout the 2008 election cycle and the period preceding it, a number of states have implemented questionable purge programs aimed at cancelling the registration status of voters. A 2007 purge program carried out in Louisiana provides one stark example. Here, the state implemented an interstate match and purge program that targeted voters presumed to be ineligible because they appeared on the registration rolls in more than one state. The state's cancellation program was based on a questionable methodology that looked to identify or "match" voters by comparing the first name, last name and date of birth of Louisiana voters with individuals on the registration rolls in a select number of states. Those individuals bearing the same first and last names, and same date of birth were presumed to be the same person and targeted for removal. However, this matching system proved unreliable capturing many voters who simply happened to have similar identifying information. Numerous studies reveal that these matching efforts are error-prone and unreliable in that they are not based on sufficiently unique criteria that would prevent the disenfranchisement of eligible voters.² Notably, the states that were the focus of this particular purge scheme were those in which many persons displaced by Hurricanes Katrina and Rita sought refuge following the storms.

In mid-August, 2007, approximately 12,000 voters were purged from the State's voter registration lists under this program and it remains unclear how many have been removed subsequent to that point. A significant number of those purged were African-American voters. Moreover, the apparent discretion and broad latitude given to election officials under this purge program³ not only undercuts the goals of the NVRA but also

² See e.g., Myrna Percz, *Voter Purges available at* http://brennan.3cdn.net/5de1bb5cbe2c40cb0c_s0m6bqskv.pdf

³ Illustrating the inherent unreliability of the program, Commissioner of Elections Angie LaPlace identified several scenarios that Registrars may encounter when dealing with "voters who appear to be matches" and

complicates efforts to move towards a more inclusive system. While some may argue that these voter removal programs are necessary to preserve the integrity of the voter rolls, poorly designed programs such as Louisiana's runs the risk of disqualifying large numbers of qualified registrants. In addition, these programs unfairly place the burden of re-registration squarely on impacted citizens and can thus, discourage individuals from future participation in the electoral process. For these reasons, voter removal programs should be carefully assessed and scrutinized to ensure that they are not over-inclusive with respect to the scope of persons targeted for removal.

Unreliable Database Matching Schemes

As states have moved to implement the Help America Vote Act's (HAVA) electronic voter registration database requirements, the resulting technological advancements have also been used to "match" and remove voters from registration lists. Over the past two years, LDF has identified a wide-spread pattern among states relying on flawed database matching schemes that result in the removal of voters from registration lists. Under these circumstances, states ignore the fail-safe provisions built into the National Voter Registration Act (NVRA) and use unreliable and flawed processes to identify and remove otherwise eligible voters. As a result, database match and purge procedures can be used to manipulate the composition of the electorate as elections approach.

Interstate match and removal programs can also have a negative impact when tied to the use of other electronic databases.⁴ Communities of color are particularly vulnerable when unreliable match processes are used to identify registered voters who share a name with an individual in an electronic database of criminal offenders. As exemplified by the purge program implemented in Florida shortly before the 2000 election, this type of cross-database, inter-state matching process has a particularly harmful impact on communities of color. Without judicial intervention or other action, the NVRA's failsafe requirements imposed upon list maintenance programs will continue to be circumvented by local jurisdictions. In this context, the inaccurate removal of registered voters will continue to negatively impact voters seeking to register and participate in the political process.

As these examples illustrate, current attacks on eligible voters occur both before and after registration. Both HAVA and the list maintenance provisions of the NVRA have provided opportunities for nefarious state and local actors to prevent the registration of eligible voters and opportunities for the removal of otherwise eligible voters from voter registration lists.

proposed an approach for dealing with persons who are registered in Louisiana and out of state but who want to cancel their out-of-state registration; and persons who are registered in Louisiana and indicate that they have never registered out of state, among others. In a June 2007 e-mail to Louisiana Voter Registrars, Commissioner LaPlace indicated, by way of example, that "Lisa A. Anderson" and "Lisa Pruitt Anderson" should be considered a match because with many female voters, "one registration may be under their middle name and one may be under their maiden name as their middle name."

⁴ See Complaint, *NAACP, et al. v. Harris, et al.* available at https://www.naacpldf.org/content/pdf/harris/NAACP-v-Harris_Complaint.pdf.

Mass Rejection of Voter Registration Applications for Immaterial Omissions

In 2008, LDF conducted a comprehensive pre-Election Day voter education and advocacy program: Prepared to Vote. Prepared to Vote was designed to provide critical information to voters well in advance of Election Day in order to ensure that more voters would be able to overcome obstacles and barriers that might otherwise stand in their way. An important component of the Prepared to Vote program focused on the rules, requirements and deadlines for voter registration. This section of my testimony provides an overview of some of the troubling trends we identified through our pre-Election Day advocacy efforts that reflected systemic problems with the voter registration system in a number of states.

Through our pre-Election Day outreach efforts, we observed a troubling trend in which local election officials rejected significant numbers of voter registration applications because of questionable interpretations of HAVA's requirements and non-material omissions on applications by those seeking to register. In particular, LDF learned that there are three circumstances in which local election officials frequently reject voter registration applications because of an immaterial omission: when registrants fail to mark a check box confirming that they are a citizen despite having signed an oath on the application which requires the applicant to affirm their citizenship, when registrants have been issued a driver's license number but provide their social security number instead; and when registrants inadvertently omit both their social security number and driver's license number from an application.⁵ In our view, each of these scenarios relies upon an erroneous interpretation of HAVA's requirements.

The failure to check a box regarding citizenship or age has resulted in the rejection of registration applications for immaterial omissions in a number of states. In Indiana, for instance, election officials were directed to reject registration applications if an applicant failed to mark the checkbox confirming their citizenship and voting age. Officials maintained this position notwithstanding other provisions of state law requiring that all Indiana voter registration applicants swear and affirm, under penalties of perjury, that they are of voting age and citizens of the United States. As Election Day approached, this interpretation led to successful litigation to prevent election officials from rejecting voter registration applications on these grounds.⁶ Although the parties resolved the litigation favorably by Election Day, the impact of this discretionary interpretation and application of HAVA's checkbox requirement continues. This example illustrates the impact of widely disparate interpretations and applications of federal law by local and state election officials.

⁵ Congressional intent regarding the use of social security and driver's license numbers to verify identity during the registration process has also led to significant confusion regarding HAVA's database match requirements. During the 2008 election cycle, Florida's process of rejecting all registration applications that did not match information maintained in a HAVA database led to the widespread rejection of registration applications statewide, ultimately leading to litigation. See *Fla. State Conf. of the NAACP v. Browning*, 522 F.3d 1153, 1156 (11th Cir. 2008).

⁶ See *Brown v. Rokita*, Civ. A. No. 1:08-CV-1484RLY-TAB (S.D. Ind.).

Moreover, local and state election officials are also interpreting HAVA's requirements in a manner that essentially imposes additional eligibility criteria that must be satisfied by individuals seeking to register to vote. On July 2, 2008, for instance, Alabama Secretary of State Beth Chapman, distributed a memorandum to all local registrars outlining her interpretation of HAVA's requirements with respect to the verification of social security and driver's license numbers provided on registration applications. Chapman instructed local election officials to not accept or process a registration application unless the applicant provided their driver's license number or the last four digits of their social security number. The memorandum went on to assert that "applicants who have a driver's license *are required to provide that number*" by law (emphasis added). The varying interpretations of HAVA's requirements by local and state election officials certainly undermine Congress's intent to provide a more fair and open voter registration system.

Non-Compliance with the Registration Requirements of the NVRA

The NVRA requires that states make voter registration opportunities widely available at department of motor vehicles (DMVs) and other state agencies.⁷ Congress sought to mandate voter registration opportunities at public assistance offices to reach not only those citizens who drive, but also those citizens who are poor or disabled, and who do not drive but participate in public assistance programs.⁸ The NVRA requires entities that provide public assistance to integrate voter registration opportunities into the process during which an individual interacts with the agency (i.e., while the citizen seeks benefits or services.)⁹

Despite these NVRA requirements, recent evidence suggests that NVRA-designated agencies too often fail to implement training programs regarding the requirements of the NVRA; fail to carry out accurately their registration responsibilities and/or fail to submit (or timely submit) completed applications to the appropriate election official. For example, LDF has uncovered significant evidence of widespread non-compliance among several states including Louisiana and Mississippi, among others. Recent LDF investigations in these states reveal that personnel at a number of NVRA-mandated agencies are simply unfamiliar with the law and the obligation to make voter registration forms available to persons seeking services at these sites.

⁷ States are required to accept voter registration applications "made simultaneously with an application for a motor vehicle driver's license," 42 U.S.C. § 1973gg-2(a)(1), as well as applications submitted at the offices of other state agencies, 42 U.S.C. § 1973gg-2(a)(3).

⁸ See H.R. Conf. Rep. No. 66, 103d Cong., 1st Sess. 18-19 (1993).

⁹ See 42 U.S.C. § 1973gg-3, 1973gg-5(a), § 1973gg-5(a)(6).

Conclusion

The 2008 election cycle has yielded significant evidence of the ongoing problems that plague our nation's voter registration system. Given these problems, the challenge we now face is determining how to reform and repair the system in a way that will be more inclusive and provide affirmative opportunities for broad and meaningful participation to the millions of eligible but not yet registered citizens throughout our country. While we turn our attention to exploring the corrective action that must be taken, we must remain mindful of the particular challenges faced by those who are among the most vulnerable and marginalized in our society — the poor, those incarcerated, and our nation's racial and ethnic minorities. The future of American democracy remains tied to our ability to address the persisting barriers that exclude millions of citizens from being able to register and vote on Election Day.



KRISTEN CLARKE

Kristen Clarke is the Co-Director of the Political Participation Group at the NAACP Legal Defense and Educational Fund, Inc. where she oversees and coordinates the activities of the organization's legal program in the areas of voting rights and election law. She provided significant legal advocacy during Congress's 2006 reauthorization of the expiring provisions of the Voting Rights Act, helping to significantly shape and inform the Congressional record. Ms. Clarke has also provided testimony to Congress regarding election reform and voting rights issues.

She is currently defending the recently renewed Section 5 preclearance provision of the Voting Rights Act from a constitutional challenge in a case now pending before the United States Supreme Court.

Prior to joining LDF, Ms. Clarke worked for several years in the Civil Rights Division of the U.S. Department of Justice. She served as a trial attorney in the Voting Section of the Division where she handled a number of matters arising under the Voting Rights Act of 1965, among other federal statutes.

Ms. Clarke writes and comments frequently on issues concerning race, law and democracy. She received her A.B. from Harvard University and her J.D. from Columbia Law School.



Testimony of Jonah H Goldman: Executive Summary
 Director, National Campaign for Fair Elections, Lawyers' Committee for Civil Rights Under Law

Before the Senate Committee on Rules and Administration
 "Voter Registration: Assessing Current Problems"
 March 11, 2009

The United States voter registration system is wildly outdated and badly in need of modernization. At the dawn of the 19th century, before we fought the Civil War, before the first Model T rolled off the assembly line and before Alexander Graham Bell made the first telephone call, the Whig Party began to put in place our current voter registration system. Like the now-extinct Whig Party, our registration system should be a thing of the past. The system is inefficient; it sets election officials up for failure by diverting resources and energy from other critical tasks and it prevents more eligible voters from casting a ballot than any other part of the process. But our greatest aspirations for democracy, however important, are not our first thought in these trying times. As governments at all levels fight to stretch every penny, this Congress has recognized that streamlining essential processes is a critical component of moving forward in this new economy. Just as our health care system is stuck in the past, wasting vast sums of money sustaining an antiquated paper system that puts patients at risk, counties and states across the country are wasting millions of dollars every election cycle administering an outdated and expensive paper based voter registration system that frustrates election officials and threatens to block eligible voters from the rolls. Modernizing the registration system will not only improve the foundation of our democracy, it will allow communities to reinvest these resources in critical functions like keeping more teachers in the classroom and more cops on the street.

As Election Protection's report demonstrates, voters across the country still face unnecessary barriers to the polling place at each stage of the electoral process. Voters were turned away because they did not receive their absentee ballots or because poll workers did not understand the provisional balloting system. Voters stood in excruciatingly long lines and lost votes on malfunctioning voting machines. But the single largest cause of the problems on and before Election Day is our antiquated and cumbersome voter registration system. There are two primary culprits in our broken registration system: Paper and Timing. Each registration requires an individual paper form and the vast majority of these forms come in during the critical planning and implementation period just before an election. The inefficiency of the voter registration system has a domino effect, forcing election officials to divert their attention and resources from other critical election functions, causing confusion at the polls and infecting every aspect

of the voting process. According to the Census Bureau's post-election survey, in 2004, the last presidential election where figures are available, 9 million eligible Americans were not registered due to missed registration deadlines, lack of information about where or how to register, or permanent illness or disability. In addition, the Census reports that over 1 million people who were registered did not vote in 2004 because of problems with their registrations.



Testimony of Jonah H Goldman
 Director, National Campaign for Fair Elections, Lawyers' Committee for Civil Rights Under Law

Before the Senate Committee on Rules and Administration
 "Voter Registration: Assessing Current Problems"
 March 11, 2009

Mr. Chairman, Thank you for having me here today. I commend your leadership in holding this hearing at a time when the issue of election administration can be considered in the deliberate, meaningful way that is fitting of our great democracy. My name is Jonah H Goldman and I am the Director of the National Campaign for Fair Elections at the Lawyers' Committee for Civil Rights Under Law.

Mr. Chairman, our voter registration system is wildly outdated and badly in need of modernization. At the dawn of the 19th century, before we fought the Civil War, before the first Model T rolled off the assembly line and before Alexander Graham Bell made the first telephone call, the Whig Party began to put in place our current voter registration system. Like the now-extinct Whig Party, our registration system should be a thing of the past. The system is inefficient; it sets election officials up for failure by diverting resources and energy from other critical tasks and it prevents more eligible voters from casting a ballot than any other part of the election process. But our greatest aspirations for democracy, however important, are not our first thought in these trying times. As governments at all levels fight to stretch every penny, this Congress has recognized that streamlining essential processes is a critical component of moving forward in this new economy. Just as our health care system is stuck in the past, wasting vast sums of money sustaining an antiquated paper based system that puts patients at risk, counties and states across the country are wasting millions of dollars every election cycle administering an outdated and expensive paper based voter registration system that frustrates election officials and threatens to block eligible voters from the rolls. Modernizing the registration system will not only improve the foundation of our democracy, it will allow communities to reinvest these resources in critical functions like keeping more teachers in the classroom and more cops on the street.

The Lawyers' Committee was founded 45 years ago by President Kennedy to organize the *pro bono* resources of the private bar to protect civil rights. The National Campaign for Fair Elections was established by the Lawyers' Committee to lead Election Protection, the nation's largest non-partisan voter protection coalition, and to turn the lessons learned from that experience into real, effective, policy solutions for America's voters. In the 2008 election, the Lawyers' Committee recruited, trained and deployed over 10,000 legal volunteers who developed a nationwide comprehensive, year round

program to protect voters' rights by working with election officials, supporting non partisan voter mobilization efforts, providing direct assistance to voters with problems or questions and deploying legal resources to help poll workers, election officials and voters on Election Day. One of the cornerstones of the program is 1-866-OUR-VOTE, the nation's largest voter services hotline which, since its inception, has handled over 500,000 calls from voters across the country, including over 240,000 during the 2008 election cycle. In 2008, Election Protection launched www.866ourvote.org, a dynamic online clearing house providing state specific information on voting rules and laws, an interactive web chat to answer voter questions, and a real time chronicling of the problems and challenges that confront our election system. Nearly 300,000 unique users visited 866ourvote.org in the six weeks leading up to the election. The information from calls into the hotline and stories collected over the web are logged into www.ourvoteline.org, the coalition's web based database. The stories that make up the nearly 90,000 reports in our database paint the most complete picture available of the American voting experience from the perspective of the voter. Those stories, together with our extensive and on-going dialogue with hundreds of state and local election officials as well as the experience of our leaders, partners and volunteers on the ground form the basis for *Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow*, a report on the Election Protection program that we are releasing today. A copy of that report is appended to this testimony.

There are two primary culprits in our broken registration system: Paper and Timing. Each registration requires an individual paper form and the vast majority of these forms arrive at registrars offices during the critical planning and implementation period just before an election. For example,

- In Fairfax County, Virginia 30% of new voters who registered last year were added to the roles in the final 30 days of registration;
- In Fulton County, Georgia, 41.4% of all registration applications were received in the final 6 weeks of the registration period;
- In Hillsborough County, Florida 42% of all registration applications the county received in 2008 arrived just before the close of registration;
- New York City received 211,866 new registrations in the final 10 days of the registration period in 2008, as compared to 195,136 in the 9 months prior and 146,147 all of 2007;
- Of the 298,000 individual paper records that Franklin County, Ohio received and processed, more than one sixth, or 50,500, came in the month of September alone, the last full month prior to the close of voter registration for the November election. That is compared with the 12,000 records received in April 2008 and is about half of the average annual volume for a non federal election year.
- Los Angeles County, the nation's largest election jurisdiction received over 1.1 million new voter registrations in 2008. Nearly 50% -- 541,542 -- of those new registrations arrived in September and October. Of those new registrations, 46% - more than a quarter of a million applications -- arrived between October 15th and October 30th. The day after the post-marked deadline for registration, Los Angeles County received 63,718 applications.

As Election Protection's report demonstrates, voters across the country still face unnecessary barriers to the polling place at each stage of the electoral process. Voters were turned away because they did not receive their absentee ballots or because poll workers did not understand the provisional balloting system. Voters stood in excruciatingly long lines and lost votes on malfunctioning voting machines. Cynical attempts to prevent eligible voters from casting a ballot through deceptive practices were reported in a disturbing number of states and took on a 21st century character, utilizing text messages, social networking sites like Facebook and email. But the single largest cause of the problems on and before Election Day is our antiquated and cumbersome voter registration system. The inefficiency of the voter registration system has a domino effect, forcing election officials to divert their attention and resources from other critical election functions, causing confusion at the polls and infecting every aspect of the voting process. The process delays the production of poll books and the dissemination of critical information to poll workers. The process also prevents timely additions of new registrants to the rolls which frustrate campaigns, parties and activists who count on reliable lists to interact with voters in the lead up to the election. But the biggest impact is on the voters. According to the Census Bureau's post-election survey, in 2004, the last presidential election where figures are available, 9 million eligible Americans were not registered due to missed registration deadlines, lack of information about where or how to register, or permanent illness or disability. In addition, the Census reports that over 1 million people who were registered did not vote in 2004 because of problems with their registrations.

Our Outdated Registration System Blocks Millions of Eligible Voters From Casting A Ballot.

Election Protection witnessed the impact of our antiquated registration system first hand. Over 1/3 of all problems tracked by the OurVoteLive Database came from voters with registration issues, by far the largest single source of problems experienced by the nearly ¼ of a million voters we assisted through the hotline and the hundreds of thousands more we worked with through our field program, through our online voter assistance center and through our extensive outreach and productive relationships with election officials. Problems at the polling place was the second most frequent report at 26%, followed by problems with voting equipment and absentee ballots, together comprising another quarter of the problems logged into the system.

The effects of our poor registration system are felt across the electorate. New voters and long time voters are both at risk of disenfranchisement because of the challenges with the voter registration system. The problem disproportionately impacts certain Americans; overseas citizens and military service people cannot correct problems or omissions on the registration rolls because they have poor access to registration facilities. Likewise, older voters and voters with disabilities are often forced to rely on an absentee ballot process that requires up to date registration rolls to effectively administer mail in voting. Young voters and students are frequently left off the rolls because they move often and are unfamiliar with the process.

Problem 1 – Getting the Paper Forms to the Right Place

The current system of voter registration is a bureaucratic nightmare. As an initial matter the paper registration ballot needs to show up at the right office. In an election system with over 7,000 local

election officials, this is no small feat. During the 2008 election cycle in New York, for example, where registration forms are supposed to be processed by the county registrars about 100,000 forms collected by third party registration groups were sent to the State Board of Elections in Albany. The State Board had to spend countless staff hours sorting through 100,000 forms and forwarding them to the correct local office, where officials were already inundated with registration applications. After Election Day, a board of election's employee in New York City found a curious box. Inside, she found approximately 3,500 registration forms that had been forwarded by the State Board in early September. Those 3,500 names did not make the registration rolls by Election Day. It is impossible to know how many of these voters showed up to vote on November 4 and were turned away or declined to cast a provisional ballot. Election Protection received calls from voters across the country who turned registration applications over to third party organizations confident that they would show up on the rolls. Unfortunately, the applications of many of these callers never made it to the proper election officials, forcing poll workers to turn away these voters.

Problem 2 – Getting the Paper Forms in On Time

The registration deadline also causes significant issues. Election Protection is able to solve the problems of a tremendous number of voters who call us or click our online tools for help. While our volunteers revel in that success, they are deeply saddened by the thousands of energized voters who call only to find out that they are not registered and have missed the deadline. Sometimes, the deadlines thwart the efforts of those voters, like Elizabeth S., who have done all they should, but because of their circumstances, are blocked from the polling place.¹ Elizabeth's husband Tom is an Airman First Class on active duty at Luke Air Force Base in Glendale, AZ. This young military family was transferred from Georgia to the base in Arizona on short notice only two weeks before the election. They attempted to register in their new community, but were told that they had missed the registration deadline. Elizabeth and Tom were left frustrated that they were unable to make their voices heard in the selection of Tom's boss, the commander in chief, in the first presidential election for which they were eligible. Another military voter, Adam P., an active duty serviceman from Mississippi, submitted a registration form just before he left for his tour, comfortably before the registration deadline. When he came home he found there was no record of his registration and the deadline had passed.

Problem 3 – Making it Onto the Rolls

Assuming a voter knows when the registration deadline is and submits a timely application, too often that voter's name does not make it onto the rolls. Kisha H., from right here in Washington, DC, called Election Protection on November 4th. Kisha reported that despite visiting a social service agency in September and filling out a registration form, she was not on the rolls when she went to her polling place in Southeast Washington. Kisha attempted to register at social service agencies in DC before but she had never made it onto the rolls. Unfortunately, this is a problem at social service agencies across the country. Angela E. from Missouri called the hotline in tears on November 3rd. She had updated her

¹ Names have been changed at the request of the voter.

registration while changing her address at the DMV, but didn't receive a confirmation in the mail. Angela then called the Jackson County Board of Elections to confirm her registration and polling place – before the registration deadline – and was told that she was registered. Since she was nine months pregnant, Angela decided to vote by in-person absentee ballot before Election Day – just in case. When she went to vote at the Board of Elections, she was told that she was not on the rolls at her old address and was not registered at her new address. Angela's only option was to cast a provisional ballot. Many voters who should be registered often wind up casting provisional ballots, which frequently go uncounted. In fact, according to the United States Election Assistance Commission (EAC) over 40% of all uncounted provisional ballots are rejected because of registration problems. That's what happened in Alabama to Eden B., who submitted her registration application to her university before the registration deadline. When she arrived at the polls there was no record of her registration and she was forced to cast a provisional ballot. Unfortunately, because she was not on the rolls, her ballot was not counted.

Problem 4 – The Problem of Purges

Problematic purges often remove long time voters from the registration rolls. Through forced matches with unreliable databases and errors in list maintenance programs, long time voters are either removed from the rolls or have their registration information incorrectly updated. James R. had been voting at the same polling location in Alabama for decades, but when he went to the polls on Election Day he was told that he was not registered. An election official told him there may have been a purge, and that his office had received calls from about 20 other voters whose names had seemingly “disappeared” from the rolls. Similarly, John H., a 91-year-old World War II veteran from Illinois was in Oklahoma undergoing medical treatment when he requested an absentee ballot. Unfortunately, the LaSalle County, Illinois election supervisor said that he was not longer on the rolls so, though she felt terrible about it, she could not send him an absentee ballot.

Incorrect information on registration rolls is particularly problematic in party based primaries. During 2008, Election Protection ran programs on five of the largest primary days (e.g. Super Tuesday, Potomac Primaries, etc.). In nearly every state, and particularly in Indiana, Pennsylvania, California and Georgia, Election Protection received calls from voters who showed up at the polls and were told that they were registered with the wrong party or were not registered with a party at all. This happened to both new voters and long time voters. In states with closed primaries if a voter's party affiliation is incorrect, he cannot participate in that election.

Our Outdated Registration System Puts an Unmanageable Burden on Election Officials, Draining Critical Resources and Causing Negative Collateral Effects Across the Entire Voting Process

Despite these challenges, voters turned out at near historic levels in 2008. At the state and local level, dedicated professionals worked around the clock to provide an opportunity for everyone to be counted. These unsung heroes of democracy have an unbelievably difficult job. Most are responsible for all elements of the election process; they must ensure that all eligible voters who want to participate make it onto the registration rolls, they have to procure, deploy and maintain election equipment, they have to plan where polling places should be located and assign registered voters in a way that is efficient and

effective, they must administer absentee balloting and any early voting process allowed for by their jurisdiction, they must recruit, train and deploy poll workers – the list goes on and on.

But the registration system puts all of those activities in jeopardy. Through Election Protection, I have had the honor to interact with hundreds of talented men and women that run our election system. Since the election, I have had extensive conversations with many officials about the role of the registration system and the toll it takes on how they do their job. In jurisdictions of all sizes and types whether run by Republicans, Democrats or appointed non-partisan professionals, the story remains the same: the inefficiencies of the registration system are a fundamental concern because it undermines their ability to effectively serve their voters. The nineteenth century registration process stacks the deck against them. As it stands, the broken voter registration system forces election officials to implement costly quality control measures and data entry systems to decipher hand written applications and process them under unreasonable time constraints. This untenable arrangement threatens democracy and costs states and localities a considerable fortune.

Case Study 1 – Forsyth County, Georgia; Registered Voters - 102,424

Seven years ago Gary Smith retired from a successful career in business and electrical engineering. He decided to give back to his community of Forsyth County, Georgia by taking the reins of the Forsyth County Board of Registrations and Elections, promising to modernize an antiquated system of elections, identifying where he could add efficiencies to save the tax payers some money and provide a system more worthy of the patriotic spirit of the community. In 2008, his budget was \$1.4 million. He spent around ½ of that budget on the registration process, though he is responsible for all facets of the election including planning for Election Day, administering the largest per capita early voting system in the state and overseeing the recruitment, training and deployment of poll workers. Much of his overall registration budget was spent on temporary employees to input voter registration information into the state's registration database. True to his word, Gary has implemented some efficiencies to this process. Each voter registration card that he receives is scanned into a program which auto populates fields in the registration database. The worker then looks at the scanned image and either accepts the information as correct, changes the information that was automatically populated or tries to decipher that information which could not be read by the automated program. Because correctly entering the information is the difference between an eligible voter correctly showing up on the rolls, having the opportunity to cast a regular ballot and having that ballot counted and an eligible voter being blocked from the ballot box, Gary ensures that a second set of eyes looks at each form before it is submitted: a critical safeguard, but one that takes an extraordinary amount of resources.

Case Study 2 – Franklin County, OH; Registered Voters - 848,013

Matt Damschroder tells a similar story. For the past 7 years, Matt has been overseeing elections in Franklin County, Ohio. In 2008 he spent around \$1 million on personnel costs just for voter registration, the majority of that going to quality control procedures; making sure names were entered correctly on the vote registration rolls, deleting duplicate registrations, and the like. In the last 4 weeks before the close of the 2008 registration cycle, the volume of new applications caused Matt to spend a significant

portion of his entire voter registration personnel budget hiring temporary employees and paying over time to regular employees to enter in the paper registration forms that are collected into the database. Like Gary, Matt insists that two sets of eyes look at each registration form before it is submitted. Adding to this hefty cost is the process of removing duplicate registrations from the list. While his registration volume increased between the 2004 and 2008 presidential elections, he only has approval for the same number of full time employees for voter registration activities. But, in 2008, fully half of his full time voter registration staff was engaged almost solely in eliminating duplicate registrations. These duplicates often come from third party registration groups that submit applications from people already on the rolls – sometimes a single person will submit up to 5 applications. Other time intensive problems that Matt’s quality control team addresses are registrations that are missing some information. This not only takes time, but costs money – so much, in fact, that the county board of elections stopped notifying potential applicants of missing information keeping them from getting on the voter rolls because that notification is not required by Ohio law.

The big problem, however, is handwriting. Despite their best efforts, Matt’s temporary employees and the quality control team sometimes cannot read a voter’s handwriting other times, voters show up incorrectly on the final registration rolls because there was an error in the data entry process. In addition to draining time and resources, this has other consequences on Election Day. Sometimes voters show up at the polls and their name has been wrongly entered into the poll books, forcing them to cast provisional ballots. Matt’s team tries valiantly to reconcile the mistake by using other data to identify the voter and count the ballot. Unfortunately, sometimes that match cannot be accomplished and the vote is not counted. Data entry errors or indecipherable handwriting sometimes leads to an entry in the database that puts the voter at the wrong address. Sometimes, just inverting a number or misreading one digit for another will move a voter from the correct precinct to an incorrect precinct. Here, Ohio’s strict provisional balloting law comes into play. Voters who find information for their correct precinct, show up on Election Day and are forced to cast a provisional ballot. Though they are in the precinct where they live, they are registered at a different precinct. In Ohio, only 8 out of every 10 provisional ballots are valid to be counted. In the instances I have outlined, the voter would have been able to cast a regular ballot instead of a provisional one had the handwriting been decipherable and data entry errors eliminated.

Not surprisingly, the weight of these registration demands forces other critical election functions to suffer. New voters who want to cast absentee ballots, for example, may not yet show up on the registration rolls when their absentee applications are received by the Board of Elections. This causes those applications to be rejected, possibly disenfranchising eligible voters. Board of Election employees are diverted from other election administration activities to fill in the gap of voter registration. As Matt says, “phones that would otherwise be picked up are not, leaving voters’ questions unanswered.” Of course, this reality is not limited to Ohio, Tameka M., a voter from Michigan, accidentally entered information that was incorrect on her voter registration form. Despite repeated efforts, she was not able to get in touch with the City Clerk to correct her registration, whose office would tell her to call back or would not answer the phone. Unfortunately, Tameka was forced to cast a provisional ballot on Election Day. It is not just voters and election officials who are affected by the inefficiencies of the

registration system, the process delays the production of poll books and the dissemination of critical information to poll workers. Of course, the process also prevents timely additions of new registrants to the rolls which frustrate campaigns, parties and activists who count on reliable lists to interact with voters in the lead up to the election.

Case Study 3 – Los Angeles County, California; Registered Voters - 4,341,135

Dean Logan, who runs elections for Los Angeles County, the nation’s largest election jurisdiction, has a \$13 million budget – and that is just for registration. Similar to his colleagues in Georgia and Ohio, an overwhelming chunk of those dollars are spent on navigating the vast inefficiencies of the system. But that is not the total cost of the registration program; according to Dean it is difficult to pin down the exact cost of voter registration in Los Angeles because of the collateral costs the system’s inefficiency inflicts on other parts of election administration. The registration process not only depletes resources of other critical functions necessary to running a smooth election, but it diverts the time and energy to plan because of the overwhelming number of applications that arrive in the critical months before an election.

Because the sheer volume of registration near the deadline slows the registrar’s ability to keep the voting lists up to date, there is an impact on planning for Election Day. Because of the delay in entering the information into the database, Dean has to spend \$56,000 in every countywide election just to mail supplemental voter rosters to poll inspectors overnight. It is tremendously difficult to plan for how many ballots to order and how to effectively distribute them.

Another collateral cost of the current registration program for LA County is how many provisional ballots are generated by registration problems. Eighty-five percent of all provisional ballots that are rejected are not counted because of registration problems, additionally 28.6% of the provisional ballots that are counted were cast because of questions about registration status. The provisional balloting system costs money not only to print provisional ballots and distribute provisional ballots, but during the canvassing process, there has to be a determination made on the validity of each provisional ballot.

The challenges presented by poor penmanship are particularly pronounced when you receive over 60,000 registration applications in one day. But Dean’s primary complaint is duplicates. Because of the high profile of the election and the uneasiness of the electorate, voters submit multiple registrations that have to be processed which waste significant resources. This leads to significant delays in other parts of the election process. Particularly, these inefficiencies affect Los Angeles’s considerable Vote By Mail program. In California, a voter can mark her desire to permanently vote by mail on the registration application. If that application is delayed in getting processed, that leaves voters vulnerable to not receiving their absentee ballots. Voters across the state experienced this problem, including Allen K. from San Jose who called Election Protection to report that even though she had registered before the deadline; her request for an absentee ballot was denied “because she was not registered.”

While modernizing the system makes it more likely that eligible voters can participate in our democracy and allows election professionals to, in the words of Matt Damschroder from Franklin County, “get us out of the business of data entry and back into the business of running elections,” there is another,

current and critical reason to address this problem. Mr. Chairman, as you know far too well, the economic crisis is strangling state and local budgets. Every day, teachers, first responders and other essential local government workers are waking up uncertain if this will be their last day educating our children or protecting our streets. Modernizing voter registration will make this essential government service far more efficient and far less expensive, reinvesting critical resources into our communities.

Again Mr. Chairman, thank you for all you are doing to move us towards a more efficient, equitable process to exercise our vote and participate in our great system of democracy. Each election the voter registration system, this relic of the country's pre-Civil War past blocks millions of eligible Americans from casting a ballot, distracts election officials from performing critical administrative tasks, and needlessly wastes millions of critical dollars at a time when state and local budgets are stretching every penny. Congress has the power and the opportunity to do something about this problem of democracy. Thank you for taking the first step today. I look forward to your questions.

Thank You.

APPENDIX I:

Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow

A report on the Non-Partisan Election Protection program

THANK YOU

Election Protection would like to thank the hundreds of state and local organizations that led the program in their communities. The program's success is owed to their experience, relationships and leadership. In addition, we would like to thank our national partners, without whom this historic effort would not have been possible:

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Note: This report reflects the views of the Lawyers' Committee for Civil Rights Under Law and does not necessarily reflect the views of any other Election Protection partner or supporter.

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EXECUTIVE SUMMARY

WHAT HAPPENED IN 2008

The strength of our democracy is measured by our capacity to include all Americans who are eligible to vote and want to participate. This can only happen if the administration of our elections is fair and accurate. While the American election system rests on a fundamentally strong foundation, the current infrastructure simply cannot handle the weight of full participation. The system needs to be upgraded and modernized to serve all eligible Americans in every future election.

The 2008 general election inspired millions of new voters across the country. For that energy to ignite lasting civic participation, those new voters need faith in a system that is relevant and responsive.

The high voter turnout in 2008 widened cracks that have existed in our elections system for decades. Election officials nationwide were grossly under-resourced. The mad rush to Election Day multiplied systemic problems: valid voters were purged from the rolls, new voters were never added to the rolls, absentee ballots were delayed or never sent, and hundreds of thousands of Americans were forced to wait in hours-long lines to vote. These problems and more presented barriers to voting for eligible Americans across the country in the weeks leading up to and on Election Day. They had an impact on all voters, but particularly affected voters of color, new citizens, military service members, elderly voters, people with disabilities and students. These are old challenges, made more urgent than ever by the increasing enthusiasm of eligible voters across the country. In the 2000 presidential election, Cal Tech and MIT found that several million eligible voters were prevented from voting because of problems with election administration. Unfortunately, we have yet to put in place the systemic solutions to move past these hurdles.

Without a serious effort to improve the system, millions more voters could be disenfranchised in every future election. Election reform must start now, while the new Congress has Election Day problems fresh in mind and before the next campaign cycle injects the politics of an election season into this policy debate. Americans deserve a system that is efficient, fair and accurate. Our democracy demands nothing less.

THE ROLE OF ELECTION PROTECTION

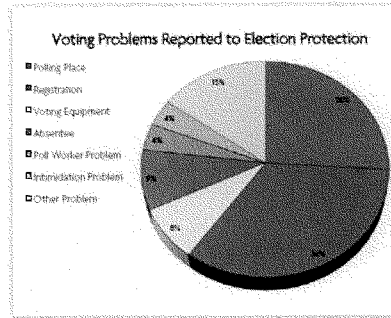
The nonpartisan Election Protection Coalition was created in 2001 to monitor and mitigate problems and to help ensure that all voters have an equal opportunity to participate in the political process. The 2008 Election Protection program was the most ambitious voter education and protection effort in history — a robust extension of the coalition's voter protection programs in 2004 and 2006. In the 2008 election cycle, Election Protection received more than 200,000 calls from voters from all 50 states to its 866-OUR-VOTE hotline, including nearly 100,000 calls on Election Day alone. Election Protection's network of more than 10,000 trained legal volunteers fanned out across the country engaging and assisting election officials, coordinating with community partners and educating voters throughout the year. These volunteers provided crucial on-the-ground support to voters, collaborated with election officials, and, when necessary, litigated, helping to solve countless problems and preventing disenfranchisement from coast to coast. Hundreds of thousands of voters who faced barriers to voting benefited from direct contact with Election Protection's volunteers.

The diversity, size and reach of the coalition allowed its success. More than 80 national organizations, representing the full spectrum of the electorate, worked to weave Election Protection into the fabric of the historic 2008 election. Hundreds of other partners joined locally in cities and states across the country.

THE PROBLEMS WE SAW

Information collected throughout this unprecedented effort was entered into Election Protection's "Our Vote Live" database, developed by the Electronic Frontier Foundation. This data paints the most comprehensive picture available of the obstacles Americans face as they head to the polls. The results illustrate an overburdened system and a frustrated electorate.

More than 200,000 voters called Election Protection for assistance during the general election. Thousands of others sought help from trained volunteers on the ground. The reports gathered from these voter interactions are only a small percentage of the problems experienced across the country. This report offers the first analysis of the data. More information will be available in subsequent reports as we continue to probe the data set in even greater detail.



KEY ISSUES

The most significant challenges to voting that Americans faced on and before Election Day fall into four categories: registration problems, absentee ballot problems, deceptive practices and polling place problems. These problems occurred in nearly every state to some degree, often varying due to the sophistication of the state's election rules and the commitment of resources to election administration.

- **Registration Problems**

The greatest number of voting problems — more than one-third of those reported in the fall of 2008 — were a result of our overburdened, inefficient and under-resourced registration system. In many jurisdictions, the crush of applications caused major administrative problems on Election Day. Unprocessed applications, mistakes on the voter rolls and confusion at the polling place left thousands of voters frustrated, slowed long lines on Election Day and prevented eligible citizens from voting across the country.

- **Absentee Ballot Problems**

For millions of voters, including many military service members, senior citizens, people with disabilities, college students away from home and Americans living overseas, absentee ballots are the *only* way to vote. Many were not able to have that vote counted this year. Voters across the country reported to Election Protection that their ballots were not received in time or mailed to a wrong address. Others discovered their request for an absentee ballot was never processed at all. Moreover, overly strict counting procedures left many otherwise eligible absentee ballots uncounted. The enormous number of new registrations in the months and weeks before November 4 overwhelmed election officials and forced them to choose between processing new registrations and handling absentee ballot requests.

- **Deceptive Practices**

In 2008, Election Protection received almost daily reports in the weeks leading up to the election of voters

being targeted with misinformation and voter intimidation. These were intentional efforts to keep voters from casting a ballot. Fliers, "robocalls," emails, text messages and online social networking programs such as Facebook were all used to deliver deliberately false information about registration, polling locations, poll closing times and voter ID requirements.

- **Polling Place Management Issues**

Too often the difference between the vote of an eligible American being counted or not boils down to the decision of a poll worker. Many poll workers — critical players in the election process — simply did not have the information, training or resources to effectively make these judgments in the face of such complicated election rules and regulations. There were widespread problems with provisional ballots, particularly regarding confusion over their purpose and when they should be used. As a result, voters who should have been offered regular ballots were forced to vote provisionally and many voters who were entitled to vote provisionally were simply denied the right to vote. Other polling place problems, such as breakdowns of voting equipment, prevented voters from casting a ballot and exacerbated long lines.

WHY WE NEED REFORM NOW

Election administration is too often affected by partisan interests. Because election administration is so political, progress has never been made to implement systems that protect voter interests. Over the last decade, millions of Americans have been disenfranchised by unresponsive voter registration systems, deceptive voting practices, a lack of resources, and poorly designed inefficient administration systems. Lawmakers from both sides of the aisle must improve the process before the same unnecessary outcome affects voters in the next election cycle. Action should be taken early, outside of the rancor of an election season, to address the problems voters face and provide needed resources to relieve the nation's dedicated election officials.

POLICY RECOMMENDATIONS

- **Start by Modernizing Voter Registration**

Updating the voter registration system to one in which voters are automatically registered and stay on the rolls permanently will ensure that every eligible voter who wants to cast a ballot can participate. At the same time, it will stop the flood of last-minute registrations that put an unmanageable burden on election administrators in the critical weeks before an election. By keeping registration data accurate and current, automatic and permanent registration will solve the significant problems and confusion around provisional balloting.

- **Combat Deceptive Practices**

The past few election cycles have seen a disturbing increase in deceptive information designed to prevent eligible Americans from exercising their right to vote. In 2008, we saw these activities go online and increase dramatically in their sophistication and targeting. Unfortunately, there is no adequate remedy in federal law for these types of practices. Deceiving eligible voters about the mechanics of elections or registration must be unambiguously illegal. Federal, state and local officials should be empowered not just to punish violators but also to quickly correct deceptive information through sources trusted by affected communities.

- **Provide Election Officials the Resources to Succeed**

Thanks to election officials and poll workers' tireless efforts and creative problem solving, many Election Day disasters were averted this year in the face of two opposing forces: high turnout and a desperate lack of resources. Election officials should have adequate resources and support to ensure that every polling place can handle the voters assigned to it. Poll workers should have adequate training to understand and properly carry

out their complex and critical tasks. Election officials should not have to reallocate supplies and people at one polling place to meet the needs at others. Instead, they should be empowered to think creatively about how to fill poll worker shortages.

- **Expand the Vote: Make Early Voting Available Everywhere**

Almost one third of voters cast their ballots before Election Day in 2008. Early voting alleviated significant stress on the system and allowed election officials to recognize problems and find real-world solutions before the majority of Americans went to the polls. Giving voters flexibility will minimize administrative issues that lead to problems like long lines. Allowing instant voter registration at early voting sites would also bring new voters into the democratic process who may have missed or were unable to meet restrictive registration deadlines.

ELECTION PROTECTION: THE PROGRAM

VOTING IN 2008

The 2008 election cycle saw an unprecedented enthusiasm for politics sustained over the course of two years. Record turnout of first time voters energized the long, contentious primary season. From coast to coast, states experienced double digit increases in voter turnout, a resounding endorsement of the American democracy. Many new voters were among those who were traditionally left out or stayed away from the process; low-income Americans, minorities and youth.

This increased participation and enthusiasm was inspiring. Voting rights advocates knew it would also further burden an overwhelmed election system, which would exacerbate existing problems like registration backlogs, long lines and limited resources at the polls. Throughout the primary season, registered voters' names were missing from the rolls, absentee ballots went undelivered, and voters stood in long lines as they waited to cast ballots — forecasting what was to come in the general election.

Despite these hurdles in the primaries, the general election season continued to see record registration reported across the country. The *Detroit News* reported that 98 percent of the voting-age population in Michigan was registered. Early voting saw tremendous turnout in states like North Carolina, Ohio and Florida. On October 30, officials in Nevada reported that 42 percent of registered voters had already cast a ballot. Illinois reported more than 821,000 early voters. Voters clearly demonstrated in 2008 that Americans firmly believe in making the electoral process work.

HISTORY OF THE ELECTION PROTECTION PROGRAM

In the wake of the disputed presidential elections in 2000, the civil rights community formed Election Protection to provide a comprehensive and proactive structure to ensure that every eligible voter has an opportunity to cast a ballot that is counted. The coalition has grown into the nation's largest non-partisan voter protection program and has become an integral part of the election process.

The legal program serves as the coalition's centerpiece by organizing thousands of trained volunteers into a comprehensive voter services and education program. This nationwide effort establishes a support structure for nonpartisan voter mobilization partners, meets with election officials, creates comprehensive state-specific materials, litigates when necessary and administers the 866-OUR-VOTE voter services hotline. The program, paired with advocacy for reform at the state and federal level, has enabled Election Protection to help millions of voters exercise their right to vote.

In 2004, Election Protection's first presidential election cycle, the coalition developed over 30 Election Protection Legal Committees in more

The Lawyers' Committee for Civil Rights Under Law

The Lawyers' Committee for Civil Rights Under Law has been the legal lead of Election Protection since helping establish the coalition in 2001. The nationwide legal program serves as the coalition's centerpiece, organizing thousands of trained legal volunteers, overseeing a national legal field deployment, meeting with election officials, litigation, establishing a support structure for non-partisan voter mobilization partners, and administering the 1-866-OUR-VOTE voter services hotline.

than 25 states. Voters from every state called 866-OUR-VOTE more than 150,000 times in the two weeks up to and including Election Day. Of the 25,000 Election Protection volunteers nationwide, more than 8,000 were legal volunteers. The Lawyers' Committee worked with more than 100 nonpartisan local, state and national coalition partners to accomplish its mission.

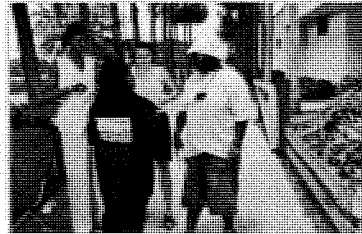
Through its comprehensive data collection program, Election Protection established a new benchmark for measuring the problems Americans faced as they headed to the polls. This information allows Election Protection partners to shape election reform policy initiatives, identifies areas where litigation is needed to remedy poor election administration processes, and serves as a valuable tool for election administrators and the community to identify areas for improvement. At the federal level, the information gathered from Election Protection made the case for the *Deceptive Practices and Voter Intimidation Prevention Act* introduced by then-Senator Barack Obama and the *Count Every Vote Act* introduced by then-Senator Hillary Clinton. The data informed similar policy efforts at the state and local levels.

2008: HISTORIC ELECTION, HISTORIC UNDERTAKING

The 2008 campaign season was Election Protection's most ambitious effort to date, starting earlier, reaching more voters and mobilizing more volunteers than ever before. Election Protection's work began during the presidential primaries, continued through the spring and summer, was in full force for the voter registration period and concluded with its most comprehensive Election Day program ever. Election Protection built the largest voter protection and education effort in history, bringing together civil rights advocates, diverse community partners, media, and concerned citizens to safeguard the votes of all Americans.

Early in the year, Election Protection focused on five primaries: the February 5 "Super Tuesday" primary; the February 12 "Potomac Primary;" the March 4 "Second Super Tuesday" primary; the April 22 Pennsylvania primary; and the May 6 primaries in Indiana and North Carolina. During the primary season, Election Protection deployed 1700 trained legal volunteers, received almost 7,000 calls from 43 states and the District of Columbia to nine 866-OUR-VOTE Hotline call centers, and organized legal field programs in ten states and Washington, DC. This important work not only assisted thousands of voters, but also formed the basis for Election Protection's primary report, "Looking Ahead to November" foreshadowing what election officials and the coalition could expect in the general election — long lines, purging, backlogs, and a system overwhelmed by the crush of large numbers of new voters.

Even while analysis of primary data was underway, the Lawyers' Committee and its partners quickly began laying the foundation for a successful general election program. To ensure Election Protection was responsive to the needs of a diverse electorate, an equally diverse coalition was assembled. By Election Day, the coalition had swelled to nearly 160 national, state and local legal, community and media partners. The coalition included groups representing African Americans, Latinos, young voters, Asian Americans, Native Americans, people with disabilities, the elderly, unions, women's rights groups, faith groups, the GLBT community, and others. These organizations helped to augment the great work of Election Protection's legal and community leaders



One of Election Protection's more than 1,700 trained legal volunteers stands with a voter outside a Nevada County Polling place. There were Election Protection mobile legal volunteers at more than 400 polling jurisdictions across the country.

on the ground, publicizing the 866-OUR-VOTE hotline and other coalition resources, assisting election officials, educating voters and playing a vital role in minimizing problems on Election Day.

Election Protection and its media partners—NBC News, MSNBC, BET networks, TV One, E! Video the Vote and YouTube — collaborated on the most extensive voter education initiative in history; working together to educate millions of voters, often instantly debunking false and confusing information disseminated through innovative and far reaching mediums.

The Lawyers' Committee and the coalition also developed 46 Election Protection Legal Committees in 25 states across the country. These committees worked with local non-partisan grassroots organizations to provide valuable legal support for their voter registration, education, and get-out-the-vote efforts. Additionally, Election Protection Legal Committee leaders established and expanded relationships with local election officials to get detailed information about Election Day plans and to help them improve administration as Election Day approached.

On September 17, Election Protection officially launched the 866-OUR-VOTE hotline, more than a month earlier than in previous efforts, to provide vital support to voters during the end of the voter registration period. Trained volunteers staffed the hotline at a call center housed by the Lawyers' Committee which received more than 100,000 calls through November 2. Volunteers helped callers with questions about registration, early and absentee voting, polling place locations, and identified trends and problems for local Election Protection leadership to address.

On the ground, Election Protection Legal Committees were finalizing plans for Election Day programs, investigating systemic problems that came in through the hotline and working with election officials and community partners to overcome barriers. The diversity of the coalition allowed Election Protection to quickly respond to problems, prioritizing collaborative solutions with election officials, but filing critical litigation where necessary.

For the first time, the Election Protection Hotline joined with 888-Ve-Y-Vota, administered by the National Association of Latino Elected and Appointed Officials Education Fund (NALEO) to provide a complimentary resource to Spanish speaking voters. In partnership with Univision, Impremedia and Entravision, NALEO informed millions of Spanish-speaking voters of their rights and provided guidance on the voting process.

Taking advantage of new technology, Election Protection rolled out a dynamic online voter education program in 2008. The www.866OURVOTE.org website served as an interactive clearinghouse for state and national voting rules, regulations, news, and information on hot election topics. Voters were able to click on their state on a map and quickly access state-specific voting manuals, frequently asked questions, and voting news. The dynamic website provided a compendium of resources for interested media, volunteers, and citizens on what was current in election administration. During the final weeks of the campaign, visitors to the website could instantly engage in a web chat with trained volunteers who were ready to help with questions or problems. From September 17 through Election Day, more than 283,000 people visited the website.



At the bottom, Election Protection had to call on the grassroots including the call center in Washington, DC. Volunteers answered thousands of calls from the 866-OUR-VOTE hotline, and logged reports of voter problems and problems that were resolved on our website.org.

The coalition also harnessed new media in an expansive way, increasing the number of voters served by tens of thousands. Social networking tools like Facebook, Twitter and YouTube dramatically increased the online reach of Election Protection and allowed the coalition to further connect with young voters. Election Protection leaders constantly posted updates to its social networking pages and allowed voters with cell phones to text-message problems on and before Election Day to the coalition's Twitter page. New media allowed new techniques to analyze the kinds of problems voters encountered.

Through the Lawyers' Committee's vast pro bono network, the Election Protection hotline expanded to thirteen call centers on November 3 and then to 32 call centers for Election Day. The 866-OUR-VOTE and 888-Ve-Y-Vota hotlines received nearly 50,000 calls on November 3 and nearly 100,000 calls on November 4. Inquiries came from all fifty states, the District of Columbia, Puerto Rico and the Virgin Islands, and from Americans abroad. In addition to assisting hundreds of thousands of voters over the phone and the Internet, Election Protection provided crucial on the ground assistance to voters and poll workers at their polling places and in election officials' offices across the country. The coalition deployed teams of mobile legal volunteers to monitor targeted polling places in more than 40 voting jurisdictions. These volunteers were strategically placed in areas with a high concentration of traditionally disenfranchised voters and in areas with a history of election problems. Election Protection's mobile legal volunteers helped voters with their questions, assisted poll workers and were dispatched to address issues reported to the hotline. The coalition stationed legal volunteers at local election offices to resolve problems quickly and directly.

The Electronic Frontier Foundation developed the interactive Our Vote Live database allowing hotline volunteers to quickly capture as much information as possible in real time. Call reports were instantly categorized by type, location, and urgency, and made publicly available, without any individually identifying information, at www.OUR-VOTELIVE.org. More than 86,000 reports were entered into the database between August 15 and November 4. On Election Day, this data informed the coalition's voter protection efforts by identifying trends, providing evidence of ongoing problems, and illustrating the scope of problems to the media. This unprecedented data collection system paints the clearest picture available of the problems voters face and serves as the basis for this report.

LITIGATION

Though Election Protection aims to resolve issues by working directly with election officials, litigation is sometimes required to overcome barriers to the polls. In 2008, Election Protection partners filed several lawsuits that ensured voters were able to register and remain on the rolls. These cases focused on violations of the National Voter Registration Act of 1993 (NVRA), the Help America Vote Act (HAVA), and other voting procedures.

Enabling Registration at State Agencies

Several of the court decisions in 2008 dealt with failures by states to properly and vigorously enforce the National Voter Registration Act of 1993 ("NVRA"), also known as the "motor voter law." That historic legislation represents the most significant effort by Congress to expand opportunities to register to vote since the enactment of the Voting Rights Act of 1965. The NVRA

Courts Order Compliance with the National Voter Registration Act of 1993

In July 2008, Election Protection Partners won a federal lawsuit in Missouri which allowed more than 26,000 citizens to register to vote for the first time through state social service agencies.

In October 2008, Election Protection Partners prevailed in the case of *Harkless v. Brunner*, when a federal appeals court rejected arguments by Ohio state officials that they could avoid responsibility for the failure of public assistance agencies to carry out their voter registration duties.

requires that citizens have the ability to register whenever they go to a state motor vehicle office to apply for a driver's license and whenever they seek services at a wide variety of state agency offices. The NVRA also requires that citizens be able to register by mail. The statute further imposes strict limitations on the circumstances in which persons who are registered to vote, and continue to meet basic state eligibility requirements, may be purged from the voter rolls.

There have been recurring problems with NVRA implementation in certain states, especially with regard to the agency registration requirement and the limitations on voter purging. The failure of state agencies to regularly offer voter registration to their clients was the subject of two court decisions in 2008, in suits brought by Election Protection partners. In July 2008, a federal trial court granted an injunction against the State of Missouri, which resulted in state social service agencies registering 26,000 new voters during the first six weeks of compliance. In October 2008, the federal Sixth Circuit Court of Appeals rejected arguments by Ohio state officials that they could avoid responsibility for the failure of public assistance agencies in the state to carry out their voter registration duties.

Purging

The federal courts stopped two states from purging registrants in violation of the NVRA. In *United States Student Association Foundation v. Land*, the state of Michigan was prevented from purging new registrants whom the state believed may have moved. The court found that the state was circumventing safeguards contained in the NVRA, which was designed to ensure that voters who have not moved are not mistakenly purged. In October, the Sixth Circuit Court refused the state's request to stay the injunction. Also in October, in the case of *Common Cause of Colorado v. Coffman*, the state of Colorado was prevented from violating the NVRA's prohibition on purging qualified voters within 90 days of a federal election.

No Match, No Vote

Another set of court decisions concerned efforts to misapply the Help America Vote Act of 2002. Election Protection partners successfully opposed arguments that would have required labor-intensive one-by-one reviews of registration applications any time a computer failed to precisely match a different government listing for the same individual. This computer database matching is a deeply flawed process to remove voters from registration lists: errors occur in as many as a fifth of all records spot-checked. Unfortunately, state officials and private parties tried to force matches with other government databases and remove those voters who came back as a "non-match." These attempts were often made at the 11th hour, potentially preventing election officials from instituting safeguards against faulty matches.

In Ohio and Wisconsin, Election Protection partners filed amicus briefs successfully supporting election officials who were sued by parties demanding removal of voters who came back as non-matches. In Ohio alone, this could have put in jeopardy more than 200,000 entries on the statewide registration list. The Ohio dispute went all the way to the United

Setting Precedent: *League of Women Voters v. Brunner*

In November, following the election, the Sixth Circuit Court of Appeals held that the State of Ohio may be sued under the Constitution to remedy systemic failures in its election system, involving registration, absentee voting, and polling place procedures.

The suit was filed by Election Protection partners in 2005 based on the state's conduct in the 2004 general election and prior elections. This is a precedent setting decision, as it represents the first time a federal appellate court has held that plaintiffs may base a challenge to systemic election administration failures on the Constitution, relying on the Supreme Court's 2000 ruling in *Bush v. Gore*.

States Supreme Court, which in October refused to require the manual reviews. In Wisconsin, a state trial court judge ruled, also in October, that HAVA does not mandate states implement these strict policies because of the obvious risk to eligible voters.

Election Protection partners also successfully blocked a related effort by the state of Georgia to use database matching to prevent new registrants from voting. The Secretary of State claimed that under HAVA, the state was compelled to rely on citizenship information included in the state's driver's license database to verify the U.S. citizenship of new registrants. The federal trial court found that Georgia had unlawfully implemented this new practice without obtaining federal preclearance, as required under Section 5 of the Voting Rights Act.

A third set of court decisions dealt with matters other than voter registration, including early voting or absentee voting procedures, and Election Day polling place procedures. The most significant ruling came from the Supreme Court in the case of *Crawford v. Marion County Election Board*. In April 2008, the Court rejected a constitutional challenge to an Indiana law that requires that voters generally present a government-issued photo ID in order to cast a ballot at the polls on Election Day. Various members of the Election Protection coalition filed amicus briefs urging the Court to hold that the procedure unconstitutionally infringes on the right to vote.

In Ohio in September, Election Protection partners successfully urged the courts to reject a challenge to an Ohio procedure which allowed residents to both register and cast an absentee ballot during a special five-day period. This involved participation by Election Protection partners in three different lawsuits (*State ex. rel. Colvin v. Brunner*; *Project Vote v. Madison County Board of Elections*; *Ohio Republican Party v. Brunner*) in the Ohio Supreme Court, two federal trial courts, and the Sixth Circuit Court of Appeals.

The NAACP, an Election Protection partner, won an important decision in October on behalf of Pennsylvania voters. A federal trial court ruled, in the case of *NAACP-SCP v. Cortes*, that the state's procedures for emergency paper ballots (as a back-up if and when voting machines fail) were unconstitutional, and required the state to use paper ballots at any polling location where 50 percent or more of the machines became inoperable.

Taken together, these cases allowed for hundreds of thousands of new voters to register and for eligible voters to ensure that they remained on the rolls.

KEY ISSUES FACING VOTERS

Many of the voter questions or problems that came in to Election Protection were resolved quickly by trained volunteers. Election Protection entered more than 86,000 reports into the Our Vote Live Database, creating the data analyzed in this report. The reports entered are illustrative of problems faced in larger numbers by others who did not call. A single call often represents the experience of tens, hundreds or thousands of voters. For example, when a caller reports that polls are not functioning or that hours long lines are preventing voters from casting a ballot, hundreds or thousands of voters are affected by that report.

There are seven broad categories of problems that affected voters throughout the 2008 election cycle: registration (34%), polling place (26%), absentee ballot (9%), voting equipment (8%), poll worker (4%), intimidation (4%), and other problems (15%) such as language, accessibility, student residency, identification requirements and electioneering concerns. This distribution of problems was consistent with what we saw on Election Day alone when the most commonly reported issues were polling place (31%), registration (28%), absentee ballot (5%), voting equipment (11%), and poll worker (5%) problems. These problems, with varying severity, existed in nearly every state and disenfranchised countless voters.

REGISTRATION PROBLEMS

Millions of Americans who had never voted before were energized to go to the polls in 2008. Disproportionately, these voters came from traditionally under-represented demographics such as youth, racial and ethnic minorities, and low income families. These Americans turned to third-party registration drives, registered through their DMV or social service agency, or directly submitted their application to their board of election, often just as deadlines loomed. As more voters eagerly tried to participate, the volume of requests overwhelmed election officials. Backlogs mounted as registration deadlines passed and Election Day grew near.

At the same time, election officials worked to clean the voter rolls of people who had passed away, moved, or were no longer eligible to vote. Keeping the rolls accurate is an important step in ensuring that elections are fair, but officials were sometimes told to check rolls against inaccurate data sources, contrary to federally mandated guidelines. This left hundreds of thousands of eligible voters in Ohio, Georgia, Florida and other states vulnerable to being purged from the rolls. Voting rights advocates pressured officials to suspend purging activities until after the election, then just a few weeks away.

Numerous stories of voters who were able to vote in the primary but who were purged off the general election rolls came to the 866-OUR VOTE hotline. On Election Day, registration inquiries rose throughout the morning, peaking at 1 pm and holding steady until polls closed. Confusion over voter registration, names missing from rolls and eligibility concerns caused problems on Election Day. Poll workers were often confused about how to handle this situation, forcing voters who were entitled to regular ballots to vote provisionally and turning away those voters with a right to a provisional ballot. These problems exacerbated long lines at polling places across the country.

ABSENTEE BALLOT PROBLEMS

Absentee voting is the only way for many to cast ballots, including military and overseas voters, students away from home, people with disabilities, and people who cannot get to the polls for business, familial obligations or other reasons.

As with voter registration applications, requests for absentee ballots flooded election officials' offices. Ballot requests started early and grew with increasing volumes as deadlines approached. Local and state officials, already overwhelmed by registration applications, sometimes could not attend to absentee ballot requests in a timely manner.

Voters who waited patiently were not always rewarded. On November 3, for instance, voters who had not received their absentee ballots called the Election Protection hotline throughout the day from various states including California, Georgia, New York, Florida and Virginia. On Election Day, voters who had not received ballots turned to the hotline for advice in increasing numbers between 2 pm and 6 pm, asking how they could still have their voices heard. In Los Angeles County alone, for instance, many voters called to see if they could still vote at their polling place after their requested ballot never arrived. Unfortunately, they could not. The rights of these and other Americans to vote were simply lost in the mail or still sitting in an election office pile, waiting to be processed.

DECEPTIVE PRACTICES

There is a long and sorry history of political operatives trying to trick Americans out of voting. In 2008, these tactics were focused on voters in battleground states. In Philadelphia, fliers distributed and posted in a West Philadelphia neighborhood claimed that any violation as simple as an unpaid parking ticket would render people ineligible to vote and subject to arrest at the polls. In southern Virginia and at George Mason University in the northern part of the state, official-looking fliers "informed" voters that, because of projected high turnout, Democrats should wait and vote on November 5, the day after the election.

The same technology that allows efficient, rapid dissemination of accurate information also opens opportunities for mass mischief. In 2008, false e-mails, text and Facebook messages "directed" college students to vote on the Wednesday after polls closed. Official websites and email lists were breached in Missouri and Virginia, spreading misinformation. Election Protection coalition members worked diligently to ensure that millions of voters knew their rights. Election Protection partners Common Cause and the Lawyers' Committee documented these new problems in a white paper, "Deceptive Practices: 2.0."

POLLING PLACE PROBLEMS

Voters suffer when polling places are understaffed or staffed by poorly trained poll workers. Long lines, misapplication of election laws, and paralyzing confusion resulted in eligible voters being turned away across the country in 2008.

Many poll workers are experienced, but laws and voting technologies change over time and require new training. Poll workers routinely get only a few hours of training on hundreds of pages of nuanced election law. While it is one thing to administer an election with a paper system, it is a completely different process to administer one with a touch-screen voting machine or electronic scanner. Unfortunately, poll workers are often not given the guidance they need to adequately administer the election when systems change.

Poll workers too frequently do not understand basic rules of elections in their jurisdictions. Poll workers demanded ID's in states where it is not required, forced provisional ballots on voters who should have cast regular ballots, and inaccurately instructed voters to cast provisional ballots that might not be counted instead of directing them to the correct precinct where their vote would count.

Election officials are critical resources for poll workers and voters alike, determining resource allocations, design-

ing ballots, and offering interpretation of key laws. Resource allocation problems and challenging ballot design issues manifested themselves on Election Day. Many voters were forced to wait in long lines where there should have been additional resources. Other voters came away from the process confused when ballots were unclear. Some election officials misinterpreted laws to the detriment of voters. In Virginia, Michigan and Colorado, students were told that if they registered where they went to school (instead of at their parents' address) they could lose their healthcare, financial aid, and jeopardize their parent's taxes — all false claims. On Election Day, many poll workers exacerbated the situation by second-guessing the eligibility of student voters.

Machines fail, of course. Proper preparation means technicians and backup systems must be readily available. Unfortunately, these precautions were either not taken or insufficiently deployed to polling places across the country. More than a tenth of all reported problems on Election Day were related to voting machine issues; more than a quarter of all the calls received by the hotline by 9 am were in regard to polling place problems. There were numerous reports of machines breaking and jamming. Voters in Florida and Virginia were asked to put plain paper ballots in unmarked bags or boxes, alarming many voters who feared their vote would not be counted or was not secure.

POLICY RECOMMENDATIONS

- **START BY MODERNIZING VOTER REGISTRATION**

The last-minute deluge of registration applications overwhelmed election officials across the country in 2008, forcing them to make tough decisions about which problems to address and which to leave unresolved. These untenable choices inevitably disenfranchised eligible voters. In some cases, officials opted to use their limited time and resources processing registration applications instead of distributing absentee ballots — a choice that no election official should ever be forced to make.

These problems have real consequences. On the eve of the election, Election Protection received more than 1,300 reports of registration problems. Too often, eligible voters were left off of the rolls or removed through unreliable purging methods. New voters arrived at the polling place energized by the history of Election Day, only to find their names not on the rolls because of application backlogs. These problems confused poll workers, extended already long lines and prevented eligible Americans from having a say in the 2008 election. As the problems that Election Protection saw in 2008 demonstrate, we have a 19th Century registration process in a 21st Century political system.

Modernizing the voter registration system to one that is **automatic, permanent**, and allows for **Election Day correction** will go a long way to solving these persistent problems by providing all eligible voters with an assurance that their names will be on the rolls while preventing the flood of last minute registrations that strain election administrators in the critical weeks before an election. A modern election system will include more eligible Americans, will save money in increased efficiency, and will build confidence in the electoral process.

Automatic Registration: Automatic registration shifts the burden of registration from voters to the government and eliminates the need to rely on independent, third-party voter registration organizations to sign up voters. Such a registration system will help states efficiently identify eligible voters from other government databases and add those names to their registration rolls. Voters can opt out if they prefer to not be registered, but for those who want to be included on the rolls, this system will continually update the names of eligible voters, eliminating the last minute deluge of registration applications just before registration deadlines.

Permanent Registration: Every year, at least one in six Americans move, most within their state. Millions more change their names. Under current, outmoded registration systems, the process for updating registrations is cumbersome, increasing the possibility for mistakes by voters or administrators. Many voters simply do not realize that they must clear this hurdle to remain eligible. Voters should be able to update their registration when their circumstances change, such as when they fill out a change of address form with the postal service. This will lessen the administrative burden on election officials and make it more likely these voters will not face problem at the polls.

Election Day Correction: Making registration automatic and permanent will go a long way to overcoming the obstacles that our current registration system creates. No system, however, is perfect. Voters who are not automatically added to the rolls, those who change their names or who move without updating their registration, or those voters who show up and find their information on the voting rolls is incorrect should be able to update that information up to, and on, Election Day. A modern, sophisticated system of automatic and permanent registration will make this fail-safe rare. No eligible voter should be turned away at the polls because her name was not added or was incorrectly taken off the list.

According to the United States Census Bureau, in 2006 there were 65,226,000 unregistered citizens of voting age; that means one-third, or 32 percent, of the 201,073,000 citizens of voting age population did not even have an opportunity to vote. Making registration automatic and permanent will give these voters a chance to have their voices heard.

- **COMBAT DECEPTIVE PRACTICES**

Voters in nearly a dozen states were the victims of misinformation in the weeks leading up to and including Election Day. Inaccurate information was disseminated about registration, polling locations, poll closing times, voter ID requirements, and a host of other eligibility issues. In addition to denying a voice to eligible voters, deceptive practices increase the poisonous cynicism voters have about the process.

In Virginia, Michigan and Colorado, out-of-state students were told that if they registered where they went to school, they could lose their healthcare, financial aid, and jeopardize their parent's taxes — all untrue. In minority communities in Philadelphia, fliers were found stating that police officers would be positioned at poll locations to arrest anyone with a police record including something as small as an unpaid parking ticket. In predominantly African American neighborhoods in Virginia, a letter was circulated on state letterhead instructing Democrats to vote on November 5, one day after Election Day. Election Protection worked rapidly with local officials and media to debunk this false information.

New mediums make it easier than ever to disseminate deceptive information quickly; our election system needs to adapt accordingly to combat these practices and minimize the effects of partisan tricks. False information was distributed via Facebook and text messages in 2008, for example, targeting new and young voters.

Prohibit Deceptive Voting Practices: Federal law does not adequately protect against voter deception. While the Voting Rights Act provides a remedy against voter intimidation, voters who are deliberately provided misinformation about when, where, or how to vote or about voter registration requirements do not have adequate legal recourse. This should be corrected. Federal law should be clear: if you intend to deceive voters, you will be punished.

Provide an Adequate Administrative Remedy for Deceptive Voting Practices: While it will be an improvement to prohibit deceptive practices through federal law, in the heat of an election season, when most of this activity happens, voters should be informed of correct information through sources they trust. Prosecutions are often not possible or the most effective way to overcome deceptive information as Election Day approaches— the most important goal near an election. This remedy should be a collaboration between the relevant government actors at the federal, state, and local levels. The Justice Department should collect information and statistics about these practices to inform investigations and determine the extent and character of deceptive voting practices.

- **PROVIDE ELECTION OFFICIALS THE RESOURCES TO SUCCEED**

Thanks to election officials, poll workers and Election Protection volunteers' tireless efforts and creative problem solving, many Election Day disasters were averted in 2008, despite high turnout and a desperate lack of time, staff and funds. Still, shortages of resources prevented many problems from being solved, leading to voter disenfranchisement. From broken voting machines to untrained poll workers, preventable problems caused long lines and kept frustrated voters from casting their ballots. These problems could have been avoided if the administration of our electoral process provided officials and poll locations with the resources needed to handle the weight of full participation.

Voters in Chesapeake, Virginia, had to wait as long as seven hours to cast ballots on Election Day due to problems with new electronic poll books and a shortage of voting machines and poll workers. In California, poorly trained poll workers wrongly instructed thousands of registered voters to cast provisional ballots on Election Day when they were entitled to regular ballots. In Pittsburgh and Los Angeles, a lack of poll workers caused such long lines and confusion on Election Day that officials asked Election Protection volunteers to step in to act as poll workers. Like so many other averted crises on Election Day, officials made smart quick fixes, but the cause of these problems remain unaddressed. These problems can only be prevented when election officials are given the resources they need to process forms, prepare poll locations, and train workers adequately in advance.

By modernizing the administrative process, we can remove the barriers to a successful, accurate election.

Provide Adequate Resources to Election Officials: State and local election officials need to be provided adequate resources to do their jobs and encourage implementation of new innovations. There should also be adequate incentives to encourage creativity in poll worker recruitment, training and deployment as well as in other election management such as resource distribution and adequacy. Election officials should be provided incentives to experiment with using other government employees as poll workers and explore possibilities of public/private partnerships and student poll worker programs to fill the gaps in recruitment.

- **EXPAND THE VOTE: MAKE EARLY VOTING AVAILABLE EVERYWHERE**

In the historic 2008 election, almost one-third of voters cast their ballots before Election Day. Early voting alleviated significant stress on the system on Election Day and allowed election officials to recognize problems and find solutions before the majority of Americans went to the polls. Early voting also allows citizens to correct mistakes such as the omission of their names from the rolls and provides an opportunity for voters who cannot get to the polls on Election Day to be part of the process. "No excuse" early voting, especially when it includes instant voter registration, enables significantly more citizens to participate in the electoral process.

In North Carolina, where early voting with instant registration was allowed for the first time in a presidential election, 49 percent of all ballots cast for president were cast before Election Day and the state had its highest percentage turnout in 24 years. In Georgia, more than 500,000 people voted early in the final week of October. In Texas, more people voted early in 2008 than on Election Day in 2004. And in Florida, a whopping 4 million people voted early for the 2008 general election.

States that had early voting fared better than those that did not in overcoming some of the most pressing problems of this election season. These states significantly alleviated Election Day challenges like unprepared election officials and poll workers, malfunctioning machines, shortages of paper ballots, and long lines.

"No Excuse" Early Voting: Voters should be given flexibility in choosing when and how they vote to minimize long lines and overburdened balloting systems. States should provide voters with a voting period that lasts at least two weeks and spans at least one weekend. Early voting sites should be convenient and accessible to all eligible voters in the jurisdiction. Voters should have an option to permanently vote absentee — without excuse — and not have to re-apply every election cycle.

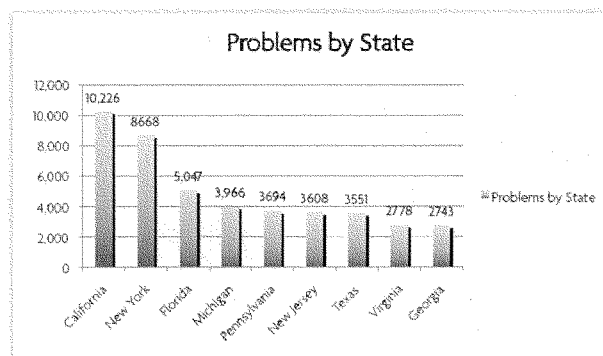
Registration During Early Voting: Offering instant voter registration at early voting sites further empowers voters who may have missed restrictive registration deadlines. It also allows voters to correct mistakes or omissions on the voter registration list.

THE STATES: PROBLEM, SOLUTIONS AND ELECTION DAY

While the administration of elections varies significantly from state to state, clear patterns emerge across most states — registration backlogs, absentee ballot issues, voter purging, confusion about ID laws, a dearth of poll workers, and long lines.

These problems have turned away countless voters in previous elections, but they are all problems that can be solved with common sense federal reforms. The states that Election Protection has examined can be divided into four categories:

- **Battlegrounds (Virginia and Missouri):** These states had to balance record turnout and limited resources. This combination created registration backlogs, long lines, and poll worker shortages.
- **Big States, Big Problems (Pennsylvania, New York and California):** These heavily populated states had registration backlogs and unfilled absentee ballot requests due to a large influx of applications close to the deadline, a bureaucratic log jam that disenfranchised thousands.
- **Troubles Foreshadowed (Michigan and Georgia):** Registration and list maintenance issues threatened to illegally purge voters from the rolls in these states. These emerging issues ultimately became major problems during the general election. However, election officials and advocates were able to work together to protect the rights of voters.
- **Historic Problem Areas (Florida and Ohio):** Politically charged and notoriously problematic, these states had the greatest likelihood for repeating problems of previous cycles. Officials and Election Protection worked together to resolve many of them but more progress should be made.



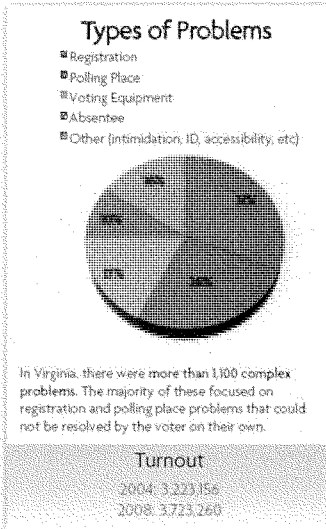
VIRGINIA

By 7 am on Election Day, Election Protection had received multiple reports from across the state of broken machines, long lines and polling places opening late. News helicopters captured images of lines snaking around parking lots and school buildings. As a new battleground, Virginia election officials were new to the scrutiny of the national spotlight and overwhelmingly high turnout.

Given the conditions on the ground and high turnout forecasts, experts anticipated that Virginia had the potential for widespread voting issues. In an effort to mitigate problems, Election Protection worked prior to the election with local news media to ensure that Virginians were aware of their rights, including voting rules and deadlines.

Leading up to the election, the most noteworthy problem targeted students throughout the state: registrars hampered student registration and infringed upon their right to vote at school by mailing out lengthy questionnaires to students and allegedly refusing to register some. Many students were reportedly forced to cast provisional ballots on Election Day.

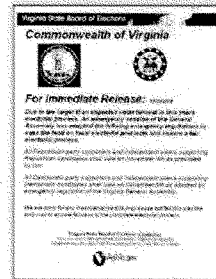
On Election Day itself, the residents of Virginia found themselves in some of the longest lines in the country. With a lack of preparedness and resources, and a seven percentage point higher voter turnout than 2004, Virginia proved to be a hotbed of voting problems. Although the vast majority of problems reported on Election Day were the result of overburdened polling places, Virginia voters faced many other obstacles, including several instances of dirty tricks and misinformation.



DECEPTIVE PRACTICES

A combination of dirty tricks by political operatives, voter intimidation and honest mistakes contributed to the spread of misinformation across the state, particularly affecting students. In one especially audacious instance, phony fliers bearing the state seal were circulated in an attempt to trick voters into voting on the wrong day. Still, the most egregious forms of deception and misinformation targeted college and university campuses.

Election Protection reached out to the State Board of Elections about clarifying and correcting information on its official website related to college standards for voting. Eventually, the Board of Elections made some positive changes. However, problems at specific colleges persisted.



In August, the Montgomery County registrar sent out a release incorrectly warning Virginia Tech students that they may face serious consequences for registering in Virginia, including being dropped from their parents' health insurance or voiding their status as dependents on their parents' tax returns.

At Virginia Commonwealth University, there were reports that instructors told students they would be punished with a grade point drop if they missed class to vote. Ultimately, the dean sent an email to all faculty members instructing them to be flexible on Election Day to accommodate students who needed to vote.

As Election Day approached, rumors circulated at Virginia Polytechnic Institute that all out-of-state students who tried to vote in Virginia would put their financial aid in jeopardy. This rumor persisted on several campuses across the country. Election Protection conducted aggressive media outreach to debunk such myths and get the word out about students' voting rights.

At James Madison University, a registered student received a letter from the Board of Elections stating that there was incorrect information on his application and that he could not vote unless he went to court. He went to the courthouse and was told he would have to pay \$10 to schedule a hearing, which he did. He then received a call informing him that the location of the hearing had been changed. The location was too far for the student to travel and he never voted.

At 11:16 am on the Tuesday of the election, an email circulated around the campus of George Mason University, purportedly from Provost Peter Stearns, informing students and staff that the election had been postponed until Wednesday, November 5th. Later, Stearns sent another message revealing that someone had hacked into the system and that voting would indeed take place "today, November 4th."

VOTER REGISTRATION

Voter registration surged nearly ten percentage points higher than in 2004 with more than five million Virginians registered to vote in the 2008 election. Unsurprisingly, a third of the problems reported to Election Protection by callers from this new battleground state involved registration problems. Multiple voters who registered through the Department of Motor Vehicles or via third party groups reported never receiving a registration card. In other cases, they arrived at their polling places only to find their names missing from the voter rolls. Some voters did not fill out their registration paperwork correctly, but were not notified of this until well after the registration deadline of October 6.

Confusion over registration inevitably leads to problems at the front of the voting line, creating a longer wait for everyone behind. Registration problems were one factor in long lines across the state.

POLLING LOCATION PROBLEMS

Early on Election Day morning, Virginia voter Zaheer T. called 866-OUR-VOTE on behalf of two colleagues who were stuck in an extremely long line at the Doctor Clarence Cuffee Recreation Center in Chesapeake. His colleagues arrived at the polling place at 7 am, only to find a line that wrapped around the building twice and was not moving. His colleague estimated that 900 people were waiting. After calling the city, Zaheer learned they were sending additional voting machines and election personnel. There were also reports that the seven voting machines in the building had failed and that there were no paper ballots available. Voters at that polling place waited in line for an extraordinary seven hours and fifteen minutes to vote.

in the city of Chesapeake, where Zaheer was calling from, lines as long as six hours were reported at various points throughout the day. Election Protection received reports from one Chesapeake precinct of all the voting machines malfunctioning simultaneously around 7 am, resulting in lines in excess of three hours for much of the day. Reports later in the afternoon vacillated between only one and two machines working properly. These long lines were especially challenging for elderly voters and people with disabilities who were often not offered curbside or other assistance to accommodate physical challenges as required by law. Similar calls came in from across the Commonwealth throughout the day.

Polling place problems, poll worker training and machine problems were serious issues in Virginia and together comprised 43 percent of the reports received by Election Protection for the state. Early in the morning on Election Day, equipment malfunctions contributed to long lines across the state, particularly in Richmond and Northern Virginia. Additionally, multiple callers reported poll workers who were confused by electronic poll books. Problems persisted throughout the day in the Tidewater region in the eastern portion of the state, which includes the Hampton Roads area. Long lines and machine issues were exacerbated by poor weather. Voters with rain-soaked hands and clothing caused the ballots to get damp, leading to problems with electronic scanners.

MISSOURI

The symptoms of Missouri's greater voting problems were foreshadowed during the early voting period. Missouri allows in-person absentee voting for several weeks leading up to Election Day. On November 3, voters formed lines as early as 5:30 am in some places, and stood for several hours to cast absentee ballots.

Problems on Election Day ranged from hours-long voting lines and intimidation, to misused provisional ballots and voter rolls arriving at the wrong precincts. However, the most severe problems were the result of major administrative problems and unprepared poll locations. Missouri officials were swamped by high levels of voter registration and unprecedented requests for absentee ballots.

ADMINISTRATIVE BACKLOG

As with many other states, Missouri election officials were overwhelmed by paperwork. In addition to dealing with new registrants, Missouri officials also had to accommodate an estimated 40 percent increase in absentee ballot requests compared to those cast in 2004. Again, this is symptomatic of a larger problem: election administrators were overloaded and under-supported, both in terms of resources and policies.

In St. Louis, a troubling pattern began to emerge. Voters who had submitted change of address forms several weeks prior to Election Day found to their disappointment that these forms had not been processed by Election Day.

Gretchen H., a voter who contacted the Election Protection hotline, was told (along with many other MO voters) to appear before a judge at the St. Louis City Board of Elections on November 4 to have her change of address form approved by a judge in order to vote. When Gretchen showed up at the courthouse, she discovered a waiting room full of dozens of other voters awaiting the same approval process. At 2 pm, these voters were told that the judge would no longer hear those requests. All the remaining voters were denied the right to vote. In the city of St. Louis, the volume of paperwork and the toll on administrators' time meant that many voters were unable to cast the regular ballot to which they were entitled.

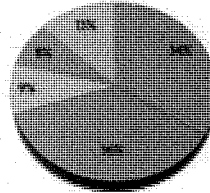
Although they had followed the rules and filled out the necessary paperwork, they were unable to vote in 2008.

POLLING LOCATION PROBLEMS

Several precincts across the state received the wrong voter lists, which caused enormous confusion and long lines. Other locations opened

Types of Problems

- Registration
- Polling Place
- Voting Equipment
- Absentee
- Other (intimidation, ID, accessibility, etc)



There were nearly 500 complex problems in Missouri, with the vast majority of these problems being polling place and registration problems that required working with high-level election officials.

Turnout

2004: 2,764,835
2008: 2,925,205

"There were a lot of us who had to fill out a provisional ballot because they weren't on the rolls."

— Latrease C., St. Louis, MO.
Latrease filled out a change of address form, but upon arriving at her polling location found she was not on the voter rolls.

late, only to find that they did not have sufficient resources to handle the turnout. In Kansas City, voters reported lines taking as long as eight hours. Like several other states, voters arrived at the polls to find that their registration applications had not been processed, despite the fact that their registrations were sent in on time. Many were forced to vote provisionally, while some were even denied the opportunity to cast a provisional ballot.

These issues could have been much worse. After observing high voter registration levels and in anticipation of high turnout, Secretary of State Robin Carnahan made \$2 million available for additional poll workers to serve at polling locations across the state — a bold step that provided critical resources at a critical time. Missouri also has a state statute in place which allows military and citizens serving away from home on Election Day to vote by fax or e-mail and then put the original in the mail.

VOTER MISINFORMATION AND MISTREATMENT

Election Protection received several reports from voters who were given intimidating misinformation. The Secretary of State's office reportedly received complaints from people who had received text messages claiming that, due to high turnout, Democrats would be voting on Wednesday, November 5. In one location, it was reported that there was a sign posted, informing voters that they were not allowed to vote a straight ticket (all Republicans or all Democrats), which prompted the voter who called Election Protection — and untold others — to vote against his preferred party once to ensure that his ballot would be counted.

On another occasion, a registered voter in a predominantly African-American neighborhood attempted to vote in-person absentee during the allowed time period, because he was going to be away on Election Day. He had all the appropriate identification, but the polling precinct had confused his birth date with that of his father, who has the same name. The voter presented a current utility bill with his name and address as proof, which is allowed under state law, but the poll worker refused to accept it. Even after an Election Protection volunteer informed the poll worker of this statute which allows someone to vote with a current utility bill, he refused to change his mind. The voter was at the polls all day working to resolve the issue.

Election Protection received several reports from different precincts of voters being asked for photo identification or multiple forms of identification, neither of which is legally required to vote in Missouri.

PENNSYLVANIA

In the weeks leading up to Election Day, Pennsylvania experienced many registration and absentee ballot problems. As isolated reports of dirty tricks and voter intimidation circulated, Election Protection quickly worked to dispel the misinformation through the local media and grassroots outreach. At the same time, Election Protection worked with election officials so that they were not overwhelmed on Election Day.

As in other states, the registration statuses of some voters were questioned in the weeks leading up to the election. Delaware County, which includes Philadelphia suburbs, rejected 250 voter registrations and questioned 4,000 more just five days before the election.

Election officials took precautions that alleviated a great deal of the expected problems. The deadline for appealing registration rejections and corrections was pushed back. Additionally, a judge upheld a lawsuit filed by voting rights advocates to ensure that back-up paper ballots would be on hand if half the voting machines in a given precinct broke down.

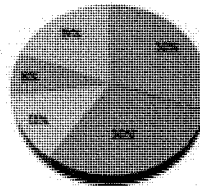
VOTER MISINFORMATION AND INTIMIDATION

In a West Philadelphia neighborhood, fliers appeared stating that anyone who showed up at the polls with a criminal record of any kind — including something as minor as an unpaid traffic ticket — would be arrested on the spot by law enforcement officials stationed at every polling location. Election Protection conducted aggressive media outreach in the area to quickly debunk this myth. As a result of Election Protection's efforts, the false fliers were discussed and discredited in articles about election-related dirty tricks published by the Associated Press, *Philadelphia Inquirer*, McClatchy and ABC.com.

Voters in a largely minority and low-income neighborhood — the Creekside Apartments in Bensalem — were concerned that the move of their polling location threatened to disenfranchise many because the new location was not accessible for people without cars. The *Philadelphia Inquirer* editorialized that the location, a mile from where it had been in previous election cycles, had been moved to further partisan ambitions of Bucks County officials. The new location had no sidewalk and required voters to cross a five-lane highway.

Types of Problems

- Registration
- Polling Place
- Voting Equipment
- Absentee
- Other (intimidation, ID, accessibility, etc)



There were nearly 500 complex problems in Pennsylvania. As in the other states, registration and polling place problems dominated the cases.

Turnout

2004: 5,769,590
2008: 5,992,384

Recently, at school, an Obama supporter approached me during a visit to my parents. He informed that on the day of the election there will be law enforcement officers to arrest anyone on those who come to vote based on their unimpaired record. He advised me if I had any outstanding warrants or traffic offenses, I should clear them up prior to voting. They assume this to be an opportunity for those who normally go by lawlessness and politicians, to gain their trust and vote. Showing them to prove there is no law together and police officials arrested on the spot. Do I you have police the right to take care of it.

POLLING PLACE PROBLEMS

Election Day was very problematic at the start in Pennsylvania due to late precinct openings in Philadelphia, broken voting machines, and underprepared poll workers. By mid-morning, serious problems were being reported from a dozen precincts across the state. Many voters who could not use voting machines had difficulties obtaining the paper ballots to which they were entitled. Some voters were given provisional ballots because paper ballots ran out at multiple locations. The major cities of Philadelphia and Pittsburgh reported the greatest number of problems. Issues caused by severely understaffed polling places in Pittsburgh were largely remedied as Election Protection volunteers stepped in to serve as temporary poll workers. Still, each of these problems resulted in eligible voters being prevented from voting.

Machine problems particularly affected voters with disabilities. Betty P. is blind, so she always uses the voting machines on the visually impaired mode. At her polling place in 2008, the mode did not work and no one at the polling location could find a machine manual to fix the problem. Poll workers told Betty to go home without casting her vote. She wisely objected and in the end, a poll worker agreed to assist her. Betty effectively cast her vote, though she was not able to do it with the privacy or certainty to which every voter is entitled.

"The poll worker asked me not to report the problem."

— Betty P., Philadelphia, PA.
Betty is visually impaired. The voting machine at her precinct wasn't working properly and she was unable to vote privately.

ABSENTEE PROBLEMS

As a result of the administrative backlog that plagued population centers in the state, many Pennsylvania voters in cities reported not receiving absentee ballots by Election Day. This caused additional problems at polling places on Election Day, as some of those who feared their votes would go uncounted took time away from family obligations, work, or struggled with a disability to get to their polling place. Upon arrival, they were told they would be unable to vote in person since they had already requested an absentee ballot.

For nine pregnant women in Pittsburgh's McGee-Women's Hospital, Election Protection was able to ensure their absentee vote. "I had plans on voting. And all through my labor I was asking how was I going to go about that. Fortunately, there was a knock on my door," said Juana S. who gave birth to a son on Election Day. Juana and eight other women were in labor when a nurse called Election Protection for assistance. The volunteer was able to file a request for emergency absentee ballots with the state in time to have their votes cast and counted.

NEW YORK

The story in New York took shape in the days before Election Day. In New York City, paperwork from new registrants and absentee ballot requests overwhelmed election officials, leading to frustrated and disenfranchised voters on Election Day. Although most problems were related to registration, there were significant numbers of polling location issues on November 4.

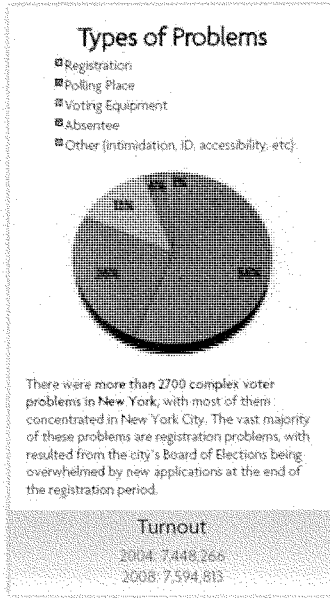
Notably, there were few accessibility problems reported in New York, likely due to the compliance of the New York City Board of Elections with federal mandates to make ballot-marking devices accessible to disabled voters at every city polling place.

REGISTRATION PROBLEMS

Registration problems were rampant in New York, comprising more than half of the problems reported by New Yorkers to the Election Protection Hotline. New York law states that registration applications must be received no later than 20 days prior to Election Day. This fact, combined with record registration in many counties meant that New York election officials faced a tidal wave of paperwork a little more than two weeks before the election, allowing them little time to process new applications. New York City saw 204,000 new voter registration forms arrive at the Board of Elections in just the first two weeks of October. By October 15, nearly three quarters of a million registration applications had been received for the year. Tacking on an additional request for 50,000 — 60,000 absentee ballots, officials told the media they would have to work around the clock to process all the paperwork in time for Election Day.

Many voters who registered or changed their address through the DMV while filling out license applications did not appear on the rolls. The same was true of individuals who had registered via third party registration drives. Voters whose forms could not be processed by the NYC Board of Elections because they were incomplete were placed on a "suspension list." Unfortunately, many of those voters did not receive the notice of suspension in time to correct their applications. They showed up at the polls only to be told they were not registered. Election Protection volunteers helped hundreds of these voters obtain orders from New York State Supreme Court Judges sitting in each of the counties to allow these voters to cast their ballots. Nothing, however, could stop the river of paperwork problems from cascading down to affect the polling places, causing long lines and confusion on Election Day.

On December 2, the *New York Post* reported that more than 3,500 voter registration forms were shipped to the New York City Board of Elections on September 10, only to sit in a box until November 6 — two days after the



election. The voters who cast provisional ballots were counted, but it is unclear how many other voters were turned away at the polls.

POLL WORKER PROBLEMS

Registration issues exacerbated other problems, including poll worker training and availability. In one instance, the NYC Board of Elections had printed supplemental registration books to augment the original poll books due to the high volume of new and last minute registrants. However, according to reports, some poll workers did not sufficiently understand the purpose or validity of the books and, in some instances, did not remember to check them before turning eligible voters away.

"When I signed in at the table, the election worker asked me to sign a sheet and put an R or D next to it. Just a loose leaf sheet!"

— Mary O. Merrick, NY
A poorly trained poll worker was requiring all voters to write their party affiliation on a list she was keeping.

Lack of poll worker availability and training contributed to these problems. Election Protection received reports of polling locations with too few poll workers, as well as polling locations with poorly trained or obstinate poll workers. When machines broke or malfunctioned, workers in some cases were not aware of how to address such issues, leading to late openings of polling places and long lines. In another instance, a voter reported that he was inaccurately listed as inactive. Although by law he would be entitled to vote provisionally, a poll worker attempted to prevent another worker from providing a ballot to him, and instructed him not to vote.

BROKEN MACHINES AND IMPROPER BALLOTS

Throughout New York City, particularly in Brooklyn and Manhattan, large numbers of voting machines broke down. In many of these sites, poll workers followed proper procedure and distributed emergency paper ballots to voters while they waited for engineers to arrive and fix the machines. However, in several instances, poll workers provided voters with unofficial provisional ballots in the place of emergency ballots, or turned people away from the polls altogether. Election Protection volunteers worked throughout the day to swiftly alert election officials to these issues, and, where possible, to send out mobile legal volunteers to visit these problem polling sites in person and help to clarify any misunderstandings for poll workers and voters.

CALIFORNIA

Californians faced problems throughout the voting process — registration, early voting, absentee ballot request and polling place problems. Although reports were highly concentrated in Los Angeles County, voters across the state faced a litany of issues resulting from the state's overtaxed election administration system.

An overwhelming number of last-minute registration applications and requests for absentee ballots made it impossible for election administrators to fully process all forms in time for Election Day. These problems manifested themselves in the form of long lines and confusion — by voters and poll workers alike. There were numerous reports of people who did not receive their absentee ballots in time, preventing them from voting. Nearly 13 percent of all absentee ballot problems came from California, the highest of any state. Poll workers were unprepared and made significant errors, including misusing provisional ballots. New registrations were processed slowly and incompletely, which caused confusion at the polls and long lines.

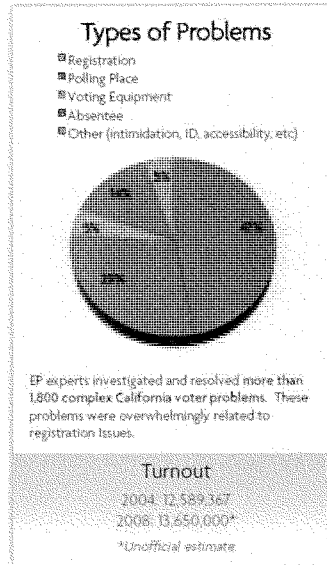
State officials rightly have established late registration and absentee ballot request deadlines to reduce the hurdles to voting. Governor Schwarzenegger recently passed an online voter registration law that will continue to break down those barriers. However, these changes did not do enough in 2008. Turnout was only slightly higher than in 2004, but even this small increase placed an enormous burden on California's already overloaded system.

BALLOT PROBLEMS

Voters at poorly prepared poll locations in Los Angeles County and elsewhere began reporting ballot shortages in the early afternoon on Election Day. Many people who went to the wrong polling place were incorrectly instructed to vote provisionally instead of being sent to the correct location. At one polling place, provisional ballots were handed out because so many voters were unaware that their poll location had changed and had gone to the wrong location. In other places, voters were not offered provisional ballots even when they were warranted, for example, when paper ballots were requested or when regular ballots were running out. In all, about a million people voted by provisional ballot in California, a staggering number.

POLLING PLACE PROBLEMS

In addition to problems stemming from higher turnout, voters grappled with under-equipped polling places and poor training of poll workers. Twenty-five percent of all reported polling place problems came from California.



Broken or too few voting machines made long lines even longer. In vote-by-mail districts, there was confusion over the procedures for a voter who had not received his or her vote-by-mail ballot.

ABSENTEE BALLOT REQUESTS

Due to high volume, absentee ballots were not mailed to many Californians even though they submitted their request well before the deadline. This disenfranchised many voters who were out of the state, physically unable to go to the polls, or had to attend to family or work obligations. It left others confused as to whether they could go to their polling place to vote even though they had requested a ballot.

"People were getting frustrated and not waiting to be told where to put their completed ballots. It didn't seem it was professionally secured, or respectful of the process. It's a day you want everything to go smoothly and it seemed so rinky-dink."

— Katie W., Escondido, CA
on the chaos at her polling place.

FLORIDA

A familiar feeling of cynicism blanketed Florida in the weeks leading up to November 4, even though state officials had worked to ensure a smoother election than in previous cycles.

Heading into the general election, Florida election officials pushed to implement the state's new "no match, no vote" voter registration policy by checking names of voter registration applications against flawed public databases. If the voter's name or information was inconsistent, her application would be rejected. The databases that the registration lists were checked against were notoriously unreliable. This lightning rod injected a familiar anger and frustration in Floridians still simmering from 2000. Election Protection partners, led by the Brennan Center for Justice, litigated to lessen the disenfranchising impact of the law.

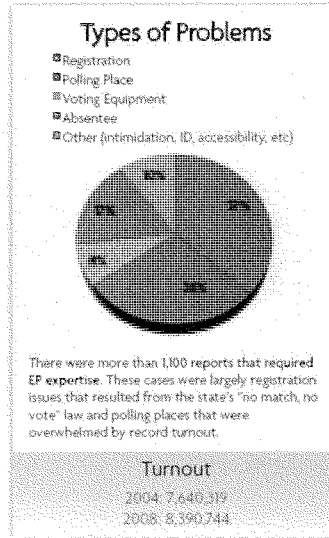
During the early voting period, problems at overburdened early voting sites were dramatically lessened when Governor Charlie Crist courageously issued an executive order to extend voting hours for the week before Election Day. While this solution enabled millions of Floridians to cast a ballot early, registration, polling place and voting equipment problems still cropped up across the state on Election Day.

REGISTRATION PROBLEMS

High registration rates meant that voters were either turned away at the polls because of registration issues or told to vote by provisional ballot. Other voters found they had not been added to the rolls because their registration did not match driver's license or social security information under Florida's no-match, no-vote law. Additionally, Election Protection received reports from voters who had registered through the Department of Motor Vehicles, but upon arriving at their polling place and showing ID, were told they were not registered. Overall, 37 percent of the problems Floridians reported to the Election Protection hotline involved a registration issue.

ABSENTEE BALLOTS

Administrative time and resources spent on processing registrations and comparing voter lists complicated other parts of election administration. Many voters reported never receiving their absentee ballots, despite timely requests. Some came to the polls, only to be forced to vote provisionally because records showed they had requested an absentee ballot. The residents of a hospital in Broward County who had requested absentee ballots did not receive them in time to vote. In another example, a voter named Harvey D. from Coconut Creek, FL, had suffered a



"He's probably not going to get his vote in, and that's that."
— Harvey D's daughter,
Coconut Creek, FL.
Harvey is disabled and never received his absentee ballot.

stroke. Neither Harvey nor his wife, who is his primary caregiver and cannot leave him alone, were able to go to their polling place on Election Day. In anticipation, they had requested absentee ballots well ahead of time. Their ballots had still not arrived when they called the hotline on November 4, disenfranchising the couple.

POLLING PLACE PROBLEMS

Difficulties with voting machines were prevalent across the state on Election Day, and were the second biggest problem reported to the hotline. Over the course of the day, at least three dozen polling places in populous areas all across the state — Manatee, Orange, Hillsborough, Miami-Dade, Lee, Palm Beach, Pinellas, Duval, Volusia, Broward, Escambia, Lee, Leon and Sarasota Counties — reported significant problems with their optical scanning machines. This breakdown of optical scanners had a cascading effect of additional problems in many locations. When the scanners broke, voters were required to manually insert ballots into a safe box. When boxes filled up, poll workers began stacking ballots in unsecured locations throughout polling places. This also contributed to long lines and general confusion.

"There's a three and a half to four and a half hour wait to vote and I can't find out why."
— Mary O., Miami, FL

Even though stuffing ballots into bags struck many callers as odd, poll workers were actually following protocol. In other instances, poll workers did not properly carry out their duties. At one precinct in Tampa, two voters showed up at 6:55 pm to vote. Although anyone standing in line before 7 pm should have been allowed to cast a ballot, poll workers shut the doors before these Floridians could cast a ballot. An Election Protection volunteer on site stayed with them, calling the Supervisor of Elections to protest the premature poll closing. The two voters were ultimately allowed in to cast their votes.

LONG LINES

As was the case all over the country, the excitement over the election had prompted unprecedented registration and turnout in Florida. During the early voting window, there were initial reports of Floridians waiting several hours to cast an early ballot — a situation partially alleviated by Governor Crist's extension of early voting hours. On Election Day, however, long lines persisted.

Hundreds of voters in highly populated areas waited in line well past 9 pm at the Emmanuel Lutheran Church in Miami, and several universities were affected as well. At the University of South Florida in Tampa, voter turnout was wildly underestimated. Nearly 1,900 students were registered to vote at a single polling location with only two poll workers. They could only process between 60 and 90 voters an hour. At the University of Florida, Gainesville, student voters waited past 9 pm to cast their ballots. At the University of Central Florida in Orlando, voters waited in lines upwards of five hours. The Orange County Elections Supervisor sent additional staff members to monitor the situation.

OHIO

In the weeks leading up to Election Day, Ohio voters faced a politically charged environment, with Democrats and Republicans battling over the window from September 30 to October 6, when voters could register and cast early ballots at the same time. Election Protection partners, led by the Lawyers' Committee for Civil Rights Under Law, successfully litigated to allow Ohio residents to simultaneously register and cast absentee ballots during the special five-day period.

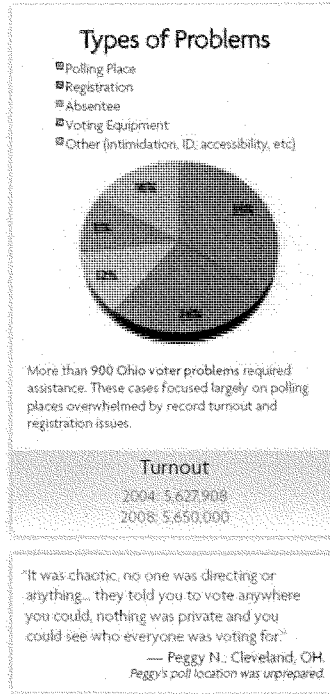
Reminiscent of 2004, the tension between the parties and election officials was palpable. Reports of intimidation — license plates being recorded outside of polling locations and misinformation on eligibility — further polarized a pre-election season once again dominated by litigation. A protracted legal battle that reached all the way to the U.S. Supreme Court was fought over database matching rules. More rigorous database matching rules were not required under existing election law and created new opportunities to wrongly purge eligible voters from the rolls. Ultimately, Ohio election officials were not required to institute unnecessary database matching procedures, but problems persisted.

POLLING PLACE PROBLEMS

Polling place problems were most common on Election Day, with 35 percent of the total calls received by Election Protection related to this issue. Many of these problems were caused by registration mistakes in the weeks leading up to Election Day. In some cases, voters who had voted in the same precinct for years were not listed in the poll book. In others, voters received registration cards or were listed in the statewide database, but did not appear in the book. These problems exacerbated issues at the polling places. Long lines caused by late openings, insufficient signage or supplies, and machine failures were made even worse when voters were not on the rolls.

POLL WORKER ISSUES

Election officials did not have adequate resources to properly staff polling locations. This led to undertrained poll workers and caused many of the problems in the days leading up to and on Election Day. Some voters were wrongly told during the early vote period that they would need to vote provisionally if they had requested or received an absentee ballot. Many others were misinformed about the identification requirements and deadlines for the early voting window.



On Election Day, some poll workers were not equipped to handle the continued trend of high turnout in the state, a problem that voting rights advocates and election officials had anticipated. In one Cleveland polling location, voters were told to forgo using the voting booths and mark their ballot in any location that was available.

A Toledo voter, Letrice M., went with two of her neighbors to the Pathway Community Church to vote. Election officials were confused about provisional ballots and changed Letrice's and one of her neighbor's ballots to provisional ballots, even though they had initially been given regular ballots. After voting, Letrice's ballot was placed in the provisional ballot box, which was unsecured.

"I'm afraid my vote won't count."
 — Letrice M., Toledo, OH
The poll workers at Letrice's poll location were poorly trained and confused on Election Day.

In some cases, poll workers insisted on more stringent forms of ID than necessary in Ohio, where the law does not require that the address on a voter's license match their registration address. However, some poll workers incorrectly forced voters whose photo ID address did not match the registration address to vote provisionally. Election Protection leaders worked with the county board of elections to notify the county's presiding judge about how to correctly apply the law.

Ohio election officials did what they could to remedy poll worker mistakes on Election Day. Unfortunately, there were not enough resources to assist every eligible voter who faced challenges at the polls. In many cases, poll workers failed to direct voters to the correct precinct and instead instructed them to vote provisionally. In Hamilton County and elsewhere, Election Protection volunteers worked with the Board of Elections to allow a voter who had voted provisionally at the wrong precinct due to poll worker error to come back and vote at the proper precinct so that his or her ballot would count.

MICHIGAN

Thousands of Michigan voters were at risk of being purged from voter rolls and receiving false information about their rights during the 2008 election cycle. Michigan set off the foreclosure scare — linking foreclosures to voter eligibility — with reports that people who had recently been displaced due to home foreclosures would be challenged as they attempted to vote. Media coverage of the rumors prompted lawmakers in Michigan, Illinois, Nevada, Ohio and Maryland to quickly address these concerns and assure affected registered voters that they would not be disenfranchised. This was a clear example of election officials acting swiftly to fix problems and dispel myths. Sadly, these problems created lasting confusion for Michigan voters among the many other issues that plagued polling locations on Election Day.

Confusing rules, registration problems, untrained poll workers and disorganization at polling places threatened to disenfranchise thousands of Michigan in the 2008 election cycle. In fact, 64 percent of the problems reported to the Election Protection Hotline fell into these categories. These enormous challenges were all simple and preventable, but Michigan's overburdened election officials did not have the resources to fix them in time to ensure the rights of every eligible voter.

PURGING

It was reported on September 11 that the Macomb County Republican Party Chairman would challenge voters' eligibility if their home had been foreclosed. Election Protection worked with media, election officials and non-partisan grassroots organizations to get the word out to voters that they should not be afraid to go to the polls and that their vote would be counted. In addition, the Michigan Department of Civil Rights rolled out a massive voter education effort less than a month before the election to counteract various myths and rumors surrounding foreclosures, campaign paraphernalia and prior felony convictions.

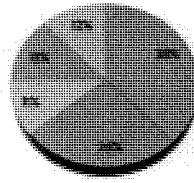
In response to a different lawsuit, a federal judge ordered the Secretary of State to restore to the voter rolls the names of more than 1500 Michigan voters who were wrongfully purged because their registration cards were undeliverable.

MISINFORMATION

Misinformation about student voting rights surfaced in

Types of Problems

- Polling Place
- Registration
- Absentee
- Voting Equipment
- Other (intimidation, ID, accessibility, etc)



As in other states, Michiganders faced polling places that were overwhelmed by turnout or mismanaged by poll workers, and registration troubles that required EP assistance. There were more than 550 problems that were resolved by working with high-level election officials.

Turnout

2004: 4,875,692
2008: 5,031,766

"Someone at the Board of Elections said he'd advise not to register students in Michigan because it could damage financial aid and insurance. I wanted to clarify, so I went ahead and called the hotline.

— Emily D., Grand Rapids, MI
Emily, like many students, heard that her financial aid would be revoked if she voted in her school state

Michigan as in other states. Emily D. of Grand Rapids was working to get eligible voters — including students — registered in time to vote for November's general election. Like many students, Emily was given erroneous advice from election officials that registering students in a county other than where their parents lived could endanger their financial aid and health insurance. She called the 866-OUR-VOTE hotline to verify this information, and upon learning that students could register in Michigan without legal repercussions, Emily went on to register 200 new student voters.

POLLING PLACE PROBLEMS

Polling place and registration problems again combined to create headaches and long lines for voters. Poll workers were poorly trained and did not handle check-in efficiently. In many instances, voters had to go to several different precinct stations before they could cast a ballot. Additionally, poll workers were often unaware that voters in Michigan who did not have a government-issued photo ID could vote after signing an affidavit.

"Nothing was communicated by anyone that actually worked"

— Aisha A., Flint, MI.
The chaos at Aisha's poll location prevented many from voting.

In Flint, voters experienced the frustration of long lines, broken machines, and inadequately trained poll workers. After waiting in line for at least two hours, Aisha A. finally heard through another voter leaving the polls that the delay came from the only available machine breaking down. Poorly trained poll workers then made several bad decisions: First, voters were told to use paper ballots for poll workers to feed into the machine later. Then, they divided voters by name alphabetically, which sent people who had been waiting in line for hours back to the end of the line. Frustrated voters started leaving by the dozens without voting, according to Aisha.

Voters in Pontiac were confused about poll location changes. Voters went to the wrong polling location causing confusion and delays. Furthermore, polling places with multiple consolidated precincts caused further confusion when voters were not directed in an orderly way to their correct voting location.

ABSENTEE BALLOTS

As in other states, absentee voting presented unique difficulties. A Williamston couple experienced problems obtaining information on how to vote absentee. Tina S.'s husband has multiple sclerosis, which has rendered him unable to move from below the shoulder. After many attempts, Tina reached someone at the Governor's office, who told her that she could fill out her husband's absentee ballot on his behalf as long as he placed an "X" on the ballot by holding a pen with his mouth. Tina, unlike many voters, was willing to chase down the answer to her questions and planned well in advance to navigate the complicated system.

"Him not voting would have been unacceptable. He's as smart as he was the day he left college."

— Tina S., Williamston, MI.
Tina was worried that her husband who is disabled would not be allowed to vote absentee.

GEORGIA

In the weeks leading up to Election Day, Election Protection attorneys were involved in a lawsuit that temporarily ceased a state registration process that threatened to disenfranchise thousands of eligible Georgians based on often outdated and inaccurate information about the citizenship status of new registrants. The court order provided protections and a defined process for those voters flagged as non-citizens.

Georgia Election Protection took more than 1,900 phone calls on Election Day. Officials braced for unprecedented turnout and ultimately saw nearly a five percentage point increase over 2004 levels. This increase created major problems at the polls. During early voting, some precincts saw waits of six to eight hours.

ADMINISTRATIVE BACKLOG

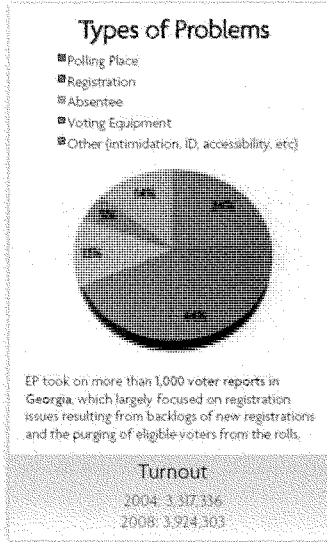
Only a few weeks before Election Day, officials were still receiving thousands of new registration forms to process. In mid-October, there were reports out of DeKalb County of about 30,000 registrations sitting in a box waiting to be entered. Although Election Day was relatively smooth at the polls in metro-Atlanta and the surrounding areas, the paperwork backlog resulted in unique problems for voters who had recently moved, requested absentee ballots, or were newly registered.

REGISTRATION PROBLEMS

Registration problems accounted for nearly half of all the problems reported to the 866-OUR-VOTE hotline. Backlogs in registration combined with purges created difficulties for many voters on Election Day.

Voter Sharon S.'s story illustrates a problem that thousands of Georgians faced in the weeks leading up to Election Day. Sharon, a resident of Norcross, had recently moved and submitted her updated address during the summer. After a month went by without a sign of her new registration card, Sharon called the Secretary of State's office. The card had mistakenly been sent to an address at which Sharon had lived three moves ago. Sharon had to resubmit her forms at the last minute and — unlike many more Georgia voters — managed to get her forms in on time to vote.

Misspelled names and mistyped birthdates on registrations combined with confusion over ID requirements also turned away eligible voters. For example, Patricia and her daughter live at the same address in Augusta, Georgia.



"If I had found out about this problem after the registration deadline, I would have been denied my right to vote."
— Sharon S., Norcross, GA.

and have similar names. Patricia voted early on September 24. Her daughter then tried to vote early on October 3, but was told that she could not vote early because she had already voted. Patricia's daughter explained that it was her mother who voted early the week before but the poll worker had already closed the screen on the electronic voting machine, terminating the process and did not know how to undo it. Patricia was denied further information about whether or not the problem was resolved and steps she could take to ensure that both of their votes would be protected. She and her daughter still don't know if their votes were counted.

CITIZENSHIP CHALLENGES

Donovan, of Tucker, GA, waited in line for two hours and 45 minutes on Election Day. When he got to the front of the line, the poll worker told him that he could not vote because he was not a U.S. citizen. Donovan had in fact become a naturalized citizen more than two years ago. After a long back-and-forth, and the generosity of Donovan's boss to give him more time off, Donovan went back to the polls and was finally allowed to vote. Tucker was just one of thousands of eligible new American citizens whose right to vote was threatened in Georgia in 2008.

"I'd be damned if he gave up!
But he did vote in the end."
— April A., Tucker, GA,
wife of Donovan, whose citizenship
was wrongfully challenged at the polls.

LITIGATION

On October 9, several Election Protection member groups, including the Lawyers' Committee for Civil Rights Under Law, the American Civil Liberties Union (ACLU) Voting Rights Project, and the Mexican American Legal Defense and Educational Fund (MALDEF), filed a lawsuit in Georgia. The lawsuit was filed on behalf of Cherokee County resident Jose Morales, a naturalized citizen whose eligibility was repeatedly challenged by election officials even after providing proof of his citizenship. At the time the lawsuit was filed, Morales and potentially thousands of other Georgians were at risk of having their names purged from voter registrations rolls under Georgia's database matching procedure which flagged suspected non-citizens. The procedure, which relied on the State's Department of Driver's Services ("DDS") database, presented a particularly unfair challenge to new citizens. There is currently no procedure to update the DDS database in order to reflect subsequent naturalization by persons who were legal residents when they obtained their DDS license. This created a systematic bias against naturalized citizens, needlessly jeopardizing their voter registration status and unduly burdening their right to vote. More than 100,000 people became naturalized citizens in the past 10 years in Georgia, according to the Department of Homeland Security, so the potential for harm was significant.

On October 27, The United States District Court for the Northern District of Georgia issued a preliminary injunction against Secretary of State Karen Handel, finding that the database matching process used to flag suspected non-citizens on the voter rolls was adopted in violation of a key provision of the Voting Rights Act. Under the injunction, Georgia officials may not use the citizenship matching program to permanently deny any voter registration applications or permanently remove any existing voter registrants from the rolls unless and until the State obtains clearance for a new procedure.

Eligible voter Jose Morales and the thousands of other voters whose rights were in jeopardy were allowed to vote in 2008. With automatic and permanent voter registration, they would be guaranteed that right in every future election and free to vote without intimidation.



Biography of Jonah H Goldman

Director, National Campaign for Fair Elections, Lawyers' Committee for Civil Rights Under Law

Before the Senate Committee on Rules and Administration

"Voter Registration: Assessing Current Problems"

March 11, 2009

Jonah H Goldman is the Director of the National Campaign for Fair Elections in the Lawyers' Committee for Civil Rights Under Law's Voting Rights Project. Jonah is responsible for implementing the Campaign's mission of developing policy and strategy to reform the administration of elections at the federal, state and local level. His responsibilities include leadership in the Election Protection Coalition, the National Network on State Election Reform, and the Lawyers' Committee election reform advocacy and litigation docket.

During the 2008 election season, Jonah was the driving force behind Election Protection, the largest non-partisan voter protection coalition in the country's history. His leadership enabled the Lawyers' Committee to bring together over 60 national legal, community and media partners with hundreds of local and state partners to protect the rights of traditionally disenfranchised voters. In addition to managing more than 10,000 legal volunteers in 45 localities across the nation, Jonah directed the operation of 866-OUR-VOTE, a national voter services hotline which, since its inception, has received over 500,000 calls from voters across the country, including over 240,000 calls handled by trained operators in 25 call centers during the 2008 election cycle. Jonah also coordinated the development of www.866ourvote.org, a clearinghouse for state specific voting information and a resource on the developing issues of election administration in the 2008 cycle. The site was visited by more than 300,000 individuals in the six weeks leading up to the election.

As one of the primary leaders in the 2004 and 2006 Election Protection efforts, Jonah was responsible for designing the structure of the program, coordinating efforts with the numerous Election Protection partners and volunteers and designing and implementing a training curriculum for legal volunteers. Information collected during these programs served as the basis for major election reform legislation, the *Deceptive Practices and Voter Intimidation Prevention Act* and the *Count Every Vote Act*.

Jonah has been a frequent commentator on the issues confronting American democracy. In addition to testifying before the United States Congress and other legislative bodies, he is frequently asked by international, national, state and local press including *CNN*, *NBC*, *MSNBC*, *Fox*, *CBS*, *The New York Times*, *USA Today*, *Newsweek*, *The L.A. Times*, *The Wall Street Journal*, *The Washington Post*, *The Atlanta*

Journal Constitution, The Houston Chronicle, The Cleveland Plain Dealer, Arizona Republic, and The Associated Press, for his opinions on the subject and has published extensively regarding how to improve our electoral process. Jonah has also served as an Adjunct Professor at the Georgetown University Law Center.

Jonah graduated with honors from Binghamton University and from Boston College Law School where he received the John F. Cremens Award for outstanding work in clinical programs.



The Newspaper of Capitol Hill Since 1955

Voter Registration System Needs to Be Modernized

By Robin Carnahan and Trey Grayson
Special to Roll Call
March 10, 2009

As the elected officials responsible for safeguarding the most valuable asset in any election — the right of all eligible voters to cast ballots for the candidates of their choice — we were proud to see the nation's election system rise to the challenge of historic voter participation on Nov. 4. Now, as lawmakers gather to consider changes to our election system, we must evaluate what lessons we can learn from 2008 to make our election system even better for the next cycle.

One key area where improvements are necessary, and possible, is the modernization of our voter registration system. We're pleased to see that the Senate Rules and Administration Committee is holding a hearing Wednesday on our voter registration system, and we encourage the committee, in a bipartisan way, to consider the challenges of our system and ways in which its efficiency, accuracy and cost effectiveness can be improved.

The 2008 elections made it clear that our system relies too heavily on outside groups to register voters and places considerable burdens on individuals seeking to register or update their registration. This can lead to concerns about invalid registrations clogging the system or voter rolls plagued by duplicate and inaccurate information.

Consider, for instance, the case of the high school civics teacher who decided to help her students by collecting their voter registration cards and turning them in. A lovely sentiment, but come Election Day the students found out the hard way that the teacher forgot to submit the cards by the registration deadline. Or reports from jurisdictions all over the country, including our states, that local election officials were slammed at the last minute with huge stacks of registration forms from groups registering voters. Such a last-minute rush is probably inevitable given human nature and the political process, but it leads to tremendous pressures on election workers, leading to delays and errors, despite everyone's best efforts.

To be fair, outside registration efforts are as much a symptom as they are a problem. Some eligible voters have a difficult time navigating the system on their own, and even those who have properly dotted every "i" and crossed every "t" can show up at their polling place on Election Day to find they're not on the rolls. Indeed, the nonpartisan Election Protection coalition said that almost 40 percent of all the complaints they received in 2008 were related to voter registration issues.

We must significantly streamline voter registration and make greater use of technology to weed out inefficiencies. Right now, many voters have no convenient way of verifying that they're on the rolls, or that their information is accurate, leading them to submit duplicate registrations to ensure their right to vote is secure. If voters move between states or within a state, or even more simply change their name, their old, outdated registration record often remains for several years. Simplifying and automating the process could help save time and money and, most importantly, protect voters.

While the National Voter Registration Act, or Motor Voter Act, was supposed to solve many of these problems, we know all too well that while some localities do a great job of complying with the act — offering opportunities to register at all governmental agencies — many do not. If we could harness the power of technology, we could better serve the goals of the Motor Voter law, rendering its mandates nearly obsolete while at the same time reducing the need for outside groups to assist in voter registration.

There must be a better way to make sure that all eligible voters have easy access to the system while ensuring that only eligible voters have such access. We should embrace opportunities to research and study technological innovations to the voter registration system, which could help election officials do their jobs more efficiently, using fewer resources, while improving upon the system's accuracy. Most importantly, technology and policy innovations could help us better serve our "customers" — the voters.

We have been fortunate to work with those, such as the Pew Center on the States and others, who share our vision of more accurate and efficient elections, and better service to voters, and who have been promoting research and pioneering new solutions. Though this most recent election is over, we will not stop working across state and party lines to ensure that we have the voter registration system our voters deserve.

Robin Carnahan (D) is Missouri secretary of State, and Trey Grayson (R) is Kentucky secretary of State.



TESTIMONY

Testimony
U.S. Senate Committee on Governmental Affairs
Dr. Larry J. Sabato
Director, University of Virginia Center for
Governmental Studies
May 3, 2001

Mr. Chairman, Members of the Committee, thank you for this opportunity to speak with you today about the intertwined issues of voter registration and vote fraud in the United States.

Of course, this is a subject that has received considerable attention during the months since the ballots were cast in the 2000 Presidential election.

Let me begin my remarks by stating what all of us familiar with politics already know. Fraud and corruption in the American electoral system did not start with the 2000 Presidential election. In fact, evidence of corruption spans the entire history of our Republic.

What could be unique at this point in our nation's history is the degree to which we, as a nation, can embark on a serious discussion of how to reform the system to limit the extent of electoral fraud and corruption.

The November 2000 election can serve as the catalyst for such a debate. By all means, we should toss out antiquated voting machines that poorly count properly cast ballots. But we ought simultaneously to spend sufficient resources to reduce vote fraud in several states.

When we look at the registration system and voting process in the U. S., we have to balance two conflicting values, two equally worthy objectives:

1. The goal of full and informed participation of the electorate.
2. The integrity of the system.

To the extent that we keep expanding the participation rate and make it easier and easier for people to register and vote, we almost certainly increase the chances for voter fraud. So, in a sense, it is a trade off. To move completely in the direction of one value as opposed to the other is foolhardy. We must achieve

a balance between these two important democratic values. Currently we do not have a good balance.

As Election 2000 demonstrated, the problems are numerous. I draw your attention to several of the most egregious instances of fraud that were encountered last year, and in other recent elections.

Last November, as reported by *The Miami Herald*, the votes of a 90-year-old woman and 21-year-old man were among more than 2,000 illegal ballots cast by Florida residents who swore they were eligible to vote, but in fact were not. The woman voted absentee and in person, while the man voted despite a felony drug conviction. These 2,000 illegal ballots were discovered in just 25 of Florida's 67 counties – this in a presidential race won by only 537 ballots in Florida.

These voters cast ballots even though their names were not on precinct voter registration lists, because all they had to do was sign an affirmation swearing they were eligible to vote.

Even though they were supposed to, poll workers never checked to see if these 2,000 people were actually registered. In addition to these 2,000, there were 1,200 instances of convicted Florida felons who had been legally stripped of their right to vote, but nevertheless managed to stay on the voting rolls and cast their ballot in the last election. There is also some indication that at least a few people who maintain two residencies cast ballots in two different states, one by absentee and the other in person.

Similarly, in Wisconsin, the *Milwaukee Journal Sentinel* found that at least 361 felons voted illegally last November 7th, breaking the state law that disqualifies felons from voting until they are off probation and parole. Like Florida, Wisconsin was the site of a very close Bush-Gore contest.

But it doesn't stop with Florida and Wisconsin, and as I suggested, fraud didn't just appear during the 2000 Presidential election.

Just a glance at the past decade shows many examples of electoral fraud. You don't even have to look very closely to find, as I did in my book *Dirty Little Secrets: The Persistence of Corruption in American Politics*:

Extensive absentee ballot fraud in Alabama.

Hundreds of phony registrations in California.

Nearly 1,000 illegal votes in New Jersey including some by

people who were unregistered and others who were dead.

Significant absentee ballot fraud in Philadelphia.

Votes stolen from the elderly and infirm in Texas

And the list goes on and on.

Voter fraud is not limited only to these examples. My strong suspicion – based on scores of investigated and unexplored tips from political observers and interviewees over the years – is that some degree of vote fraud can be found almost everywhere, and serious outbreaks can and do occur in every region of the country.

Whether fraud is Democratic or Republican, or located in the North or the South or the West, the effect on American democracy is similar. While electoral hanky-panky affects the outcome in only a small proportion of elections (mainly in very tight races), one fraudulent ballot is one too many for the integrity of the system and the confidence that the people have in the system.

The need for reform is urgent and clear. Voter turnout in the United States is traditionally too low, and cynicism among citizens too high, to permit the malodorous malady of election fraud to continue unchecked – or to spread.

No system is absolutely foolproof, but at the very least it seems to me that we could all agree that a photo identification card (of any sort) should be produced by each voter at the polls.

Second, voters should be asked at the time of registration to give a number unique to them – a social security number, a driver's license number – that can be prerecorded on the voter list provided each precinct's workers.

Third, every voter should have to sign his name on the voting rolls at the polls so that the signature can be compared to the one on the registration form to see if they match up. This comparison would probably be made only in the event the results of a close election were challenged, although again, the computer technology already exists for instantaneously scrolling, side by side, the poll signature and the registration signature.

Fourth, all potential voters ought to be advised at the polls, whether orally by an elections official or by means of a printed statement of the eligibility requirements for voting and the penalties for fraudulent voting. A similar warning should be prominently featured on all absentee and early-voting/mail-in

ballots. These four overlapping safeguards are not too burdensome for voters and poll workers, but they would go a long way toward discouraging fraud at the precinct stations on Election Day.

Fifth, no early-voting/mail-in and absentee ballot should ever be separated from its cover sheet and counted until the voter's signature has been carefully checked against the registration file signatures. Every envelope containing the marked absentee or early-voting/mail-in ballot should also be signed by an adult witness whose address should also be listed.

Finally, Mr. Chairman let me say that these regulations, even if adopted universally and followed to the letter, will be insufficient if:

- (1) registrars and elections offices are not staffed and funded adequately;
- (2) the statutes do not punish fraud severely -- major felonies are required, not minor misdemeanors;
- (3) law enforcement authorities do not make voter fraud a priority and press for substantial legal penalties against those found violating the fraud statutes; and
- (4) the news media do not begin to look for evidence of voter fraud -- a probable prerequisite to their finding it. A good first step would be for every news organization to establish and publicize a "campaign corruption hotline."

The examples I listed earlier, and others throughout the nation make it obvious that the solutions required for voter fraud must necessarily be adapted to each locality's culture and practice. But one imperative unites all the cases: While registration and voting should be as easy as possible, the process should also be as fraud-proof as possible.

Thank you Mr. Chairman.



Senator Schumer and Senator Bennett, Members of the Rules Committee, thank you for organizing this hearing. I am Jim Dickson, Vice-President of the American Association for People with Disabilities and chair of the National Disability Vote Coalition, which is made up of 36 national disability organizations. Founded on the fifth anniversary of the Americans with Disabilities Act, AAPD was created to bring together the diverse constituencies that make up the disability community to be a powerful force for change - politically, socially and economically.

Thanks to the leadership of the Congress, millions of disabled Americans were able to vote privately and independently in the last presidential election. There has been a lot of progress in making our nation's complex voting system accessible to Americans with disabilities. However, we still have a long way to go.

The single largest problem that Americans with disabilities faced on Election Day stems from inadequate poll worker training. (Attached to this testimony are a few specific examples which are emblematic of many more complaints that we have received.) The following is a list of the types of problems voters encountered that are all based on poor poll worker training.

- Poll workers actively discourage voting on the accessible machines. For example, one voter reports "I did eventually use the new machine but only after the poll workers spent about thirty minutes on the phone with the county office. By the way, the poll workers said the county response was that they could not be bothered with questions about the new machines." (Susan Stockburger, Systems Advocate, Independent Living, Inc.) A survey conducted in New York City reports "At poll sites all over the City, poll workers revealed that they had not received enough training, actively discouraged voters from using the BMDs and breached the right to privacy by watching voters use the BMD." (Center for Independence of the Disabled) A disability leader in Fairfax, Virginia reports that poll workers were told to discourage the use of the accessible voting machine.
- Poll workers do not know how to operate the accessible voting device. The National Federation of the Blind operated an Election Day hotline for problems and conducted a telephone survey of blind voters. They found that poll worker related problems were the major factor in either voters not being able to vote or having to experience serious delays before they could vote. In Ulster County, New York several people were told poll workers didn't know how to use equipment.
- Often poll workers can not find the earphones that are necessary to make the voting system accessible.
- In many places, election officials or poll workers insist that the accessible device can only be used by people with disabilities. This creates all kinds of problems. Many voters reported that because they lack a visible disability poll workers prevented them from using the accessible machine. "The election worker told me I couldn't use it because I

did not look disabled. I told her anyone could use it and how did she know if I was disabled or not. She said it was just for people who were blind, deaf, and were using wheelchairs. I told her that was wrong. Another worker said they were not well trained on how to set up the BMDs. The device was placed in an area that was not private and it was not turned on. Many people had problems in Broome County.” (Susan Ruff, Director of Advocacy, Southern Tier Independence Center, Binghamton, New York)

- California has put a policy in place that says if four or fewer votes are cast on the accessible device, those votes will not be counted.
- Most states have a policy in place that in case of long lines a voter with a disability may wait her turn while seated. Rarely are people in line informed of this policy, either by sign or announcement. One voter reports “I waited in line for nearly three hours... I have difficulty standing for long periods and my back was in severe pain from having stood that long.”
- Poll workers deciding someone isn’t capable of voting. People in Texas who are developmentally disabled, psychiatrically disabled or deaf were all discriminated against in the last election. In a few cases the protection and advocacy groups were able to successfully intervene.

Besides poor poll worker training there are still problems with accessibility. Regrettably there are still many polling places that are not wheelchair accessible. This is particularly frustrating after the government has spent hundreds of millions of dollars buying accessible voting machines which have been placed in inaccessible polling places.

- A survey conducted this summer in Columbus, Ohio found that considerably more than half of all polling places were not wheelchair accessible. In Somerville, Massachusetts the board of elections reported that all their polling places were accessible. The disability community surveyed every polling place in the city and found that out of 21 polling places, 15 were not accessible. What is particularly frustrating about many inaccessible polling places is that the inaccessibility is relatively inexpensive and easy to fix. “Most of the problems encountered were with parking issues, accessible routes, lack of signage, steps or “lips” at entry doors and ramps being blocked or being too steep.”(Maryann Donaldson, Architectural Modification Consultant, Resource Center for Accessible Living, Inc.) In New York City the disability community has been surveying polling places for nine years. Often after reporting a polling place inaccessible, it is still inaccessible for the next election. The report states “Below are the number of sites visited during each survey and the number of sites where access barriers were found:

November 2003	31 Sites Visited, 14 Sites or 42% with Barriers
March 2004	44 Sites Visited, 30 Sites or 68% with Barriers
September 2004	35 Sites Visited, 15 Sites or 43% with Barriers
November 2004	85 Sites Visited, 52 Sites or 61% with Barriers
November 2005	77 Sites Visited, 57 Sites or 74% with Barriers
November 2006	15 Sites Visited, 15 Sites or 100% with Barriers
November 2007	50 Sites Visited, 42 Sites or 84% with Barriers
February 2008	34 Sites Visited, 29 Sites or 85% with Barriers

September 2008	24 Sites Visited, 21 Sites or 87% with Barriers
November 2008	65 Sites Visited, 54 Sites or 83% with Barriers

Since 2003, CIDNY has conducted 460 site surveys, finding 329 with barriers, or 72% overall. We have visited 310 polling locations throughout New York City, surveying many locations several times over the years.” (Center for Independence of the Disabled, NY)

- In Terre Haute, Indiana accessibility was denied at an early voting site.
- In Tennessee, only 4 out of 38 counties had accessible sample ballots on their website.

Thanks to the foresight of the Senate Rules Committee, the government accountability office conducted a national survey on voting accessibility last November. I expect that the report, to be issued later this year, will show considerable progress has been made. I am certain that the report will corroborate the fact that with improved poll worker training many more voters will be able to vote privately and independently. Our country should be grateful to the millions of citizens who volunteer as poll workers. Unfortunately the training for poll workers in much of the country is inadequate on all points of election management, not just disability. Much of the country provides only two to four hours of training. Most of this training is lecture, not hands on or dialogue. This substandard poll worker training is a major factor challenging the general confidence in our elections system. A recent report from the University of Utah found that quality of the voter poll worker interaction is the most important factor in determining a voter’s confidence that her vote will be counted accurately. (Hall, Thad, J. Quin Monson, and Kelly D. Patterson. 2008. The human dimension of elections: How poll workers shape public confidence in elections. *Political Research Quarterly*.) AAPD urges this committee to conduct a hearing specifically on poll worker recruitment and training.

From: Maryann Donaldson [mailto:mDonaldson@rcal.org]
Sent: Tuesday, March 10, 2009 1:03 PM
To: Vote
Cc: Fran Wishnick
Subject: Election Review Comments

RCAL is an Independent Living Center that promotes inclusion and advocates for people with disabilities throughout Ulster County. For the past 10 years RCAL staff and volunteers have performed polling site surveys to see if the sites are accessible for people with disabilities. Currently there are 108 polling sites in Ulster County. For the Nov 4, 2008 election 99 sites were inspected. Our agency was informed by our local Board of Elections once again that all sites were fully accessible. They also told us that temporary solutions such as portable ramps, temporary parking, etc would be in place for the places we informed them about in previous years that had problems. Less than 1% of all the sites inspected were classified as being fully accessible. Please note, these are sites that have been previously reported as having problems and still have not been addressed. Most of the problems encountered were with parking issues, accessible routes, lack of signage, steps or "lips" at entry doors and ramps being blocked or being too steep. I've attached a couple of photos documenting a few of these problems. Basically, if people can not get into the site to vote then it really doesn't matter whether the voting machines are accessible or not.

Maryann Donaldson, Architectural Modification Consultant

Resource Center for Accessible Living, Inc.
727 Ulster Avenue, Kingston, NY 12401
(845) 331-0541 ext. 27

From: Kim Borowicz [mailto:KBorowicz@accessliving.org]
Sent: Monday, March 09, 2009 10:04 AM
To: Vote
Subject: FW: Obstacles at the polls and with voter registration

I am responding to the email on issues in voter registration and at the polls.

The voter registration form is in small print and is not accessible to me as a vision impaired person. There should be an electronic form available and other alternative formats.

While the voting machines had large font, I was handed forms/info at the polls that were not.

The voting machine I used only showed one of two columns when in large print mode. I had mistakenly thought I finished my ballot and then realized I never voted for the president. This is because I completely missed half of the ballot because only one of the two columns on each page showed up at one time, and I didn't realize I had to scroll to the side.

Not all of the information on the voting machines comes up in large print. The page finder and page numbers do not show up in large print. Nor do the page titles or the scroll bar/arrow. The print out receipt is also not in large print.

The voting machines are extremely slow in large print mode and it is difficult to move through each page because the scroll up/down left/right function is incredibly slow/cumbersome.

From: Garry and Joy Relton [mailto:relton30857@cox.net]
Sent: Sunday, March 08, 2009 7:55 PM
To: Vote
Subject: Problems At Polls

This past election as well as the past years since we have had accessible voting machines in Fairfax county Virginia, I voted using a provisional ballot. This is because, when I attempt to use the touch screen there is no indication whether my vote has been cast for a candidate and then, the electronic ballot goes on. There is no auditory announcement of the selection and often, as was the case last time, the system has been so slow that I don't know which item on the ballot I have progressed to, I ended up going through the ballot without having been given an opportunity to make a selection on several of the offices. When the poll worker came to help me, he couldn't get it to work either. and I have yet to enjoy the right to vote privately and independently. This machine was a waste of money and a very poor choice for persons with either visual problems or dexterity problems and should never have been chosen. I have the right to vote independently and privately but I have yet to be able to enjoy that right completely. I am still voting with the assistance of either my husband or the poll worker. I have more privacy with my bank statements and my bills than I have in casting a vote.

Registering to vote requires me to have someone else fill it out as the form is not provided online or in another accessible format. I have voted every year since 1975 in local, state and national elections. I cherish the right to vote but long for the day when I can exercise that right privately and independently.

-----Original Message-----

From: notify@yahoogroups.com [mailto:notify@yahoogroups.com] On Behalf Of susan_stockburger

Sent: Monday, March 09, 2009 1:00 PM

To: Vote

Subject: Problems in New York with Vote 2008

I am the Systems Advocate at Independent Living, Inc. a disability organization whose mission is to remove barriers so that persons with disabilities can achieve their highest potential. We monitored the election in November and asked employees and consumers to comment on their experiences at the polls.

I was told that you have been asked to provide the Senate Rules Committee with stories about the November 2008 election - specifically problems encountered by persons with disabilities.

As you may not know, New York has yet to fully comply with the requirements under H.A.V.A., passed in 2002. In fact, the Justice Department sued New York as a result. New York, operating under a consent decree, decided in mid 2008 to offer only a few certified choices for counties in choosing new voting machines.

The new machines were required to be operational at every polling site. Each site had the old lever machines and ONE new machine.

Problems were numerous. Many times the new machine was not in view, in the corner, not plugged in, and not operational.

Other times the machine was available but with no knowledgeable poll worker to operate it.

Other times the machine was placed in a location that did not offer privacy for the secret ballot.

First of all, it was necessary to request the machine, which means you needed to know it was operational and available. There was no information at my polling site about the new machine at all - I had to request it - was told that no one knew how to use it and I needed to be "cripled" in order to use it.

I did eventually use the new machine but only after the poll workers spent about thirty minutes on the phone with the county office. By the way, the poll workers said the county response was that they could not be bothered with questions about the new machines. Too bad!!

Next year the judge has ordered that all lever machines be replaced in New York. Look out!

Susan Stockburger
Systems Advocate
Independent Living, Inc.
5 Washington Terrace
Newburgh, NY 12550
845-565-1162 ext 237

From: Beata Karpinska [mailto:bkarpinska@ariseinc.org]
Sent: Tuesday, March 10, 2009 12:15 PM
To: Vote
Subject: story from Election Day

Hi, my name is Beata Karpinska-Prehn. I am a disability rights advocate from Syracuse, NY. I voted at Drumlins Country Club. When I entered the poll site I was not offered the BMD (Ballot Marking Device) called Sequoia Image Cast that is being used in our county to help pwd's mark their ballots. So I requested it. I have an environmental disability but not an obvious one that someone can see. I was told by the poll worker that it would take me at least 40 minutes to vote on this BMD. Then I was told by another poll worker that I can not use the BMD because I am not "handicapped."

Because I was aware of this machine, I requested that the poll worker call our county's Board of Elections to get a permission for me to use the BMD. After 15 minutes on the phone they finally got through and I was able to use it. It took me less than 10 minutes to mark my ballot on it because I had an opportunity to try it out beforehand when it was on a display. The poll worker was also very familiar with the BMD machine operation. But my concern is that the poll workers at my polling place should not decide who has a disability based on voter's appearance. It should be up to a voter to decide what machine to use. Also, the poll workers should explain to the voters that the new BMD is available to anyone with a disability who wants to use it. Other voters did not know it even existed.

I also spoke to other voters in our county about their experiences in other poll sites. I have learned that in other locations the poll workers were not so familiar with the BMD machines. In one site the BMD was not even plugged in when a voter arrived to use it. Poll workers were not aware how to use the machine in several poll sites or how to use individual parts such as paddles or puff and sip. Machines were also positioned in a way that it did not allow for privacy despite of having a privacy screen. In one site the headphones did not work. At another site the voter had to wait for at least 3 hours because of a paper jam in the BMD. Poll workers were not prepared to handle the new BMD's.

If the BMD machine and scanner for paper ballot get certified in NYS for next year, each poll site will have BMD machines and scanners to scan all paper ballots. At that time BMD's will be the only option, other than a paper ballot completed by hand, for pwd's to vote on. The poll workers will need much more training on the county level to raise up to this task.

Please let me know if you have any questions.

Beata Karpinska-Prehn
Syracuse, NY
315-671-2929

-----Original Message-----

From: Susan Ruff [mailto:advocate@stic-cil.org]

Sent: Monday, March 09, 2009 4:17 PM

To: Vote

Subject: The November election

Thank you for gathering election stories to share with the US Senate Rules Committee. When I voted November 8, I asked to use the ballot marking device (new in NY this year).

The election worker told me I couldn't use it because I did not look disabled. I told her anyone could use it and how did she know if I was disabled or not. She said it was just for people who were blind, deaf, and were using wheelchairs. I told her that was wrong. Another worker said they were not well trained on how to set up the BMDs. The device was placed in an

area that was not private and it was not turned on. Many people had problems in Broome County.

Our county's Board of Elections has worked hard with our Independent Living Center and has made all the polls accessible. They trained their workers, but not well enough it seems.

Susan Ruff
Director of Advocacy
Southern Tier Independence Center
135 East Frederick St.
Binghamton, NY 13904
(607) 724-2111 (voice/TTY)
(607) 772-3613 (fax)

From: Fran Wishnick [mailto:fwishnick@rcal.org]
Sent: Tuesday, March 10, 2009 11:28 AM
To: Vote
Subject: Voting Difficulties

This was the first year that New York State polls had the new Ballot Marking Devices (BMD) available on election day. In Ulster County, New York, we had several situations where people tried to use the BMD but poll workers did not know how to use it. In one instance, the poll workers called the Ulster County Board of Elections for directions. This allowed the individual to enter a vote and print a ballot but the machine would not cast the vote. This individual tried two times and the BMD still didn't work so she voted on the old lever machine. This process took one hour.

Also, we continue to find many polling places where accessibility to the polling place is an issue. Despite repeated documentation and complaints, several locations still do not have accessible pathways to the building, paths are blocked so that people in wheelchairs cannot navigate, etc.

Fran Wishnick
Public Policy/Advocacy Director
Resource Center for Accessible Living (RCAL)
727 Ulster Avenue

From: natalie redmond [mailto:peqyarone@sbcglobal.net]
Sent: Sunday, March 08, 2009 8:32 PM
To: Vote
Subject:

The lines were way too long. There were no clear markings for those who had disability issues to go to a specific area. Then there were only two voting booths at our site for the handicapped. I waited in line nearly three hours and still had to wait inside the building. I have difficulty standing for long periods and my back was in severe pain from having stood that long. If it wasn't for a person standing near me and finding out if there were areas for the handicapped I was gonna leave. The parking was horrible as well.

Natalie Redmond

From: ted selker [mailto:ted.selker@gmail.com]
Sent: Saturday, March 07, 2009 12:55 AM
To: Vote
Subject: disabled voting problems

I have watched well over 200 polling places vote from 2000 to 2008.
I have seen consistency problems everywhere for disabled voters: Typically
- the "separate but equal" voting equipment is turned off or intimidating to election officials
- assisted voting gets abused by frustrated middle aged children
- assistive devices such as magnifiers are not easy enough to find when needed
- sample ballots are not used enough by people and are essential to reducing errors for disabled people.
- audio voting systems are difficult to use

I can give actual stories for each of these problems.

Ted Selker Ph.D
past co-director of Caltech/MIT Voting Technology Project

November 28, 2008

To: Jeff Dougan, Assistant Director, MOD
Michelle Tassinari, Director/Legal Counsel, MA Elections Dept.
Barry Rafkind, Co-Chair, Somerville Human Rights Commission
From: Eileen Feldman, Disability rights advocate, former chair, Somerville
Commission for Persons with DisAbilities

Jeff,

Thank you for your response to the inquiries from Barry and myself.

A sampling of Somerville polling sites were viewed during the Primary and Presidential Elections, 2008, and residents also reported problems they encountered to writer. [In addition, information was offered to city staff after 2006 polling site review- some information from that report included here, as may be relevant.]

Requests were made, in writing, for City ADA Coordinator and Elections Commissioner to evaluate all polling places prior to Election Day, but writer was informed that there were no issues to resolve. Notification was also provided to same staff, in writing, regarding various constituent complaints regarding AutoMARK machines during 9/16/08 Primary: the machines were not turned on, poll workers did not seem to know how to operate machines, ink not available, and headphones not available. Elections Commissioner responded that these problems were not evident to him during his inspection.

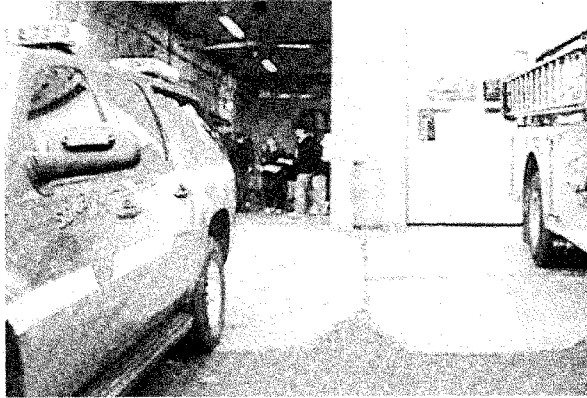
I contacted MOD Director for guidance in mid-October, no response.

Ward One, Precinct 1 (Capuano School): Constituent report: Door to accessible entrance was not capable of being operated without assistance.

Ward One, Precinct 2 (East Library): No van accessible parking space available. Interior not viewed; however, in 2006, an unobstructed path 36 inches wide was not available due to the crowded conditions.

Ward One, Precinct 3 plus Ward Four, Precinct 2 (Reilly-Brick Fire Station): Site inaccessible from designated HP space, from street, and from both ends of sidewalk because no continuous common surface. No level, smooth path to entrance. No van-accessible space. 4 Photos (11/4/08) follow:

Front ENTRANCE VIEW:



Sidewalk view from Walnut Street:



Sidewalk view towards polling entrance, from HP-designated spot:



Sidewalk terrain in front of entrance, side view::



Ward Two, Precinct 3: Viewed in 2006: No van-accessible parking provided.

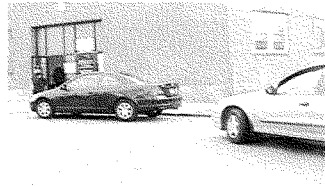
Ward Three, Precinct 2 (Cummings School): A parent reports that this school is not accessible; I have no further details.

Ward Four, Precinct 2 (Reilly Brick) see above.

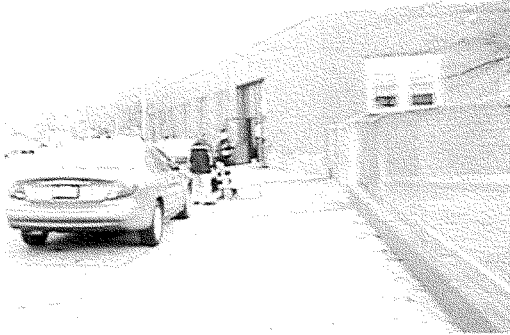
Ward Four, Precinct 3 (Winter Hill Community School): Constituent report: Door not independently operable.

Ward Five, Precinct 1 (DPW): [In 2006, polling room was viewed and poll workers interviewed. The room was cramped (no interior accessible aisle available), down stairs (no accessible entrance), and no van-accessible space.] In 2008: no van-accessible parking space. Interior not viewed. Sidewalk path to entrance not a continuous common surface. Photos (11/4/08) below.

Entrance curbcut blocked by cars:



Non-continuous sidewalk to DPW entrance:



HP signage:

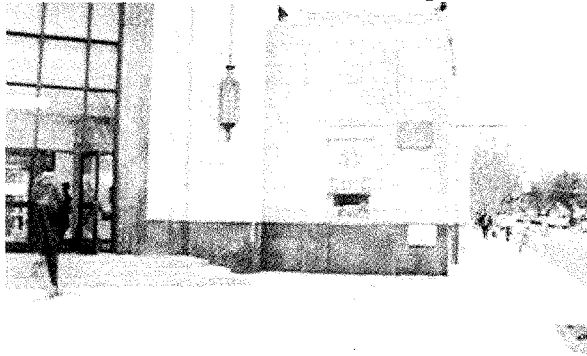


Ward Five, Precinct 2 (Browne School): A parent reports that this school has no wheelchair-accessible entrance. No further details available.

Ward Five, Precinct 3 (engine 7): 2 reports that ballots not made available at AutoMARK machine, and that that privacy sleeves were not provided once ballots were provided. One report that voter was not given option to vote independently, despite ability to do so. In addition, it was reported that poll workers talked about voters with disabilities as though they were invisible, even though they were standing right there (as in: "Do you think s/he'll need help?"). No van-accessible space.

Ward Six, Precinct 1 (Dilboy Post): "Accessible entrance" not independently accessible or by access code. No van-accessible space. Photos (11/4/08):

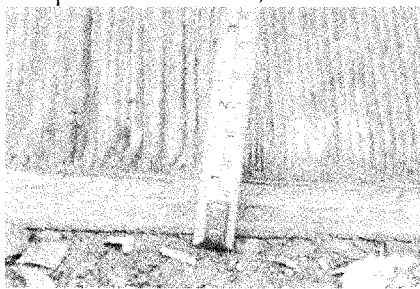
Main entrance (accessible entrance sign at bottom right of building):



Back entrance view- not independently accessible:



Ramp transition 1 inch, unbeveled:

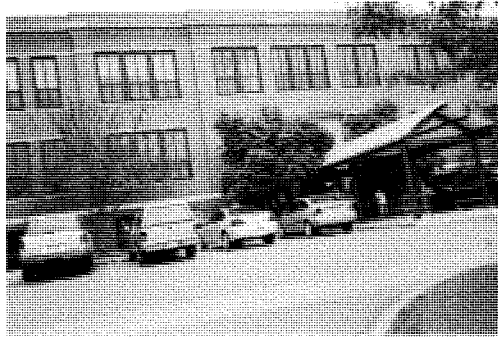


Ward Six, Precinct 2 (Ciampa Manor): Constituent report: Entrance not capable of being operated without assistance. Exterior viewed by writer: No accessible entrance signage posted (main entrance includes gate less than 36 inches wide). No van-accessible parking. [In 2006, interior was viewed: main entrance led to a down stairs polling room and no accessible interior route available.]

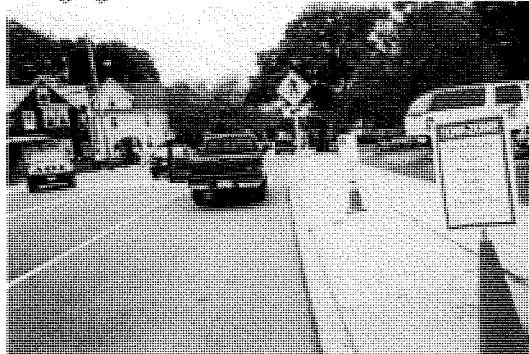
Ward Six, Precinct 3 (Chapel Street church): No van-accessible space.

Ward Seven, Precinct 1: (TAB building): Photos taken during Primary voting day, 9/16/08:

Van access denied:



HP signage:



Ward Seven, Precinct 3 (Teele Square Fire Station): No accessible entrance offered. Sidewalks from all sides not continuous or unobstructed; width of sidewalk from curbscut obstructed, preventing 36 inch continuous path to entrance. No van-accessible space, no drop off available. [In 2006, poll workers interviewed and displayed significant antipathy towards voters with disabilities not voting absentee. Discarded voter materials and books covered the "disabled voters" table. No interior accessible route.] (11/4/08 photo on Somerville Journal website showed no accessible entrance again.)

4 Photos from primary voting day, 9/16/08 follow.

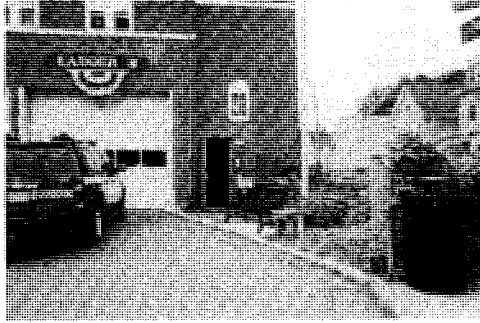
Sidewalk obstructed on all sides. This is approach from Holland Street.



Only available polling entrance:



No alternate accessible entrance provided:



HP Parking signage and sidewalk view:



WASHINGTON
LEGISLATIVE OFFICE



March 18, 2009

The Honorable Charles Schumer, Chairman
The Honorable Bob Bennett, Ranking Member
Committee on Rules and Administration
United States Senate
Washington, D.C. 20510

Hearing on "Voter Registration: Assessing Current Problems" (3/11/09)

Dear Chairman Schumer and Ranking Member Bennett:

On behalf of the American Civil Liberties Union (ACLU), its over half a million members, fifty-three affiliates nationwide, and countless additional supporters and activists, we commend the Committee for holding a hearing to explore the problems in our current voter registration system. We thank the Committee for allowing us to submit this letter for the hearing record documenting registration problems citizens encountered during the 2008 election cycle.

Introduction

According to the Cooperative Congressional Election Survey, 4 million registered voters did not vote in the 2008 presidential election because of administrative problems.¹ Another 4 million to 5 million people reported administrative problems as the reason for not registering.² In order for the United States to continue as one of the world's leading democracies, it must ensure all eligible citizens are able to register and cast their ballots. Unfortunately, onerous requirements and extensive problems with our country's voter registration system have disfranchised millions of voters.

The ACLU's Voting Rights Project has documented many of these problems and has litigated cases across the country to protect our citizens' rights to register and cast a ballot. This letter will summarize some of the registration issues that stood as both administrative and legal obstacles to voters during the 2008 election.

¹ *Voter Registration: Assessing Current Problems: Hearing Before the S. Comm. on Rules and Administration*, 111th Cong. 1 (2009) (statement of Stephen Ansolabehere, Professor, Department of Government, Harvard University, Cambridge, M.A.), available at http://rules.senate.gov/public/index.cfm?FuseAction=CommitteeSchedule.Testimony&Hearing_ID=c33b5ae8-ace8-413e-85db-a256ce6169f6&Witness_ID=e394ba39-8bf4-441c-8ed3-6e8c68c4b23.

² *Id.*; see also Editorial, *Shut Out at the Polls*, WASH. POST, Mar. 16, 2009, at A16, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/03/15/AR2009031501668.html?referrer=emailarticle>.

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RICHARD JACKS
TREASURER

Processing of Registration Forms and Absentee Ballots

In September 2008, in letters to the Senate Judiciary Committee, House Judiciary Subcommittee on the Constitution, Civil Rights, and Civil Liberties, and the House Administration Subcommittee on Elections, the ACLU discussed its concerns that DOJ was failing to assist state election officials in facing the unprecedented administrative challenge of backlogged registration applications.³ In 2004, DOJ received many complaints from people who said they were registered to vote, but had not appeared on the voter lists.⁴ Frequently, these people were newly registered voters whose applications had not been processed.⁵ We expressed concern, based on this past experience, that state election officials' failure to process applications, to resolve eligibility prior to rejection of applications, or to clear backlogged new applications would disfranchise many citizens, especially minority and young voters.

As predicted, in the 2008 election season, citizens registered to vote in record rates. Unfortunately, in many instances, election officials failed to process voter registration forms and absentee ballot applications on a timely basis thereby preventing citizens from voting. During the monitoring of the election, the ACLU received calls from people who said the registration forms they filled out at their local motor vehicle offices had not been processed, or that, similarly, their requests for absentee ballots had not been processed or the requested ballots were not received in time to vote.

Registration List Matching Issues

Much of the ACLU's 2008 election litigation dealt with voter registration list problems. State party officials challenged registered voters and voter registration applicants as non-residents based on various database matches or comparisons. For example, in Montana, Republicans challenged 6,000 potential Democratic registered voters as non-residents prior to the 2008 election because their names appeared on a U.S. Postal Service change of address registry. The Secretary of State, however, instructed the counties involved not to process the challenges. A federal court, in a suit brought by the Montana Democratic Party, later ruled that the "timing of the challenges is so transparent it defies common sense to believe the purpose is anything but political chicanery."⁶

In other states, election officials pressed for voter database matching. For example, Georgia, relying upon a comparison of voter registration lists with drivers' license lists, sent letters to

³ Letter from Caroline Fredrickson, Director and Deborah J. Vagins, Legislative Counsel, Washington Legislative Office, American Civil Liberties Union to Chairman Patrick Leahy and Ranking Member Arlen Specter, Committee on the Judiciary, United States Senate (Sept. 9, 2008) (on file with authors), available at http://www.aclu.org/images/asset_upload_file353_36689.pdf; Letter from Caroline Fredrickson, Director and Deborah J. Vagins, Legislative Counsel, Washington Legislative Office, American Civil Liberties Union to Chairman Jerrold Nadler and Ranking Member Trent Franks, Subcommittee on the Constitution, Civil Rights, and Civil Liberties of the Committee on the Judiciary and Chairwoman Zoe Lofgren and Ranking Member Kevin McCarthy, Subcommittee on Elections of the Committee on House Administration, United States House of Representatives (Sept. 23, 2008) (on file with authors), available at http://www.aclu.org/images/asset_upload_file396_36895.pdf.

⁴ *Lessons Learned in the 2004 Presidential Election: Hearing Before the Subcomm. on the Constitution, Civil Rights, and Civil Liberties of the H. Comm. on Judiciary*, 110th Cong. 3 (July 24, 2008) (Statement of Gilda R. Daniels, Asst. Professor, Univ. of Baltimore School of Law).

⁵ *Id.*

⁶ *Montana Democratic Party v. Jacob Eaton*, Case 9:08-cv-00141-DWM, at 10 (D. Mont. Oct. 8, 2008).

5,000 voters or applicants for registration advising them that they would not be allowed to vote in the November 2008 election unless they submitted proof of citizenship. A three-judge court ruled that the database matching constituted a change in voting that first required pre-clearance by the Department of Justice under Section 5 of the Voting Rights Act. The court further required the state to notify all those who had been sent challenge letters that they would be allowed to vote on Election Day through a special procedure ordered by the court, after which their votes would be counted if they established their citizenship.⁷

In Ohio, the state Republican Party attempted to purge registration lists and/or challenge newly registered voters whose information did not perfectly match Department of Motor Vehicle records. In fact, almost a third of all newly registered voters in Ohio had some problem with the database match. Not surprisingly then, on Election Day, the ACLU received calls on its voter protection hotline from people who showed up at the polls to vote, but whose names did not appear on the registration lists.

Time Periods for Registration Prior to an Election

Currently, there is a patchwork of laws across the country with varying registration requirements for individuals who move less than 30 days before an election. Relocating from one state to another should not cause someone to lose his or her right to vote. In practice, however, these laws can prevent citizens from voting, and often disproportionately impact young voters and military families who are frequently more mobile. Moves within a state can be even more complex, with rules sometimes depending on when the voter moved and whether the voter moved across precinct, city, or county lines. In Ohio, the ACLU even documented problems where voters were threatened with prosecution for requesting ballots if they had not been registered for 30 days in advance of the November 2008 election. Such complexity breeds confusion and calls out for a simplified standard.

Proof of Citizenship for Voter Registration

Proof of citizenship requirements have also deprived many people of the right to vote. For example, Arizona voters approved a proof of citizenship requirement for voter registration in 2004. Between January 2005 and the fall of 2007, 31,550 voter registration applications were rejected for failure to provide proof of citizenship. Only 11,000 of the total were subsequently able to register, even though some 90 percent of the applicants claimed the United States as their place of birth. The district court upheld the constitutionality of the proof of citizenship statute in a challenge brought by several plaintiff groups.⁸

Student Voter Registration Requirements

The ACLU has found that students in several states have been subjected to improper residency challenges. Many local jurisdictions apply a special, and unconstitutional, presumption that students cannot be residents of the places where they attend school. For example, the ACLU worked on behalf of students at Georgia Southern University in Statesboro, who had been challenged as non-residents. Currently, the ACLU and other organizations are investigating complaints from students attending Georgia Southern College in Cochran, who were denied the right to vote in 2008 because they were not deemed to be local residents.

⁷ *Morales v. Handel*, No. 1:08-CV-3172 (N.D. Ga. Oct. 27, 2008).

⁸ *Intertribal Council of Arizona, Inc. v. Brewer*, No. CV06-01362 (D. Ariz. Aug. 20, 2008).

Georgia was not the only instance of local officials dissuading students from registering in 2008. This past fall, a registrar in Virginia incorrectly advised students attending an in-state university that their parents would not be able to claim them as dependents on their federal income tax returns if they registered to vote in Virginia. To help disseminate corrective registration information, the ACLU of Virginia faxed letters to 30 local registrars in Virginia urging them to allow students to register to vote where they were attending school. The ACLU of Virginia also sent letters to local Virginia papers setting out the legal standards for student registration.

Homeless Voter Registration Requirements

There are also inconsistent standards for homeless voter registration. A person need not have a home in order to register and vote, but that fact is not widely understood. Only thirteen states have enacted homeless voting rights statutes. Fifteen others have some sort of written policy or formal opinion allowing homeless voter registration. The remaining states rely on judicial decisions or informal guidance, and too often that information does not filter down to lower level election workers. Even those states that have statutes or binding decisions protecting homeless voter registration have widely varying requirements. For example, some require a mailing address while others do not; some will accept a post office box while others will not. The resulting inconsistency operates as a barrier to full participation by homeless Americans, a disproportionate number of whom are veterans of our military.

Felony Disfranchisement Laws and Misinformation

In a recent report, the ACLU and the Brennan Center documented that confusing and highly varied state laws regarding voter registration for citizens with a past felony conviction have led to the dissemination of incorrect information regarding those citizens' ability to register.⁹ Inaccurate information regarding registration eligibility has led to widespread disfranchisement of eligible voters across the country.¹⁰ For example, in February 2009, the ACLU filed suit in South Dakota against state and local election officials who refused to allow people to vote who were convicted of offenses, but not sentenced to prison, despite state law which allows such persons to vote.

In Alabama, the ACLU is challenging that state's lack of clarity over what crimes are disfranchising. The legislature has compiled a short list of such offenses; however, the state's Attorney General has compiled a much more extensive list that is being used to prevent people from voting. Such unnecessary and confusing registration standards have led to the disfranchisement of untold numbers of would-be voters in Alabama and have left litigation as the only option to clarify the standards for an eligible citizen's right to vote.

Finally, the ACLU is also challenging a state law in Arizona that does not allow individuals with former felony convictions to register and vote until they have paid all their court costs, fines, and restitution associated with their sentence. The plaintiffs contend that conditioning the right to vote on the payment of any fee is in the nature of a poll tax in violation of the Twenty-Fourth Amendment. The complaint was dismissed by the district court and is now on appeal.

⁹ ERIKA WOOD & RACHEL BLOOM, DE FACTO DISENFRANCHISEMENT 6 (2008), available at http://www.aclu.org/pdfs/racialjustice/defactodisenfranchisement_report.pdf.

¹⁰ *Id.*

Conclusion

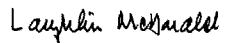
We appreciate the Committee's examination of the problems associated with our country's current voter registration system. Due to inconsistent information, onerous requirements, and improper election administration our registration system all too frequently robs citizens of their fundamental right to vote. Reforming our nation's registration system, with appropriate safeguards, should be a high priority for Congress. We look forward to working with the Committee as it seeks solutions to these problems and expands voter access.

If the Committee would like any additional information regarding the summaries described above or has any additional questions, please contact Deborah J. Vagins at (202) 715-0816 or dvagins@aclu.org.

Sincerely,



Caroline Fredrickson
Director
ACLU Washington Legislative Office



Laughlin McDonald
Director
ACLU Voting Rights Project



Deborah Vagins
Legislative Counsel
ACLU Washington Legislative Office

cc: Members of the Senate Committee on Rules and Administration



Association of Community Organizations for Reform Now

The Honorable Charles Schumer
Chairman, Committee on Rules and Administration
United States Senate
30 Russell Office Building
Washington, DC 20510

The Honorable Bob Bennett
Ranking Member, Committee on Rules and Administration
United States Senate
30 Russell Office Building
Washington, DC 20510

Dear Chairman Schumer and Ranking Member Bennett,

Thank you, on behalf of the more than 400,000 member families of the ACORN (Association of Community Organizations for Reform Now) for the opportunity to submit this testimony on the important work of voter registration and ways to improve the process of including all Americans in our democracy.

Although decades of work by civil rights advocates and civic groups – with the help of laws like the Voting Rights Act and the National Voter Registration Act (NVRA) – have reduced barriers to registration and voting for many Americans, too many obstacles remain in the way of full civic participation.

Registration rates for African Americans lag Whites by 10 percentage points (71 percent to 61 percent). Latinos (54 percent) and Asian Americans (49 percent) lag even further. Only half of eligible young Americans, ages 18-29, are registered to vote. Low income people vote at much lower rates than the more affluent. *These disparities in electoral participation weaken our democracy and distort public policy by making elected officials less accountable to citizens from disenfranchised communities.*

In order to reduce these disparities in our electorate and help build a more truly representative American democracy, ACORN has conducted major, non-partisan voter registration drives in the last several years—talking face to face to millions of Americans about the importance of voting, and helping people complete and submit voter registration applications.

In 2008 ACORN surpassed its goals by collecting and submitting more than 1.3 million voter registration forms from Americans living in low income and minority communities. Based on past studies of voter registration drives and samples from our own work, we estimate that seventy percent (over 900,000) of these applications resulted in keeping existing voters on the rolls or adding new voters to the rolls: Hundreds of thousands of young, minority, and low-income citizens registered for the

first time, while hundreds of thousands of otherwise eligible voters updated their voter registrations to their current address.

Voter registration drives by civic groups contributed to a surge in voter turnout among young people, people of color, and low-income citizens, making the 2008 electorate more representative of America than in previous elections. Below, we share some of the information about how we conducted this work, challenges we faced, and our recommendations for involving all Americans in our democracy.

How ACORN conducted its voter registration work

In 2008, ACORN implemented the most sophisticated quality-control system in the voter engagement field. Each application collected was examined by independent staff for completeness and tagged and bundled so we could tell which employee gathered it. Registrations were entered into a database by an outside vendor, and call centers made several attempts to reach each and every registrant to verify their information. Where we were able to do so, ACORN worked to "cure" incomplete registrations by contacting voters to get information about missing or inaccurate entries—such as county or zip-code information—that could cause a registration to be rejected.

ACORN turned applications in to election officials in three stacks with separate, detailed cover sheets: 1) those that ACORN believed were complete and ready for processing, 2) those that required additional information and 3) those that ACORN thought were suspicious and should be carefully reviewed by election officials in order to verify the authenticity of the information on the applications.

Election officials generally recognized ACORN's good work and praised our quality control systems. In the course of our voter registration drives, ACORN routinely met and communicated with state and local election officials to review the quality of our work and to establish cooperative relationships.

Unfortunately, a few election officials either ignored ACORN's attempt to notify them of applications that needed further review or did not conduct such a review. In all cases, ACORN staff and lawyers sought to work closely with election officials to resolve any problems and make the process of enfranchising American citizens as efficient as possible.

Understanding voter registration drives

In the course of this work, ACORN hired more than 12,000 workers to help people register to vote and verify their information. As with any business or agency that operates at this scale, there are always some people who want to get paid without doing their job, or who aim to defraud their employer. Any large department store will have some workers who shoplift. Any large voter registration operation will have some workers who turn in bogus registration forms – not because the "Jimmy Johns" whose name they put on a registration form will ever attempt to vote on Election Day, but because they want to get paid without actually making the effort to help

register actual voters.¹

ACORN has a zero-tolerance policy for any employee deliberately falsifying registrations, and in the cases where our internal quality controls identified this happening, we fired the workers involved and turned them in to election officials and law-enforcement.

Contrary to rumor, ACORN paid its canvassers by the hour, not by the card.

Fortunately, only a small fraction of the workers we hire try to defraud ACORN in this way, but we have a significant stake in making sure employees know we will fire them and encourage prosecution when we catch them.

No criminal charges related to voter registration have ever been brought against ACORN itself or its partner organizations. Convictions against individual former ACORN workers have been accomplished with our full cooperation and often at our suggestion using the evidence obtained through our quality control and verification processes — evidence which, in most cases ACORN called to the attention of authorities. Press stunts notwithstanding, ACORN's staff and attorneys have not received notification or information indicating the organization itself is under investigation by any government entity anywhere in the country.

Some poorly-reported media accounts further conflated instances of fraudulent voter registration cards, which constituted no more than a percent or two of all the applications we collected with the more routine problems endemic to any effort to collect large amounts of information from the field such as incomplete voter registration cards (applications missing information), handwriting errors, or cards where the voter entered erroneous information or submitted a card not realizing he or she was already on the rolls.² These distinctions are important yet some media outlets reported on voter registration without discussing them.

Predictably, however, partisan forces tried to use these isolated incidents to incite fear of widespread voter fraud. In 2008, ACORN staff and volunteers had to contend with break-ins and vandalism to their offices, racist harassment messages, and death threats as they went about the work of helping their fellow citizens register to vote.

The numerous attacks on ACORN voter registration drives and the inflammatory media reports were all based on the same false and discredited premise: that a voter registration application that contains incorrect information represents an attempt, or at least an opportunity, for someone to commit "voter fraud," i.e. cast an

¹ For example, a number of news reports made much of a voter registration card turned into election officials in Lake County Indiana with the name "Jimmie Johns"—a local sandwich shop. What they almost all failed to report that ACORN's Quality Control staff had attached a "problematic card report coversheet" which stated this very fact.

² While there is very little research in this area, a comparison of voter registration records from the state of Pennsylvania indicated that cards collected by civic groups had a lower rate of errors than those that voters completed on their own or while doing business in government offices.

improper ballot. As numerous studies and reports by responsible media have demonstrated, *this is simply not the case.*³

Fraudulent voting itself is close to non-existent in the United States, and there has never been a single documented instance of a fraudulent voter registration form resulting in an improper vote. Even if someone wanted to influence the election this way, it would not work. Election officials have to verify the identity of each registrant and, if somehow a person made it onto the rolls improperly, they would be a sitting duck to be nabbed and prosecuted as soon as they showed up to vote.

Why civic groups must turn problematic cards over to election officials

In almost all states and localities, ACORN is required either by state law, local election officials or good legal judgment to turn in every voter registration application, even if ACORN supervisors know that the card is incomplete or fake. Some states have explicit laws requiring the submission of all signed voter registration applications. Other states or localities have policies that require that an application be turned in within a given time period—implying that it must be turned in. In all cases, it is election officials who have the final right and responsibility to determine if a card is valid.

In every state, the worst possible decision an organization could make is discard a registration application that turns out to be valid, thus disenfranchising a voter. This would be in opposition to our organizational goal of helping all citizens register and vote, and would be a legal liability as well. So the advice of our counsel has been in almost every case to turn in every single card, identifying in writing any suspected problems.⁴

Improving the voter registration process

Voting rights and voter registration are fundamental components of our democracy and should not be partisan issues. ACORN's voter registration work reached out to and helped enfranchise American citizens from the most underrepresented and disenfranchised communities.

As today's hearing of the Senate Rule Committee will undoubtedly demonstrate, the U.S. Justice Department has an important role to play in the protecting of voting

³ One of the more comprehensive studies on the topic is "The Politics of Voter Fraud" by Barnard professor Lori Minnite. projectvote.org/fileadmin/ProjectVote/Publications/Politics_of_Voter_Fraud_

⁴ ACORN voter engagement and legal staff met with elections officials around the country as we began our voter registration drive in 2007-8 and discussed our procedures with them. In only three localities did elections officials ask us to turn cards we knew to be fraudulent into local law enforcement rather than (as opposed to delivering them to the elections office with problems flagged). Because this was allowable under these states' laws, we agreed to do this only if we were 100% certain that it could not possibly be an application from a legitimate voter—and that only occurred in one place.

rights for all our citizens. Existing laws make it clear that efforts to intimidate voters and organizations helping them are criminal offenses. Aggressive enforcement of these laws should be a high priority for the Justice Department going forward.

In considering longer-term legislation to address problems with the voter registration process, it is worth bearing in mind the fact that in many other democracies, ensuring citizens are registered to vote is a government responsibility. ACORN's members and staff would be the first to applaud a system that takes responsibility for addressing the disparities in the electorate off the shoulders of community organizations. A system of voter registration in which the government maintains and updates list of citizens who can vote would allow community organizations to focus on talking to citizens around public policy issues, rather than handling the mechanics of voter registration.

An important interim step in this direction would be to increase state compliance with the National Voter Registration Act (NVRA). Passed in 1993, the NVRA was intended to help close gaps in the electorate by requiring that states reach out to register citizens through commonly used services: motor vehicle offices and public assistance agencies.

To date, however, too many states have met the public agency provisions of the NVRA with reluctance, resistance, or outright refusal. A 2008 report by Project Vote and Demos, *Unequal Access: Neglecting the National Voter Registration Act 1995-2007*, documented that the number of registration applications from public assistance agencies was in fact at an historic low.

ACORN has worked with public officials and, where necessary, gone to court to see that public agencies provide registration opportunities to the citizens they serve.

Missouri: A Success Story

A model of what can be achieved by bringing states into compliance with the NVRA is the outcome of the 2008 federal case *Acorn v. Scott* in the state of **Missouri**.

In April 2008 a lawsuit, *Acorn v. Scott*, was filed charging that the Missouri Department of Social Services DSS had failed to fulfill its legal obligations to provide voter registration services to all public assistance clients. The state's compliance with NVRA had fallen from 1995-1996, when the state was a leader in registering voters through public assistance agencies with over 143,000 registrations, to an appalling 15,500 public agency registrations in 2005-2006. "Substantial evidence" of voting rights violations cited in the Court's ruling include emails between two DSS employees acknowledging that voter registrations applications completed by clients had been allowed to pile up for more than a year, through several elections.

On July 15, 2008 Judge Nanette K. Laughrey issued an order directing the Missouri DSS to immediately comply with NVRA. The order instructed Scott and Luck to send notice within five days to all DSS locations informing them that compliance with NVRA was mandatory and required by law, with failures subject to citation for contempt of court. Following this landmark ruling, the attorneys for the plaintiffs in

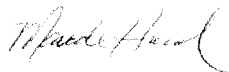
ACORN v. Scott began negotiating a settlement with DSS, and opened discussions with the state's WIC program to improve Missouri's implementation of NVRA.

As a direct result of the court order, registrations through Missouri DSS agencies skyrocketed in the six-week period following implementation: **more than 26,000 Missourians registered to vote through Missouri DSS agencies from mid-August through the end of September**. This six-week total surpassed the number of registrations the state collected in public assistance agencies during all of 2005 and 2006 combined.

Such impressive results clearly indicate that Missouri's public assistance agencies could have registered hundreds of thousands of voters over the last two years had they implemented the law properly, and provide a perfect example of what can be achieved when states comply with the NVRA and live up to their responsibility to make voting easy and accessible for all Americans.

Any federal legislation or regulatory action regarding voter registration and election participation should be considered with the goal of building a more inclusive and representative democracy.

Sincerely,

A handwritten signature in cursive script, appearing to read "Maude Hurd".

Maude Hurd
President, ACORN



March 17, 2009

The Honorable Charles E. Schumer, Chairman
U.S. Senate Committee on Rules and Administration
305 Russell Senate Office Building
Washington, DC 20510

Re: Voter Registration: Assessing Current Problems

Dear Chairman Schumer:

Advancement Project is pleased to accept the Committee's invitation to provide follow-up comments concerning the Committee's March 11, 2009 hearing topic, "**Voter Registration: Assessing Current Problems.**" We are a policy, communication and legal action civil rights organization that supports organized communities in their struggles to achieve universal opportunity and a just democracy. Voter protection is a central component of Advancement Project's Power and Democracy program, which supports community-based efforts to increase civic participation, improve election administration, and remove structural barriers to electoral participation in low-income and minority communities.

Since its founding in 1999, and particularly in the years following the 2000 election debacle, Advancement Project and its local community partners have been monitoring the administration of registration and voting in several states, investigating inefficient and inequitable election practices, and challenging state and local election officials where there have been legal and constitutional lapses. During that time, as a result of increased scrutiny and activism from voting rights advocates, as well as the efforts of several state and local election officials to institute needed reforms, we have witnessed some incremental improvements in America's system of election administration. In addition, Congress's passage of the Help America Vote Act of 2002 ("HAVA") has brought about additional discrete reforms, including requirements that all states (1) implement and maintain a unified, statewide computerized list of registered voters, and (2) offer provisional ballots to any voter who appears to vote on Election Day, claiming to be registered and qualified, but is not listed on the precinct register. Unfortunately, these reforms have proved to be incomplete and inadequate. Indeed, some of HAVA's well-intentioned "fixes" have themselves created dramatic problems, because of the lack of uniformed, defined federal standards, coupled with dramatically divergent interpretations of the same federal statutory language by different state and local election officials and different federal courts.

In November 2008, an energized electorate navigated complicated voter registration rules, appeared to vote with necessary identification, and endured long lines to vote at record levels in the presidential election. While the high level of voter participation shows that our democracy is strong, a wide range of structural barriers to voter registration and voting persists. These barriers — present at the federal, state and local level — prevent full enfranchisement of all eligible voters, particularly voters in low-income communities and communities of color.

These comments will review several of the major election administration barriers that Advancement Project identified during and prior to the 2008 election season and then offer several potential solutions that Congress could enact to improve voter access and reduce the disenfranchisement that often results from election official errors, while still preserving electoral integrity.

BACKGROUND

Despite the recent national focus on election administration, the United States is still a long way from ensuring that every eligible voter is registered and able to cast a ballot that is counted. Some obstacles are longstanding. Others sprang up more recently, as the unintended consequences of legislation meant to fix election problems. We discuss below six of the major election administration problems that Advancement Project has encountered and worked to mitigate and/or eliminate through its voter protection efforts:

- Voter registration barriers caused by identification matching procedures
- Overuse and misuse of provisional ballots
- The threat of voter caging and unfounded challenges to voters' eligibility
- Inadequate and inequitable polling place resources, including a lack of poll worker training
- Unauthorized purging of voter registration rolls
- Laws and practices that disqualify voters with felony convictions

While these flaws in election administration are widespread, they are not evenly distributed. Low-income communities of color are disproportionately affected. The Help America Vote Act of 2002 — intended to remedy some of the list maintenance and other administrative deficiencies that allowed for widespread disenfranchisement in the 2000 election — has proved to be an incomplete fix and a mixed blessing. Varying interpretations of the statute by state and local election officials and the federal courts have led to alarmingly unpredictable results, and all too often disenfranchisement. In particular, HAVA's flawed identification matching procedures and provisional balloting system have created barriers to voter registration and voting, and those barriers fall heavily on voters of color. Advancement Project supports amendments to HAVA to address barriers that prevent full enfranchisement in our democracy. Correcting the shortcomings of HAVA will ensure that the Act serves its original purpose to provide minimum federal standards for "uniform and nondiscriminatory election technology and administration." 42 U.S.C. § 15481.

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Another federal election statute, the National Voter Registration Act of 1993 ("NVRA"), requires amendment and clarification to protect voters from unwarranted removal from the voter rolls. In addition, Congress should enact new legislation, or empower the Election Assistance Commission to establish appropriate uniform regulations, to ensure that our nation's poll workers are adequately trained and that each polling place is appropriately staffed with a sufficient number of voting machines (in those jurisdictions where they are used), voting booths (in those jurisdictions that use paper ballots), emergency ballots, telephone lines, and real-time connections to the statewide voter registration database to prevent long lines, unnecessary disenfranchisement resulting from poll worker error, and to otherwise protect voters' rights. In addition, Congress should enact legislation to permit people with felony convictions who have been released from confinement to vote in federal elections.

ANALYSIS

Voter Registration Barriers Resulting from Misinterpretations of HAVA

HAVA was federal lawmakers' response to the 2000 presidential election. The Act aims to restore confidence in our election process by ensuring some degree of uniformity and equality in states' administration of elections. Among other things, HAVA sets standards to improve the reliability of voter registration lists. 42 U.S.C. § 15483. Unfortunately, because of a lack of uniform definitions as to some crucial terms such as "jurisdiction," some state legislators and election officials misinterpret HAVA in ways that place onerous burdens on voter registration and voting — burdens that Advancement Project views as illegal and unconstitutional — and that lead to inconsistent and unpredictable enforcement of federal election law.

Under HAVA, states must attempt to match a voter applicant's driver's license number or Social Security number, and other personal information, against the state's motor vehicle or the federal Social Security Administration database. Although HAVA does not explicitly prescribe the consequences of a matching failure and leaves to the states the "specific choices on the methods of complying" with its requirements, see 42 U.S.C. § 15485, Advancement Project believes that the clear intent and purpose of HAVA was not to make successful database matching a prerequisite to voting in any jurisdiction. Congress's failure to articulate uniform and clear standards for database list matching has wreaked havoc in many states. While most states honor the spirit of HAVA by not refusing to register a voter applicant whose name and other personal identification information does not match exactly with a record in the motor vehicle or Social Security database, a few states use this database no-match as a reason to disenfranchise otherwise eligible citizens.

In Florida, for example, the state legislature passed a law that makes an exact database match a condition of registration. That statute was upheld by a divided panel of the Eleventh Circuit Court of Appeals against a claim that it violated HAVA and the materiality clause of the Voting Rights Act.¹ As the dissenting Eleventh Circuit judge explained, making matching a registration prerequisite is problematic because "numerous administrative and technological barriers, such as

¹ *Florida State Conference of the NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2008) (vacating district court's preliminary injunction enjoining Florida's "no match, no vote" statute, § 97.053(6), Fla. Stat. as preempted by HAVA and the materiality clause of the Voting Rights Act).

computer glitches or human error . . . make the possibility of non-matches for qualified voters a strong possibility.² Moreover, matching errors are more common among voters of color. During 2006 and 2007 in Florida, the majority (65 percent) of would-be voters disenfranchised by matching problems were African American (26 percent) and Latino (39 percent), although they made up only 28 percent of the applicant pool.³

Likewise, in other states, HAVA matching practices may inadvertently disenfranchise eligible voters. In Missouri, although the state has a policy of allowing voters to cure matching problems at the polls and vote by regular ballot, the practical effect of a failed match is to prevent the printing of that voter's name to the poll list and prevent the voter from receiving information about his or her assigned polling place — thereby throwing a voter's registration into limbo and significantly increasing the likelihood that the voter will be effectively disenfranchised.

Even in states where database matching is not a prerequisite to voter registration, the matching process flags voters and makes them vulnerable to challenges to their eligibility. For example, in 2008, Ohio and Pennsylvania did not require matching as a precondition to registration. However, the Republican parties in those states signaled their intent to challenge unmatched voters' eligibility and thereby force such voters to cast provisional ballots—which may be rejected for a range of administrative reasons unrelated to the voters' eligibility. Thanks to aggressive advocacy by Advancement Project and other advocates, the state Republican parties did not follow through on their threats to file mass challenges to non-matched voters in Ohio or Pennsylvania in this election cycle. Nevertheless, the matching processes dictated by HAVA, coupled with state challenger laws, create a risk that unmatched voters may be disenfranchised in future election cycles.

Overuse and Misuse of Provisional Ballots

Section 302(a) of HAVA was enacted to ensure that all voters in federal elections have access to provisional voting in cases where they do not appear on the precinct list or an election official raises some other challenge to their eligibility. 42 U.S.C. §§ 15482(a). But states' implementation of provisional voting has made this federal protection a mixed blessing at best. Indeed, poor interpretation or implementation of Section 302(a)'s requirements at the state level sometimes causes the very type of disqualification and disenfranchisement that the statute was created to fix.

Advancement Project investigated provisional ballot use and misuse in the 2006 general election in Ohio and Florida and issued a report that documents a constellation of problems. For example:

- Poll workers directed voters to the wrong voting location, or failed to direct them to the voting location assigned to their precincts, causing their provisional ballots to be rejected under state law
- Provisional ballots were rejected under state law because of administrative errors, such as incomplete envelopes and missing signatures

² *Id.* at 1176 n. 5.

³ *Id.* at 1176 n. 4.

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Provisional Voting: Fail-Safe Voting or Trap Door to Disenfranchisement? (Advancement Project, 2008), available at <http://www.advancementproject.org/pdfs/Provisional-Ballot-Report-Final-9-16-8.pdf>. Although data on the states' use of provisional ballots in the 2008 presidential election cycle is not yet fully available, Advancement Project suspects, based on its prior research, that significant problems with provisional ballot administration likely recurred. In Ohio, for example, voters cast 206,155 provisional ballots in 2008 — a record number — of which 39,845 (or, over 19%) were rejected. Our review of calls to non-partisan voter hotlines reveals that misdirection from poll workers caused some voters to cast a provisional ballot in the wrong precinct.

A whole set of problems flow from state laws that require the disqualification of provisional ballots cast in the “wrong precinct” — i.e., at a voting location other than the one assigned to the voter's precinct of residence. Advancement Project contends that such “wrong precinct” rules misconstrue and violate HAVA's provisional ballot guarantee. Even assuming that such rules are facially legal, as some courts have held,⁴ they are being applied in ways that violate voters' rights under HAVA and the due process clause of the Fourteenth Amendment. The problems center on the process encountered by voters on Election Day, which is fraught with errors and lapses on the part of poll workers. Too often, if a voter's name is not on a precinct roster, poll workers simply issue the voter a provisional ballot — without bothering to check whether the voter is in the correct location. This problem is compounded in multi-precinct polling places. Advancement Project found that in many instances, voters whose provisional ballots were rejected as cast in the wrong precinct were actually at the right polling place, but at the wrong precinct table. If poll workers had instructed these voters to walk across the room, their votes would have counted.

Urban communities, where younger voters, voters of color, and lower-income voters tend to be concentrated, are more vulnerable to disenfranchisement by the “wrong precinct” rule. Residents of those communities are more likely to rent and to change residences frequently, resulting in more frequent changes in precinct assignments. In addition, urban areas tend to have more multi-precinct polling places and numerous polls located within a neighborhood. When poll workers issue provisional ballots that can never be counted, they transform a tool intended to protect voters from disenfranchising administrative errors into a tool of disenfranchisement.

Unauthorized Purging of Voter Rolls

The National Voter Registration Act of 1993 (NVRA) limits the circumstances under which states may remove voters from the rolls. 42 U.S.C. § 1973gg-6 (2008). In some cases, however, states continue to purge voter rolls in ways that violate those limits. For instance, less than a month before the November 2008 election, Advancement Project obtained temporary federal injunctions against election officials in Michigan and Colorado to stop illegal purging practices.⁵ Both states

⁴ See, e.g., *Sandusky County Dem. Party v. Blackwell*, 387 F.3d 565 (6th Cir. 2004) (reversing the district court's holding that HAVA requires provisional ballots cast out of precinct to be counted).

⁵ See *United States Student Ass'n Found. v. Land*, 546 F. 3d 373 (6th Cir. 2008) (denying stay of injunction prohibiting rejection of voter registration when voter identification card was returned as undeliverable and reinstating all registrations canceled for that reason); *Common Cause of Colorado v. Coffman*, Civ. Act. No. 08-cv-2321-WYD, U.S. Dist. Colorado, trans. telephone conf. Oct. 31, 2008 (finding violation of federal law and ordering secretary of state to cease removing any voters from the state voter registration database prior to upcoming election).

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were disqualifying new registrants whose voter registration cards were returned as undeliverable. As the Sixth Circuit found, that practice violates the NVRA's requirement that systematic purges of voters whom an election authority believes have moved may occur only after a voter (1) fails to return the residency confirmation notice sent by forwardable mail and (2) fails to vote or otherwise confirm or update their voter registration information within the two federal general election cycle following receipt of the notice. 42 U.S.C. § 1973gg-6(d). In addition, Colorado was continuing to purge voters systematically in violation of the NVRA's ban on such purge programs within 90 days of a federal election, *id.* at § 1973gg-6(c)(2), until ordered by a federal judge to stop.

Michigan, like a few other states, also maintained a purge program whereby a voter's registration was immediately canceled whenever the state received notification from another state's driver's licensing authority that the voter had surrendered his or her Michigan license and applied for a driver's license in that state. This program results in the purging of approximately 70,000 voters each year. Instead of sending a residency confirmation notice to the voter and waiting the required two federal general election cycles, as required by Section 8 of the NVRA, Michigan simply presumes that the voter who obtains an out-of-state license intends to change his or her permanent residence for voting purpose and immediately canceled the registration. A federal court has already determined that shortcut purge programs like this violate the NVRA.⁶

Inadequate Poll Worker Training and Inequitable Polling Place Resources

There are no federal minimum standards for the training of poll workers. Nor are there any federal standards for the allocation of poll workers to polling places – or for the provision of other resources, such as voting machines, paper ballots, and electronic poll lists—which leads to disparate Election Day experiences and the disenfranchisement of voters whose polling locations are inadequately supplied.

Inadequate poll worker training causes numerous breakdowns in election administration, which in turn cause disenfranchisement. Poorly trained poll workers may not know their state's identification requirements and so may demand excessive identification and thus disqualify eligible voters. Not knowing how to handle voting technologies can cause machine breakdowns, the excessive use of paper ballots, and long lines that in turn disenfranchise voters who cannot wait hours to vote. See *Poll Worker Training: Is Your State Complying with the Law?*, Advancement Project, Sept. 2008, available at <http://www.advancementproject.org/pdfs/vpp/pollworkertrainingbrief.pdf>.

Likewise, inadequate and ill-distributed polling place resources are the cause of much disenfranchisement through delay. In some jurisdictions, resource inequities disenfranchise disproportionate numbers of low-income voters of color. A report by Advancement Project predicted how, in states like Virginia, where there are insufficient guidelines in place to determine where and how voting machines and other equipment should be allocated, precincts with high concentrations of voters of color would have significantly fewer voting machines available — which inevitably would lead to unacceptably long lines in those precincts, as compared to majority-white precincts. *End of the Line? Preparing for a Surge in Voter Turnout in the November*

⁶ See *United States Student Ass'n Found. v. Land*, 585 F. Supp. 2d 925, 940-43 (E.D. Mi. 2008).

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2008 General Election, 4, Advancement Project, Oct. 2008, available at www.advancementproject.org. While full election and turnout data for the 2008 general election is not available, anecdotal reports from Election Day show that Advancement Project's predictions were accurate.⁷

Voter Caging

"Voter caging" is a partisan, discriminatory method of challenging the eligibility of voters of color. The term derives from the use of politically motivated, direct mailings that are sent to targeted voters. Typically, a political party sends non-forwardable mail to the addresses of targeted registered voters. If the mail is returned as undeliverable — e.g., because of a wrong apartment number, incorrectly entered street address, some other possible data entry error in the address, or because the notice was sent to the voter's registered physical address instead of the voter's listed mailing address — the party adds that voter to what is known as a "caging list." The party, pursuant to a state challenger statute, then challenges the eligibility of the voters on the "caging list" on the ground that because the non-forwardable mail directed to the address was returned as undeliverable, the applicant does not reside at that address and the registration is fraudulent. Once a challenge is made to a voter's registration, the voter must prove that her registration is valid.

Voter caging and challenges have often been employed to disenfranchise voters of color. In 2008, state and local Republican Party organizations in Michigan threatened to compile lists of voters whose names appeared on foreclosure lists and challenge those voters' eligibility. After a federal lawsuit was filed to block challenges using foreclosure lists, the Republicans agreed not to challenge voters on that basis.⁸

Felony Disenfranchisement

Beyond the obstacles to enfranchisement caused by the administrative problems discussed above, there remains one group of mentally competent citizens over the age of 18 banned from voting in certain states. People with felony convictions are disenfranchised in most states while in prison and on parole, and sometimes on probation. In a handful of states, people with convictions remain permanently barred from the polls, even after completing their sentences. Even in states that ostensibly restore voting rights upon completion of a sentence, administrative barriers and ill-informed local officials can prevent re-enfranchisement. For instance, in one city in Missouri, Advancement Project discovered that people who had finished serving time for felony convictions were being prevented from reregistering by demands for documentation they could not provide. Because of racial disparities in the criminal justice system, felony disenfranchisement disproportionately diminishes the voting power of communities of color. Congress should explore ways in which to end this disenfranchisement scheme that is inconsistent with principles of fairness and an inclusive democracy.

⁷ See, e.g., *Election Protection 2008: Helping Voters Today, Modernizing the System for Tomorrow*, 18-20, Lawyers' Committee for Civil Rights Under Law, March 2009, available at <http://www.866ourvote.org/tools/documents/files/0077.pdf> (summarizing hotline call statistics in Virginia).

⁸ See *Maletski v. Macomb County Republican Party*, No. 2:08-cv-13982 (E.D. Mi.) filed Sep. 16, 2008 and settled Oct. 20, 2008.

RECOMMENDATIONS

To address the election administration problems identified above, Advancement Project recommends that Congress consider the following recommendations during the current session of the One Hundred Eleventh Congress:

- *Promote voter registration modernization and Election Day registration.* Congress should enact legislation requiring states to modernize voter registration by automatically registering all eligible voters to vote and permitting eligible voters who do not become registered automatically to register to vote on Election Day. This will help ensure that traditionally underrepresented groups, such as minority, low-income, youth and college, and disabled voters — who are more likely to move frequently and are, therefore, more susceptible to being removed from the voting rolls under the current system of registration — are better able to participate fully in America's democracy.
- *Promote and support legislative reform of HAVA.* Congress should amend HAVA to clarify that HAVA-mandated matching processes may not be used to substantially delay or deny a voter applicant's registration; to prohibit the use of a matching failure as the sole basis for challenging a voter's eligibility; and to require states to count provisional ballots cast by voters who appear to vote in the "wrong" precinct for all federal elections in which the voters are eligible to vote.
- *Promote and support legislative amendment of the NVRA.* Congress should clarify and strengthen the NVRA to stop the unauthorized purging of voter rolls. These reforms should include specifying that states may not purge new registrants based solely on returned voter registration cards, or based on matches with other state databases, without giving voters notice of their removal and an opportunity to reverse it if it is erroneous. In addition, Congress should clarify that a voter registration form cannot be rejected based on an omission of non-essential information that does not pertain to eligibility requirements under state law. Likewise, the NVRA should be amended to clarify that state and local election officials must distribute federal voter registration forms and process applicants who submit completed federal forms, without imposing additional requirements, e.g., documentary proof of citizenship, on those applicants.
- *Promote and support legislative reform to establish federal standards for poll workers.* Congress should set national standards for poll worker training and support that would make training mandatory for all poll workers; require that training include hands-on training and role playing; require that poll workers receive compensation for their attendance of training; and require assessment of poll workers at the completion of their training.
- *Ensure adequate polling place resources and permit early voting.* Congress should enact legislation to require states in which voter lines were longer than 45 minutes in the 2004 or 2008 general election to submit a remedial plan to eliminate or minimize wait times. Additionally, to reduce lines on Election Day, legislation should be enacted that requires states to offer their voters early voting by regular ballot.

Sen. Charles E. Schumer (Cont'd)
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- *Prevent voter "caging."* Congress should enact legislation to outlaw the voter challenge device known as "caging" that has been used to target voters of color. Political parties and other private parties should be prevented from challenging voters based on returned mail or a foreclosure list. In addition, challengers should be required to set forth specific grounds for a voter's purported ineligibility under penalty of perjury, and any challenge to a voter's ineligibility should be required to be made before Election Day to prevent the chaos and voter intimidation at the polls.
- *End the disenfranchisement of people who have completed serving sentences for felony convictions.* Congress should enact legislation ensuring that people with felony convictions who have been released from confinement are not denied the right to vote, by requiring states to allow them to vote in federal elections.

Advancement Project is pleased, at any time, to provide technical advice, assistance, testimony, and consultation to this Committee as it moves toward the legislative reforms that will ensure that all Americans have clear paths to the polls.

Sincerely yours,

/s/ Bradley E. Heard

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March 16, 2009

Hon. Charles E. Schumer
 Hon. Bob Bennett
 United States Senate
 Committee on Rules and Administration
 305 Russell Senate Office Building

Dear Chairman Schumer and Ranking Member Bennett:

As a national non-partisan organization dedicated to protecting and enhancing the democratic rights of U.S. citizens, Dēmos: A Network for Ideas and Action commends the Senate Committee on Rules and Administration on its recent hearing on Voter Registration: Assessing Current Problems, on March 11, 2009. Dēmos takes this opportunity to submit the following comments on continuing serious problems with voter registration experienced by millions of eligible voters during the most recent election cycle. We hope that the Committee will embrace the opportunity to explore reforms in election administration that can address these serious problems and ensure that every American has the opportunity to register to vote and participate in the political process.

Denial of Voter Registration Opportunities to Low-Income Voters

Ensuring access to voter registration for low-income citizens, who all too often have been left out of the electoral process because of unnecessary barriers to voter registration, was a key priority for the Democracy Program at Dēmos during the 2008 election cycle. Our research, investigation and advocacy revealed massive, long-standing failings in states' compliance with Congress' key initiative to ensure full access to voter registration for low-income citizens, the National Voter Registration Act of 1993 ("NVRA").

Through enactment of the NVRA in 1993, Congress aimed to increase voter participation by simplifying "unfair registration laws and procedures,"¹ especially for historically disfranchised populations. Although the NVRA may be popularly known as the "Motor-Voter" law because of its requirement for providing voter registration through state DMV offices, an equally important part of the law is its requirement that state public assistance offices (administering programs such as Food Stamps, TANF, Medicaid and WIC) must provide voter registration services to all persons applying for benefits, recertifying their eligibility for benefits, or recording a change of address.

Despite states' obligations under the NVRA, data strongly suggest that public assistance agencies across the country are not complying with their obligation to provide voter registration services. Dēmos' research shows that between initial implementation of the law in 1995-1996 and the most recent data reported by the EAC for 2005-2006, voter

¹ 42 U.S.C. § 1973gg(a)(1)

registration applications from public assistance agencies have declined by 79 percent nationwide. Nine states reported decreases of 90 percent or more.² Poor compliance with the NVRA perpetuates an already troubling discrepancy in political participation: nationwide, 80 percent of citizens in households making \$100,000 or more are registered to vote, compared with only 60 percent of citizens in households making less than \$25,000.³

Representative of the problem, but by no means the only offender, was Missouri's Department of Social Services. The state of Missouri has a substantial income gap with respect to those registered to vote: only 66 percent of adult Missouri citizens in households making less than \$25,000 a year were registered to vote in 2006 compared to 85 percent of those in households making \$100,000 or more. According to data from the FEC and EAC, voter registrations from public assistance agencies dropped by 88 percent in Missouri between 1995-1996 and 2003-2004.

Field investigations confirmed what the numbers strongly suggested, specifically, that the agency was not providing the opportunity to register to vote to every individual who applied, recertified, or changed an address in connection with public assistance benefits. We notified the Secretary of State and agency Director about our findings. When we received no response that the offices would change their practices, Dēmos – together with partners including Lawyers' Committee for Civil Rights Under Law, Project Vote, and a pro bono law firm – filed a complaint in federal district court and requested a preliminary injunction for immediate relief in light of the then-upcoming election.

On July 9, 2008, the Court heard testimony from eleven witnesses and accepted extensive written submissions from the parties. Less than a week after the hearing, on July 15, the Court issued the preliminary injunction we had requested, finding that Missouri DSS had violated the NVRA by failing to provide plaintiffs – and tens of thousands of other low-income Missourians – with the opportunity to register to vote required by the NVRA.⁴ The state's own documents confirmed that the state was short by approximately *one million* of the number of voter registration applications that would have been necessary to provide required voter registration services to DSS clients between 2003 and 2008. Other evidence showed that voter registrations applications completed by clients had been allowed to pile up on a caseworker's desk for more than a year without being submitted to election authorities for processing, and that many local offices were simply unaware of their voter registration obligations. Based on these and other violations, the Court directed the agency to

² Douglas Hess and Scott Novakowski, *Unequal Access: Neglecting the National Voter Registration Act* (Feb. 2008), available at <http://www.demos.org/pubs/UnequalAccessReport-web.pdf>. To put these declines in context, it is important to understand that the maximum possible decline in voter registrations is 100%: a 100% decline means that the number of voter registrations at public assistance agencies has declined to zero, with no further decline being numerically possible. Accordingly, a 79% nationwide decline in voter registrations at public assistance agencies – with some states recording a 90% decline – indicates an extremely grave compliance problem, approaching the outer mathematical boundary for a reduction in voter registrations.

³ *Id.* at 3, citing Douglas R. Hess, Project Vote, "Representational Bias in the 2006 Electorate," (2006), Table 6: Household Income and Voting Behavior, available at <http://www.projectvote.org>.

⁴ *ACORN, et al. v. Scott, et al.*, 2:08-cv-04084 (W.D. Mo., July 15, 2008), available at <http://www.demos.org/publication.cfm?currentpublicationID=39FF09AD-3FF4-6C82-5C632CED7216F235>.

immediately comply with the voter registration requirements of the NVRA and adopt a comprehensive plan on how to do so.

As a result, voter registration applications received at DSS offices skyrocketed. Whereas all Missouri public assistance agencies had received a total of only 15,500 registration applications over a two-year period in 2005-2006, DSS alone has since received over 70,000 registrations since August 2008 and the end of January 2009. The state's public assistance agency received over 12,700 registrations per month in five and a half months since the court order went into effect - a staggering increase over its previous two-year average of just 649 applications a month.

Dēmos is currently working in at least 10 states to overcome similar problems in compliance with states' voter registration obligations under Section 7 of the NVRA, and data from many more states indicate the need for investigation and enforcement. This problem affects millions of low-income persons who are missing the opportunity to register to vote at a local public-assistance agency. For many low-income individuals, such agencies may be their sole point of contact with the government, and sole opportunity to register to vote. Ensuring states' compliance with their obligations under Section 7 of the NVRA must be a priority so that low-income citizens may register and participate in our political process, as Congress had intended 15 years ago in passing the NVRA. We are encouraged that the Voting Section of the U.S. Department of Justice, after years of neglecting its responsibility to enforce Section 7 of the NVRA, has entered into settlements with two states in the past year after we met with the leadership of the Voting Section last year.⁵ However, there is much more work to be done to fulfill the promise of the NVRA for ensuring the political participation of low-income citizens.

Denial of Voter Registration Opportunities to Veterans

As this Committee is aware, many of our nation's veterans experienced serious obstacles to voter registration and the vote prior to the 2008 presidential election. Many veterans reside for extended periods at VA facilities -- nursing homes, emergency housing, rehabilitative care centers, or some other type of facility with few on-site voter registration services-- and some, especially those who are disabled, face significant obstacles to traveling off-campus for voter registration.⁶ This problem was exacerbated prior to the 2008 elections by shifting and detrimental VA policies.

In the months preceding the 2008 presidential election, the Veterans Health Administration issued and withdrew no less than three different policies on voter registration. The first policy directive, VHA Directive 2008-23 issued on April 25, 2008, required all VA facilities to develop comprehensive voter registration plans to assist veterans in voting, required the VA to publicly post voter registration information for

⁵ See DOJ NVRA settlements with Arizona (available at <http://www.demos.org/publication.cfm?currentpublicationID=BB58168C-3FF4-6C82-5DEC8F3E8A072061>) and Illinois (available at <http://www.demos.org/publication.cfm?currentpublicationID=51787F81-3FF4-6C82-568C31CA2CEDD7CD>).

⁶ In 2006, 773,600 veterans obtained treatment at inpatient VA facilities. See <http://www1.va.gov/opa/fact/vafacts.asp> (last viewed September 6, 2008).

veteran inpatients, and required that VA facilities provide absentee voter applications if patients cannot leave the facility. Unfortunately, two and a half weeks later, it issued Directive 2008-25, rescinding Directive 2008-23 and announcing a broad *prohibition* against any third-party voter registration drives. In addition, the VA refused to accede to state requests from California, Connecticut, Vermont, North Carolina, and Arkansas that VA facilities serve as voter registration agencies and conduct voter registration themselves (to obviate the problem of a lack of third party voter registration).⁷ State designation of federal agencies as voter registration agencies is provided for in the National Voter Registration Act.⁸

We know from our work that this second policy inhibited voter registration assistance at VA facilities. In mid-August of 2008, a colleague forwarded an inquiry from a veteran who wanted to organize a group of veterans to conduct non-partisan voter registration at a VA facility. After receiving Directive 2008-025 and information about VA Form 10-0462 (which the group of veterans would have needed to sign), he indicated that he felt it would be futile to request approval to try to register veterans at VA facilities.⁹

On September 8, 2008, after this Committee scheduled a hearing on the issue of voter registration assistance for veterans, the VA rescinded Directive 2008-025 and adopted its third policy on voter registration, Directive 2008-053. While an improvement over the second policy, the registration problem remained as the directive required only that each VA facility must adopt “a written published policy on voter assistance” and that information on registering and voting must be posted throughout VA facilities.¹⁰ The new policy neither imposed any affirmative obligation on VA facilities and agencies to register veterans and failed to clarify whether and to what extent outside groups would actually be permitted to conduct voter registration activities. Indeed, the volunteers with responsibility for the policy were prohibited from affirmatively offering voter registration because each had to sign a form agreeing that (1) s/he would strictly limit voter registration assistance to only those veterans who specifically requested it, and (2) s/he would not encourage political participation through voting.¹¹

Data collected by the U.S. Census Bureau indicate that a significant number of veterans remain unregistered to vote. In fact, over 5.3 million veterans (23.2% of all veterans) were not registered to vote in 2006.¹² There are also significant gaps in

⁷ See Written Testimony of Lisa J. Danetz before the Committee on Rules and Administration, United States Senate, at 8 (September 15, 2008), available at http://www.demos.org/publication.cfm?current_publicationID=B9461641%2D3FF4%2D6C82%2D5A2FC05FB2A30A6A.

⁸ 42 U.S.C. § 1973gg-5(a)(3)(B)(ii).

⁹ Written Testimony of Lisa J. Danetz, *supra*, at 7.

¹⁰ VHA Directive 2008-053 at 4.b(1), available at http://www1.va.gov/VHAPUBLICATIONS/ViewPublication.asp?pub_ID=1756.

¹¹ See Transcript of Oral Testimony of Lisa J. Danetz before the Committee on Rules and Administration, United States Senate, at 31 (September 15, 2008).

¹² Source: U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2006, Table 15b, available at <http://www.census.gov/population/www/socdemo/voting/cps2006.html>.

registration rates between more highly educated and affluent veterans and those with lower education and lower income, indicating the need for greater voter registration outreach among such veteran populations. In 2006, only 70 percent of veterans with a high school diploma or less were registered to vote compared to 83 percent of those with a baccalaureate degree and 88 percent of those with an advanced degree.¹³ Similarly, only 73 percent of veterans in households with incomes below \$25,000 were registered to vote compared to 85 percent of veterans in households making \$100,000 or more a year.¹⁴

During the last session of Congress, Senators Diane Feinstein and John Kerry and Representative Robert Brady introduced legislation in the U.S. Senate (S. 3308) and House of Representatives (H.R.6625) that would have required the Department of Veterans Affairs to approve state requests for designation of VA sites as voter registration agencies, in accordance with the National Voter Registration Act. The bills also directed the VA to facilitate voter registration activities by nonpartisan organizations and elections officials. The House passed the legislation but the Senate adjourned amidst extensive negotiations in this Committee over the bill. Thus, voter registration of veterans remains an issue, as does the sufficiency of voter registration opportunities for many other citizens who interact with the federal government to receive, among other services and programs, naturalization services at the United States Citizenship and Immigration Services and Supplemental Security Income and Social Security Disability Insurance from the Social Security Administration.

Voter Registration Problems Revealed By Provisional Ballot Usage

Experts estimate that as many as 3 million votes were lost in the 2000 election because of registration problems alone.¹⁵ The Help America Vote Act of 2002 (HAVA) and its provisional balloting requirement were a response to these widespread problems. To ensure that no voter is turned away from the polls, provisional ballots are to be distributed to individuals who, among other things, believe they are registered to vote but whose names cannot be found on the voter rolls at the polling place. Provisional votes are subsequently counted if election officials are able to verify that the individual is a legitimate voter under state law.¹⁶ While provisional ballots can save votes, they are not without their problems.¹⁷

While provisional ballots themselves pose many problems, their use (and abuse) is actually a symptom of a much more fundamental problem: a dysfunctional voter registration system. Examination of provisional ballot data can thus shed light on the

¹³ *Id.*

¹⁴ Source: U.S. Census Bureau, Current Population Survey, Voting and Registration in the Election of November 2006, analysis by Dēmos.

¹⁵ CalTech/MIT Voting Technology Project, *Voting: What Is, What Could Be* (July 2001).

¹⁶ 42 U.S.C. § 15482.

¹⁷ See e.g. Scott Novakowski, *A Fallible 'Fail-Safe': An Analysis of Provisional Balloting Problems in the 2006 Election* (Dēmos, November 2007), available at <http://www.demos.org/pubs/failsafereport.pdf>; Scott Novakowski, *Provisional Ballots: Where to Watch in 2008* (Dēmos, October 2008), available at http://www.demos.org/pubs/provisionalballot_brief.pdf; and Advancement Project, *Provisional Voting: Fail Safe Voting or Trapdoor to Disenfranchisement* (September 2008), available at <http://www.advancementproject.org/pdfs/Provisional-Ballot-Report-Final-9-16-08.pdf>.

scope and character of the problems affecting our registration system. Nationwide, hundreds of thousands, sometimes even millions, of voters who believe they have properly taken the steps necessary to register to vote are showing up at the polling place only to find their names omitted from the voter rolls. In many cases, their provisional ballots are not counted.

Over 1.9 million provisional ballots were cast in the 2004 presidential election.¹⁸ Sixteen states reported that over 1 percent of all ballots cast in that election were provisional.¹⁹ Provisional ballots made up over 3 percent of ballots cast in six states and over 5 percent in another three states.²⁰ In the 2006 midterm election, twelve states reported that over 1 percent of ballots cast were provisional, with Arizona reporting a provisional balloting rate of 4.7 percent and Ohio a rate of 3 percent.²¹

While nationwide data from the 2008 election is not yet available, Ohio is one state that is again attracting attention for its high provisional balloting rate. Statewide, 3.6 percent of votes cast were provisional, up from an already-high 3 percent in 2006.²² Franklin County, home to city of Columbus, had a rate of 5 percent and Cuyahoga County, containing Cleveland, had a rate of 4.3 percent.²³

Such high numbers of provisional ballots and high provisional balloting rates are indicative of breakdowns in our registration system. In most cases, provisional voters clearly believe they have followed all the steps required to be registered to vote. In fact, HAVA requires that each provisional voter sign an affirmation attesting that they are a registered voter.²⁴ Calls received by the Election Protection hotline in 2006 confirm that many voters given provisional ballots believed they had properly registered, some even saying they had confirmed their registration status with election officials as recently as the day before the election.²⁵ Furthermore, numbers of provisional ballots cast do not include the throngs of voters who were erroneously turned away from the polls without being offered a provisional ballot or refused to cast one because they believed it would not count.²⁶

¹⁸ Kimball W. Brace and Michael P. McDonald, *2004 Election Day Survey* (U.S. Election Assistance Commission, 2005), http://www.eac.gov/election_survey_2004/toc.htm.

¹⁹ Eagleton Institute of Politics, Rutgers University and Moritz College of Law, The Ohio State University, *Report to the U.S. Election Assistance Commission on Best Practices to Improve Provisional Voting* (2006), available at http://www.eagleton.rutgers.edu/News-Research/ProvisionalVoting_VoterID.html.

²⁰ *Ibid.*

²¹ U.S. Election Assistance Commission, *2006 Election Administration and Voting Survey*, available at <http://www.eac.gov/program-areas/research-resources-and-reports/completed-research-and-reports/election-day-survey-results>.

²² Ohio Secretary of State, *2008 Election Results*, available at <http://www.sos.state.oh.us/SOS/elections/electResultsMain/2008ElectionResults.aspx>.

²³ *Ibid.*

²⁴ 42 U.S.C. § 15482(a)(1),(2)

²⁵ Scott Novakowski, *A Fallible 'Fail-Safe': An Analysis of Provisional Balloting Problems in the 2006 Election* (Dēmos, November 2007), available at <http://www.demos.org/pubs/failsafereport.pdf>

²⁶ *Ibid.*

Just as troubling as high rates of provisional ballots being cast are the large numbers of provisional ballots that are rejected. In 2004, over one in three of the 1.9 million provisional ballots cast were ultimately rejected.²⁷ In 2006, almost 22 percent of the 791,483 provisional ballots cast were rejected.²⁸ Because HAVA left up to the states the decision of which provisional ballots to count, states vary dramatically in their rejection rates. In 2006, for example, rejection rates ranged from a high of over 93 percent in Kentucky to 1.6 percent in Oregon. The primary reason provided by the states for rejecting provisional ballots that year was because voters were determined to be “not registered.” The second most frequent reason was that the ballot was cast in the “wrong precinct.”²⁹ Thus, the majority of rejected provisional ballots in 2006 were discarded because of problems directly related to voter registration.³⁰ In these circumstances, not only is our registration system failing our citizens, but the safety net designed to protect them is also proving ineffective.

The widespread use of provisional ballots is indicative of fundamental, underlying problems with our voter registration system. While increasing access to the franchise, voter registration reform would also largely eliminate the problems associated with provisional ballots. By tackling these problems, registration reform would reduce the usage of, and problems related to, provisional ballots. Indeed, states that allow Election Day or Same Day Registration report much lower numbers of provisional ballots. For example, in 2006, Wisconsin reported 271 provisional ballots cast and Wyoming reported only 22 statewide.³¹ After adopting EDR in 2007, Iowa experienced a dramatic drop in provisional ballot usage, from 14,661 provisional ballots in the 2004 election to only 4,725 in 2008.³² North Carolina also experienced a huge drop: 92,533 provisional ballots were cast in the 2006 general election, as compared to 53,972 in the high-turnout 2008 presidential election. Gary Bartlett, Executive Director of the North Carolina State Board of Elections, has attributed this drop to the state’s use of Same-Day Registration.

Harassment of Voters Using Lawful Voter Registration Methods in Ohio

Other disturbing voter registration problems observed by Dēmos during Election 2008 included harassment of and unfounded accusations against lawful registrants by law enforcement authorities in Greene County and Hamilton County, Ohio.

Under Ohio law, voters are permitted to register and cast an in-person absentee ballot on the same day during the six-day window between the beginning of early voting and the end of the registration period. This “Golden Week” for same-day registration in

²⁷ EAC, 2004. See note [4].

²⁸ EAC, 2006. See note [7].

²⁹ In 2006, thirty states and the District of Columbia automatically rejected provisional ballots cast in the wrong precinct even if they were cast in the correct jurisdiction or, in some cases, even the correct polling place.

³⁰ In 2006, 66 percent of rejected provisional ballots were discarded for the following reasons: the voter was determined to be “not registered,” the voter’s registration was “not timely received” by election officials, the voter was purged from the rolls, or because the provisional ballot was cast in the wrong precinct or jurisdiction. EAC, 2006. See note [7].

³¹ EAC, 2006. See note [7].

³² Iowa Secretary of State 2008 Report, available at <http://www.sos.state.ia.us/pdfs/2008report.pdf>.

Ohio extended from September 30 through October 6, 2008 in the recent presidential election. Despite legal challenges to this registration procedure by the Ohio Republican Party, four different federal and state courts upheld the lawfulness of this registration method in decisions issued in late September 2008.³³

Despite the clear lawfulness of Ohio's same-day registration procedure under both Ohio and federal law, law enforcement officials in Greene County, Ohio, announced that they were launching an investigation into voting by each of the 302 persons in Greene County who registered and cast an absentee ballot on the same day during the period September 30 through October 6. The Greene County sheriff announced the investigation even though he acknowledged in news reports that he lacked any first-hand reports or evidence that could support allegations of voter fraud. Instead, the only grounds cited for the investigation were unsubstantiated "concerns" expressed in telephone calls by members of the public who appeared to object to registration and voting by students in the community, unaccompanied by any specific allegation of actual fraud or other illegal conduct committed by any specific voter.

After learning of this disturbing threat of voter harassment, Dēmos immediately drafted a letter to the Greene County Sheriff and Prosecuting Attorney stating that a law-enforcement investigation based solely on the fact that a voter registered to vote using lawful methods threatened the federally protected rights of Greene County voters under Section 11(b) of the Voting Rights Act of 1965, among other protections.

Section 11(b) of the Voting Rights Act, 42 U.S.C. § 1973i(b), provides:

No person, whether acting under color of law or otherwise, shall intimidate, threaten, or coerce, or attempt to intimidate, threaten, or coerce any person for voting or attempting to vote, or intimidate, threaten, or coerce any person for urging or aiding any person to vote or attempt to vote, or intimidate, threaten, or coerce any person for exercising any powers or duties under section 3(a), 6, 8, 9, 10, or 12(e).

Our letter pointed out that an investigation based on nothing more than a voter's decision to use a lawful method of registration would surely chill the willingness of voters in Greene County to exercise their right to register to vote in future elections, and that it was difficult to view such an investigation as anything other than unlawful intimidation under Section 11(b) of the Voting Rights Act. We accordingly urged the Greene County officials immediately to cease their investigation and we provided a copy of our letter to the U.S. Department of Justice. Fortunately, within hours after we sent our letter, Greene County officials announced that they were dropping their investigation.

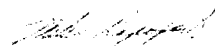
³³ Dēmos participated as counsel in defending the legality of Ohio's same-day registration period in conjunction with a variety of Ohio voters and advocacy groups. The litigation is described further in the attached letter to Greene County officials dated October 10, 2008 (also available at: <http://www.demos.org/pubs/GreeneCountyLetterFinal.pdf>)

Officials in Hamilton County, Ohio also made highly publicized and unwarranted allegations of voter fraud against some 600 Hamilton County voters who took advantage of the same-day registration window during the 2008 election. In announcing the investigation, Hamilton County Prosecuting Attorney Joe Deters declared “We know of certain voter fraud.”³⁴ However, after news reports noted that Mr. Deters was serving as the Southwest Ohio Regional Chairman of the McCain campaign, Mr. Deters recused himself from the investigation and turned it over to a court-appointed special prosecutor. In January 2009, the special prosecutor released a report establishing that the claims of voter fraud were in fact groundless.³⁵ “Ultimately,” the report stated, “the investigators discovered get-out-the-vote practices, sponsored by community organizations, which took full advantage of this unique absentee-voting period, but no evidence that these practices violated Ohio law.”³⁶

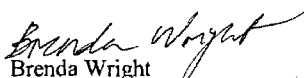
Dēmos is concerned that these groundless accusations of voter fraud, and unwarranted investigations of lawful voter registration, may chill lawful voter registration activities. The Committee may wish to inquire whether the Voting Section of the U.S. Department of Justice uncovered other instances of voter registration intimidation through similar tactics during the 2008 election and, if so, what steps are being taken to address this problem.

Conclusion

Dēmos appreciates this opportunity to inform the Committee of the serious voter registration problems that continue to impede and deter millions of citizens from full participation in the political process. We look forward to working with the Committee during this session on its continuing efforts to address and overcome these problems.



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³⁴ Kimball Perry and Howard Wilkinson, “Deter Steps Out of Voter Probe,” Cincinnati Enquirer, October 20, 2008

³⁵ “Vote fraud claims were wrong,” Cincinnati Enquirer, January 28, 2009, available at <http://news.cincinnati.com/apps/pbcs.dll/article?AID=/AB/20090128/NEWS01/901280317/>

³⁶ *Id.*



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March 11, 2009

U.S. Senate Committee on Rules and Administration
305 Russell Senate Office Building
Washington, DC 20510

Dear Committee Members:

Thank you for holding this timely and important hearing, *Voter Registration: Assessing Current Problems*. As you will certainly hear from those invited to testify, our current voter registration system is riddled with problems and susceptible to breaking down at several points throughout the process—from filling out a registration form to voting on Election Day. In the November 2008 General Election, voters across the country were denied their right to vote because of bureaucratic hassles, unclear directions and a system in need of a major overhaul.

Leading up to the November election, FairVote surveyed hundreds of local election officials in counties in states of particular focus to the presidential candidates in order to better understand the problems voters might face on Election Day. (See attached final report.) Among other key findings, we determined nearly all of the jurisdictions prepared their machine and poll booth allocation plans several weeks or months in advance of their states' voter registration deadline. Since many voters register in the weeks leading up to the deadline, local officials were unprepared for the surge in turnout, compared to previous election cycles. This problem, and others, could have been avoided if the government took the position that it anticipates voter participation—and is not surprised by it.

Instead of anticipating participation, our current system expects voter apathy. Unlike most democratic countries around the world, the U.S. has a self-initiated, opt-in system of voter registration where voters themselves are solely responsible for ensuring accurate and complete voter rolls. We urge this committee to explore options that will move toward a system of automatic voter registration, where citizens have the opportunity to opt-out of the process if they so choose. Policies like systematically pre-registering 16-year-olds in high schools, automatically registering any eligible voter who interfaces with a government agency and allowing citizens the opportunity to correct any voter registration error on Election Day will dramatically improve our system, reduce burdens on local officials and bring the United States into the international mainstream in this important area.

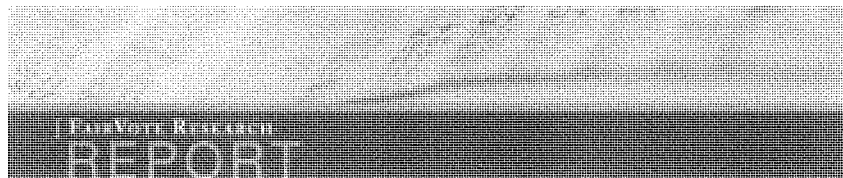
Thank you again for holding this hearing. I hope this will be the first of many opportunities the voting rights community will have to move our voter registration system into the 21st Century.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Rob Richie".

Rob Richie
Executive Director

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Uniformity in Election Administration: A 2008 Survey of Swing State County Clerks National Edition

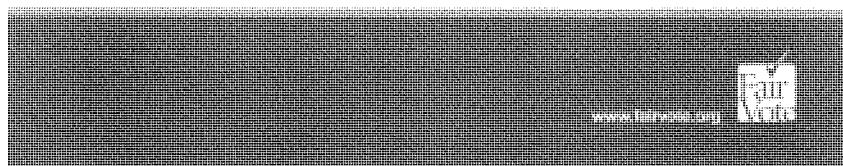
By Allison McNeely and Adam Fogel
October 27, 2008

Introduction

The Democracy SOS Project aims to increase transparency in election administration and to monitor the actions of election officials, starting with Secretaries of State. This series reports the results of surveys of county clerks in 10 "swing states" during the 2008 presidential election. FairVote staff and interns surveyed nearly every county clerk in Missouri, New Mexico, Colorado, Pennsylvania and Virginia, as well as election officials in counties with at least 500,000 residents in Ohio, Florida, Minnesota, Michigan and Wisconsin.

We asked questions designed to shed light on the practices of the county, as well as their interpretation and compliance with state law. We asked questions regarding the allocation of voting machines and poll booths in order to assess the county clerks' preparedness in ensuring that there would not be long lines and everyone would be able to vote on Election Day. We asked every county clerk if they planned to put together a written allocation plan of their machines/booths to assess if these plans have been well thought out. We inquired as to when draft and final versions of the ballot would be ready to assess their clarity and ensure the public has time to review the ballot before Election Day, which helps cut down the amount of time voters spend in the voting booth. Finally, we asked about the number of post-secondary institutions in each county and if they had on-campus polling locations to evaluate accessibility for youth voters.

For our national survey, we phoned counties in the 10 states with populations over 500,000. In total, we attempted to contact 35 counties – spanning from 11 counties in Florida to just 1 in Virginia and Wisconsin. Unfortunately, we were unable to reach 9 counties out of the 35 called. These counties include Miami-Dade, Florida; Broward, Florida; Hillsborough, Florida; Pinellas, Florida; Volusia, Florida; Jefferson, Colorado; Wayne, Michigan; Macomb, Michigan; and Kent, Michigan. For a complete list of counties, see Appendix A.



Type of Voting Equipment and Number per Precinct

The first question we asked each county clerk clarified the voting equipment used in the county as well as the number of machines per precinct. We looked up the machines used in each county and whether or not they had central or precinct-based count on the website *verifiedvoting.org*, and then compared the information to responses by the county clerks. All the county clerks we spoke with were able to successfully state which types of voting equipment they used and the number of machines per precinct. The most common types of machines used are the optical scan and the DRE for accessible voting. A few counties opted to use the automark, an accessible ballot marker instead of the DRE touch screens. The number of machines per precinct varied greatly – some counties had 1 optical and 1 DRE per precinct,¹ but each county had at least two machines of some kind per precinct.

Voting Equipment Used in Counties with Populations over 500,000

	Optical Scan	DRE TS/PB/Dial	Automark
Number of Counties*	18	19	7

*Out of 26 surveyed

The Help America Vote Act (HAVA) of 2002 does not specify what kind of voting equipment states must use. Furthermore, there are no requirements for the number of voting machines they have to put in each precinct. Requirements surrounding accessible voting state there must be some kind of accessible voting machine available to voters at each polling location, but not much more is required of the election official. The lack of specificity in HAVA may explain why we found such varied results for the type of voting machine used in the states and the numbers they allocated to each precinct. In short, insufficient federal guidelines address the issue of voting system uniformity and their allocation.

Allocation of Poll Booths in each Precinct

The next question sought to address how county clerks determine the number of poll booths needed for the upcoming presidential election. This question was difficult for many election supervisors to answer due to several states' upcoming primaries; they were not thinking that far ahead.

In general, election supervisors cited experience, past voter turnout, current voter registration, and precinct population most frequently as factors that they use to determine the number of booths needed. Some of the more promising responses included references to a specific number of registered voters per voting booth or DRE. Summit, Ohio and Oakland, Michigan will allocate 1 booth per every 100 voters. El Paso, New Mexico will allocate 1 booth per every 400 registered voters. For the counties that only used DRE systems, Montgomery, Ohio will have 1 machine per

Officials “did not say how they used [voter registration and previous turnout] to determine an effective allocation.”

¹ Hamilton, Orange, Lee, Polk, and El Paso counties

160 voters, Montgomery, Pennsylvania will have 1 machine per every 600 voters, and Fairfax, Virginia will have 1 machine per every 150 voters.

Overall, not a single election official surveyed could refer to a specific scientific formula that they use for calculating the number of booths needed. They did make reference to empirical data such as past voter turnout or current voter registration, but they did not specifically say how they use such numbers to determine an effective allocation.

Written Allocation Plan

We then asked election officials if they would be preparing a written allocation plan of their poll booths for the upcoming November election as a means of gauging their organization and planning. The plan would simply state how many poll booths each polling location in each county will receive on Election Day.

Only 16 out of 26 counties surveyed were preparing a written allocation plan of voting machines and booths.

Our survey found that the majority of election officials do have a written plan for poll booth allocation, but a fair number of counties will not. Out of 26 administrators surveyed, 16 expected to create a written booth allocation plan before Election Day.²

The most common reasons cited by county clerks for not creating a written allocation plan were that the allocation of booths is based on what has been done in the past and that the booths are stored at polling locations, so allocation does not change. Furthermore, Oakland, Michigan, plans at the city level, so we cannot be certain of municipal level preparation.

Readiness of Rough and Final Drafts of the Ballot

Next, we asked election supervisors when the rough and final draft of their ballot for the presidential election would be ready as a means of understanding their election planning timeline, as well as to find out when we would be able to see a copy of the ballot to

Dates for when the final ballot would be ready varied by several months across the counties surveyed.

evaluate its clarity. We wanted to determine which ballots were made available to the public for comment and which ballots went through multiple drafts or edits. In addition, giving voters the opportunity to see the ballot before Election Day encourages them to prepare to vote. This preparation

leads to voters spending less time in the booth, which in turn leads to shorter lines on Election Day.

² Cuyahoga, Franklin, Hamilton, Montgomery (Ohio), Palm Beach, Duval, Lee, Brevard, Montgomery (Pennsylvania), Bucks, Bernalillo, Arapahoe, St. Louis, Jackson, Fairfax, Milwaukee

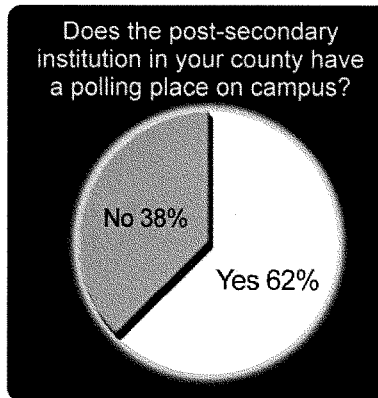
In general, we found that many officials were confused by the concept of a rough draft. It appears that many election supervisors send the information for their ballot to the printer after the certification date and then receive their ballots anywhere from a week to a month after they are submitted. They consider these to be the final version of the ballot. Those officials that did understand the difference between a rough and final draft of the ballot were vague as to when a rough draft would be ready. Responses ranged from “after the certification date”³ to “no idea – probably September.”⁴ Some clerks did not know at all.⁵ It is also possible that clerks did not understand the concept of a rough draft of the ballot because they only print their ballots once.

All election officials were aware of when the final draft of their ballot for the presidential election would be ready. Around absentee voting, 6 weeks prior and 30 days prior were the most common answers. Dates for when the ballots would be ready spanned a significant range of time, the earliest answer was August 11th⁶ and the latest answer was the day of the election.⁷

College Campuses and Polling Locations

The final question in the survey was intended to determine which counties had a post-secondary institution, and whether or not there was a polling place on campus. We were curious about the placement of polling locations on campus because in recent election cycles, on-campus polling locations have had the longest lines in the country.

Of the 26 counties surveyed, 24 have a university, college, community college or junior college in it. Of the 24 with a post-secondary institution, only 15 counties reported that they plan to have a polling location on campus.⁸ In general, counties that had post-secondary institutions had more than one type of institution. Most do not put polling locations on all of the post-secondary institutions in the county, only some of them.



³ Orange County

⁴ Philadelphia County

⁵ Franklin, Summit, Polk, Brevard, Philadelphia, and Jackson Counties

⁶ Palm Beach County

⁷ Delaware County

⁸ Cuyahoga, Franklin, Hamilton, Montgomery (Ohio), Palm Beach, Orange, Duval, Hennepin, Allegheny, Bernalillo, El Paso, St. Louis, Jackson, Fairfax, Milwaukee

Officials provided a range of rationales as to why they put polling locations on certain campuses but not others. Brevard County, Florida reported not having any polling locations on campuses because they wanted to stay away from schools due to logistics concerns. Hamilton County, Ohio had to move its polling location off of the University of Cincinnati campus due to campus construction. St. Louis County, Missouri will have one polling location on a college campus but the official was unsure about the rest of the campuses in its county. The official said that it just depends on the issues on the ballot.

Conclusions

We have concluded that in the largest counties of the swing states surveyed, there is much work to be done to create uniform standards for the conduct of elections at the local level. At a minimum, state and federal officials should implement policies encouraging pre-election transparency and post-election accountability. Allowing for public input at every stage of the election process—from ballot design to poll booth allocation plans—would lead to far greater credibility in the electoral process and could prevent serious oversights that impact voters. Post-election accountability should include a full review of election preparation, quantitative measures tracking ease of voting (i.e. average time waiting in line, average time to cast a ballot, etc.) and recommendations to improve future elections.

First, voting machines specifications, at least in terms of the way votes are counted, should be standardized across the country. The lack of uniformity could create numerous problems that can and likely will arise from a lack of standardization of voting equipment such as faulty programming and use, lack of accessibility, and concerns over legitimacy of the results. The Help America Vote Act should require, at a minimum, that all states standardize their voting equipment for every county in their state.

Second, a standard formula for the allocation of voting machines and poll booths should be implemented. All election officials should prepare written allocation plans so they are able to accurately and effectively communicate their election plans to poll workers. We believe that the lack of written allocation plans in some counties, as well as the responses given for the rationale behind poll booth allocation, demonstrate insufficient preparation for the upcoming election. Election officials should be required to draft a written allocation plan for poll booths, to be finalized by a specified date well in advance of the election.

Third, all election officials should receive a draft of their ballot before printing a final version. This draft should be available for scrutiny by NGOs and public interest groups, and also so that voters are able to see at least a draft of the ballot before Election Day. States should establish a widely known release date for copies of the draft and final ballot to ensure the ballot is clearly understood by voters.

Fourth, post-secondary institutions should have polling locations on campus and students should not be subjected to allocation decisions that discriminate against them. That means counties should determine poll locations based on the number of registered voters

in each precinct, voter turnout in previous elections and other neutral factors. We recommend every post-secondary institution with student housing have a polling place on campus.

In the days leading to the November election, officials at the local level should make every effort to ensure transparency by publicizing Election Day plans. Officials should also support measures in the future that increase accountability and preparedness in an effort to build public confidence in the election process. In addition, secretaries of state should push their state legislatures to introduce bills standardizing election procedures statewide. In the meantime, secretaries should promulgate administrative rules for county officials using whatever power is currently at their disposal.

At the federal level, the Election Assistance Commission (EAC) should release election management guidelines setting uniform standards and best practices for the all of the topics covered in this report, including machine and poll booth allocation, election preparedness, public input in ballot design and on-campus polling locations. Finally, Congress should give the EAC rule-making authority and the necessary resources to implement their recommendations.

Appendix A

State	County
Ohio	Cuyahoga
Ohio	Franklin
Ohio	Hamilton
Ohio	Summit
Ohio	Montgomery
<i>Florida</i>	<i>Miami-Dade</i>
<i>Florida</i>	<i>Broward</i>
Florida	Palm Beach
<i>Florida</i>	<i>Hillsborough</i>
Florida	Orange
<i>Florida</i>	<i>Pinellas</i>
Florida	Duval
Florida	Lee
Florida	Polk
Florida	Brevard
<i>Florida</i>	<i>Volusia</i>
Minnesota	Hennepin
Pennsylvania	Philadelphia
Pennsylvania	Allegheny
Pennsylvania	Montgomery
Pennsylvania	Bucks
Pennsylvania	Delaware
New Mexico	Bernalillo
Colorado	Denver
Colorado	El Paso
Colorado	Arapahoe
<i>Colorado</i>	<i>Jefferson</i>
Missouri	St. Louis
Missouri	Jackson
<i>Michigan</i>	<i>Wayne</i>
Michigan	Oakland
<i>Michigan</i>	<i>Macomb</i>
<i>Michigan</i>	<i>Kent</i>
Virginia	Fairfax
Wisconsin	Milwaukee

Italicized counties declined participation or did not respond to repeated requests for participation in the survey.

Acknowledgements

Without the hours spent calling hundreds of local election officials, this project would not have been possible. FairVote would like to thank our great summer 2008 research team for making this project a reality. Researchers include: Eku Boateng, Tyler Brannon, Charles Butler, Jonah Gold, Annie Johnson, Kathryn "Ryan" Lee, Allison McNeely, Jennifer O'Dell, Allison Oesterle, Erin Pauling Steven Risma and Daniel Weaver.

Special thanks to Tova Wang of Common Cause and Eddie Hailes of the Advancement Project for their advice and support from the inception of this project.

Thanks to former FairVote staff Ryan Griffin and interns Vincent Vecchione and Nora Mascioli for their work early on in the project. Thanks to FairVote's program director David Moon for conceiving this project in 2006.

Thanks to Democracy Fellow Tara J. Young, who worked tirelessly recruiting our coalition partners. Our national partners include: People for the American Way, New America Foundation, The Advancement Project, Common Cause, Demos, America, Association of People With Disabilities, The Praxis Project, and Progressive States Network.

This report was made possible through support from the Herb Block Foundation.



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Executive Director
Nancy E. Tate

March 11, 2009

Senator Charles Schumer
Chairman, Committee on Rules and Administration
U.S. Senate
Washington, DC

Dear Mr. Chairman:

We are writing to provide our perspective on current problems in voter registration. We ask that this letter be included in the record of the hearing the Rules Committee held on this subject today.

The single most important issue in voter registration is the failure of the states to fully implement -- and the failure of the U.S. Department of Justice to enforce -- Section 7 of the National Voter Registration Act of 1993. Section 7 requires that states provide extensive voter registration opportunities at public assistance and disability agencies. Registration figures indicate, and investigations by outside organizations confirm, that most states are not implementing the law.

In the first years after enactment of the NVRA, registration from social service agencies was significant but not large. Since then, however, registration has dropped precipitously, resulting in the loss of millions of voters from the voter rolls according to work by Project Vote, Demos, and others.

While the Department of Justice is responsible for enforcing Section 7, the performance of the Department has been lackluster at best. Few cases have been brought and there is no clear enforcement strategy.

The League of Women Voters urges the Committee to address this issue. We ask that you call attention to the failure of the states to fully implement Section 7 and we urge you to explore with the Department of Justice what enforcement strategies might be pursued. If states were simply to reinstate their earlier programs, it would result in the registration of millions of eligible citizens. It states had clear direction from the Department of Justice, additional significant improvements could be made.

Because of the number of potential voters involved, full implementation of Section 7 is critically important. Because enforcement is essential for any program designed to protect voters, effective enforcement of Section 7 by the Department of Justice deserves special attention.

We also believe that there are opportunities to enhance voter registration through designation of federal offices as voter registration agencies under the NVRA.



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such as the Veterans Administration, naturalization services, Supplemental Security Income, and other programs.

The League is also concerned about limitations on third-party voter registration drives by states and localities. In 2005, the League of Women Voters of Florida was forced to stop all its voter registration activities in that state because of burdensome restrictions that could have resulted in bankrupting that League. The Florida League challenged these restrictions in the courts, but, unfortunately, this was not an isolated example of a state acting in a way that undermines voter registration.

Organizations such as the League are crucial to assuring that voter registration is available to every voter, but the facts also show conclusively that we are key to assuring that minority voters have access to registration. In 2004, approximately 8.5 percent of registrants had been registered by the efforts of third party organizations, according to the Bureau of the Census. The data also make clear who is impacted by restrictions on third-party voter registration efforts. In 2004, 15 percent of African-American and Hispanic registrants had been registered to vote as a result of an organized drive – a rate much higher than the 8.9 percent rate for Whites.

We urge the Committee to look into the limitations that states and localities place on voter registration activities by outside organizations such as the League.

We are also concerned about the operation of statewide voter registration databases. The Help America Vote Act of 2002 requires each state to implement a single, uniform, computerized statewide voter registration list to serve as the official voter list for the conduct of all elections for Federal office. Statewide databases should be designed to streamline communication among voter registration agencies and to improve election administration. In many instances, however, “no match” rules, lack of clear statewide administration and other problems have undermined rather than enhanced voter registration. Properly implemented statewide databases should ensure that once registered, no eligible voter will be removed from the official list because he or she has moved within the state.

We urge the Committee to work with the Election Assistance Commission, the Department of Justice and the states to encourage proper implementation of statewide voter registration databases. Effective management of state voter lists is the necessary starting point for any discussion of improvements in voter registration systems.

A closely related issue is the question of purging. Both HAVA and the NVRA have provisions to ensure that eligible voters are not dropped from the registration list. Anecdotal evidence suggests that these protections are not always followed. For example, many jurisdictions seemingly purge voters within 90 days of an election, which is prohibited.

Thank you for the opportunity to provide our views on these voter registration issues. As you know, restrictions on voter registration remain as the single largest barrier to voter participation, especially when the number of affected persons is considered. We commend the Committee for your work in this area.

Sincerely,

Mary G. Wilson
President



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 Texas² 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 for 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 1¹⁹

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. 19731f-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 2²⁵

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 Service³⁰ (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 for the military voter to determine by when he or she must 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/dvas/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 1, 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 along 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 or 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

$$(P[\text{email}_{\text{military}}] + P[\text{email}_{\text{personal}}]) - (P[\text{email}_{\text{military}}] \cdot P[\text{email}_{\text{personal}}])$$

or in this case

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

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 Foundation⁵⁶ 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.



People with Mental/Cognitive Disabilities Have the Right to Vote

February 20, 2009

Election 2008 highlighted states' disparate voter mental-competence requirements, and supports the need to have national standards for voters with mental disabilities. Voting is just as important to people with mental disabilities as it is to everyone else. Yet their voting rights are widely misunderstood. As a result, they are often disenfranchised—by unwarranted concerns about their competence to vote, by inappropriate challenges to prevent them from voting, by refusals to provide or permit help with voting or by help that disregards the voter's own choices.

Systemically, the key concerns reported by our affiliates fall into the following areas:

- (1) voter-competence requirements imposed by state laws or by election officials or service providers;
- (2) voter challenges due to intellectual disability;
- (3) voters with disabilities refused assistance; and
- (4) voters in institutions denied the right to vote by absentee ballot.

Here is a sample of stories NDRN received on Election Day.

TX – prohibiting persons with mental illness from voting when found not guilty by reason of insanity.

- 5 psychiatric patients who had been committed to psychiatric facilities after the deadline to request a mail-in ballot and had been denied the ability to leave the facility on Election Day by a doctor. Texas facilitated a laborious same day emergency mail-in ballot process and all but 1 was able to vote on Election Day by paper ballot at their respective psychiatric hospital. The one who was not able to vote called the hotline a 4PM. The deadline in Texas to have a representative personally request an emergency ballot is 5PM, and the representative must have a signed doctor's letter. While the caller was being informed of the steps that would need to be taken, a staff person grabbed the phone away from the client and informed the hotline worker that the resident could not vote because she was in a psychiatric hospital. The Hotline worker tried to explain the options and facilitate an emergency ballot, but the hospital staffer hung up on the hotline worker. Follow up calls to administrators at the hospital were not returned. PAIMI staff are assisting the HAVA project in working with the client and looking at rights violations in the facility.

- Two calls from individuals with cognitive disabilities who were harassed when they tried to use an assistant of their choice to vote. In one case, a small county's Election Administrator threatened to call the police on the assistant if she continued to try to assist.

TN – failing to provide assistance to voter with cognitive disability.

- Seven (7) individuals with intellectual disabilities who were not literate were told they could not vote if they couldn't read and sign the sign-in form. After asking to speak to a supervisor that issue was resolved. However, because they did not voluntarily and directly ask for assistance from either poll workers or their support staff, the voters were denied help in the voting booth. "But I can't read" was not interpreted as a direct request for assistance. Four (4) of the seven voted without the opportunity to make an informed decision on their ballot.

NC – voters with intellectual disabilities refused assistance or were intimidated in other ways.

- The main recurrent problem in the state was people being refused assistance. Not only did we get several calls, but there were instances reported in news articles on opposite ends of the state where people from a group home were brought to vote and they were refused assistance or were intimidated in other ways.

MA - failure to provide assistance to voters with cognitive disability.

TALKING POINTS

Voters with disabilities have the right to vote.

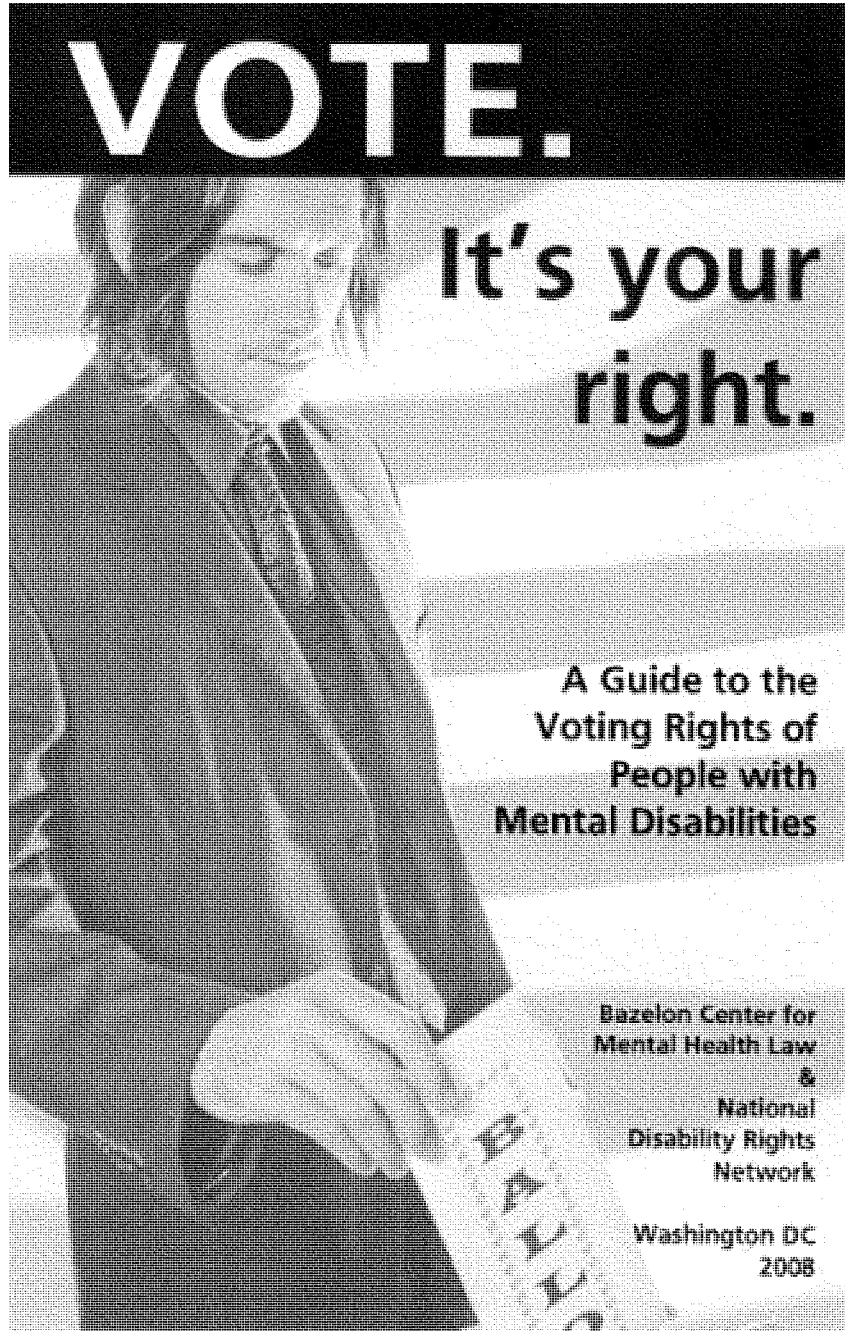
If a person with a mental disability understands what it means to vote, Federal law guarantees your right to vote. The Americans with Disabilities Act, 42 U.S.C. § 12132; *Doe v. Rowe*, 156 F.Supp.2d 35 (D.Me.2001).

- Voter qualifications that make broad categories of citizens ineligible to vote based on concerns about their mental competence (e.g., a qualification that bars voting by anyone under guardianship) may violate the Equal Protection Clause of the Fourteenth Amendment/Due Process Clause and the ADA; disenfranchising people who have the capacity to vote. Any voter qualification must be narrowly tailored.
- The ADA bars discrimination based on disability by state or local election officials or by state-operated residential facilities and other service providers that exercise any control over individuals with disabilities and their access to the voting process. Title II of the ADA provides that "no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity. 42 U.S.C. § 12132. "Public entities" include any State or local

government” and “any department, agency, special purpose district, or other instrumentality of a State or local government.” Id. § 12131(1).

Voters with disabilities have the right to have assistance in voting.

- Federal law gives voters with disabilities the right to decide whether to have assistance in casting a ballot and who will provide it.
- Voters can choose a poll worker, friend, family member, caregiver, assisted living provider, facility staff person or almost anyone else.
- The only people who may not assist a voter are the voter's employer or an agent of that employer, or, if the voter is a member of a union, the voter's union officer or an agent of the union.



VOTE.

**It's your
right.**

**A Guide to the
Voting Rights of
People with
Mental Disabilities**

**Bazelon Center for
Mental Health Law
&
National
Disability Rights
Network**

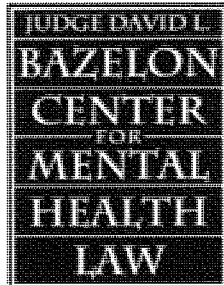
**Washington DC
2008**

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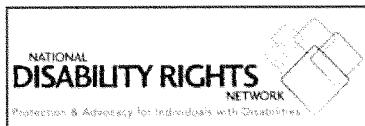
The guide is a project of the Voting Working Group of the National Disability Rights Network (NDRN). It was written by Bazelon Center deputy legal director Jennifer Mathis and senior staff attorney Lewis Bossing, with assistance by NDRN senior staff

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Introduction

Voting is a fundamental right in American society—the foundation of our democracy. By expressing our views through voting, we can help ensure that our government develops and implements good policies and protects our civil rights. And votes do count: In 2000, President George W. Bush won the presidential election by taking Florida with a margin of just 930 votes of the six million cast.

Voting is just as important to people with mental disabilities as it is to everyone else. Yet their voting rights are widely misunderstood. As a result, they are often disenfranchised—by unwarranted concerns about their competence to vote, by inappropriate challenges to prevent them from voting, by refusals to provide or permit help with voting or by help that disregards the voter's own choices.

This booklet explains the rights of voters with mental disabilities. It can be a resource for people with mental disabilities, advocates, family members, service providers, election officials, state and local mental health and aging authorities, state legislators and others.

The text focuses on four areas of concern to voters with mental disabilities: (1) voter-competence requirements imposed by state laws or by election officials or service providers, (2) state photo-ID laws, (3) voter challenges and (4) providing help to voters with disabilities. A final section describes the relationship between federal and state laws in this area. To help readers learn specifics about their state, we include a chart listing each state's laws on voter-competence requirements.

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While much of the explanation is geared toward lawyers, we also include text boxes with information addressed to voters, family members and advocates. Two one-page reference sheets are also available: a summary of the voting rights of people with mental disabilities and a summary of the types of help that may and may not be provided to voters with disabilities. Versions of these (reduced in size but not content) appear at the back of this booklet.

What is Not Covered Here?

Requirements for physical accessibility of voting systems, including polling places and voting equipment, are outside the scope of this booklet. However, you can find information and resources on the physical accessibility of voting systems on the National Disability Rights Network website, <http://www.ndrn.org/voting/resources>.

Key Legal Principles

- ☒ A state does not need to require a voter to demonstrate competence, and some states don't.
- ☒ If a state chooses to impose a voter-competence requirement, that requirement cannot be so broad that it takes away the right to vote of people who are capable of voting. For example, a state generally may not have laws that impose a blanket ban on voting by anyone under guardianship.¹
- ☒ If a state chooses to impose a voter-competence requirement, that requirement must be applied to *all* voters. It cannot single out a particular group of voters, such as people who are the subject of guardianship proceedings.²
- ☒ In virtually all states, only a court can find that a person is not competent to vote. In fact, it would present serious constitutional concerns for election officials or anyone else to make such a determination without the procedural safeguards of a court proceeding.³
- ☒ Service providers, such as nursing homes, hospitals, assisted-living facilities and group homes, cannot bar residents from voting based on staff or administrators' decisions that residents are not competent to vote.⁴
- ☒ Questions about a voter's competence can form the basis for a voter challenge only under very limited circumstances, if at all. Most states' laws restrict the grounds on which a voter may be challenged, the people who may bring a challenge and the types of evidence that can form the basis for a challenge. Many states do not permit any voter challenges based on competence.
- ☒ People with disabilities have the right to get help with voting and to decide who will help them vote.⁵
- ☒ A person with a disability can get help from a friend, family member, caregiver, residential service provider or almost anyone else of his or her choosing except an employer or

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union member. The person can also ask a poll worker for assistance with voting.⁶

- A person helping a voter with a disability should ask the voter what choice he or she wants to make, if any. It is the voter who makes the choice whether to vote and how to vote, not the person providing help.
- The person providing help should not mark a ballot to reflect any choice other than the choice expressed by the voter.
- The person providing help must respect the voter's privacy at all times during the voting process.⁷

Voter-Competence Requirements

People with mental disabilities sometimes lose the right to vote because of state voter-competence laws or because election officials, poll workers or service providers improperly impose their own voter-competence requirements. This section describes the ways in which people have lost the right to vote due to these laws and practices. It also describes what voters' rights are and what steps they may take to preserve or restore their rights.

State Voting Laws

Many states require that voters have a certain level of competence in order to vote. These requirements, in state laws or state constitutions, sometimes deprive people with mental disabilities of the right to vote. See the chart of each state's laws on voter competence on page 41.

- ☒ About 15 states and the District of Columbia have laws that bar voting by individuals who are “under guardianship” or adjudged “mentally incompetent” or “mentally incapacitated.” All of these terms generally mean the same thing.⁸ These laws require a court determination of incompetence or incapacity before removing a person's right to vote. Typically, however, such determinations involve competencies other than voting competence.

A finding of incompetence or incapacity generally means that a person is unable to meet basic needs for food, clothing and shelter due to a disability. For example, many individuals are placed under guardianship because they were unable to care for themselves during a psychiatric crisis. Yet they may have a good understanding of how elections work and of the issues at stake in federal, state and local elections. Guardianship hearings rarely include inquiries into a person's understanding of voting issues.

- ☒ Some 20 states have laws that bar voting *only* if a court has

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determined that an individual specifically lacks the capacity to vote.⁹

- ☒ Three states have laws that bar voting by individuals who are “non compos mentis.” This term has been interpreted differently from one state to the next.¹⁰
- ☒ Nine states have laws that use outmoded and stigmatizing terms such as “idiots” and “insane persons” to describe who is barred from voting based on competence concerns.¹¹ Such laws are rarely enforced because they are virtually impossible to understand and apply.
- ☒ Eleven states—Colorado, Idaho, Illinois, Indiana, Kansas, Maine, Michigan, New Hampshire, North Carolina, Pennsylvania and Vermont—place no disability-related restrictions on the right to vote.¹²

Election Officials

Election officials sometimes impose their own voter-competence requirements and prevent individuals with mental disabilities from voting. They have refused to allow individuals who live in institutions to register and vote or to obtain absentee ballots. Or they have required institutional residents to take examinations not required of others before being permitted to vote. Such practices have been invalidated by the courts as unconstitutional.¹³ Indeed, many states now have laws specifying that individuals do not lose their right to vote because of their residence in an institution.¹⁴

Example: Election officials in New Jersey segregated the ballots submitted by residents of a state psychiatric hospital and refused to count the ballots unless residents could prove that they were competent to vote. This practice was held unconstitutional.¹⁵

Example: Election officials in Virginia refused to provide absentee ballots for people with mental illnesses living in a state psychiatric hospital based on state officials’ interpretation of state law as authorizing absentee ballots for individuals in

facilities only if they have physical disabilities.¹⁶

Example: Election officials in Arkansas required a group of individuals with developmental disabilities who lived in a group home to pass an examination in order to be permitted to vote. This requirement was not imposed on other voters.

Poll Workers

Poll workers sometimes improperly turn away individuals with mental disabilities at the polls based on their own judgments that these individuals should not be permitted to vote.

Service Providers

Some providers of residential or other services for people with disabilities have inappropriately kept individuals with mental disabilities from registering, voting, or receiving voting assistance. Staff of hospitals, developmental disabilities institutions, nursing homes, group homes, shelters and other settings sometimes decide on their own that residents should not be allowed to vote. Staff of such facilities typically exert significant control over residents' lives, and their decisions have prevented many residents from exercising their lawful right to vote.

Example: A recent study of Philadelphia nursing homes revealed that many residents were denied the right to vote based on staff decisions that they were not competent to vote. Staff at a significant number of nursing homes required residents with cognitive impairments to answer questions to demonstrate their understanding of the election process, including names of candidates or current officeholders and questions about voting procedures.¹⁷ Pennsylvania law does not contain any voter-competence requirement.

Example: Before the November 2004 election, a Department of Veterans' Affairs (VA) nursing home in California refused to permit volunteers to come to the home to provide voter education and registration assistance. Staff told registration workers that the residents were "too demented to vote." After

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a threatened lawsuit, the facility allowed the protection and advocacy agency for individuals with disabilities to provide training on voting rights and assist residents who wished to register to vote.¹⁸

Example: Before the November 2004 election, an Ohio nursing home resident was barred by staff from registering to vote because his disability made him unable to create a signature and he used an "X" instead of a signature.

What Are Your Voting Rights?

Only a Court Can Decide that Someone is Not Competent to Vote

An election official, poll worker or service provider cannot make decisions about whether a person is competent to vote. In virtually every state with a voter competency requirement, a court must make the determination that a person does not meet the competency requirement.¹⁹ Even state laws disenfranchising “idiots” and “insane” people have been read to require a court finding of incompetence.²⁰

Indeed, regardless of what state law says, basic principles of federal due process require that a person’s right to vote cannot be taken away without the opportunity to be heard in court.²¹ The decision that a person lacks the competence to vote cannot be made by a long-term care facility, hospital or other service provider, or by a guardian or family member. Nor can it be made by a poll worker or election official.

When voter-competence decisions are made outside of a courtroom, they are not only being made by people who are unauthorized to make them, but they are typically based on factors that have little to do with what state law requires. In fact, many people have been denied the right to vote *even in states that do not have any voter-competence requirement* because service providers or others simply assumed, as in the above examples, that they could legally prevent people with mental disabilities from voting.

If a person is told by a poll worker that he or she is not competent to vote, the person should ask to vote a provisional ballot before leaving the polling place. The provisional ballot will be counted later if the person is eligible to vote.

Can Anyone But a Judge Decide that You Are Not Competent to Vote?

It is not legal for anyone to take away your chance to vote because that person thinks that you are not competent to vote. Election officials and poll workers cannot stop you from voting because of your disability. Staff in hospitals, nursing homes and other institutions cannot refuse to allow residents to register and vote or to obtain absentee ballots. That is unlawful. Only a court can decide that a person lacks the competence to vote.

If you are told on Election Day that you cannot vote, you can demand to vote a provisional ballot.

How Can Someone Retain the Right to Vote or Have it Restored Under State Law?

While advocates may want to consider challenging certain state voter-competence requirements as inconsistent with federal law (see page 12), many individuals may simply wish to use avenues available under state rules to try to keep from losing their right to vote, or to have it restored. This section describes what individuals may do—usually in the context of guardianship proceedings—to accomplish these goals.

In many states, a person is at risk of losing the right to vote when a guardianship is imposed. This is true in most states that have some type of voter-competence requirement. In states where the right to vote is automatically lost when a person is under guardianship, the ward may lose the right to vote even though the subject of voting was never raised. Often neither the ward nor the person seeking guardianship is aware that the right to vote is at stake in a guardianship hearing.

Know Your Rights in Guardianship Proceedings

If someone is trying to become your guardian, you should know what having a guardian will mean for your voting rights. If your state bars voting by people who have guardians or who are not able to vote (these states are listed in notes 5 and 6), you should ask the probate judge to keep your right to vote. You should also be prepared to show the judge that you are able to vote.²²

What Must You Show to Retain the Right to Vote?

You should try to present more information than necessary to show that you are able to vote. You should explain your ability to understand what it means to vote and how the voting process works. Have a mental health professional confirm this. If you communicate in a way that the judge may not understand clearly, the mental health professional should be able to explain how you communicate to help the court understand.

What if You Have Already Lost the Right to Vote?

If you have already lost the right to vote when you got a guardian, you can always ask the probate court to restore it. The fact that you were found unable to vote at one time does not necessarily mean that you are unable to vote now.

[box continues on the next page]

Know Your Rights [continued]

Even in states that remove the right to vote from anyone under guardianship, some courts allow people to keep the right to vote, or to have it restored, if they can show they are able to vote.²³

You may wish to contact the protection and advocacy agency in your state to help you figure out how to make sure your right to vote can be kept or restored in guardianship proceedings. You can find contact information for the agency in your state at <http://www.ndrn.org>.

Challenging State Voter-Competence Requirements

Someone who has lost the right to vote based on a state voter-competence requirement may be able to challenge the requirement on the ground that it violates federal law. Laws that bar people who are “mentally incompetent” or under guardianship from voting generally violate the Constitution and the Americans with Disabilities Act (see pages 25-28) if they are used to take away a person’s right to vote based on disability even if the person has the capacity to vote.

Fewer people lose their voting rights in states with laws that remove a person’s right to vote only after a court determines that he or she is not competent to vote. Even these laws, however, typically require certain people—usually those who are the subject of guardianship proceedings—to meet standards that are not imposed on other voters.

Probate courts in these states sometimes ask individuals who are the subject of guardianship proceedings to demonstrate an understanding of elections and politics that goes far beyond what

is expected of the general public before they are permitted to vote. For example, individuals are sometimes asked to provide the names of various federal, state or local office holders, to explain the voting process and to explain their political views. Individuals who do not answer these questions to the satisfaction of the questioner are not permitted to vote.

Such inquiries hold people with mental disabilities to a higher standard than other voters. They also function as a type of unlawful literacy test for people with mental disabilities. The Voting Rights Act requires courts to apply the same standard to everyone (see pages 29-30).

What You Can Do if Told You May Not Vote

If you have been told that you may not register or vote because of a state rule about competence, you may contact the protection and advocacy agency for people with disabilities in your state. You can find its contact information on the web at <http://www.ndrn.org>. The protection and advocacy agency can help you figure out what to do. The Bazelon Center for Mental Health Law may also be able to help. You can reach the Center at (202) 467-5730.

Advocating to Change the Voter-Competence Standard in Your State

We urge advocates and policymakers to promote the replacement of restrictive voter-competence standards with tailored standards that treat voters with disabilities equally.

Voters with Mental Disabilities Should Not Be Held to a Higher Standard

Voter qualifications typically include, in addition to U.S. citizenship, residence in the state where the person is voting, being age 18 or over and, in some states, not having been convicted of a felony within a certain timeframe. No state subjects voters without disabilities to any type of standard to measure voting capacity. We do not expect voters without disabilities to demonstrate the rationale for their votes or their understanding of how the voting process works.

What Standard Should Be Used to Determine Voting Competence?

The need for any voter-competence requirement is remote at best. There is no indication that election systems in any of the states without voter-competence requirements have been compromised by the votes of people with mental disabilities.

To the extent that states choose to have a voter-competence requirement, all their laws and practices must hold all individuals to the same standard.²⁴

Given that the essence of voting is expressing a choice, one appropriate standard for voting competence is whether a person can communicate, with or without accommodations, a choice whether to cast a vote. The American Bar Association's House of Delegates recently adopted a similar standard: whether a person can communicate, with or without accommodations, "a specific desire to participate in the voting process."²⁵

In sum, experience in many states suggests that it is unnecessary to impose *any* limitation on the fundamental right to vote of people with mental disabilities. Where states decide to have such limitations, the standard for voting should be the same for a person with a mental disability as for anyone else: whether the person can express a choice.

Photo-Identification Laws

A number of states have begun to require voters to present a driver's license or other government-issued photo-ID in order to vote. These requirements may place both financial and practical burdens on voters. Even where laws require provision of a free photo-ID to indigent individuals, fees are often required to obtain the necessary documentation, such as a birth certificate. Voters with mental or physical disabilities who do not already have a photo-ID may face particular challenges in obtaining one.

As of June 2008, seven states ask voters to show photo-identification.²⁶ In five of these states, voters lacking a photo-ID can vote if they submit an affidavit and/or provide additional forms of identification. In Indiana and Georgia, voters without a photo-ID can only vote a provisional ballot. In Georgia, these voters must return later with photo-IDs. In Indiana they may return with either photo-IDs or an affidavit explaining that indigence or religious principles prevented them from obtaining one.²⁷

While a state court struck down Missouri's photo-ID law,²⁸ the U. S. Supreme Court recently upheld Indiana's law.²⁹ The Supreme Court's decision was based on the failure in that case to demonstrate that any group of voters was actually subjected to excessive burdens.

The Supreme Court's decision leaves room for future constitutional challenges to voter-identification laws that present substantial burdens on individuals' right to vote. Such laws may also violate state constitutions that are more protective than the U.S. Constitution. Finally, they may violate the Americans with Disabilities Act (ADA—see page 27) if they screen out voters with disabilities and are not necessary, or if a state fails to make reasonable modifications necessary to ensure that voter-identification laws do not deprive people with disabilities of equal voting opportunities.³⁰

Voter Challenges Based on Mental Competence

Competence challenges to voters with mental disabilities, although they are not permitted in many states, have sometimes been cynically used to affect election results.

Example: Shortly before the November 2004 election, *The New York Times* reported that political party officials in Ohio were training thousands of recruits to challenge voters suspected of being ineligible to vote. Among other things, the recruits were “taught how to challenge mentally disabled voters who are assisted by anyone other than their legal guardians.”³¹

Most states’ laws provide for challenges to a person’s eligibility to vote.³² State law governs who may bring a challenge and what types of evidence must be presented to support a challenge. Visit <http://www.bazelon.org/issues/voting> for a link to a chart summarizing each state’s requirements as to the permissible grounds for challenges, the individuals who may bring a challenge, and the evidence and procedures required.

Is Competence a Permitted Ground for Challenging a Voter?

In many states, lack of competence is not a permissible basis for a voter challenge, even if the state has a voter-competence requirement.³³ And if the state does not have a voter-competence requirement, then a person may not be disqualified on the basis of competence.

In some states, competence may form the basis for challenges brought *before* the election, but not for challenges *at* the polling place. Polling-place challenges are sometimes limited to factors that are more easily determined, such as whether the voter is the person he or she claims to be or is voting at the correct precinct.³⁴

Even when challenges based on competence are allowed, many people wrongly believe that individuals with mental disabilities may be challenged based simply on the fact that they

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have a disability, that they have a guardian, that their guardian is not present when they vote or other inappropriate grounds.

Who May Challenge a Voter?

Voter-challenge laws also typically restrict who may bring a challenge. While many states allow other registered voters to challenge a voter, in some states only certain election officials or appointed challengers are permitted to bring a challenge.³⁵

What Type of Evidence is Required for a Challenge?

Voter-challenge laws usually require the challenger to present certain types of evidence and follow specific procedures. Some states, for example, require a challenger to demonstrate personal knowledge and/or reason to believe that the challenged voter does not meet the requirements to vote.³⁶ Demanding standards of proof may be required.³⁷ Accordingly, a voter challenge based on competence may require specific proof and personal knowledge that the person challenged does not meet voter qualifications related to competence.

A Person Who is Challenged Cannot be Prevented from Casting a Provisional Ballot

Regardless of the procedures that state law may require for voter challenges, the federal Help America Vote Act entitles a person whose eligibility to vote is in doubt to cast a provisional ballot if the person believes he or she is registered and eligible to vote in the appropriate jurisdiction.³⁸ The provisional ballot will then be counted if it is later determined that the person is eligible to vote. **A voter who is challenged at the polling place should always ask for a provisional ballot if told that he or she is not eligible to vote.**

What You Can Do if Challenged at the Polls

If an election official or another person at the polling place says you are not competent to vote, you should ask for a provisional ballot. You have a right to cast a provisional ballot no matter what the state's laws and regulations say about your eligibility to vote. It will be counted after Election Day if you are registered and eligible to vote. You can contact the protection and advocacy agency in your state to help you show that your provisional ballot should be counted. You can find the agency's contact information on the web at <http://www.ndrn.org>.

Voters Have the Right to Assistance

People who need help in voting because of a disability have the right to help from a person of their choice.³⁹ This can be a family member, a friend, a caregiver, a poll worker or almost anyone else. The only people who are not allowed to help are the person's employer or an agent of the employer, or, if the voter belongs to a union, an officer or agent of the union.⁴⁰

A helper must respect the voter's choices and may not substitute his or her own choices for the voter's. Nor can the helper make assumptions about how the person wants to vote. If the helper cannot reliably determine the voter's intent, he or she cannot cast a vote for that person.

Who Can Help Me Vote, and How?

A family member, friend or caregiver can come with you to help, or you can ask a poll worker for assistance. You can tell your helper what information to fill in on a registration form, if you cannot complete the form because of a disability. In an election, you can say what choices you want among those listed on a ballot.

Your helper can also explain instructions in your language, demonstrate the voting process, read ballot choices or use simplified language to explain the choices on the ballot. He or she can enter a voting booth with you if your disability makes it difficult to enter the booth alone and vote there without assistance.

If your helper marks a ballot for you, it must be for the choices *you* have expressed, not the helper's. If you don't want to cast a vote on an issue or for a candidate, the helper must leave that choice blank.

A Helper Must Respect the Voter's Privacy

A person who is helping another to vote must respect the person's privacy at all times during the voting process.⁴¹ After the person has completed a ballot, the helper should offer to make sure that the ballot accurately reflects the voter's choices and should offer to correct any mistakes and check the ballot for additional choices that may have been missed.⁴²

Election Officials Must Provide Help

A voter may ask election officials for help. Election officials must ensure that their voting systems are readily accessible to people with mental disabilities.⁴³ They must make reasonable modifications to rules and policies needed to help people with mental disabilities register or vote.⁴⁴ For example, having a poll worker or other election official explain ballot instructions or content in simpler language at the request of a voter with a disability would be a reasonable modification. Election officials may also need to provide assistance by visiting voters with disabilities in nursing homes and other care settings in order to help them apply for, complete and submit absentee ballots, if residents choose to vote by absentee ballot.

Service Providers Must Provide Help

A voter may wish to get help from a service provider. Nursing homes, hospitals, group homes, board-and-care homes and other facilities providing care and services to individuals with disabilities must also make reasonable modifications to their policies and practices to ensure that residents who need help with the voting process receive it.⁴⁵ These modifications usually include helping residents to register, to get to the polling place or to apply for and complete an absentee ballot if the resident chooses to vote by absentee ballot.

Example: On Election Day in November 2004, a number of residents of a state psychiatric hospital in New York were prevented from voting because their privileges to leave the

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facility had been taken away as a result of failure to comply with hospital rules. Hospital staff did not attempt to obtain absentee ballots to enable the residents to vote. The matter was resolved after a resident contacted advocates for assistance and the hospital ultimately agreed to take the residents to the polling place to enable them to vote.

In order to promote compliance with the law, states should require nursing homes and other residential facilities for individuals with disabilities and older adults to:

- provide information to residents about how to register to vote in the facility's jurisdiction and how to change their address for voting purposes if necessary;
- ask all residents whether they want to register and offer help to those who want to do so;
- encourage residents to exercise their right to vote and permit voter education to occur on site; and
- offer assistance to residents in applying for and submitting absentee ballots sufficiently in advance of the deadlines.

Disability Services Offices Must Provide Help with Registration

The National Voter Registration Act, or "Motor Voter" law, requires states to designate as voter registration agencies: (1) all offices that are primarily engaged in providing disability services and that receive state funds, and (2) all offices that provide public assistance.⁴⁶ These agencies must make available to their clients voter registration forms and assistance in completing them, and must accept completed applications and transmit them to state officials.⁴⁷ Such agencies include vocational rehabilitation offices, offices of mental health and mental retardation, offices on aging, offices that process Medicaid applications and other disability services offices.

How to Address Concerns about Voter Fraud

Some have suggested a need for voter-competence testing to address the possibility of voter fraud when someone helps a person with a disability to vote.⁴⁸ However, such concerns should not be addressed by raising barriers to the voting rights of people with disabilities. The solutions to concerns about voter fraud, to the extent warranted, should focus on those perpetrating the fraud.

Concerns about voter fraud in this context fall into three main categories:

(1) Concerns about caregivers or others substituting their own judgment and decisionmaking when they help a person with a disability vote, rather than following the expressed wishes of the person with a disability. Often people do not realize that this is improper even if the person's prior voting history and views appear to shed light on how the person might wish to vote.⁴⁹ Votes must be based on choices actually communicated by the person whose vote is being cast.

(2) Concerns about coercing a person with a disability to vote a certain way. These concerns have been raised in particular about individuals with disabilities residing in institutional settings, such as nursing homes, where staff often exert significant control over residents' lives.⁵⁰ Concerns have also been raised about whether candidates or political party representatives have engaged in voter intimidation or undue influence when visiting residents of nursing homes to offer assistance with registration or voting.⁵¹ Of course, the experience of being subjected to voting pressures is not unique to people with disabilities.⁵²

(3) Concerns about wholesale fraud where nursing home administrators or others obtain large numbers of residents' absentee ballots and falsify them. Occasional instances of this type of fraud have prompted calls for changing voting procedures in nursing homes and similar institutional settings.⁵³

These concerns have been raised primarily with respect to the

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use of absentee ballots, as it is more difficult to detect fraudulent actions that occur outside of the polling place.

All of the concerns described above can and should be addressed through more appropriate means than imposing discriminatory burdens on individuals with mental disabilities. Policymakers, election officials and others can respond by:

- educating assistance providers about what types of assistance are and are not permitted;
- using criminal prosecution to address unscrupulous voter-fraud practices;
- establishing state law procedures requiring election officials and residential service providers for people with disabilities to assist residents of long-term care facilities and other care settings with registration and voting.

Some election officials have successfully addressed concerns about undue influence of voters with cognitive impairments without the need for capacity testing or removing individuals from voter rolls.⁵⁴ A number of states have procedures in place that are designed to promote voting by residents of long-term care facilities, although many of those procedures are voluntary or have other limitations.⁵⁵

What Is the Legal Framework?

The Relationship Between Federal and State Law

Voting in the United States is a fundamental political right.⁵⁶ The United States Constitution protects the right to vote, but it also gives states the authority to set voting qualifications for both federal and state elections⁵⁷—within certain limits. For example, states cannot set voter-qualification standards that conflict with the Constitution.⁵⁸ The Supreme Court has invalidated discriminatory state voter qualifications that violate the Fourteenth Amendment of the U.S. Constitution.⁵⁹

States must also comply with the U.S. Constitution and federal statutes, which are passed by Congress and apply nationwide. Federal laws govern if they conflict with state laws. Federal laws and the Constitution also set the “floor” for legal protections. States may pass laws that give voters with disabilities more legal protections, but they cannot take away rights that have been established by federal laws and the Constitution.

What Federal Laws Apply?

1. *United States Constitution*

The Equal Protection Clause

- The Equal Protection Clause of the Fourteenth Amendment provides that “no state shall...deny to any person within its jurisdiction the equal protection of the laws.”⁶⁰ Laws and government practices that affect the right to vote must treat people in similar situations on an equal basis. People who have the capacity to vote and meet the age and residency requirements for voting cannot be treated differently from other such voters based on guardianship status.
- A state may take away the right to vote only when it can show that doing so is a “narrowly tailored” way to achieve a

compelling government interest.⁶¹ If there is more than one reasonable way to achieve the government's interest, the way that is least burdensome on people's rights must be chosen.

➤ **Voter qualifications that make broad categories of people ineligible to vote based on concerns about mental competence (for example, that bar voting by anyone under guardianship) are likely to violate the Equal Protection Clause. In most cases, such broad qualifications would not be narrowly tailored to any government interest because they would disenfranchise many people who have the capacity to vote.**⁶²

The Due Process Clause

➤ The Fourteenth Amendment states with respect to actions by state governments that "[n]o person shall be... deprived of life, liberty, or property, without due process of law..."⁶³ The Due Process Clause provides that before a state can deprive an individual of a fundamental right, it must adequately notify the individual of the reasons for the deprivation and give him or her the opportunity to be heard before the right is taken away.⁶⁴

➤ **Removal of a person's right to vote based on such factors as guardianship status or hospitalization may violate due process if the person is not given notice that he may lose the right to vote and a chance to challenge that loss.**⁶⁵

➤ In addition, the Due Process Clause provides similar protections to those provided by the Equal Protection Clause. The Due Process Clause "forbids the government to infringe certain 'fundamental' liberty interests *at all*, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest."⁶⁶ The right to vote is such a fundamental right.⁶⁷ Accordingly, government officials may not use competency standards to restrict individuals' right to vote, unless such standards are narrowly tailored to serve a compelling government interest.

2. *The Americans with Disabilities Act*

► The Americans with Disabilities Act (ADA) bars disability discrimination in the services, programs and activities of state and local government entities, including facilities that provide services to individuals with disabilities as well as state and local election authorities.⁶⁸ These programs would likely violate the ADA if they prevent qualified individuals with disabilities from voting.

► **Public entities may not exclude qualified voters with disabilities from the voting process.**

The ADA prohibits public entities from excluding qualified people from voting based on disability if they meet the essential requirements for voting.

Before a public entity may exclude a voter based on disability, it must conduct an individualized assessment of whether the person meets the essential requirements to vote.⁶⁹ For example, a state that wishes to impose a requirement that individuals have the mental capacity to vote cannot take away the right to vote from all people under guardianship without assessing whether each individual has the capacity to vote.⁷⁰

Laws or practices that categorically bar people from voting based on guardianship status, residence in a hospital, nursing home, group home or developmental disabilities center, or similar factors would likely violate the ADA because they bar voting by people who have the capacity to vote and meet the essential requirements for voting.⁷¹

► **Public entities must provide reasonable modifications to voting policies, practices and procedures.**

The ADA also requires public entities to make reasonable modifications to policies, practices and procedures that are necessary for people with disabilities to have an equal opportunity to participate in government programs, such as registering to vote and casting a ballot.⁷² For example, a state hospital may have to modify its practices in order to

assist residents in obtaining and submitting absentee ballots. Alternatively, the hospital might choose to transport residents or allow them to go to their polling place.

Public facilities that prevent qualified people with disabilities from registering or voting based on inappropriate grounds, such as the staff's view that the person lacks the capacity to vote, likely violate the ADA.

Similarly, public facilities that bar voter-education or registration activities from their facilities on the ground that residents are too disabled to vote, or that prevent residents from attending voter-education sessions, likely violate the ADA.

► Privately operated service providers must not discriminate against people with disabilities with respect to voting.

Title III of the ADA prohibits disability discrimination by privately operated places of public accommodation, such as privately operated nursing homes, group homes or homeless shelters.⁷³ These facilities are subject to the same requirements as publicly operated facilities

3. *Section 504 of the Rehabilitation Act of 1973*⁷⁴

► Section 504 of the Rehabilitation Act (Section 504) applies to entities that receive federal funding. It prohibits disability-based discrimination in any program or activity that receives federal financial assistance.⁷⁵ It also applies to federal executive branch agencies, such as the Department of Veterans' Affairs.⁷⁶ Section 504 provides the same rights and remedies as Title II of the ADA.⁷⁷

► Entities that may be covered by Section 504 include state and local agencies that operate elections or enforce election laws, government-operated facilities providing services to people with disabilities, private service providers and federally operated facilities providing services to individuals with disabilities.

4. *Help America Vote Act (HAVA)*⁷⁸

- The Help America Vote Act of 2002 (HAVA) set new standards for voting systems in federal elections. These standards include ensuring that voting systems are accessible for all voters with disabilities. For example, HAVA requires every precinct to have at least one voting machine or system that is accessible to voters with disabilities. HAVA also requires that each voter be able to vote secretly and independently. HAVA authorizes state and local governments to apply for grants to improve voting accessibility and to train elections officials and poll workers to assist voters with disabilities. HAVA also requires states receiving grants to set up a process for resolving accessibility complaints.
- HAVA's accessibility mandate is broad: Voting systems "shall be accessible for individuals with disabilities . . . in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters."⁷⁹ Voting-system accessibility under HAVA therefore includes ensuring that people with mental disabilities who have the capacity to vote are not denied equal access to registration and voting.
- **Overbroad voter-competency standards imposed by state law would likely run afoul of HAVA, as would denials of the right to vote based on competency determinations made by individuals (such as election officials, long-term care providers or poll workers) who are not qualified to make such determinations.**

5. *Voting Rights Act*

- **The Voting Rights Act (VRA) governs federal election procedures.** It provides that no person "acting under color of law" shall "in determining whether any individual is qualified under State law or laws to vote in any election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law

or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote.”⁸⁰ This means that any test for determining whether someone is qualified to vote must be applied to all voters equally.

➤ **Voting-qualification standards, such as competency tests, that single out individuals or classes of individuals for different treatment violate the VRA.**

➤ The VRA also prohibits states from using “literacy tests” as a voting qualification unless they are given to all voters, are conducted wholly in writing and are in compliance with other requirements.⁸¹ The Act defines literacy tests to include “any test of the ability to read, write, understand or interpret any matter.”⁸² **These provisions of the VRA prohibit states from requiring voters with disabilities to pass a voter-competency test that is not required of all voters.**

➤ In addition, Section 208 of the VRA guarantees the right of people with disabilities to have voting assistance from a person of their choosing so long as that person is not the *voter’s employer, an agent of the employer, or an officer or agent of the voter’s union.*⁸³

6. *National Voter Registration Act*⁸⁴

➤ The National Voter Registration Act (NVRA) permits, but does not require, states to enact laws authorizing removal of voters from the registration rolls based on “mental incapacity.”⁸⁵

➤ Another provision of the NVRA, however, states that “[a]ny State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office—shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965.”⁸⁶ The VRA, as discussed above, requires that any voting standards that states establish be applied equally to all voters. **Thus, both the VRA**

and the NVRA bar states from using voting standards that treat individuals with mental disabilities differently from other voters.

Notes

- 1 These limitations are imposed by the the United States Constitution, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and the Help America Vote Act. See notes 60-78 and accompanying text, and p. 12 (Challenging State Voter-Competence Requirements).
- 2 This limitation is imposed by the Voting Rights Act, 42 U.S.C. § 1971(a)(2)(A). See notes 80-82 and accompanying text, and p. 12 (Challenging State Voter-Competence Requirements).
- 3 See notes 63-65 and accompanying text concerning the Due Process Clause of the U.S. Constitution and p. 9 (Only a Court Can Decide that Someone is Not Competent to Vote)
- 4 See notes 68-77 and accompanying text, and p. 9 (Only a Court Can Decide that Someone is Not Competent to Vote).
- 5 See note 83 and accompanying text, and pp. 20-22 (Voters Have the Right to Assistance; Election Officials Must Provide Help; Service Providers Must Provide Help; Disability Services Offices Must Provide Help with Registration).
- 6 See *id.*
- 7 See notes 78-79 and accompanying text, and p. 21 (A Helper Must Respect the Voter's Privacy).
- 8 A finding of "mental incapacity" or "mental incompetence" generally means that a person is in need of guardianship. Jurisdictions with this type of exclusion are Alabama, Arizona, the District of Columbia, Louisiana, Maryland, Missouri, Montana, Nevada, New York, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia and Wyoming. For citations to these legal provisions, see chart on pp. 41-66. Some additional states have similar provisions in their laws, but state attorney general opinions have interpreted those provisions more narrowly.
- 9 These states are Alaska, Arkansas, California, Connecticut, Delaware, Florida, Georgia, Hawaii, Iowa, Kentucky, Massachusetts, Minnesota, New Jersey, North Dakota, Ohio, Oklahoma, Oregon, Texas, Washington and Wisconsin. For citations to these legal provisions, see chart on pp. 41-66.
- 10 Nebraska law defines "non compos mentis" to mean "mentally incompetent." Neb. Rev. Stat. § 32-312. Hawaii law does not define the term, but provides that a person may be disenfranchised on competence grounds

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only if determined to lack the capacity to vote. Haw. Rev. Stat. § 11-23(a). Rhode Island does not define the term, but the state's election board recently overturned local election officials' decision to remove two hospitalized men from the voter rolls based on earlier rulings that each was not guilty by reason of insanity. The state board concluded that such a finding was not sufficient to render the men "non compos mentis" for purposes of voting. David Scharfenberg, *Election Board Won't Take Away Men's Vote*, PROVIDENCE JOURNAL, May 29, 2008, http://www.projo.com/news/content/INSANE_VOTERS_05-29-08_3HAA708_v17.349e81a.html.

- 11 These states are Arkansas, Iowa, Kentucky, Mississippi, New Mexico, Ohio, Minnesota, New Jersey and Nevada. New Jersey and Nevada recently eliminated such voting bans from their state constitutions, but similar language remains in their statutes. For citations to these legal provisions, see chart on pp. 41-66. In all of these states except Mississippi and New Mexico, more specific statutory provisions concerning voter competence effectively trump the "idiots" and "insane" language.
- 12 Eight of these—Colorado, Idaho, Illinois, Indiana, New Hampshire, North Carolina, Pennsylvania and Vermont—have laws that contain no voter-competence requirement. Two others—Kansas and Michigan—have constitutional provisions authorizing the legislature to impose certain voter-competence requirements but their legislatures have not done so. Maine's constitution and statutes bar voting by individuals under guardianship due to mental illness, but the Secretary of State's office has instructed election officials to disregard this requirement following a federal court ruling declaring it unlawful. Memorandum from Julie L. Flynn, Deputy Secretary of State, to All Municipal Clerks and Registrars (Sept. 4, 2001) (citing *Doe v. Rowe*, 156 F. Supp.2d 35 (D. Me. 2001)). For citations to these legal provisions, see chart on pp. 41-66.
- 13 See, e.g., *Carroll v. Cobb*, 354 A.2d 355 (N.J. Super. App. Div. 1976); *Boyd v. Board of Registrars of Voters of Belchertown*, 334 N.E.2d 629 (Mass. 1975).
- 14 Missouri's constitution, however, provides that individuals "involuntarily confined in a mental institution" are ineligible to vote. Mo. CONST. art. 8 § 2.
- 15 *In the Matter of Absentee Ballots Cast by Five Residents of Trenton Psychiatric Hospital*, 750 A.2d 790 (N.J. Super. App. Div. 2000) (ballots of state hospital residents cannot be segregated or challenged without a particularized showing of incompetence).
- 16 *Harvey v. Kaine*, No. 3:06-cv-00653-HEH (E.D. Va. Filed Oct. 2, 2006), settled Nov. 15, 2006. Two state hospital residents filed suit against state and county officials to challenge the interpretation of state law as violative of the United States Constitution, the ADA, and Section 504. Shortly after the suit was filed, the state changed its interpretation to authorize absentee ballots for individuals in facilities due to their mental disabilities. See Greg A. Lohr, *Mental Patients Sue State, Allege Denial of Voting Rights*, STYLE WEEKLY, Oct. 25, 2006, <http://www.styleweekly/article.asp?idarticle=13257>.

- 17 Jason H. T. Karlawish et al., *Identifying the Barriers and Challenges to Voting by Residents in Nursing Homes and Assisted Living Settings*, J. AGING & SOC. POL'Y, vol. 20 issue 1, at 65, 72 (2008).
- 18 In 2008, the VA adopted a policy of barring all voter registration drives at VA facilities, but has since narrowed that policy to permit state and local government officials and non-partisan groups to conduct voter registration efforts at VA facilities.
- 19 Most state laws explicitly require this determination to be made by a court or state that a person must be "adjudicated" or "adjudged" incapacitated, indicating that a court or other tribunal must decide. While some state laws simply exclude "mentally incompetent" voters, competence determinations must generally be made by probate courts in the context of guardianship proceedings.
- 20 *In the Matter of Absentee Ballots Cast by Five Residents of Trenton Psychiatric Hospital*, 750 A.2d at 794-95 (N.J. Super. App. Div. 2000) (requiring county board of elections to demonstrate a particularized showing before a court that voters were incompetent before ballots could be disqualified).
- 21 *See, e.g., Doe v. Rowe*, 156 F. Supp.2d at 47-49. Government entities must provide due process before taking away a person's right to vote. Private entities such as long-term care facilities perform a core government function when they determine whether individuals are competent to vote, and thus should also be subject to due process requirements. *See* Nina A. Kohn, *Preserving Voting Rights in Long-Term Care Institutions: Facilitating Voting While Maintaining Election Integrity*, 38 McGEORGE LAW REVIEW 1065, 1081 (2007).
- 22 There is some risk that raising these issues in the probate court proceedings may foreclose a person from later making certain arguments if he or she should wish to challenge the state law. For example, a person's request that the probate judge determine his competence to vote may be viewed as a concession that the state law allows individuals under guardianship to retain their voting rights.
- 23 *Missouri Protection and Advocacy Servs., Inc. v. Carnahan*, 499 F.3d 803 (8th Cir. 2007) (interpreting Missouri law to permit individuals under full guardianship to retain their right to vote in some circumstances despite statutory and constitutional language making individuals under full guardianship ineligible to vote).
- 24 One recent proposal urges that states eliminate overbroad voting restrictions by adopting a voter-competence test to determine whether individuals understand the nature and effect of voting. *See* Karlawish et al., *Addressing the Ethical, Legal and Social Issues Raised by Voting by Persons with Dementia*, 11 J. AMER. MEDICAL ASS'N 1345 (2004). Unless such a test is given to *all* who wish to register or vote, however, it would result in the application of a different standard to individuals who are singled out for this type of testing. Thus, such a test would function much the way literacy tests were used.

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- 25 American Bar Association, Commission on Law and Aging *et al.*, Report to the House of Delegates (Aug. 13, 2007), at http://www.abanet.org/aging/docs/Voting_Rec_FINAL_approved.doc. The ABA proposal also requires that no prohibition on voting take place unless it is ordered by a court of “competent jurisdiction,” that has afforded the individual “appropriate due process protections,” and that the court’s order is based on “clear and convincing evidence.” *Id.*

Another possible standard was recommended by the American Bar Association’s Commission on the Mentally Disabled (now the Commission on Mental and Physical Disability Law): the ability to provide the information needed to register to vote. *See* Sales, STATE LEGISLATIVE ISSUES, *supra* note 56, at 111 (“Any person who is able to provide the information, whether orally or in writing, through an interpreter or interpretive device or otherwise, which is reasonably required of all persons seeking to register to vote, shall be considered a qualified voter.”).

- 26 These states are Florida, Georgia, Hawaii, Indiana, Louisiana, Michigan and South Dakota. National Conference of State Legislatures, Requirements for Voter Identification 1 (updated June 18, 2008), <http://www.ncsl.org/programs/legismgt/elect/taskfc/voteridreq.htm>.
- 27 *Id.*
- 28 *Weinschenk v. Missouri*, 203 S.W.3d 201 (Mo. 2006) (Missouri statute requiring voters to present certain forms of state or federal photo identification violated Missouri’s constitution because it interfered with the right to vote and was not narrowly tailored to the state’s interests in preserving electoral integrity and preventing voter fraud). A federal court granted a preliminary injunction to stop enforcement of Georgia’s photo-identification law, but the plaintiffs ultimately lost. *Common Cause/Georgia v. Billups*, 439 F. Supp.2d 1294 (N.D. Ga. 2006) (granting preliminary injunction); 504 F. Supp.2d 1333 (N.D. Ga. 2007) (plaintiffs lacked standing, the law did not impose severe burdens on the right to vote, and it was rationally related to the state’s interest in curbing voter fraud).
- 29 *Crawford v. Marion County Election Bd.*, 128 S.Ct. 1610 (2008). The Court rejected a constitutional challenge to Indiana’s voter identification law, finding that the evidence presented was not sufficient for the Court to conclude that the law imposed excessively burdensome requirements on any class of voters. Because the law imposed only a limited burden on voters generally, that burden did not outweigh the state’s interests in deterring voter fraud, modernizing elections, and safeguarding public confidence in elections.
- 30 42 U.S.C. §§ 12131(2), 12132; 28 C.F.R. §§ 35.130(b)(7), (b)(8).
- 31 Michael Moss, *Big G.O.P. Bid to Challenge Voters in Key State*, NEW YORK TIMES, Oct. 23, 2004, at A1, A12.
- 32 Oklahoma’s election code appears to be the only one that does not provide for any type of voter challenge. Okla. Stat. Ann. tit. 26, art. 7.

- 33 *See, e.g.*, Cal. Elec. Code § 14240 (challenges permitted on grounds that (1) the voter is not the person whose name appears on the index, (2) the voter is not a resident of the precinct, (3) the voter is not a U.S. citizen, (4) the voter has already voted that day, or (5) the voter is presently on parole for the conviction of a felony); Ohio Rev. Code § 3505.20 (challenges at polling place permitted only on grounds that person is not a citizen, has not resided in state for 30 days, or is not of legal voting age).
- 34 *See, e.g.*, Haw. Rev. Stat. § 11-25(a) (challenges prior to election day permitted “for any cause not previously decided by the board of registration or the supreme court in respect to the same person”); § 11-25(b) (challenges on election day permitted only on the grounds that the voter is not the person he or she claims to be or that the voter is not entitled to vote in that precinct).
- 35 *See, e.g.*, Cal. Elec. Code § 14240 (“On the day of the election no person, other than a member of the precinct board or other official responsible for the conduct of the election, shall challenge or question any voter concerning the voter’s qualifications to vote.”); 15 Del. Code § 4934 (only the polling place challenger appointed by each political party may bring a challenge).
- 36 *See, e.g.*, Minn. Stat. § 204C.12 (challenger must complete form stating under oath the basis for the challenge and that the challenge is based on challenger’s personal knowledge); Tx. Elec. Code § 16.092 (challenger must file sworn statement of the specific qualification for registration that the challenged voter has not met based on the personal knowledge of the challenger); Rev. Code Wash. § 29A.08.810(3) (challenger must file signed affidavit swearing that the challenged voter does not meet particular qualifications or does not reside at the address given on his or her voter registration record, based on challenger’s personal knowledge and belief after challenger has exercised due diligence to personally verify the evidence presented; challenge cannot be based on unsupported allegations); Alaska Stat. §15.15.210 (challenger must have good reason to suspect that questioned person is not qualified to vote); Conn. Gen. Stat. § 9.232(c) (challenger must know, suspect or reasonably believe person is not qualified to vote).
- 37 *See, e.g.*, Ariz. Rev. Stat. § 16-121.01 (challenger must show clear and convincing evidence that challenged voter does not meet certain requirements); Rev. Code Wash. § 20A.08.840(4) (same).
- 38 42 U.S.C. § 15482.
- 39 Voting Rights Act, 42 U.S.C. § 1973aa-6.
- 40 *Id.*
- 41 Help America Vote Act, 42 U.S.C. § 15481(a)(3)(A) (each voting system in a federal election must be accessible to individuals with disabilities in a manner that provides the same opportunities for privacy and independence as other voters have).

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- 42 *Id.* (each voting system in a federal election must permit a voter to verify his or her votes (privately and independently) before the ballot is cast, and to change or correct any errors).
- 43 Americans with Disabilities Act, 42 U.S.C. § 12132; 28 C.F.R. § 35.150(a); Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a); Help America Vote Act, 42 U.S.C. § 15481(a)(3)(A) (requiring voting systems in federal elections to be “accessible for individuals with disabilities . . . in a manner that provides the same opportunity for access and participation (including privacy and independence) as for other voters.”).
- 44 Americans with Disabilities Act, 42 U.S.C. §§ 12131(2), 12132; 28 C.F.R. § 35.130(b)(7); Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a).
- 45 Americans with Disabilities Act, 42 U.S.C. § 12182(b)(2)(A)(ii), 28 C.F.R. § 36.302(a) (privately operated facilities), 42 U.S.C. §§ 12131(2), 12132; 28 C.F.R. § 35.130(b)(7) (publicly operated facilities); Section 504 of the Rehabilitation Act, 29 U.S.C. § 794(a) (facilities receiving federal financial assistance).
- 46 42 U.S.C. § 1973gg-5(a)(2).
- 47 *Id.* § 1973gg-5(a)(4)(A).
- 48 *See, e.g.,* Karlawish et al., *supra* note 24, at 1348 (recommending that people assisting cognitively impaired individuals in applying for an absentee ballot or in going to the polling place use a screening tool to decide whether the person is competent to vote, and if there is doubt about the person’s competence to vote, “it is probably appropriate to regard the impaired person as incompetent to vote, at least until a more authoritative determination is available.”); Jessica A. Fay, *Elderly Voters Go Postal: Ensuring Ballot Integrity for Older Voters*, 13 *Elder L. J.* 453, 481 (2005) (responding to voter fraud concerns by recommending that, among other things, nursing homes should conduct competency tests to ensure that residents have the competence to vote).
- 49 *See, e.g.,* Karlawish et al., *supra* note 24, at 1347 (noting example of spousal caregiver who voted a straight Democratic ticket for her husband, who had Alzheimer’s disease, because he had always voted a straight Democratic ticket in the past).
- 50 *See, e.g., id.* at 1349.
- 51 *See, e.g.,* Daniel P. Tokaji and Ruth Colker, *Absentee Voting by People with Disabilities: Promoting Access and Integrity*, 38 *McGeorge L. Rev.* 1015, 1026 (2007).
- 52 *See, e.g., id.* (noting the voting pressures sometimes experienced by spouses and by young adults still dependent on their parents).
- 53 *See, e.g.,* Joan L. O’Sullivan, *Voting and Nursing Home Residents: A Survey of Practices and Policies*, 4 *J. Health Care L. & Pol’y* 325 (2001) (describing allegations of nursing home-based voter fraud in Maryland and Illinois); Fay, *supra* note 48.

- 54 See, e.g., Deborah Markowitz, *Voting and Cognitive Impairments: An Election Administrator's Perspective*, 38 *McGeorge L. Rev.* 871, 874-77 (2007). In this article, Markowitz, Vermont's Secretary of State, describes how her office handled a variety of different situations in which concerns were raised about undue influence on voters with cognitive impairments. Vermont does not have any voter competence requirement.
- 55 Amy Smith and Charles P. Sabatino, *Voting by Residents of Nursing Homes and Assisted Living Facilities: State Law Accommodations*, *BIFOCAL*, vol. 26, no. 1, at 1 (Fall 2004), <http://www.abanet.org/aging/publications/bifocal/261.pdf> (describing state procedures for assisting voters in nursing homes and other long term care facilities).
- 56 See, e.g., *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886) (referring to "the political franchise of voting" as a "fundamental political right, because preservative of all rights").
- 57 U.S. Const., art. I, § 2, cl. 1 ("the electors in each state shall have the qualifications requisite for electors of the most numerous branch of the state legislature"); art. I, § 4, cl. 1 ("[t]he times, places and manner of holding elections for senators and representatives shall be prescribed in each state by the legislature thereof; but the Congress may at any time, by law, make or alter such regulations . . .").
- 58 See, e.g., *Bullock v. Carter*, 405 U.S. 134-140-41 (1972) ("Although we have emphasized on numerous occasions the breadth of power enjoyed by the States in determining voter qualifications and the manner of elections this power must be exercised in a manner consistent with the Equal Protection Clause of the Fourteenth Amendment).
- 59 See, e.g., *Dunn v. Blumstein*, 405 U.S. 330, 337 (1972) (durational residency requirement for Tennessee voters that deprived some individuals of the right to vote violated Fourteenth Amendment's Equal Protection Clause); *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663, 666-67 (1966) (poll tax violated Equal Protection Clause); *Carrington v. Rash*, 380 U.S. 89, 96 (1965) (bar on voting by members of the military who moved to Texas during the course of military service violated the Equal Protection Clause).
- 60 U.S. Const., amend. XIV.
- 61 See *Dunn v. Blumstein*, 405 U.S. 330, 337 (1972) (if a state law grants the right to vote to some citizens and denies it to others, court "must determine whether the exclusions are necessary to promote a compelling state interest.") (quoting *Kramer v. Union Free Sch. Dist.*, 375 U.S. 621, 627 (1969)). Although not every restriction on the right to vote must be judged under this strict standard, restrictions that are severe or take away the right to vote altogether must meet this test. *Burdick v. Takushi*, 504 U.S. 428 (1992).
- 62 See, e.g., *Doe v. Rowe*, 156 F. Supp.2d at 51-56 (Maine's ban on voting by individuals under guardianship by reason of mental illness violated Equal Protection Clause); *Missouri Protection and Advocacy Servs., Inc. v.*

38

Carnahan, 499 F.3d 803, 808-09 (8th Cir. 2007) (Missouri law would violate Equal Protection Clause if it categorically barred individuals “adjudged incapacitated” from voting).

63 U.S. Const., amend. XIV.

64 *Lassiter v. Dep’t of Social Servs.*, 452 U.S. 18, 24 (1981) (explaining that due process “expresses the requirements of ‘fundamental fairness’”).

65 *Doe v. Rowe* 156 F. Supp 2d at 47-51 (D. Me. 2001) (Maine’s ban on voting by individuals under guardianship by reason of mental illness violated procedural Due Process because such individuals were not given notice and an opportunity to be heard before losing the right to vote).

66 *Reno v. Flores*, 507 U.S. 292, 302 (1993) (*emphasis in original*).

67 *Id.*; see also *Reynolds v. Sims*, 377 U.S. 533, 562 (1964) (same).

68 Title II of the ADA provides that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by any such entity.” 42 U.S.C. § 12132. “Public entities” include “any State or local government” and “any department, agency, special purpose district, or other instrumentality of a State or local government.” *Id.* § 12131(1).

69 The ADA and Section 504 of the Rehabilitation Act require an individualized assessment to determine if a person with a disability is qualified. *School Bd. of Nassau County v. Arline*, 480 U.S. 273, 287 (1987) (involving Section 504 of the Rehabilitation Act, which affords virtually identical rights to those under the ADA); *PGA Tour, Inc. v. Martin*, 532 U.S. 661, 690 (2001). Additionally, the ADA bars public entities from using voting eligibility criteria that unnecessarily screen out people with disabilities from voting. *Doe v. Rowe*, 156 F. Supp.2d at 58; 28 C.F.R. § 35.130(b)(3) (barring public entities from using criteria or methods of administration that have the effect of subjecting people with disabilities to discrimination on the basis of disability); *id.* § 35.130(b)(8) (barring public entities from applying eligibility criteria that screen out or tend to screen out people with disabilities or any class of people with disabilities from fully and equally enjoying any service, program or activity unless such criteria can be shown to be necessary for the provision of the services).

70 *Doe v. Rowe*, 156 F. Supp.2d at 58-59.

71 State laws generally do not permit individuals to be excluded from voting based simply on residence in a facility for people with disabilities. See, e.g., *In the Matter of Absentee Ballots Cast by Five Residents of Trenton Psychiatric Hospital*, 750 A.2d 790 (N.J. Super. App. Div. 2000) (ballots could not be challenged based simply on voters’ residence in a state psychiatric hospital); *Carroll v. Cobb*, 354 A.2d 355 (N.J. Super. App. Div. 1976) (individuals could not be barred from registering to vote based on residence in state institution for people with mental retardation); *Boyd v. Board of Registrars of Voters of*

Belchertown, 334 N.E.2d 629 (Mass. 1975) (residence in state institution for individuals with mental retardation did not make individuals ineligible to vote).

- 72 42 U.S.C. §§ 12131(2), 12132; 28 C.F.R. § 35.130(b)(7).
- 73 42 U.S.C. §§ 12181(7), 12182. Title III of the ADA bars these entities from discriminating based on disability in the full and equal enjoyment of their goods, services, facilities, privileges, advantages or accommodations. *Id.* § 12182(a); 28 C.F.R. § 36.201(a). The ADA also requires these entities to make reasonable modifications in their policies and practices to enable people with disabilities to have equal opportunities. 42 U.S.C. § 12182(b)(2)(A)(ii); 28 C.F.R. § 36.302(a).
- 74 Section 504 is codified at 29 U.S.C. § 794.
- 75 29 U.S.C. § 794(a).
- 76 *Id.*
- 77 *Barnes v. Gorman*, 536 U.S. 181, 184-85 (2002).
- 78 HAVA is codified at 42 U.S.C. § 15301 *et seq.*
- 79 42 U.S.C. § 15481(a)(3)(A). HAVA defines “voting systems” to include voting equipment as well as “the practices and associated documentation used (A) to identify system components and versions of such components; (B) to test the system during its development and maintenance; (C) to maintain records of system errors and defects; (D) to determine specific system changes to be made to a system after the initial qualification of the system; and (E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).” *Id.* § 15481(b).
- 80 42 U.S.C. § 1971(a)(2)(A).
- 81 *Id.* § 1971(a)(2)(C).
- 82 *Id.* § 1971(a)(3)(B).
- 83 *Id.* § 1973aa.
- 84 The NVRA is codified at 42 U.S.C. § 1973gg *et seq.*
- 85 *Id.* § 1973gg-6(a)(3)(B).
- 86 *Id.* § 1973gg-6(b)(1).

Resources

You can learn more about voting laws and practices in your state by contacting the protection and advocacy agency for people with disabilities. Contact information for these agencies can be found at <http://www.ndrn.org>.

The local branch of the American Civil Liberties Union may also be able to provide information and assistance. Contact information for local ACLU branches can be found at <http://www.aclu.org/affiliates/index.html>.

Additional resources include:

- the National Disability Rights Network,
<http://www.ndrn.org>,
- the Bazelon Center for Mental Health Law,
<http://www.bazelon.org>,
- the Advancement Project,
<http://www.advancementproject.org>,
- the League of Women Voters,
<http://www.lwv.org>, and
- the Secretary of State's office and local election board in your area.

State Laws Affecting the Voting Rights of People with Mental Disabilities¹

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
ALABAMA	No person who is mentally incompetent shall be qualified to vote, unless the disability has been removed. ALA. CONST. art. 8, § 177(b). Persons disqualified under the Constitution are not entitled to vote. ALA. CODE § 17-3-9.	In a limited guardianship, the partially incapacitated person retains all legal rights which the court has not seen fit to delegate to the limited guardian. Comment to ALA. CODE § 26-2A-105.	Consumers of mental health services have the same general rights as other citizens of Alabama, including the right to vote and participate in the political process, subject to applicable laws. ALA CODE § 38-9C-4(7). 4(a)(5).	Persons with developmental disabilities and traumatic brain injury have the right to vote and participate in the political process, subject to applicable laws. ALA CODE § 38-9C-4(7). Persons with developmental disabilities and traumatic brain injury are presumed competent until a court determines otherwise. ALA. CODE § 38-9C-4(6).
ALASKA	No person may vote who has been judicially determined to be of "unsound mind" unless the disability has been removed. ALASKA CONST. art. 5, § 2. The judicial determination of unsoundness of mind necessary to disqualify a mentally impaired individual from voting must be specifically raised in a guardianship hearing or raised in a separate proceeding. 1992 Alaska Op. Atty. Gen. (Inf.) 123, Aug. 28, 1992.	Guardian may not prohibit a ward from registering or voting. ALASKA STAT. § 13.26.150(e)(6). An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those that have been expressly limited by court order or have been specifically granted to the guardian by the court. ALASKA STAT. § 13.26.090.	Persons undergoing mental health evaluation or treatment may not be denied the right to vote. Undergoing court-ordered mental health treatment is not a determination of legal incapacity. ALASKA STAT. § 47.30.835(a)(b).	

¹ This table is based on the table published by Kay Schirmer, Lisa Ochs, & Todd Shields, *Democratic Dilemmas: Notes on the ADA & Voting Rights of People with Cognitive and Emotional Impairments*, 21 BERKLEY J. EMP. & LAB. L. 437 (2000). The table was updated by the National Disability Rights Network (NDRN) in June 2004, and by the Bazelon Center for Mental Health Law on a continuous basis since that time.

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
ARIZONA	<p>No person who is adjudicated an incapacitated person shall be qualified to vote. ARIZ. CONST. ART. 7, § 2(C).</p> <p>The County Recorder shall cancel a voter's registration if they are adjudicated an incapacitated person under A.R.S. § 14-5101. ARIZ. REV. STAT. § 16-165.</p> <p>Not qualified to register to vote if adjudicated an incapacitated person. ARIZ. REV. STAT. § 16-101(A)(6).</p>	<p>Voter registration cancelled if a person under guardianship is declared an "insane person" in a court proceeding. ARIZ. REV. STAT. § 16-165(C)</p> <p>Incapacitated person defined as any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions regarding his person. A.R.S. § 14-5101(1).</p>	<p>Persons undergoing court-ordered mental health evaluation or treatment are not determined to be legally incompetent Persons undergoing mental health evaluation or treatment may not be denied the right to vote. ARIZ. REV. STAT. § 36-506(A).</p>	
ARKANSAS	<p>Registration to vote cancelled if a person is adjudged mentally incompetent by a court of competent jurisdiction. ARK. CONST. AMEND. 51, § 11(a)(6).</p>	<p>If guardian appointed prior to Oct. 1, 2001, guardian must obtain express court approval to prohibit voting. ARK. STAT. ANN. § 28-65-302(a)(1)(E).</p> <p>No guardian appointed on or after Oct. 1, 2001 shall authorize an incapacitated person to vote without filing a petition and receiving express court approval. ARK. STAT. ANN. §28-65-302(a)(2)(E).</p>	<p>No person shall be deemed incompetent to vote solely by reason of that person's admission to a mental health system. ARK. STAT. ANN. § 20-47-220(b).</p>	

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
CALIFORNIA	<p>The Legislature shall provide for the disqualification of electors while mentally incompetent CAL. CONST. art. 2, § 4.</p> <p>A person shall be deemed mentally incompetent, and therefore disqualified from voting, if, during the course of any of the proceedings set forth below, the court finds that the person is not capable of completing an affidavit of voter registration in accordance with Section 2150 and a conservator is appointed or the person has pled not guilty by reason of insanity. CAL. ELEC. CODE § 2208(a).</p> <p>If the proceeding under the Welfare and Institutions Code is heard by a jury, the jury shall unanimously find that the person is not capable of completing an affidavit of voter registration before the person shall be disqualified from voting.</p>	<p>An incapacitated person for whom a guardian has been appointed is not presumed to be incompetent and retains all legal and civil rights except those which have been expressly limited by court order or have been specifically granted by order to the guardian by the court. ARK. STAT. ANN. § 28-65-106.</p> <p>Person under conservatorship is disqualified from voting if court determines that he or she is not capable of completing voter registration affidavit; must review their capability of completing the affidavit during the yearly or biennial review of conservatorship. CAL. PROB CODE § 1910. CAL. ELEC. CODE § 2208 and § 2209.</p>	<p>Conservatorship report shall include recommendation for or against the disqualification of the person from voting. CAL. WEL. and INST. CODE § 5357(c).</p>	

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

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STATE	State Constitutional/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
COLORADO	<p>CAL. ELEC. CODE § 2208(b). Conservatee's ability to complete affidavit of voter registration shall be reviewed yearly or biennially. CAL. ELEC. CODE § 2209(a).</p> <p>No Constitutional disqualification provision.</p> <p>Right to vote is not lost because of confinement in a state institution for persons with mental illness. COLO. REV. STAT. § 1-2-103(6).</p>		<p>People receiving evaluation, care, or treatment for mental illness shall be given the opportunity to exercise his right to register and to vote in primary and general elections. The agency or facility providing evaluation, care, or treatment shall assist such persons, upon their request, to obtain voter registration forms, applications for absentee ballots, and absentee ballots and to comply with any other prerequisite for voting. COLO. REV. STAT. § 27-10-119.</p>	<p>All developmentally disabled persons who are eligible to vote under the law have the right to vote and service agencies should assist those receiving services with registration, applications, and voting. COLO. REV. STAT. § 27-10-5-119.</p>
CONN-ECTICUT	<p>No mentally incompetent person shall be admitted as an elector. CONN. GEN. STAT. § 9-12(a).</p>	<p>The guardian or conservator of an individual may file a petition in probate court to determine such individual's competency to vote in a primary, referendum or election. CONN. GEN. STAT. § 45a-703.</p>	<p>Persons under hospitalization or treatment may vote unless a specific finding is made in a guardianship proceeding that they are incapable to vote and put under guardianship. CONN. GEN. STAT. § 17a-541.</p>	

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
DELAWARE	<p>No person adjudged mentally incompetent . . . or incapacitated under the provisions of this Constitution from voting, shall enjoy the right of an elector. DEL. CONST. art. 5, § 2.</p> <p>No person adjudged mentally incompetent. . . shall be a qualified voter. For purposes of this chapter, the term "adjudged mentally incompetent" refers to a specific finding in a judicial guardianship or equivalent proceeding, based on clear and convincing evidence that the individual has a severe cognitive impairment which precludes exercise of basic voting judgment. 15 DEL. CODE ANN. § 1701</p>			
DISTRICT OF COLUMBIA	<p>Not a qualified elector if mentally incompetent as determined by a court of competent jurisdiction. NEW COLUMBIA CONST. ART. 5 § 1(c).</p> <p>Not a qualified elector if mentally incompetent as adjudged by a court of competent jurisdiction. DC CODE §1-1001.02.</p>	<p>An incapacitated person is not considered incompetent and retains all legal rights and abilities other than those expressly limited or curtailed in the order of appointment of a guardian or in a protective proceeding, or subsequent order of the court. DC Code §21-2004.</p> <p>Persons under guardianship not entitled to the elective franchise. HISTORY OF D.C. CODE. 2001 ED., ACTS RELATING TO THE ESTABLISHMENT OF THE DISTRICT OF COLUMBIA AND ITS VARIOUS</p>	<p>A person admitted or committed for treatment pursuant to this chapter may not, by reason of the admission or treatment, be denied the right to vote unless the person has been adjudicated incompetent and has not been restored to legal capacity. DC CODE § 21-564(a).</p>	

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
FLORIDA	<p>Not qualified to vote if adjudicated, in this or any other state, to be mentally incompetent, until the disability has been removed or civil rights have been restored. FLA. CONST. Art. 6 § 4(a).</p> <p>A resident of a residential facility who has reached his eighteenth birthday and is otherwise qualified to vote is eligible to vote, provided such person has not been adjudicated mentally incompetent. Op. Atty. Gen., 074-15, Jan. 9, 1974.</p> <p>Not entitled to vote if adjudicated mentally incapacitated with regard to voting in this or any other state and right not restored. FLA. STAT. § 97.041(2)(a).</p>	<p>FORMS OF GOVERNMENTAL ORGANIZATION - REGULATION OF ELECTIVE FRANCHISE.</p> <p>Right to vote can be removed if a person is determined to be incapacitated. FLA. STAT. § 744.3215(2)(b).</p> <p>Persons under guardianship must be evaluated for voting disqualification. FLA. STAT. § 744.331(3)(d)(2).</p>	<p>Any patient who is eligible to vote has the right to vote and the department shall establish rules to enable patients to obtain voter registration forms, applications for absentee ballots, and absentee ballots. FLA. STAT. § 394.459(7).</p>	<p>No otherwise qualified person shall, by reason of having a developmental disability, be denied the right to vote in public elections. FLA. STAT. § 393.13(3)(j).</p>
GEORGIA	<p>A person adjudicated mentally incompetent cannot register, remain registered, or vote unless the disability has been removed. GA. art. 2, § 1, ¶ III(b); GA. CODE ANN. § 21-2-216(b).</p> <p>A person must be adjudicated mentally incompetent before the right to vote is removed. 1995 Op. Atty Gen. No. 95-27.</p>	<p>The appointment of a guardian is not a determination regarding the right of the ward to vote. GA. CODE ANN. § 29-4-20(b)</p>	<p>Patients may vote if otherwise eligible under state law. Facility administrators shall permit and reasonably assist patients with registration, voting prerequisites, and absentee ballots. GA. CODE ANN. § 37-3-144.</p>	<p>Clients may vote if otherwise eligible. Facility administrators shall permit and reasonably assist patients with registration, voting prerequisites, and absentee ballots. GA. CODE ANN. § 37-4-104.</p>

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
HAWAII	<p>No person who is "non compos mentis" shall be qualified to vote. HAW. CONST. art. 2, § 2.</p> <p>Whenever the clerk receives from the department of health or any informing agency, information of . . . adjudication as an incapacitated person under the provisions of chapter 560. . . the clerk shall thereupon make such investigation as may be necessary to prove or disprove the information, giving the person concerned, if available, notice and an opportunity to be heard. If after the investigation the clerk finds that the person is . . . incapacitated to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible decisions concerning voting . . . the clerk shall remove the name of the person from the register. HAW. REV. STAT. § 11-23(a).</p>	<p>Definition of mental incapacity as referenced in electoral statutes: "Incapacitated person" means an individual who, for reasons other than being a minor, is unable to receive and evaluate information or make or communicate decisions to such an extent that the individual lacks the ability to meet essential requirements for physical health, safety, or self-care, even with appropriate and reasonably available technological assistance. HAW. REV. STAT. § 560:5-102.</p>	<p>Admission to psychiatric facility itself does not modify the right to vote. HAW. REV. STAT. § 334-61.</p>	
IDAHO	<p>No disqualification statute.</p>		<p>Mental health facility cannot deny right to vote unless right limited by prior court order. IDAHO CODE § 66-346(a)(6).</p>	<p>Developmentally disabled persons have the right to vote unless limited by prior court order. IDAHO CODE § 66-412(3)(i).</p>

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
ILLINOIS	<p>No disqualification statute.</p> <p>Every patient of any hospital or mental institution in this State shall be deemed a resident of the town, city, village or election district or precinct in which he resided next prior to becoming a patient of such hospital or mental institution. However, the term "hospital" does not include skilled nursing facilities. IL ST CH 10 § 5/3-4.</p> <p>Any person who is a resident of a facility licensed or certified pursuant to the Nursing Home Care Act for 30 days or longer, and who is a U.S. citizen and has resided in this State and election district 30 days preceding any election shall be entitled to vote in the election district in which any such home in which he is a resident is located, provided that he shall declare upon oath that it was his bona fide intention at the time he entered said home to become a resident thereof. IL ST CH 10 § 5/3-3.</p> <p>No disqualification provision.</p> <p>No disqualification statute.</p>			
INDIANA			<p>Detention or commitment does not deprive persons of the right to vote. IND. CODE § 12-26-2-8(a)(1)(F).</p>	

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
IOWA	<p>No idiot, or insane person, or person convicted of any infamous crime, shall be entitled to the privileges of an elector. IOWA CONST. art. 2, § 5.</p> <p>A person who is "incompetent to vote" is disqualified from registering and voting. Certification by the clerk of the district court that a court has found the person no longer incompetent shall qualify such person to vote again if otherwise eligible. IOWA CODE § 48A.6(2).</p>	<p>When a guardian is appointed for a person with mental retardation, the court shall make a separate determination as to the ward's competency to vote. The court shall find a ward incompetent to vote only upon determining that the person lacks sufficient mental capacity to comprehend and exercise the right to vote. I.C.A. § 633.556.</p> <p>When guardianship in which the order determined the right to vote is terminated, person can request reinstatement of voting rights as part of the termination procedure or in a separate determination. I.C.A. § 633.579.</p> <p>The vote of a legal incompetent shall be cast by the guardian along with a written sworn statement. I.C.A. § 468.513.</p>		<p>Being committed does not bar the right to vote unless the court makes a separate determination that the person lacks the mental capacity to comprehend and exercise the right to vote. I.C.A. §222.16.</p> <p>In an order committing a person based on mental retardation, the court shall include a finding as to whether the person has sufficient mental capacity to comprehend and exercise the right to vote. I.C.A. §222.31.</p>
KANSAS	<p>Legislature may exclude persons from voting because of mental illness. KS. CONST. art 5. § 2.</p> <p>No disqualification statute.</p>			
KENTUCKY	<p>"Idiot" and "insane" persons shall not have the right to vote. KY. CONST. § 145(3).</p>	<p>If a court finds that a person is</p>		

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
	<p>Anyone disqualified under the Constitution may not vote. Ky. REV. STAT. § 116.025(1).</p> <p>Individuals declared incompetent solely for the purpose of appointing a committee to manage their welfare checks would not be disqualified from voting and are prima facie qualified to vote. 1973 KY Attorney General Op. 73-700.</p> <p>Person declared incompetent but not declared "insane" would be entitled to register to vote if otherwise qualified. 1976 KY Attorney General Op. 76-549.</p>	<p>in need of a guardianship or conservatorship, the court must specifically determine whether the person retains the right to vote. Ky. REV. STAT. 387-580(3)(c). Ward shall only be deprived of right to vote if the court separately and specifically makes a finding on the record. Ky. REV. STAT. 387.590(10)</p>		
LOUISIANA	<p>Right to vote may be suspended while interdicted and judicially declared mentally incompetent. LA. CONST. art. 1, § 10(A).</p> <p>An individual who has been fully interdicted after being judicially declared to be mentally incompetent may not vote. An individual who is only partially interdicted is allowed to vote unless there has been a specific suspension of the right to vote. LA. REV. STAT. ANN. § 18:102(A)(2).</p>		<p>Patients in treatment facilities shall not be deprived of the right to vote because of status as a patient in a treatment facility. LA. REV. STAT. ANN. § 28:171(A).</p>	<p>Department of Health and Hospitals shall establish rules and regulations to ensure that persons with mental retardation who are competent to vote (have not been interdicted or partially interdicted with a specific suspension of the right to vote) are permitted to vote. LA. REV. STAT. ANN. § 18:102.1(B).</p>

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
<p>MAINE</p>	<p>Persons under guardianship for reason of mental illness shall not be electors. ME. CONST. ART. 2 §1.</p> <p>Held unconstitutional by Doe v. Rowe 156 F. Supp.2d 35 (D. Me. 2001).</p> <p>Found that procedures in probate courts did not give adequate due process to Plaintiffs (were not told they would be disenfranchised as a result of the guardianship process). Also found that the provision did not pass strict scrutiny because there was not sufficient correlation between the ends and the means—therefore Art. II §1 violates the Equal Protection Clause.</p> <p>Memorandum from Deputy Secretary of State to All Municipal Clerks and Registrars (Sept. 4, 2001) eliminating the ban on voting by individuals under guardianship by reason of mental illness as of Aug. 9, 2001.</p>		<p>Patients in residential care facilities have the right to vote unless facility determines a need to restrict due to medical welfare, patient is adjudicated incompetent and finding not reversed, or other statute or rule restricts the right, but not solely on admission to a hospital or residential care facility. ME. REV. STAT. ANN. tit. 34-B § 3803(1)(A-C).</p>	<p>Persons with mental retardation or autism may not be denied voting rights because of mental illness, unless under guardianship. ME. REV. STAT. ANN. tit. 34-B § 5605(5).</p>
<p>MARYLAND</p>	<p>State may regulate or prohibit the right to vote of a person under care or guardianship for mental disability. Md. CONST. art 1, § 4;</p> <p>Individual not qualified to be a registered voter if under guardianship for mental disability. Md. CODE ELEC. LAW 3-102(b)(2).</p>		<p>A person may not lose the right to vote solely because of residency in a facility for a mental disorder. MD. HEALTH-GEN. § 10-704.</p>	<p>A person may not lose the right to vote because he or she has or is receiving services for a developmental disability. MD. HEALTH-GEN. § 7-1004.</p>

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
MASSACHUSETTS	<p>Every citizen...excepting persons under guardianship... shall have a right to vote in such election. MASS. CONST. amend. art. 3</p> <p>Sec of State opinion interpreting above provision to require a specific finding of incompetence to vote before disenfranchising someone.</p> <p>Every citizen... not being a person under guardianship...may have his name entered on the list of voters in such city or town, and may vote therein in any such election. MASS. ANN. LAWS ch. 51 § 1.</p> <p>Legislature may exclude persons based on mental incompetence. MICH. CONST. art. 2, § 2.</p> <p>No disqualification electoral statute.</p>		<p>No person shall be deprived of the right to vote solely on the basis of admission or commitment to a mental health facility. 104 CODE MASS. REG. 27-13; Boyd v. Board of Registrars of Voters, 334 N.E.2d 629 (Mass. 1975).</p>	
MICHIGAN				
MINNESOTA	<p>Persons under guardianship, "insane," or not mentally competent are not entitled or permitted to vote. MINN. CONST. art. 7, § 1.</p> <p>Not eligible to vote if under guardianship in which the court order revokes the right to vote or adjudicated legally incompetent. MINN. STAT. § 201.014(2)(b)(c).</p>	<p>Unless otherwise ordered by the court, the ward under guardianship retains the right to vote. MINN. STAT. § 524.5-313(c)(8).</p> <p>Each year, within 30 days after the anniversary date of an appointment, a guardian shall send or deliver to the ward a notice ... of the status of the ward's right to vote. MINN.</p>	<p>Persons may not be deprived of the right to vote because of commitment or treatment. MINN. STAT. § 253B.23(2)(a).</p>	<p>Appointment of the commissioner as conservator shall not constitute a judicial finding that the mentally retarded person is legally incompetent except for the restrictions which the conservatorship places on the conservatee. The appointment of a conservator shall not deprive the conservatee of the right to</p>

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
MISSISSIPPI	<p>"Idiot" and "insane" persons are not qualified electors. Miss. CONST. art. 12, § 241.</p> <p>"Idiot" and "insane" persons shall not be entitled or permitted to vote. MISS. CODE ANN. § 23-15-11.</p>	<p>STAT. § 524.5-310(e).</p>	<p>Admission, treatment, or commitment does not deprive the right to vote. MISS. CODE ANN. § 41-21-101(b).</p>	<p>vote. MINN. STAT. § 252A.12.</p> <p>Admission, treatment, or commitment does not deprive the right to vote. MISS. CODE ANN. § 41-21-101(b).</p>
MISSOURI	<p>No person under guardianship of estate or person because of mental incapacity nor persons involuntarily confined in a mental institution can vote. MO. CONST. art. VIII, § 2.</p> <p>No person adjudicated incapacitated is entitled to vote. MO. REV. STAT. § 115.133(2).</p> <p>Person who had been committed to mental hospital many years earlier but did not have a guardian was not disqualified under the constitutional provision. New v. Carrough, 370 S.W.2d 323 (Mo. 1963).</p>			
MONTANA	<p>Not a qualified elector if of "unsound mind," as determined by a court. MONT. CONST. art. 4, § 2.</p> <p>No person adjudicated to be of unsound mind has the right to vote, unless he has been restored to capacity as provided by law. MONT. CODE ANN. § 13-1-111(3).</p>			

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
NEBRASKA	<p>Not qualified to vote if "non compos mentis," unless restored to civil rights. NE. CONST. art. 6, § 2.</p> <p>No person is qualified to vote if "non compos mentis," unless restored to civil rights. NEB. REV. STAT. § 32-313(1).</p> <p>"Non compos mentis" defined as "mentally incompetent" in voter registration materials. NEB. REV. STAT. § 32-312. ("Mentally incompetent" is not synonymous with being under guardianship; the latter is imposed in Nebraska based on "mental incapacity").</p>			
NEVADA	<p>No person who has been adjudged mentally incompetent, unless restored to legal capacity, shall be entitled to the privilege of elector. NV. CONST. art. 2, § 1.</p> <p>The county clerk shall cancel the voter registration if the "insanity" or mental incompetence of the person registered is legally established. NV. REV. STAT. ANN. § 293.540(2).</p>		<p>No person admitted to a public or private mental health facility pursuant to this chapter shall, by reason of such admission, be denied the right to vote, unless specifically adjudicated incompetent and has not been restored to legal capacity. NV. REV. STAT. ANN. § 433A.460(1).</p> <p>Medical director shall evaluate every six months to determine if sufficient cause to remain unable to vote. NV. REV. STAT. ANN. § 433A.480(1).</p>	

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
NEW HAMPSHIRE	<p>No Constitutional disqualification provision.</p> <p>No disqualification electoral statute.</p>		<p>No person shall be deemed incompetent to vote or to exercise any other civil right solely by reason of that person's admission to the mental health services system. N.H. REV. STAT. ANN. § 135-C:56(II).</p> <p>Subject to any other provisions of law and the Constitution of New Jersey and the United States, no patient shall be deprived of the right to vote solely by reason of receiving treatment. N.J. STAT. ANN. § 30:4-24.2(a).</p> <p>Cannot be presumed incompetent because has been examined or treated for mental illness. §30:4-24.2(c)</p> <p>Persons receiving in-patient assessment or treatment may register and vote subject to laws and Constitution. N.J. STAT. ANN. § 30:4-27.11(c)(a).</p>	<p>Persons may not be deprived of the right to vote because they have or are receiving services for a developmental disability; department rules shall not restrict voting rights. N.H. REV. STAT. ANN. § 171-A:14(f).</p> <p>Admission or residency at a facility or receipt of services shall not deprive persons of their right to register and vote. N.J. STAT. ANN. § 30:6D-4(a).</p> <p>Determination of eligibility for MR services does not create presumption of incompetency; cannot revoke right to vote based solely on placement at residential facility. Carroll v. Cobb, 354 A.2d 355 (N.J. Super. Ct. 1976).</p>
NEW JERSEY	<p>On Nov. 6, 2007, NJ voters approved constitutional amendment. New language states: No person shall have the right of suffrage who has been adjudicated by a court of competent jurisdiction to lack the capacity to understand the act of voting. Previous language stated: No person shall have the right of suffrage who is an "idiot" or "insane" person. N.J. CONST. art 2, § 1, ¶ 6.</p> <p>No person shall have the right of suffrage who is an "idiot" or "insane" person. N.J. STAT. ANN. § 19:4-1(1).</p>			
NEW MEXICO	<p>"Idiots" and "insane" persons not qualified to vote. N.M. CONST. art. 7, § 1.</p>	<p>An incapacitated person for whom a guardian has been appointed retains all legal and</p>		

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
NEW YORK	<p>Persons under constitutional disqualification not qualified under state law. N.M. STAT. ANN. § 1-1-4.</p> <p>Registration of a voter shall be cancelled when it is determined that the person is legally insane under the constitutional provision. N.M. STAT. ANN. § 1-4-26(B).</p> <p>Individuals with mental retardation "who can understand the nature of their actions should be allowed to register and vote." 1974 Op. Atty Gen. No. 74-35.</p> <p>Right of suffrage and registration of voters laws shall be established by law. N.Y. CONST. ART. 2, § 5.</p> <p>No person who has been adjudged incompetent has the right to vote, unless later adjudged competent. N.Y. ELEC. LAW § 5-106(6).</p> <p>Manhattan Citizens Group, Inc. v. Bass, 524 F. Supp. 1270 (SDNY 1981) (unconstitutional to disenfranchise a person based on admission to a hospital; in dicta, assuming but not deciding that someone adjudicated incompetent would presumably be incapable of voting).</p>	<p>civil rights except those which have been expressly limited by court order or have been specifically granted to the guardian by the court. N.M. STAT. ANN. § 45-5-301.1.</p> <p>The same reservation of rights is specified for limited guardianships. N.M. STAT. ANN. § 45-5-312(A).</p>	<p>Receipt of services for mental disability shall not deprive persons of the right to register and vote if otherwise qualified. N.Y. MENT. HYG. LAW § 33.01.</p>	<p>Receipt of services for mental disability shall not deprive persons of the right to register and vote if otherwise qualified. N.Y. MENT. HYG. LAW § 33.01.</p> <p>The commissioner shall include in rules and regulations promulgated for community residence a statement of the rights of persons living in such residences which shall include, but not be limited to ... the right to vote. N.Y. MENT. HYG. LAW § 41.41.</p>

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
NORTH CAROLINA	No Constitutional disqualification provision. No disqualification election statute.		Persons who are adult clients at a facility have the right to register and vote unless that right has been precluded by an unrevoked adjudication of incompetency. N.C. GEN. STAT. § 122C-58.	Persons who are adult clients at a facility have the right to register and vote unless that right has been precluded by an unrevoked adjudication of incompetency. N.C. GEN. STAT. § 122C-58.
NORTH DAKOTA	No person who has been declared mentally incompetent shall be qualified to vote, unless the order has been rescinded. N.D. CONST. art. 2, § 2.	Except upon specific findings of the court, no ward may be deprived of the right to vote. N.D. CENT. CODE § 30.1-28-04(3).	Unless specifically restricted in writing every 14 days by a patient's treating physician, all patients in treatment facilities retain their "civil rights." N.D. CENT. CODE § 25-03.1-40.	Developmentally disabled persons may not be deprived of the right to vote solely because of admission, residency or receipt of services at an institution or facility. N.D. CENT. CODE § 25-01.2-03(1).
OHIO	No "idiot" or "insane person" shall be entitled to the privileges of an elector. OHIO CONST. art 5, § 6. Voter registration is cancelled if the person is adjudicated incompetent for the purpose of voting, OHIO REV. CODE ANN. § 3503.18.		Persons taken into custody either voluntarily or involuntarily may vote unless adjudicated incompetent, or unless Revised Code specifically denies the right to vote. OHIO REV. CODE ANN. § 5122.301.	Persons with mental retardation and developmental disabilities have the right to participate in the political process. OHIO REV. CODE ANN. § 5123.62(W).
OKLAHOMA	Legislature may prescribe exceptions for qualification. OKLA. CONST. art. 3, § 1. Ineligible to vote if adjudicated an incapacitated person under Guardianship and Conservatorship Act, unless adjudicated no longer incapacitated; or adjudicated partially incapacitated person and right to vote	Court shall make a specific determination of the voting capacity of a person under guardianship. OKLA. STAT. ANN. TIT. 30 § 3-113(B)(1).		

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
	<p>restricted. OKLA. STAT. TIT. 26, § 4-101(2).</p> <p>The registration of any registered voter may be cancelled upon judicial determination of mental incapacitation under Title 30 of the Oklahoma Statutes. OKLA. STAT. ANN. TIT. 26 § 4-120.</p>			
OREGON	<p>A person "suffering from a mental handicap" is entitled to the full rights of an elector, if otherwise qualified, unless the person has been adjudicated incompetent to vote as provided by law. OR. CONST. art. 2, § 3.</p> <p>No disqualification statute.</p>		<p>Patient may vote unless adjudicated incompetent and finding not reversed. OR. REV. STAT. § 426.385(1)(n).</p> <p>Persons receiving mental health and developmental disability services in connection with alcohol and drug abuse programs retain the rights afforded to all citizens, including the right to vote. OR. REV. STAT. § 430.210(3).</p>	<p>Resident in a facility shall have the right to vote, unless the resident has been adjudicated incompetent and has not been restored to legal capacity. OR. REV. STAT. § 427.031(1).</p>
PENNSYLVANIA	<p>No Constitutional disqualification provision. Subject to state law, anyone who is over twenty one, has been a citizen of the United States for at least one month, and has resided in the state and county for the specified time may vote. PA. CONST. Art. 7, § 1.</p> <p>No disqualification election statute.</p>			

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
	<p>A person who is confined to an institution for the mentally ill or mentally retarded can choose to vote either in the district in which the institution is located or where they were registered to vote or resided before they were institutionalized. PENN. CONSOL. STAT. ANN. TIT. 25 § 1302(a)(4).</p> <p>A mentally retarded or mentally ill person cannot be disenfranchised solely because he or she is undergoing treatment for a mental disability or is known to reside in an institution for the treatment of the mentally disabled. 1973 Op.Atty.Gen. No. 48.</p> <p>A person who resides at institution for the mentally ill or mentally retarded in the state cannot lawfully be denied the right to register as a qualified elector in the voting district in which the institution is located. 1973 Op.Atty.Gen. No. 48.</p>			

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
<p>PUERTO RICO</p>	<p>Every person over 18 can vote if he or she fulfills the other conditions determined by law. PR Const. Art. 6, § 4.</p> <p>Each month the court administrator sends the Commonwealth Commission a list of the people who are declared judicially as mentally incompetent. PR ST T. 16 § 3076.</p> <p>Person who has been declared judicially incompetent may be challenged when registered to vote. PR ST T. 16 § 3073.</p> <p>Persons judicially declared unqualified cannot vote. PR ST T. 16 § 3055.</p>			
<p>RHODE ISLAND</p>	<p>No person who has been adjudicated "non compos mentis" shall be allowed to vote. R.I. CONST. art. 2, § 1.</p> <p>Qualified voted defined as someone who is not otherwise disqualified by law. R.I. GEN. LAWS § 17-1-2(13).</p>		<p>Patients admitted to a facility shall not be deprived of the right to vote and participate in political activity. R.I. GEN. LAWS § 40.1-5-5(f)(10).</p>	<p>Community residence resident will not be deprived of right to vote just because of admission and has right to reasonable assistance in registration and voting if desired. RI. ST. § 40.1-24.5-5.</p>
<p>SOUTH CAROLINA</p>	<p>General Assembly shall establish disqualifications for voting by reason of mental incompetence and may provide for the removal of such disqualifications. S.C. CONST. art. 2, § 7.</p>		<p>Patients have the right to vote unless adjudicated incompetent. County boards of voter registration should also reasonably assist clients with obtaining registration materials and ballots.</p>	<p>Residents of facilities have the right to vote unless adjudicated incompetent. County boards of voter registration should also reasonably assist clients with obtaining registration</p>

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
SOUTH DAKOTA	<p>A person is disqualified from registering or voting if adjudicated mentally incompetent. S.C. CODE ANN. § 7-5-120(B)(1).</p> <p>Not entitled to vote if disqualified by law for mental incompetence. S.D. CONST. art. 7, § 2.</p> <p>Names of persons declared mentally incompetent shall be removed from the voter rolls each month. S.D. CODIFIED LAWS § 12-4-18.</p>	<p>The appointment of a guardian or conservator of a protected person does not constitute a general finding of legal incompetence unless the court so orders, and the protected person shall otherwise retain all rights which have not been granted to the guardian or conservator. S.D. CODIFIED LAWS § 29A-5-118.</p>	<p>complying with voting requirements, and voting by absentee ballot. S.C. CODE ANN. § 44-22-90(7).</p> <p>Notwithstanding any other provision of law, no person may be deemed incompetent to register and vote solely by reason of his detention, admission, or commitment under this title. S.D. CODIFIED LAWS § 27A-12-1.2.</p>	<p>materials and ballots, complying with voting requirements, and voting by absentee ballot. S.C. CODE ANN. § 44-26-90(7).</p> <p>No person is incompetent to register and vote solely by reason of a diagnosis of a developmental disability, or by reason of a commitment by a county review board. S.D. CODIFIED LAWS § 27B-7-44 (replaced old language in 2000 under SL 2000, ch 131, § 76).</p>
TENNESSEE	<p>No Constitutional disqualification provision.</p> <p>No disqualification election statute.</p>	<p>May remove the right to vote if placed under a conservatorship. Petition for appointment of a conservator should include the rights that will be removed. Tenn. Code Ann. §34-3-104(6).</p>	<p>No person with mental illness, serious emotional disturbance, or developmental disability hospitalized or admitted, whether voluntarily or involuntarily, or ordered to participate in non-residential treatment or service under this title shall, solely by reason of such hospitalization, admission, or order be denied the right to vote, unless (1) The service recipient has been adjudicated incompetent by a court of competent</p>	<p>No person with mental illness, serious emotional disturbance, or developmental disability hospitalized or admitted, whether voluntarily or involuntarily, or ordered to participate in non-residential treatment or service under this title shall, solely by reason of such hospitalization, admission, or order be denied the right to vote, unless (1) The service recipient has been adjudicated incompetent by a court of competent</p>

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
<p>TEXAS</p> <p>Persons adjudicated mentally incompetent shall not be allowed to vote, subject to such exceptions as the Legislature may make. TEX. CONST. art. 6, § 1.</p> <p>A person who has been determined mentally incompetent by a final judgment of a court is not a qualified voter. TEX. ELEC. CODE ANN. Tit. 2, § 11.002(3).</p> <p>To be eligible to register as a voter, must not have been determined mentally incompetent by a final judgment of the court. TEX. ELEC. CODE ANN. Tit. 2, § 13.001(a)(3).</p>		<p>jurisdiction and has not been restored to legal capacity, or (2) The denial is authorized by state or federal statute. TENN. CODE ANN. §33-3-102(a).</p> <p>Patients have the right to register and vote unless specific law limits rights under a special procedure. TEX. HEALTH & SAFETY CODE ANN. Tit. 7, § 576.001(b)(1).</p>	<p>Persons with mental retardation have the rights, benefits, and privileges guaranteed by the constitution and laws of the United States and this state. TEX. HEALTH & SAFETY CODE ANN. Tit. 7, § 592.011.</p> <p>Persons with mental retardation have the right to a presumption of competency. TEX. HEALTH & SAFETY CODE ANN. Tit. 7, § 592.021.</p>	
<p>UTAH</p> <p>A person who is mentally incompetent may not be permitted to vote, unless right to vote restored as provided by statute. UTAH CONST. art. 4, § 6.</p> <p>No disqualification election statute.</p>		<p>Subject to the general rules of the division, and except to the extent that the director or his designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to . . . exercise . . . the right to . . . vote, unless the patient has been</p>	<p>((Subject to the general rules of the division, and except to the extent that the director or his designee determines that it is necessary for the welfare of the patient to impose restrictions, every patient is entitled to . . . exercise . . . the right to . . . vote, unless the patient has been</p>	

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
VERMONT	<p>To be entitled to the privilege of voting, persons must be of "quiet and peaceable behavior." VT. CONST. ch. II, § 42.</p> <p>No disqualifying election statute. Any person over 18 who is a citizen of the United States and a resident of the state of Vermont and has taken the voter's oath may vote. VT. STAT. ANN. TIT. 17 § 2121.</p>	<p>Proposed Legislation: Vermont 2005 House Bill 424 would add the following section: "A person in need of guardianship retains the same legal and civil rights guaranteed to all Vermont residents under the Vermont and United States Constitutions and all the laws and regulations of Vermont and the United States. These rights include: (3) the right to vote." Proposed 14 V.S.A. § 3060a. Bill has passed House and is now in State Senate.</p>	<p>adjudicated to be incompetent and has not been restored to legal capacity. UTAH CODE ANN. § 62A-15-641 (1)(C).</p> <p>When any right of a patient is...denied, the nature, extent, and reason for that...denial shall be entered in the patient's treatment record. Any continuing denial or limitation shall be reviewed every 30 days... UTAH CODE ANN. § 62A-15-641 (2).</p> <p>Patient has the right to vote on his own initiative, unless he has been adjudicated incompetent and has not been restored to legal capacity, or unless facility determines restriction needed for patient's welfare. VT. STAT. ANN. TIT. 18 § 7705(a)(3).</p>	<p>adjudicated to be incompetent and has not been restored to legal capacity. UTAH CODE ANN. § 62A-15-641(1)(C).</p>
VIRGINIA	<p>As prescribed by law, no person adjudicated to be mentally incompetent shall be qualified to vote until his</p>			

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
WASHINGTON	<p>competency has been reestablished. VA. CONST. art. 2, § 1.</p> <p>No person adjudicated incapacitated shall be a qualified voter unless his capacity has been reestablished as provided by law. VA. CODE ANN. § 24.2-101.</p> <p>Incompetent and incapacitated are not conflicting standards. Op. Atty Gen. of Va, 01-102, Dec. 10, 2001.</p> <p>All persons while they are judicially declared mentally incompetent are excluded from the elective franchise. WA. CONST. art. 6, § 3.</p> <p>"Elector" means any person who possesses all of the qualifications to vote under Article VI of the state Constitution. WASH. REV. CODE ANN. § 29A.04.061.</p> <p>Upon receiving official notice that a court has imposed a guardianship for an incapacitated person and has determined that the person is incompetent for the purpose of rationally exercising the right to vote, under chapter 11.88 RCW, if the person is a registered voter in the county, the county auditor shall cancel the person's voter registration. WASH. REV. CODE ANN. § 29A.08.515.</p>	<p>Imposition of a guardianship for an incapacitated person shall not result in the loss of the right to vote unless the court determines that the person is incompetent for purposes of rationally exercising the franchise in that the individual lacks the capacity to understand the nature and effect of voting such that she or he cannot make an individual choice. The court order establishing guardianship shall specify whether or not the individual retains voting rights. When a court determines that the person is incompetent for the purpose of rationally exercising the right to vote, the court shall notify the appropriate county auditor. RCWA 11.88.010 (5).</p>		<p>The secretary's determination under RCW 71A.16.040 that a person is eligible for services under this title shall not deprive the person of any civil rights or privileges. The secretary's determination alone shall not constitute cause to declare the person to be legally incompetent. WASH. REV. CODE ANN. § 71A.10.030.</p>

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
WEST VIRGINIA	<p>No person who is of "unsound mind" shall be permitted to vote while such disability continues. W. VA. CONST. art. 4, § 1.</p> <p>No person who is of "unsound mind," shall be permitted to vote while such disability continues. W. VA. CODE § 3-1-3.</p> <p>Any person who has been determined to be mentally incompetent by a court of competent jurisdiction is disqualified and shall not be eligible to register or to continue to be registered to vote for as long as that determination remains in effect. W. VA. CODE § 3-2-2(b).</p> <p>If adjudicated incompetent, a person is automatically denied the right to vote. No specific decision regarding capacity for voting is required. 58 W. Va. Op. Atty. Gen. 221, Mar. 28, 1980.</p>		<p>Receipt of services for mental illness or retardation does not by itself deny persons the right to register and vote; must be adjudged incompetent and finding not reversed. W. VA. CODE § 27-5-9(a).</p> <p>W. VA. CODE § 27-5-9(a) does not conflict with the constitutional provision in art. 4, § 1. 58 W. Va. Op. Atty. Gen. 221, Mar. 28, 1980.</p>	<p>Receipt of services for mental illness or retardation does not by itself deny persons the right to register and vote; must be adjudged incompetent and finding not reversed. W. VA. CODE § 27-5-9(a).</p>
WISCONSIN	<p>Persons adjudged incompetent or partially incompetent excluded from the right of suffrage, unless judgment specifies that the person is capable of understanding the objective of the elective process or the judgment is set aside. WIS. CONST. art. 3, § 2(4)(b).</p> <p>Any person who is incapable of understanding the elective process or under guardianship may not vote.</p>	<p>Limited guardianship of the person proceeding includes a voting rights determination. Wis. STAT. ANN. § 880.33(3).</p> <p>All the rights and privileges afforded a proposed incompetent under this section shall be given to any person who is alleged to be ineligible to vote by reason that such person</p>	<p>A person is not deemed incompetent to vote solely based on admission, detention, or commitment under the developmental disabilities and mental health chapter. WIS. STAT. ANN. § 51.59(1).</p>	<p>A person is not deemed incompetent to vote solely based on admission, detention, or commitment under the developmental disabilities and mental health chapter. WIS. STAT. ANN. § 51.59(1).</p>

STATE LAWS AFFECTING THE VOTING RIGHTS OF PEOPLE WITH MENTAL DISABILITIES

STATE	State Constitution/ Electoral Statutes: Persons Disqualified	Guardianship/ Conservatorship Statutes	Mental Health Statutes	Developmental Disabilities/ Mental Retardation Statutes
<p>unless the court has determined that the person is competent to vote. WIS. STAT. § 6.03(1)(a).</p> <p>Persons may not be denied the right to vote upon the allegation that they are incapable of understanding the objective of the elective process unless they have been so adjudicated by the state. However, any incompetency determination that appoints a guardian or any limited competency determination that does not expressly find that the person is competent for voting will be taken as a determination that the person may not vote. WIS. STAT. § 6.03(3).</p>	<p>is incapable of understanding the objective of the elective process. The determination of the court shall be limited to a finding that the elector is either eligible or ineligible to vote. WIS. STAT. ANN. § 880.33(9).</p>			
<p>WYOMING</p> <p>All persons adjudicated to be mentally incompetent, unless restored to civil rights, are excluded from the elective franchise. WYO. CONST. art. 6 § 6.</p> <p>No person is a qualified elector who is a currently adjudicated mentally incompetent person. WYO. STAT. ANN. § 22-1-102(a)(xxvi).</p>				

People with Mental Disabilities Have the Right to Vote

Most people want to vote, including voters with mental disabilities. If you are a voter with a mental disability, you should know your rights.

Knowing your rights will help make sure you can vote. Take this piece of paper with you when you go to vote so you will know what your rights are. You can also show this to others if you run into any problems.

This paper tells lawyers and poll workers where to find the laws that protect your right to vote!

You do have the right to vote!

- If you are a person with a mental disability and understand what it means to vote, federal law protects your right to vote.

The laws that protect that right: The Constitution and the Americans with Disabilities Act, 42 U.S.C. § 12132; Doe v. Rowe, 156 F.Supp.2d 35 (D.Me.2001).

You have the right to get help from a person you choose.

- If you can't read or need help voting because of your disability, you can have someone help you vote.
- You can bring a friend, family member or someone else you trust to help you.
- You can ask the poll worker to help you if you didn't bring anyone with you.

The law that gives you that right: The Voting Rights Act, 42 U.S.C. §§1973aa-6; The Americans with Disabilities Act, 42 U.S.C. § 12132

If you have a problem, you can get help by calling 1-866-OUR-VOTE

- Lawyers are available to give voters with disabilities and other voters advice and help with voting problems, so call 1-866-OUR-VOTE (1-866-687-8683).

The law says everyone gets to cast a ballot, so don't leave without voting!

- Even if someone says you cannot vote, the law says the poll worker must allow you to vote a special ballot called a Provisional Ballot.
- Later, an election worker will decide whether you are allowed to vote in the election. If you are, your vote will be counted.

The law that gives you that right: The Help America Vote Act, 42 U.S.C. § 15482

For more information about the rights of voters with disabilities visit www.ndrn.org

Providing Help to Voters with Disabilities: What You Should Know

Voting is a fundamental right! Voters with disabilities have the right to assistance in voting.

Voters with mental or physical disabilities are entitled to receive any assistance they need to cast their ballots.

Who may assist a voter?

Federal law gives voters with disabilities the right to decide whether to get assistance in casting a ballot and who will provide it.

- Voters can choose a poll worker, friend, family member, caregiver, assisted living provider, facility staff person or almost anyone else.
- The only people who may not assist a voter are the voter's employer or an agent of that employer, or, if the voter is a member of a union, a union officer or agent of the union.

What can assistance providers do to help a person vote?

- First, an assistance provider—helper—should ask the voter what choice he or she wants to make. The helper must never make assumptions about how a person wants to vote!
- The helper must respect the voter's privacy at all times during the voting process.
- The helper should be familiar with the instructions on how to cast a ballot and be prepared to explain them to the voter and/or demonstrate the voting process.
- The helper should be prepared to read or explain all ballot choices or questions in a language the voter understands.
- The helper may mark a ballot for a voter with a disability only if the voter has directed him or her to do so.
- After the ballot has been completed, the helper should make sure that it accurately reflects the voter's choices. The helper should offer to correct any mistakes and to check the ballot for any election contests or questions that may have been missed.

What actions would not be appropriate?

- * Making decisions for the voter—for example, marking or changing a ballot to reflect a choice other than a choice expressed by the voter.
- * Communicating with the voter in a way that makes the voter feel forced to make certain choices.
- * Pressuring the voter to vote for a particular candidate or in a certain way.
- * Withholding information or giving false information to a voter.
- * Pressuring the voter to cast a vote on every measure or candidate. Everyone has the right to choose whether or not to vote on each contest.
- * Revealing to others how the individual voted. Respect the voter's right to privacy!

What can you do if you have problems assisting?

- Call Election Protection at 1-866-OUR-VOTE (1-866-687-8683) about any Election Day assistance problems.

Testimony of

Lisa Gilbert, Democracy Advocate
United States Public Interest Research Group (U.S. PIRG)

Senate Committee on Rules,
Voter Registration: Assessing Current Problems
March 11st, 2009

U.S. PIRG is the federation of state Public Interest Research Groups-- a national network of state based non-partisan, non-profit public interest advocacy organizations based in 30 states. On behalf of our members I want to thank you for convening this hearing and I would like to submit the following on our experiences with youth registration barriers during the 2008 election cycle.

The New Voters Project

U.S.PIRG's New Voters Project is the oldest and largest grassroots non partisan effort to mobilize young voters in the country. Since our inception 25 years ago, we have registered millions of young voters. In 2008 85 PIRG organizers worked in 24 states on 150 campuses across the country running massive voter registration drives that paired on the ground and online voter registration drives in an effort to ensure the voice of students was heard in election booths across the country.

Background on Student Voting

Young voter participation is essential to our democracy. Already making up more than a fifth of the electorate in 2004, millennials born between 1980 and 2000 will make up a third of the electorate by 2015. Because voting habits are established early, the participation of this generation in the political process will lead to a healthier democracy for decades to come. Recognizing the importance of their participation in the political process, in 1972, Americans granted 18-21 year olds the right to vote. For two decades subsequently, youth vote rates decreased, fueled by a 'cycle of mutual neglect' in which political campaigns failed to focus resources on turning out a demographic saddled with low turn out rates. Young people in turn, feeling this neglect, reciprocated with even bigger declines in turnout.

Over the past several election cycles, however, the tide has finally turned. The youth vote is on the rise. Youth turnout rose in 2008 for the third consecutive presidential

election. An estimated 23 million young Americans under the age of 30 voted, 3.4 million more than in 2004. Overall youth voter turnout rose to between 52 percent and 53 percent, an increase of 4 to 5 percentage points over the 2004 exit polls. The reasons for this increase range from the increased use of technology to the increased allocation of campaign resources for reaching out to young voters. While pundits and pollsters will likely debate the sources of this trend for years to come, one factor is indisputable: For nearly a decade, experts have documented a rise in the civic engagement of young people. Students are volunteering in greater and greater numbers, and over the past several election cycles, this growing culture of civic engagement has spilled over into the political arena.

As policy-makers, local leaders, and higher education institutions look at this trend, we should ask ourselves one question: How do we keep this momentum going? How do we ensure that student voters turn out in bigger numbers this year and for years to come?

Despite the importance of resolving this question and continuing this trend, numerous barriers to student voting persist. Many of the barriers occur within our registration system as students are presented with misinformation on the process or with systems that do not take into account the transient nature of the young people of America.

Misinformation to Young Voters

Hurdles to student voting persist in other forms as well. In Montgomery County, Virginia, in the 2008 cycle a local registrar issued a memo that warned students of dire potential consequences – the loss of healthcare, scholarships and tax status – for registering to vote where they go to school. The warnings created a chilling atmosphere among student voters at Virginia Tech, resulted in worried calls from parents and caused several students to withdraw their registrations in the area.

The Virginia Tech incident was spawned by confusing state guidance that led to inconsistent rules for student voters across the state. In contrast to the experience of

students in Montgomery County, students at the University of Virginia faced no threats of dire consequences for registering to vote. While the Virginia State Board of Elections has since withdrawn much of its confusing guidance, it retains troubling information that has the potential for student voter suppression at the local level if it remains.

Additionally, the Board of Election guidance still allows local registrars to issue questionnaires to students who register to vote. The questionnaires, which could probe a student's tax status, healthcare provider and scholarship sources, could severely intimidate students who seek to register to vote where they go to school.

While local officials in Virginia have received considerable attention, unnecessary restrictions on student voters at the local level can be seen in other states as well. In Greenville County, South Carolina, the registrar's office incorrectly tells students at Furman University that if they are listed as dependents on their parent's tax returns, they must vote where their parents live.

To prevent a repeat of the Virginia Tech incident and other similar cases around the country, states should withdraw confusing and restrictive guidance for student voters that are subject to gross misinterpretation at the local level and lead to enormous barriers to student voting.

Restrictive Voter Registration Laws and Inadequate Resources for New Voters

The ability to vote is a basic right and should be easy and accessible. Over the past several decades, this country has made enormous strides toward achieving this goal. Registration deadlines set weeks before Election Day, however, remain as impediments to student voting. In fact, according to Demos, a non-partisan public policy organization, Election Day registration could increase youth turnout in presidential elections by as much as 14 percent.

In 2004, for instance, four of the five states with the highest youth turnout in the nation

allowed voters to register and vote on the same day. Based on these results, we believe that modernizing our voter registration to include same day balloting across the country would significantly boost the youth vote and remove a significant hurdle to young voter turnout across the country.

With the youth vote on the rise, it is more important than ever to ensure the availability of adequate resources to handle the influx of new voters eager to exercise their civic responsibility for the first time. However, our voting infrastructure is often insufficient to meet the needs of student voters across the country. Among these problems are ballot shortages, lack of staff to process new voter registration forms, and a lack of on-campus polling places.

One example occurred in Ohio in the 2008 primary. All 88 counties in the state had turnouts greater than 70 percent of the turnout in the 2004 general elections. This heavy turnout resulted in ballot shortages in at least two counties in the state. These ballot shortages in Ohio created serious obstacles to youth voting in the student heavy precincts.

It is critical that local elections officials anticipate and plan for a surge in student voters at the polls and filling out registration forms. A failure to hire enough staff to process registration forms in college jurisdictions, or to staff polling places, can have a serious impact on the ability of students to cast their ballots.

Conclusion

The good news is that the youth vote is on the rise and enthusiasm among students for engaging in the political process continues to climb coming out of this historic election. To continue to encourage this exciting trend in youth participation, legislators should look for ways to modernize our voter registration system so that the requirements and information around registration is clear, and so local officials have the resources to process the increased student registrations.



Statement of Project Vote

United States Senate Committee on Rules & Administration

Hearing on Voter Registration: Assessing Current Problems

March 11, 2009

Project Vote is a national nonpartisan, nonprofit corporation that provides research, guidance, and technical assistance to voter participation and voting rights organizations. Project Vote regularly advises these organizations on the requirements of state and federal law as they apply to the conduct of elections, and monitors the operation and enforcement of these laws. In 2007-2008, Project Vote ran a large-scale, nonpartisan voter registration program in 19 states that helped over 1.3 million Americans apply to become registered voters or update their registration status. We appreciate the interest of the Senate Rules Committee in improving and modernizing our voter registration process in light of recent experience in the states, and we are eager to share our expertise during your deliberations.

At the outset, it is almost unnecessary to say that the "system" of voter registration in this country is not one system, but rather thousands, because every election jurisdiction has broad discretion to impose its own rules. It is almost unnecessary to say this, and yet it is one of the most important things we can say, because states, counties, and cities already vary widely in their compliance with federal constitutional and statutory mandates. Any proposals to enact additional federal standards should be evaluated against the goal of greater clarity and uniformity in the law.

What we learned from the 2008 election should inform any dialogue about how to improve the registration process. In the sections below, we describe problems that Project Vote experienced in 2007-2008 related to access to voter registration services and materials, the placement and removal of voters from the rolls, the intimidation of new voters, and the enforcement of voting laws.

I. Access to Voter Registration

Access to voter registration has always been particularly challenging for low income citizens and racial minorities. Congress addressed this problem by, among other remedies, requiring in Section 7 of the National Voter Registration Act of 1993 ("NVRA") that public assistance agencies and offices serving the disabled provide voter registration services to their clients. Although many states initially resisted implementing the NVRA and its public agency registration requirement, state agencies managed to facilitate the registration of 2.6 million low-income Americans during the first two years of the Act's implementation. Regrettably, because of poor compliance and inadequate enforcement, state public assistance agencies helped only 550,000 low-income Americans register to vote in the most recent period measured, 2005-2006. Consequently, the American electorate as recently as 2006 remains skewed towards affluent Americans. Only 60% of adult citizens in households making less than \$25,000 were registered to vote, compared to over 80% in households making \$100,000 or more. Since the

agency registration sites designated by Section 7 are generally the most convenient for low income and racial minority citizens, the agencies' failure to comply with their obligations under the NVRA has a profound impact on both the absolute number of registrations and the demographic makeup of the registered population as a whole.

The NVRA, fortunately, did not rely on government alone to ensure all Americans, regardless of age, income or race, have opportunities to register to vote. The NVRA also authorizes registration by mail, requires the U.S. Election Assistance to design a federal mail form that states must use and accept, and particularly instructs states to provide mail registration forms to organizations engaged in voter registration drives. However, the ability of civic, religious and political organizations, to facilitate registration by underrepresented Americans as envisioned by the Congress is being increasingly hampered by state laws, rules, and procedures. In some instances, judicial decisions are contrary to the intent and language of the NVRA, further limiting the effectiveness of mail registration.

At least 8 states—Colorado, Florida, Georgia, Maryland, New Mexico, Ohio, Rhode Island and Texas—have instituted restrictions on the use by organizations of the federal mail voter registration application. In some instances, states have reversed their position (CO, MD, and RI), and in other cases courts have struck down state requirements (FL, GA and OH). Significantly, only in Georgia did a federal judge strike down a state practice as contravening the NVRA; the other courts relied instead on the Constitution.

Congress should explicitly provide in Section 4 of the NVRA for the unfettered access and use by civic, religious, and political organizations of the federal mail form so they can continue to reach out to underrepresented Americans in furtherance of the stated purpose of the Act.

Organizations conduct voter registration drives, of course, to help eligible Americans join the voter rolls. Election officials in several states, however, frustrate organizations' ability to ensure that eligible applicants are placed on the rolls. In 2008, Project Vote ran a program to acquire information on applicants who had been rejected in order to help them cure any administrative deficiencies that led to their rejection. Several jurisdictions refused to provide such information while other jurisdictions would do so only in return for a significant fee. Similarly, some jurisdictions refused to make available records of rejected applications, effectively shrouding the process of determining an applicant's eligibility in secrecy. Congress specifically rejected the notion that voter registration records are confidential or that the process of adding and removing voters from the rolls occur in secrecy in Section 8 of the NVRA.

Further, in 2008, some county election officials in Texas and Louisiana literally refused to process applications from certain registration drives, and one county required registration workers to check each application against a database to ensure they were not duplicates of previously registered voters. While one must have sympathy for public officials inundated with new applicants, they are not justified in shifting the burden of doing their jobs to members of the public, particularly when voter registration workers are often volunteers.

II. Processing Applications and Maintaining Lists

Congress required states to register as voters eligible Americans who applied at least 30 days before a federal election and to notify applicants of the disposition of the application in Section 8 of the NVRA. The statute, however, does not specify a deadline for sending out disposition notices. Election officials in

a number of jurisdictions therefore send out notices intermittently or at the close of registration. This practice not only denies applicants an opportunity to correct any problems or submit a new application, it also encourages useless re-registration by individuals who, fearing their applications were not processed, submit a second or even third application. We urge Congress to correct this oversight by requiring covered states to determine the eligibility of an applicant and send her a disposition notice within 10 days of receipt of an application.

In addition, there is evidence that departments of motor vehicles and public assistance agencies in some states do not transmit applications to election officials on a regular basis, sometimes accumulating them until it is too late for the would-be voter to supply additional information or fix errors. These voter registration sites usually do not provide the applicant with a receipt for his application, and thus he leaves the agency with no "paper trail" showing that he attempted to register, a document that might serve as evidence when he appears at the polling place on Election Day.

In some states, a disposition notice that is returned to the board of elections is cause for cancellation of the application for registration, even when the application was otherwise successful. This unfortunate policy takes advantage of an ambiguity in Section 6(d) of the NVRA, and we urge Congress to clarify the law on this matter. As the law currently reads, a non-deliverable disposition notice "may" be followed by the list maintenance protocol described in Section 8 of the NVRA. We suggest this process be made mandatory by substituting "must." The registrant should be allowed to correct any error in the address on the spot if he appears to vote on Election Day. If he does not appear, the notification process set forth in Section 8 *must* be followed before he is dropped from the roll.

Many states carried out aggressive list maintenance programs in 2007-2008 that led to the purging of thousands of voters in violation of the NVRA. It is apparent that there is widespread confusion about the requirements of Section 8, which sets forth an elaborate process by which voter rolls are updated and is intended to minimize the risk of erroneous purging. While we need not quote the statutory language here, the law is clear that (1) systematic purges based on change of address may not be conducted within 90 days of a federal election; and (2) failure to vote, even over a long period of time, is *not*, without more, a ground for removal from the voter roll. The election of 2008 saw renewed interest among voters who had not exercised the franchise in decades, many of them elderly African Americans. There were numerous reports of such eligible voters appearing at their polling places on Election Day, only to be told that their names were no longer on the rolls.

Compounding the general misunderstanding of the list maintenance rules is the advent of statewide databases. With the Help America Vote Act's requirement that states create and maintain a statewide electronic database of registered voters, some states have attempted to match a new registrant's data with existing databases of drivers' license numbers or Social Security numbers and deny registration to an applicant whose data does not match. This use of databases is inconsistent with the purpose of the database requirement imposed by HAVA and is, moreover, notoriously unreliable because of the proliferation of data entry and other errors in such databases. A settlement and consent decree in *Washington Association of Churches v. Reed* put a stop to Washington's use of such a match process and made clear that the NVRA rules for registration processing and list maintenance are still applicable, notwithstanding HAVA's database requirement.

In another variation on the misuse of the state database, some states have formed regional compacts to share voter registration information, with the object of rooting out duplicate entries—voters who have moved from one state to another without canceling registration in the prior state. (The compact states include Iowa, Kansas, Missouri, and Nebraska in one agreement, joined later by South Dakota and Minnesota; and another compact spearheaded by Kansas, and including Arizona, Arkansas, Colorado, New Mexico, Oklahoma, and Texas.) Louisiana, though not participating in any ongoing compact, did inquire of a number of far-flung jurisdictions soon after Hurricane Katrina, to determine whether displaced Louisianans had registered to vote in other states.

It is important to note that the vast majority of registration duplications occur through inadvertence and not criminal intent. But whatever the explanation, the appearance of two registration records for the (apparently) same person is only the *beginning* of the process mandated by the NVRA. While there is nothing in the law prohibiting states from sharing registration data, a state cannot then unilaterally cancel the voter's registration when he appears to have moved. Rather, the law requires the state to follow the protocol of multiple mailings and a waiting period as set forth in Section 8.

III. Intimidation of New Voters

Intimidation of newly-registered voters was also a strategy in evidence in the 2008 election cycle. In October, the New Mexico Republican Party held a press conference to display voter registration cards for 10 voters they claimed cast ballots illegally in the NM primary. Nine of the 10 were Latino, all identified as Democrats, and most were 18 or 19 years old. An investigation revealed that at least eight of them were legitimate, eligible voters. Several of them were then harassed by a private investigator, who was reportedly hired by an attorney for the Republican Party. This intimidation incident is the subject of a pending lawsuit in New Mexico.

In Greene County, Ohio, the Sheriff launched an investigation of alleged voter fraud during Ohio's "golden week," when a citizen could register and vote on the same day. A county prosecutor admitted that no one had alleged that voter fraud was occurring. Nonetheless, only a public outcry and media attention succeeded in ending the investigation. In Hamilton County, Ohio, a grand jury was convened by a county prosecutor to investigate similar, unspecified allegations of voter fraud—allegations that were disavowed by both the County election board and the Secretary of State.

The Wisconsin Republican Party issued a call to law enforcement and security personnel to serve as "volunteer poll watchers" in inner city precincts in Milwaukee, chillingly evoking racially-motivated "ballot security" programs that should have been relegated to the distant past. While it is clear that these strategies are illegal under the Voting Rights Act and the NVRA, as a practical matter the damage is done as soon as the story hits the press. New voters, particularly newly minted citizens from countries where voter intimidation is a time-honored political tradition, are effectively deterred from voting freely, or voting at all.

IV. Enforcement Issues

Further exacerbating the constellation of voter registration problems has been a pattern of lax enforcement of the federal voting rights statutes by the Department of Justice in recent years. The agency registration provisions of NVRA Section 7, in particular, have been largely ignored by the

Department—and even more flagrantly flouted by the agencies themselves. The enforcement of Section 7 is an area where recent experience has proven that a little effort goes a long way. Jurisdictions that have been ordered to comply with the law (and a few that have undertaken to do so voluntarily) by offering voter registration have shown immediate and remarkable success in adding new registrants. A new and energetic commitment to Section 7 enforcement by the Department of Justice is long overdue.

Compounding the problem of spotty federal enforcement has been a troubling pattern of permissiveness in NVRA interpretation by the courts. From the time of the NVRA's enactment, states have attempted to impose their own registration requirements, in contravention of the spirit—sometimes even the letter—of the NVRA, whose purpose was to simplify registration and make it more easily accessible. Unfortunately, the courts have given the states wide berth in imposing additional eligibility requirements. Technical and redundant questions on state registration forms, for example, operate as grounds for rejecting otherwise valid applications. Obviously, the more complex the form, the more it disadvantages applicants of limited literacy or limited English proficiency.

The federal mail-in form, heralded initially as simple “postcard registration,” has now been encumbered by 18 pages of state-specific instructions. A 2008 request to the Election Assistance Commission by the state of Michigan would, if approved, direct Michigan applicants to mail their federal form to the appropriate county or township election office (of which there are 542!) rather than the state office, despite the NVRA's explicit language that forms are returnable *to the appropriate state election official*. Such a procedure would unduly complicate the registration process, expand the opportunities for error, and add pages of county and township listings to the state-specific instructions. Nevertheless, at this writing, Michigan's request is still pending before the EAC.

In 2004, the federal form was redesigned pursuant to HAVA, but old forms were still being circulated as recently as the fall of 2008, sometimes to the detriment of the registrant. In Indiana, old forms surfaced at a nursing home, whose unsuspecting elderly residents' applications were rejected because they were on obsolete forms, until Project Vote filed a lawsuit and obtained an order requiring that their provisional ballots be counted. Despite that order, however, the named plaintiff was denied a provisional ballot at her polling place and was unable to vote. It is not known how many others had the same experience.

While the foregoing does not purport to be an exhaustive list of the issues of 2008, we hope that it gives the Committee a sense of the registration problems that have persisted over a period of decades, as well as some (like state database matching) that are of more recent origin. What is most vexing is the intractability of some of these injustices, which should have been remedied long ago. It is perhaps not surprising, though, with literally thousands of election districts operating with some measure of autonomy that a problem solved in one town is bound to crop up in another. That is why federal regulation and oversight is so essential in ensuring that our system of registration and voting will soon be worthy of the public's confidence.

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March 9, 2009

The Hon. Charles Schumer
The Hon. Bob Bennett
Committee on Rules and Administration
SR-305
Washington DC 20515
attn.: Adam Ambrogio, Esq.

Dear Chairman Schumer and Senator Bennett:

I represent Steven Preminger and residents¹ of the Menlo Park VA nursing home in litigation that seeks to ensure that wounded warriors retain their voting rights after they take up residence in VA facilities. My clients also believe that the VA should also offer its 4 million outpatient beneficiaries the opportunity to complete voter registration forms when they apply for benefits.

With the stroke of a pen, Secretary Eric K. Shinseki of the Department of Veterans Affairs (VA) can help every wounded warrior register to vote. Last year, Barack Obama reminded the nation of the importance of protecting this fundamental right.

[Leading this country] starts with protecting the fundamental rights of our troops. They have fought across the world so that others have the right to vote, but here at home, the Bush Administration has refused to help wounded warriors register. There is nothing patriotic about denying wounded troops the ability to vote. It's time for the VA to do the right thing. It's time to reverse this shameful decision.

The "shameful" and "unpatriotic" decision was the action of the prior Secretary, during the 2004 and 2008 campaigns, to ban all² voter registration on its campuses – which include homeless shelters and nursing homes where wounded warriors live. In response to advocacy by you, former Chairman Feinstein, President Obama, and other leaders, the House passed H.R. 6625, the Veterans Voting Rights Act, which you co-sponsored as S. 3308. The Senate was unable to vote on this measure before the 110th Congress adjourned. As a result, over five million veterans – who fought for the right to vote – remain unregistered and ineligible to participate in our democracy.

¹ The Santa Clara County (California) Democratic Central Committee became a formal party to the litigation not to advocate for partisan voter registration, but to represent its members (and members of other political parties) who move to local VA campuses had some opportunity to preserve their membership in the party of their choice and their right to vote in primary and general elections. Residents of the Menlo Park CA nursing home asked the Committee to act as their legal representative in order to protect their anonymity.

² Late in the campaign, the VA modified its absolute ban to require each local facility head to publish guidelines for cooperation with "nonpartisan" organizations. Not one of the 1400 facility heads published anything, and some campuses continue to exclude 501(c)(3).

Rafferty to Chairman Schumer, March 9, 2009, page 2

In lieu of further legislation specific to veterans this year, we ask that the Rules Committee and its members act in their oversight role to encourage the new leadership at the VA to implement President Obama's commitment to our nation's veterans. With his pen stroke, Secretary Shinseki can designate on a nationwide basis the VA a "voter registration agency" under Section 7 of the National Voter Registration Act, 42 U.S.C. 1973gg-5, and Section 1 of Executive Order No. 12926.³ This will ensure that each wounded warrior living on a VA campus – and every one of the VA's four million outpatient beneficiaries – will receive an offer of assistance in keeping their voter registration current whenever they apply for benefits.

My clients understand that this Committee may consider increasing federal responsibility for voter registration under several developing proposals for "universal" voter registration. Until and unless such reforms become law, two federal agencies – the Social Security Administration and the VA – can play an enormous role under existing statutes to help their beneficiaries keep their addresses updated in voter registration files. Each of these agencies corresponds regularly with poor, elderly, and disabled citizens, many of whom do not register automobiles and are therefore excluded from the normal mechanisms of "motor voter" that guarantee that all drivers have an opportunity to keep their voter registrations current. Giving these underrepresented groups an opportunity to register that is at least equal to that enjoyed by automobile drivers.

In contrast to the Social Security, the VA has a large resident population in homeless shelters and nursing homes in practically every state. In most cases, wounded warriors automatically lose the right to vote when they accept residential benefits on one of these campuses. Depending on the jurisdiction and individual circumstances, their change of residence normally invalidates any previous registration – or makes the veteran subject to federally mandated "purges" when notices sent to a former address get returned as undeliverable.

VA homeless and hospitalized residents generally do not drive cars or receive state health or welfare benefits that would entitle them to "motor voter" assistance. They do not frequent shopping centers or other public venues where they would encounter partisan and nonpartisan voter registration workers. They are seldom listed in telephone directories or subject to direct mail. Unless the VA helps these veterans register, they will be completely isolated from the political life of their communities.

The VA has a special obligation to acutely wounded warriors who are repatriated from Iraq or Afghanistan to the VA's four national polytrauma centers (one of which is in Santa Clara County). These citizens have the right to assume citizenship in the state of California – or in another state to which they intend to return. The decision

³ The Executive Order requires the VA to accept a designation made by the highest election official of a state. The protection of veterans voting rights by a federal agency should not depend upon the calculations of a state official. Moreover, the former Secretary violated Section 1 by declining designations by the Secretaries of State of California and Connecticut, claiming that voter registration was a "partisan diversion."

Rafferty to Chairman Schumer, March 9, 2009, page 3

may have consequences for their educational benefits or tax liabilities. While they were overseas (or when they were in Army care at Walter Reed), these soldiers had access to voting officers who had the resources of the Federal Voting Assistance Program (FVAP), administered by the Secretary of Defense under UOCAVA, 42 USC 1973ff. Now that these returning heroes are being directly repatriated into the custody of the VA, they deserve access to voter registration help for whatever jurisdiction they select as their voting domicile. Neither the League of Women Voters nor local political parties are equipped to provide this legal advice and logistical assistance. By contrast, the VA can coordinate with FVAP at minimal cost and maximal efficiency.

CONCLUSION

The former Secretary claimed that voter registration was a "partisan diversion" from the various missions of the VA. The right to vote is central to our respect for the dignity of every wounded warrior. These men and women have unique insights into the challenges our democracy faces drawn from the direct experience in defending us. We owe it to them – and to ourselves – to offer them the opportunity to register to vote when they apply for VA benefits or move to a VA residence. We ask that you and the other members of this Committee – without regard to political party – join together to ask Secretary Shinseki to reverse the former Secretary's shameful decision and enfranchise America's wounded warriors.

Sincerely,



Scott J. Rafferty
Attorney for Steven Preminger
and SCCDCC



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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

Statement of
Cecilia I. Martinez
Executive Director
The Reform Institute

For the
Committee on Rules & Administration
United States Senate

Hearing on
Voter Registration: Assessing Current Problems

March 11, 2009

The Reform Institute, a nonprofit, nonpartisan public policy organization working to strengthen the foundations of our democracy and build a resilient society, applauds the Committee for convening a hearing on assessing current problems in voter registration and offers the following statement.

The Reform Institute believes that providing relevant information to voters – such as polling location and registration status – in an easily accessible manner is critical to advancing voter participation and effective election administration. To that end the Institute has been an active partner in voter assistance hotlines that provide such information to voters. Data accumulated by such hotlines in recent elections underscore that registration-related problems represent one of the primary impediments to voters casting ballots in an orderly and efficient manner.

In the 2008 election the Reform Institute partnered in promoting the 877-GOCNN08 national election hotline. The hotline informed and empowered voters by providing information on poll locations, allowing voters to record messages reporting problems at the polls and connecting them to local election administrators. The hotline logged over 96,000 calls from concerned voters through Election Day. According to InfoVoter Technologies, which administered the hotline, some 47% of calls were from voters using the hotline's automated poll locator to ascertain where they were to vote.

Of complaints directed to the hotline, the largest share by far (31% of complaint calls) involved registration problems. Of calls coded as registration complaints 42% were from callers who claimed they were registered to vote but were informed by poll workers that they were not. Another 12% complained that they never received confirmation of their registration status.

Registration grievances were also the most prevalent complaints to similar hotlines the Institute was involved with in the 2004 and 2006 elections. The data illustrates the need for reforms that enhance transparency and efficiency in the voter registration

process as well as improving the management of voter registration databases and the ability of voters to easily confirm and change their registration status if necessary.

Election Year	% of complaint calls involving registration
2004 National Presidential Election	38%
2006 National Midterm Election	20.6%
2008 National Presidential Election	31%

Sources: 877.GOCNN08: A Preliminary National Report. InfoVoter Technologies, Nov. 2008; MyVote! National Election Report: Voice of the Electorate 2006, Fels Institute of Government, August 2007.

Many voter registration problems are caused by the combination of large numbers of voters registering just before the registration deadline, often as part of voter registration drives conducted by political parties and interest groups, and undermanned election administration offices unable to cope with the blizzard of registrations in time for the election. Equipping election administration authorities with the resources to adequately process voter registrations in a timely manner and promoting coordination between election offices and organizations conducting voter registration drives would enhance the registration process and alleviate many of the registration-related problems experienced by voters on Election Day.

Above all, voters need easy access to reliable information. The lack of basic information – namely regarding polling place and registration status – is effectively creating serious barriers to voting by citizens across the country. This problem can and must be addressed by drawing on the innovation, collaboration and leadership that have often fueled progress in this nation.

Voters should not have any doubt concerning their registration status. Voters should be able to “track” their voter registration from when they fill-out the form, to when it is processed by their local elections official, much like the tracking system used by shipping companies like FedEx and UPS. Building a robust and effective system will require both enhanced education for election officials and knowledge on the part of voters as to their rights and responsibilities.

Improving voter access to basic information must be a cornerstone of efforts to improve election administration. The technology is there – we must encourage collaboration among federal, state and local elections officials, as well as with outside organizations, to take advantage of innovative solutions and to develop systems that efficiently assist voters and enhance the voting process. Congress has a role to play in

providing the leadership necessary to bring the relevant actors together and effectively exploiting technology. Citizen education and empowerment are one of the major pillars to building a resilient society. The Reform Institute is ready and able to assist in this critical effort.



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**Before the United States Senate
Committee on Rules and Administration**

Hearing on Voter Registration: Assessing Current Problems

**Statement for the Record
by Page Gardner, President
Women's Voices. Women Vote**

What Women's Voices. Women Vote Has Done Lately

Women's Voices. Women Vote (WVWV) has been on the forefront of efforts to register and facilitate voting by women who historically have been under-represented in our electorate—unmarried women or 'women on their own.' WVWV has focused on developing effective techniques to encourage use of mail-in registration and vote-by-mail opportunities. By pioneering these techniques, along with neutral information efforts tailored to what under-represented segments of our society really want to know, WVWV was able to generate more than 900,000 returned mail-in registration applications in the 2008 election cycle, and forward about one million vote-by-mail applications to unmarried women.

What Remains to Be Done for the Approximately 38 Percent of Eligible Voters Who Did Not Cast a Ballot in 2008

In the November 2008 election, there were approximately 212 million Americans eligible to vote, but only 133 million cast ballots in the general election.¹ Due in part to the "Get Out the Vote" efforts of groups including WVWV, this figure represents the largest number of voters to have ever participated in a U.S. election,² and an increase of 9 million more voters than the 2004 presidential election.³ While this result is a great accomplishment, much more work remains to ensure that the remaining 79 million eligible citizens that did not cast their votes are encouraged and able to do so in future elections.⁴

Astonishingly, in 17 states the percentage of voting eligible population that voted actually went down from 2004 levels.⁵ WVWV believes that the main reason a higher percentage of Americans are not voting is due to the significant obstacles posed by inconsistent and unclear state voting laws. A new study has confirmed that these obstacles were directly responsible for keeping millions of Americans from casting their ballots in the 2008 presidential election.⁶ Four million to five million Americans did not vote in the 2008 presidential election because of registration problems or a failure to receive requested absentee ballots.⁷ Moreover, because of administrative problems such as voter identification requirements, an additional two to four million registered voters were "discouraged" from voting.⁸ As aptly stated by Senator Charles E. Schumer, "[t]his is unacceptable and undemocratic."⁹

The barriers erected by states seem to have a disparate impact on underrepresented voters such as unmarried women, African Americans, Latinos, and youth voters. While unmarried women represented about 26 percent of the eligible electorate, exit polling indicates that they represented only about 21 percent of the turnout in 2008.¹⁰ Similarly, Latinos represented about 15 percent of the eligible electorate in 2008, but only 9 percent of the turnout; youth voters (18-29) represented about 21 percent of the eligible electorate, but only 18 percent of the turnout.¹¹ In the aggregate, young voters, African Americans, Latinos, and unmarried women are now the majority of the population, but exit polling shows these groups represented only 46 percent of the 2008 electorate.¹²

WWW's Open Democracy Project

In 2009, Women's Voices, Women's Vote (WWW) will undertake a critical election reform educational project: identifying the legal roadblocks affecting access to the polls by historically under-represented populations and providing this information to the public, election officials, and groups engaged in election reform efforts throughout the country. While this work will draw on the many substantial research efforts that other election reform groups have undertaken, it will be a new look at the problems and shine a new light on the disproportionate impact that this country's opaque laws have on many under-represented groups.

Numerous advocacy and educational groups have made and continue to make important contributions to election reform efforts. For instance, the Brennan Center for Justice and the New America Foundation have provided a comprehensive assessment of universal voter registration proposals and are advocating for needed reform. Additionally, groups such as The Pew Center on the States, Common Cause, Demos, Fair Elections Legal Network, Leadership Conference on Civil Rights, and the League of Women Voters are pushing for various reform efforts to ensure that more and more Americans have a chance to participate more easily in our democracy.

WWW will add its voice to the election reform movement in its soon-to-be-published Open Democracy Report. This will demonstrate the confusing array of state election laws that make it very difficult for nationwide groups to make our democracy more inclusive and vibrant. WWW's report will highlight the patchwork of state laws and the most promising reform ideas in several areas ranging from universal registration and no excuse absentee voting to clear and consistent laws regarding voter ID requirements. This project is particularly unique and necessary because it focuses on the election reform measures that will impact historically under-represented groups such as unmarried women, African Americans, Latinos, and youth voters.

While WWW recognizes that the immediate focus of this particular Senate Rules and Administration Committee hearing is voter registration, it wishes to emphasize that obstacles facing groups trying to expand the electorate appear at several stages. WWW's Open Democracy project will focus on five key areas where the patchwork of laws pose the most significant obstacles and reform could yield the greatest positive results: (1) voter registration procedures; (2) absentee voting (by mail) and early voting (in person); (3) voter identification requirements for registering and voting; (4) provisional ballots; and (5) voter lists.

Registration and Voting Obstacles: The Need for Election Reform

Many states have burdensome and confusing registration requirements, complicated voter ID requirements, and limited options to cast ballots prior to Election Day. These obstacles make it extremely difficult for groups like WWV, which facilitate registration and voting, to be effective. More importantly, these roadblocks particularly impact under-represented groups such as (1) unmarried women who tend to be more mobile and have less education and income, (2) hourly workers who cannot afford to take time off work on Election Day, and (3) immigrant populations that lack common forms of identification.

Areas with the greatest need for reform include:

➤ **Voter Registration:**

- **Registration Modernization:** The Brennan Center is one of the leading groups at the forefront of the movement toward registration modernization with its recent publication advocating for universal registration and related reforms.¹³ Specifically, the Brennan Center proposes establishing a national mandate for universal voter registration within each state, providing federal funds for states to implement universal voter registration, and mandating permanent voter registration systems that will allow voters to stay on the rolls when they move and fail-safe procedures to allow correction and voting on the same day.¹⁴ WWV views this package as a critical election reform proposal. If a more piece-meal approach must be taken, reforms will be essential in several key areas related to registration: (1) same day registration; (2) standardized voter qualifications; (3) standardized registration forms and online registration; and (4) standardized registration deadlines.
- **Same Day Registration:** The area in which reform probably could have the greatest positive impact on under-represented populations is same day registration. Recent research for 2008 indicates that around 44 million eligible citizens were not registered—an alarmingly large part of our eligible electorate of about 212 million.¹⁵ Only eight states have a form of same day registration that allows voters to register and vote on Election Day. Allowing individuals to register and vote on Election Day simplifies the process for voters, provides “one stop shopping” for registration and voting, and thereby encourages greater turnout and participation. In fact, states with same day registration have seen participation among the voting age population increase 10 to 12 percentage points and voting among young people and movers is nearly 15 percent higher than in non-SDR states.¹⁶ SDR particularly assists young voters and low income citizens' who often move more frequently, and counters reduced registration rates caused by their mobility.¹⁷

- **Voter ID Requirements:** States are increasingly implementing restrictive and complicated laws requiring various forms of identification, and in some cases proof of citizenship, before voters can register to vote or cast their ballot. These strict requirements adversely impact populations such as unmarried women, African Americans, Latinos, low income citizens, and youths who more often lack current or acceptable forms of identification.¹⁸ For example, a Brennan Center study recently

found that over half of voting-eligible women do not have proof of citizenship with their current names.¹⁹ With roughly half the states requiring voters to provide or show some form of ID, the absence of consistent, simplified, and clear voter ID requirements will continue to impact voter participation.

- **No Excuse Absentee Voting and Early Voting:** The term “absentee voting” herein means voting by a mail-in paper ballot, whereas the term “early voting” is utilized in reference to voting in person at an election official’s office or other voting location prior to Election Day. Rates of both absentee and early voting are on the rise. In the 2008 elections, approximately 38 million Americans voted prior to Election Day – constituting nearly 30 percent of the ballots cast.²⁰ This figure represents a substantial increase from prior years. In 2004, 20 percent of ballots were cast by absentee or early voters, 15 percent in 2000, and 7 percent in 1992.²¹ Although all states allow for some form of absentee voting, many states have restrictions on first time voters voting by mail, voters qualified as absentee, and early voting in person. Moreover, states’ regulations regarding who can vote absentee or early differ widely. For example, some states allow “no excuse” absentee and early voting where any registered voter can vote prior to the election; whereas other states require an excuse such as absence from the state on Election Day, military duties, or health problems. Some states require that voters seeking to vote absentee need a witness and some states require a notary public as witness. Advocating for relaxed requirements for absentee and early voting should be a priority in election reform because these voting methods give voters more flexibility in casting their ballots and thereby encourage voter participation, particularly among historically underrepresented groups. The best case scenario would be universal no excuse early and absentee voting. Expanding no excuse absentee and early voting will increase voter turnout of underrepresented populations such as unmarried women, college students, and low-wage workers who cannot afford to take time off of work to vote.
- **Provisional Ballots:** In 2004, provisional ballot problems were among the top five complaints received by the Election Protection Coalition’s hotline.²² State regulations vary widely in terms of when a voter may submit a provisional ballot and how and when a state counts such votes. For instance, although HAVA requires provisional ballots, many states refuse to count any part of provisional ballots unless they are cast in what the state considers the correct precinct.²³ In addition, some states even differ by county on processing provisional ballots.²⁴ HAVA simply has not led to desired uniformity among the states (or even counties within some states). Moreover, because of unclear and complicated rules in states and counties regarding who receives a provisional ballot, some voters who should get provisional ballots are turned away from the polls and others who qualify for a regular ballot are given provisional ballots.²⁵ WWWV suggests that all states allow voters to cast a provisional ballot at *any* precinct within a county or municipality and then count the ballot choices that pertain to voters’ proper precincts. Election reform efforts should also push for a uniform standard governing which provisional ballots are counted.
- **Voter Lists:** State regulations significantly differ in terms of who updates voter lists, how the state maintains its lists, how expansively or narrowly state or local election officials read the laws and allow for name variations, and how and when officials purge voter lists. These variations cut both ways in negatively affecting the registration and

voting process. On one hand, improper purges disrupt the registration and voting process because they cause confusion for voters who believe they are registered (and later find out that they are not registered). Improper purges also complicate and add to the work of registration groups attempting to enfranchise voters by contacting unregistered voters to provide registration information. In some states, government officials match names on voter rolls against other government databases and effectively purge voters even though the matching process is often inaccurate.²⁶ For example, in 2000, Florida incorrectly purged thousands of voters from their rolls because their names shared 80 percent of the characters of the names of convicted felons.²⁷ On the other hand, inadequate attention to proper list cleaning means that some groups waste precious resources sending get-out-the-vote messaging to non-existent voters. Consistency and uniformity on both ends of the spectrum should be a priority in the election reform movement.

Conclusion

Women's Voices. Women Vote is very supportive of efforts to seek solutions to the problems many Americans face when attempting to register or vote, and that groups like WVVV face when trying to assist these individuals. The confusing array of laws, the cumbersome procedures for registering and voting, and the lack of attention to efficiency, streamlining, and consistency are all things that can be remedied. WVVV looks forward to helping those interested in reform see the problems and appreciate the need for action.

¹ Statement of Professor Stephen Ansolabehere, Senate Committee on Rules and Administration, *Hearing on Voter Registration: Assessing Current Problems*, Mar. 11, 2009. The U.S. Election Project estimates that only 131 million votes were cast for President of the United States. U.S. Election Project, 2008 General Election Turnout Rates, http://elections.gmu.edu/Turnout_2008G.html (last visited Mar. 12, 2009).

² The Pew Center on the States, *Briefing: Election 2008 in Review*, Dec. 2008, <http://www.pewcenteronthestates.org/uploadedFiles/ElectionInReviewPDF%20Final.pdf> (last visited Mar. 12, 2009).

³ Statement of The Honorable Chris Nelson, Secretary of State of South Dakota, Senate Committee on Rules and Administration, *Hearing on Voter Registration: Assessing Current Problems*, Mar. 11, 2009.

⁴ Statement of Prof. Stephen Ansolabehere, *supra* note 1.

⁵ The Nonprofit Voter Engagement Network, *Voter Turnout 2008*, <http://www.nonprofitvote.org/voteturnout2008> (last visited Mar. 12, 2009).

⁶ Ian Urbina, *Hurdles to Voting Persisted in 2008*, N.Y. Times, March 11, 2009.

⁷ *Id.*

⁸ *Id.*

⁹ Statement of Chairman Charles E. Schumer, Senate Committee on Rules and Administration, *Hearing on Voter Registration: Assessing Current Problems*, Mar. 11, 2009.

¹⁰ Press Release, WWWV, *Voter Registration Campaign to Target Unmarried Women in 24 States* (July 30, 2008), available at <http://www.wwwv.org/2008/7/30/voter-registration-campaign-to-target-unmarried-women-in-24-states>; MSNBC Exit Polling Data, available at <http://www.msnbc.msn.com/id/26843704>.

¹¹ The Nonprofit Voter Engagement Network, *Voter Turnout 2008*, *supra* note 8; Circle, Youth Demographics, http://www.civicyouth.org/?page_id=238 (last visited Mar. 12, 2009); MSNBC Exit Polling Data, *supra* note 13; Census Data available at <http://www.census.gov/Press-Release/www/releases/archives/population/011910.html> and <http://www.census.gov/Press-Release/www/releases/archives/population/012496.html>.

¹² Interview with Dave Walker, Greenberg Quinlan Rosner Research (Feb. 23, 2009) (discussing exit polling data from Democracy Corps/Campaign for America's Future Post Election Survey of 2,000 2008 General Election Voters, available at <http://www.greenbergresearch.com/index.php?ID=2287>, processed to eliminate double-counting).

¹³ See Wendy Weiser, Michael Waldman & Renee Paradis, *Universal Voter Registration Policy Summary*, Brennan Center for Justice, 2008, available at http://www.brennancenter.org/content/resource/universal_voter_registration_draft_summary/.

¹⁴ *Id.*

¹⁵ Testimony of Prof. Stephen Ansolabehere, *supra* note 1.

¹⁶ Demos, *About Election Day Registration*, <http://archive.demos.org/page52.cfm> (last visited Mar. 12, 2009); Demos, *Election Day Registration Helps America Vote*, Summer/Fall 2006, <http://www.demos.org/pubs/EDR%20Toolkit%20070506.pdf> (citing the U.S. Census figures) (last visited Mar. 12, 2009); R. Michael Alvarez & Stephen Ansolabehere, *California Votes, The Promise of Election Day Registration*, Demos, 2002, at 6.

¹⁷ Demos, *About Election Day Registration*, *supra* note 19.

¹⁸ Wendy Weiser and Jonah Goldman, *An Agenda for Election Reform*, Brennan Center for Justice, 2007, available at http://brennan.3cdn.net/39c28dc05a468de933_2om6bh0aa.pdf.

¹⁹ *Id.*

²⁰ The Pew Center on the States, *Briefing: Election 2008 in Review*, *supra* note 2.

²¹ *Id.*

²² Wendy R. Weiser, *Are HAVA's Provisional Ballots Working?*, Mar. 29, 2006, available at http://www.american.edu/ia/cdem/usp/hava_papers/Weiser.pdf.

²³ The Pew Center on the States, *Election Preview 2008, What if We Had an Election and Everyone Came?*, available at

<http://www.pewcenteronthestates.org/uploadedFiles/Election%20Preview%20FINAL.pdf>.

²⁴ *Id.*

²⁵ Wendy R. Weiser, *Are HAVA's Provisional Ballots Working?*, Mar. 29, 2006, available at http://www.american.edu/ia/cdem/usp/hava_papers/Weiser.pdf; Mark Niquette, *Concerns About Provisional Ballots Surfacing*, The Columbus Dispatch Online, Nov. 4, 2008,

http://blog.dispatch.com/vote08/2008/11/concerns_about_provisional_bal_1.shtml

²⁶ Weiser & Goldman, *supra* note 21.

²⁷ *Id.*

**HEARING ON PROBLEMS FOR MILITARY AND
OVERSEAS VOTERS: WHY MANY SOLDIERS
AND THEIR FAMILIES CAN'T VOTE**

WEDNESDAY, MAY 13, 2009

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The Committee met, pursuant to notice, at 10:05 a.m., in Room SR-301, Russell Senate Office Building, Hon. Charles E. Schumer, Chairman of the Committee, presiding.

Present: Senators Schumer, Nelson, Chambliss and Roberts.

Staff present: Jean Bordewich, Staff Director; Jason Abel, Chief Counsel; Veronica Gillespie, Elections Counsel; Adam Ambrogio, Counsel; Brenna Allen, Professional Staff; Lynden Armstrong, Chief Clerk; Justin Perkins, Staff Assistant; Mary Jones, Republican Staff Director; Shaun Parkin, Republican Deputy Staff Director; Paul Vinovich, Republican Chief Counsel; Michael Merrell, Republican Counsel; and Rachel Creviston, Republican Professional Staff.

OPENING STATEMENT OF CHAIRMAN SCHUMER

Chairman SCHUMER. The hearing will come to order and good morning to everyone and thank all the witnesses for coming and I want to thank my colleagues for being here.

Saxby Chambliss, has played an active role and I know is very interested in this issue, and I want to say we hope to get something done in a bipartisan way on this issue because this is truly a bipartisan problem.

And my good friend Ben Nelson, who wears really two hats. I am proud he is a member of our Committee, but he is also Chairman of the Armed Services Subcommittee on Personnel and Readiness and I know he cares a lot about this issue and he is a great legislator and gets a lot done so thanks for coming, Ben.

We will have opening statements from my colleagues after I finish.

Every couple of years, especially on those years ending in even numbers, right before election time there is a large push to improve the process of military voting. However, as soon as the election is over, too often we forget to continue to push for improve voting rights for military voters.

Let me say something clearly so everyone can hear it. Not this year. We have convened this hearing to uncover some of the major problems facing military and overseas voters and we hope to do whatever is necessary to clear it up so it does not happen in our next federal election in 2010.

Registration deadlines, notary requirements, lack of communication, mail delays, poor address information and state laws that put in place untenable mailing dates are all severe problems. We need to actively evaluate these problems so we can work in a bipartisan way to find solutions to the problems.

Today we will hear about that several studies that show how severe the problem is. It is more severe I think than most people realize. One of those is a new study we commissioned from the Congressional Research Service.

While the 2008 Election Assistance Commission post-election report will be released a few months from now, we wanted to see right now an initial snapshot of how voting went in the states with the largest number of military voters during the 2008 election.

We asked the Congressional Research Service to contact some of the largest military voting states and get initial data on the number of overseas ballots requested and the number of overseas ballots that were never eventually counted. We were able to get preliminary data in advance of the complete survey to be released later this year.

Here is what the data showed. It showed that up to 27 percent of the ballots requested by military and overseas voters were not counted and that is an astounding number that it should say to all of us, we can do a lot better.

Those are just the voters who actually were able to get their requests for ballots answered. There are probably many more who did not.

Studies from previous elections show that the military and overseas voters have one of the lowest level of recorded votes of all groups because it is so hard for them to vote.

And as you can see from the chart behind me, 63 percent of local election officials reported receiving completed ballots after the deadline had passed so they do not count.

The problem is compounded when 39 percent of military and overseas voters receive their ballots too late to return them in time. They request them in a timely way, but by the time they get the ballot, they cannot send it. The deadline has passed for last day of absentee voting or whatever.

This number from this past election is up 14 percent from 2006 so the problem is not getting better. It is getting worse.

It is unacceptable that in the age of global communications many active military, their families and thousands of other Americans living, working and volunteering in foreign countries cannot cast ballots at home while they are serving overseas.

Imagine the frustration the soldier feels when he or she is stationed in Iraq or Afghanistan and when their ballot finally arrives, it is too late. Here they are risking their lives for us. They take that extra step to vote. They are not at home. They obviously have many other things on their minds. They request a ballot in a timely way and it gets there too late to vote. Imagine how that feels. They can fight and put their life on the line for their country, but they cannot choose their next commander-in-chief.

To put a human face on these numbers, I want to share a letter describing some true stories to the Overseas Vote Foundation during the 2008 election.

One military voter wrote, "I submitted two registration forms via standard mail in January 2008 to Texas and received no confirmation that my registration was received or processed. I did not receive ballots for the primaries or the general election."

Another soldier, this one from Alaska, said, "I hate that because of my military service overseas, I was precluded from voting."

Let me just repeat that because they just hits you at home.

"I hate," and this is a soldier serving us, "I hate that because of my military service overseas, I was precluded from voting."

The letters continues.

"Of all people, deployed service members should have a guaranteed ability to vote in the presidential election. The state simply made it impossible for me to vote."

One final voter was able to get a ballot but was unsure whether it was ever counted.

"I called my hometown voting office to get assistance," he wrote. "Every time I called they told me something different. I ended up doing three different things just to get my ballot and then I sent it in a week before the deadline. I am hoping that my vote was counted."

In each of these stories, you can hear the effort these service men and women made to vote, calling several times, submitting their ballots early, but to no avail. This is unacceptable and something we should not let continue.

So we are here today to learn more about the source of these problems. The report of CRS clearly indicates the problem exists and is growing. The hearing is devoted not to outlining the CRS report but to figuring out what we do about it.

First, we are going to hear from the Acting Under Secretary of Defense for Personnel and Readiness. I understand that the Federal Voting Assistance Program is undergoing a period of transition and that it is currently operating under an acting director. Senator Ben Nelson and I just have sent a letter to Acting Under Secretary McGinn, one of our witnesses today, urging that a new director be put in place as soon as possible so we can get this moving.

We sent the letter to make it sure for the record that we believe that an effective Federal Voting Assistance Program is something very important to members of Congress and we want to work closely with the new director to ensure he or she receives the report from our respective committees.

Second, the leadership at the Department of Defense needs to use every available resource to increase the number of military voters who register, vote, and have that vote counted. This needs to be accomplished through a true assessment of the problems and an innovative approach to structuring voting assistance, improving technology, and informing Congress and the states what laws need to be reformed to make it easier for these soldiers and their families to vote.

There are a number of ways that the military can work to improve voting rights for members of the armed forces.

Recently, we requested that President Obama work with the Department of Veterans Affairs to provide voter registration support to the veterans they serve. But currently, the only federal offices that are required by statute to provide an opportunity to register and vote are the Armed Services Recruitment Centers. I am interested in finding out more about how that program works and whether it has been successful.

I must mention one more of our witnesses as I wind down our closing remarks. I would like to thank Lieutenant Colonel Joseph DeCaro from Florida, who is taking a very—there he is. He is not in uniform. I was looking for the uniform first. But he is doing this as a volunteer even though he is on active duty and he is talking a very short leave from his duties with the Air Force and is willing to speak about the difficulties he has faced as a member of the Air Force stationed overseas and trying to vote.

And I think I speak on behalf of all of us when I say, Lieutenant Colonel, we appreciate your service and we hope you know that you are performing an important service today by telling your story here.

A final personal note. While we hear from members of the armed forces who have encountered difficulties trying to vote, I do not find that you have to look far to find these problems.

An intern in my Buffalo, New York office, Lisa Wickman, is a veteran. She was on active duty in the Navy from 2001 to 2006. She was stationed in Guam and was on shore duty during the 2004 election. Her problem was that she wanted to vote but did not know she had to vote absentee.

Despite weekly updates on a series of other important matters, her officers never gave her or her fellow sailors important information about how to vote.

Now, that should not happen, certainly not in the United States where elections are a bedrock of our political system and we correctly have great praise and admiration for members of the armed services.

So I look forward to hearing from all of you today.

We will now call on Senator Chambliss.

OPENING STATEMENT OF SENATOR CHAMBLISS

Senator CHAMBLISS. Thank you very much, Mr. Chairman, and I appreciate you calling this hearing today on an issue that is of critical importance to America, not just to our men and women, but those folks that protect us every day need to have their rights protected. By your calling this hearing today, we are taking an important step in that direction.

Obviously I am substituting for Senator Bennett, who is was managing an issue on the floor, and I would initially asked for unanimous consent that Senator Bennett's statement be inserted in the record.

Chairman SCHUMER. Without objection.

[The prepared statement of Senator Bennett follows:]

Senator CHAMBLISS. I was also privileged to serve as Chairman of the Personnel Subcommittee on Armed Services with my dear friend, Senator Ben Nelson, a couple of Congresses ago and still serve as a member of that Personnel Subcommittee and we have talked about this in Armed Services and we look forward to working with this committee in a bipartisan way, as you say, to address this issue.

The challenge of assisting our military servicemen and women's participation in the electoral process is not new. Since our Nation's founding, we have called upon the men and women of the military

time and again to defend the rights and freedoms we Americans hold sacred.

Our soldiers are asked to leave family and home, travel to foreign and hostile lands, endure hardships of every kind, and place their lives in peril for their country. So, Mr. Chairman, it is appropriate that we in Congress do all that we can to ensure that these brave men and women are able fully to participate in the cause that they devote their lives to protecting.

Beginning with the Soldier Voting Act of 1942, Congress has sought legislative remedies to guarantee the voting rights for members of the armed services. The current law, the Uniformed and Overseas Citizens Absentee Voting Act or UOCAVA, was approved by Congress and signed into law by President Ronald Reagan in 1986.

UOCAVA sought to alleviate the difficulty of navigating the voting process for uniformed personnel and overseas citizens by standardizing the forms required of military voters to register to vote and request absentee ballots.

Additional provisions ensured that the states would accept these standardized forms, the Postal Service would carry them expeditiously and free of charge, and that a presidential designee, the SECDEF, would be responsible for administering the program.

Subsequent amendments included in the Help America Vote Act and various defense authorization acts have attempted to remedy some of the original Act's shortcomings.

This hearing provides us with a fresh opportunity to examine how we are doing in accomplishing our goal to protect the voting rights of our servicemen and women. Unfortunately it seems that our soldiers are not participating at anywhere near the levels that we would like and this is unacceptable.

As you have shown there, Mr. Chairman, a 2006 survey, conducted by the Defense Manpower Data Center, found that only 22 percent of the estimated UOCAVA population participated in the 2006 election. Commentators have proposed any number of explanations for this shocking statistic. Some point to the continuing use of traditional postal services or "snail mail" to deliver voting materials to and from the field. Others call attention to the apparent ineffective assistance of the DOD's Federal Voting Assistance Program, which the Department's own Inspector General found to reach only 40 to 50 percent of military voters.

Again, I look forward to the testimony of our witnesses and hope that they can shed some light on why this may be the case.

Among the witnesses are those who are, or have been, military voters themselves and we thank you for your service to our country.

Additionally, we have election officials who serve a vital and often thankless job in ensuring that our elections run smoothly and securely. Nowhere is their job more challenging, or important, than in working with our men and women of the armed forces.

Finally, we have a representative of the Department of Defense. Our servicemen and women rely on the Department's Federal Voting Assistance Program to help them exercise their right to vote. I hope that we will hear an honest assessment of the program's

execution of this very important responsibility and the results they have achieved.

Before closing, let me add a few comments based on my own recent experience in my election last fall. Georgia has a huge military presence. We have 13 military installations and I believe my State did a good a good job of reaching military and absentee voters in the general election in November. Georgia, as well as most other states, have an excellent procedure in place for general elections and, while I have some ideas about how these can be improved, I think in large part it worked very well.

Unfortunately, that was not the case in the run-off election in December. Lots of factors combined to make the run-off election especially difficult for military and absentee voters based on the delayed, official announcement that there would be a run-off, followed by a short time line to send and receive absentee ballots. I think this highlighted some of the weaknesses in the system, not necessarily in Georgia but across the country, and I believe that we can use that example to make improvements and find ways to ensure that our military and overseas voters are never disenfranchised.

Again, Mr. Chairman, thanks for holding this very important hearing and I look forward to the testimony of our witnesses.

Chairman SCHUMER. Thank you, Senator Chambliss, and now Senator Nelson who chairs a similar committee on armed services.

OPENING STATEMENT OF SENATOR NELSON

Senator NELSON. Thank you, Mr. Chairman, for holding this hearing. Obviously it is one of the most important topics that we can deal with because of the importance of our military men and women being able to vote and making certain that every vote counts. I look forward to seeing the testimony.

Unfortunately I am not going to be able to stay for the entire hearing. But one disenfranchised service member is one too many but, when two out of three ballots are not counted for whatever reason, we have got a serious problem on our hands.

I know that a lot of the data on overseas voting needs to be improved and made more complete and consistent from county to county and state to state so we can know more about what is truly happening because of the inadequate information and data that we currently get.

But I hope that we will find a way to increase coordination between the state, the Federal Government, the military, and the overseas voters. If we can improve the relationship and we find the way in which to expedite the process but make certain that it is complete and is sufficient, then we will be doing the kind of job we need to do.

So I appreciate your interest in this and thank you for holding this hearing.

Chairman SCHUMER. Thank you, Senator Nelson.

We look forward to working with your subcommittee as well on this important issue.

Now, I am going to introduce Gail McGinn. We have a vote at 10:30, but I think we will be able to get through not only her testi-

mony but questions before the vote because I know you have another appointment.

Ms. McGinn is the current Acting Under Secretary of Defense for Personnel and Readiness. Her department oversees the Federal Voting Assistance Program office. Ms. McGinn, previously served as Under Secretary for Plans and other positions at the Department of Defense.

Ms. McGinn, your entire statement will be read into the record and you may proceed.

STATEMENT OF GAIL MCGINN, ACTING UNDER SECRETARY FOR PERSONNEL AND READINESS, DEPARTMENT OF DEFENSE, WASHINGTON, DC

Ms. MCGINN. Thank you very much, Mr. Chairman and distinguished members of the committee.

I thank you for the opportunity to testify about the challenges our uniformed service and overseas voters experience in exercising their constitutional right to vote and the initiatives we have and continue to undertake to eliminate or litigate these challenges.

Our goals are the same. I think the department shares the committee's concerns that the absentee voting process is sometimes daunting and discouraging to these voters.

I would note, Mr. Chairman, that I am a military spouse and my husband retired from the Army. I did serve some time overseas with him and I got to experience overseas absentee voting, although I hasten to add, we were at headquarters, so I am sure it was much easier for us than for the rest of our constituency.

But the Department is dedicated to making the absentee voting process easier and more straightforward for these citizens. Time, distance and mobility are the barriers that make the absentee voting process difficult for our uniformed service members, their voting age family members and our citizens who live outside the United States, barriers that are not faced by citizens who vote at the polls.

First, there is time. There are certain actions, voter registration, absentee ballot request and the return of the citizen's marked ballot that must be accomplished by specific dates in order for the citizen's ballot to be counted. The amount of time a citizen has to complete the process is driven by the schedule established by each state and is subject to transit time in the postal system which may be extended when the individual is in a remote location.

Second is distance. Our military and overseas voters frequently find themselves at great distances from their voting residences. Many citizens are in areas where mail service is limited, intermittent or non-existent.

Peace Corp workers, submariners, forward deployed service members and others in remote areas may face periods of no mail service during the ballot mail period.

Third is mobility. Our military and overseas voters are a dynamic group. Where they are located today may not be where they will be located for the next election. As we are a Nation at war, our military members face a high operating tempo which includes undergoing individual and collective training, participating in exer-

cises and deployments. Overseas citizens also frequently move as job opportunities take them around the globe.

The Uniformed and Overseas Citizens Absentee Voting Act, UOCAVA, safeguards the right to vote in federal office elections for absent uniformed service members and their families regardless of location, and U.S. citizens who are overseas. In the administration of the law, the director of Federal Voting Assistance Program works cooperatively with state and local election officials to carry out the provisions of UOCAVA to eliminate the barriers faced by UOCAVA citizens.

The challenges of serving these citizens emanates from several principle causes characterized, as I had mentioned, by time, distance, and mobility and are exacerbated by the fact that, for many, mail remains the primary method for UOCAVA citizens to vote.

Our federal system under which 55 states and territories independently administer their election procedures means that registration, ballot distribution, and voted ballot return regulations and deadlines are determined by a large number of independent jurisdictions, each of which have unique requirements that must be met in order to register, request a ballot, and ultimately have the voted ballot count.

The Department employs three critical strategies. First, we have forged and maintained valuable partnerships with all who can assist in the absentee voting process including State and local election officials who carry out the elections, the United States Postal Service, the Military Postal Service Agency, the Department of State, the Department of Justice, other federal agencies, and overseas citizens organizations and advocacy groups.

Second, we continue to provide and encourage use of electronic transmission options for registering to vote, requesting a ballot and returning a ballot.

Third, we work with states to promote the passage of legislation that can positively effect the ability of our UOCAVA citizens to successfully participate in the democratic process.

For many years the Voting Assistance Program has proposed legislative initiatives to state officials that would facilitate voting for our citizens. There have been many successes with some states enacting some or all of our recommended legislative initiatives.

Our legislative initiatives for states and territories to improve ballot transit time are, first, provide at least 45 days between ballot mailing date and the date that ballots are due, give state chief election officials the authority to alter elections procedures in emergency situations, provide a state write-in absentee ballot to be sent out 90 to 180 days before all elections and expand the use of electronic transmission alternatives for voting material.

Currently 27 states, three territories and the District of Columbia provide at least 45 days between the ballot mailing date and the date ballots are due.

Seventeen states and the District of Columbia give chief election officials the authority to alter election procedures in emergency situations.

Twenty-seven states allow election officials to provide the state write-in a absentee ballot, and 47 states, three territories and the District of Columbia provide for the electronic transmission of vot-

ing materials for at least one part of the UOCAVA absentee voting process.

For the 2010 elections FVAP is pursuing the next generation of electronic tools to assist UOCAVA voters. These coordinated efforts have provided effective support for thousands of citizens; and while the mail does work for a large number of UOCAVA voters, we believe leveraging technology could be beneficial in removing some of the challenges voters experience.

Because each voter has a unique set of circumstances, the Department wants to provide as many alternative methods as possible for registering, requesting a ballot, and returning the ballot.

Clearly, the three areas for emphasis that you have identified in the letter that you sent to me, improved relationships and election officials, improved use of technology, and improved data on military voting are important ones that need to be continuously worked and we look forward to working with the committee on those issues.

I would like to thank you for your continued support of our service members, their families and our overseas citizens and all this committee has done to make it easier for them to vote.

I am happy to take your questions.

[The prepared statement of Ms. McGinn follows:]

Chairman SCHUMER. Thank you.

I am going to try to be brief so we can get questions in. You will hear a little buzz when the vote starts which gives us about 15 minutes before we have to go vote.

Okay. You mentioned the letter Senator Nelson and I sent you expressing the hope that the new Federal Voting Assistance Program Director who your office is currently finalizing would be able to provide effective leadership in improving access. We want to work with this individual.

And I know you cannot speak for the Secretary, but I want to know whether DOD is going to provide the support and authority to allow the new director to make the necessary changes.

Ms. MCGINN. I believe that DOD will provide what support and authority that director needs. I think this is a very very important topic for us in the Department.

By our record of investment in this in terms of military manpower for voting assistance officers, the emphasis from the top both from the Office of the Secretary of Defense, the Secretary of Defense and the military departments, we are trying to do everything we can to make sure that our voters are not disenfranchised.

Chairman SCHUMER. One issue we need to be aware of is that the first federal primaries in 2010 are about a year from now. So we do not have that much time.

Second, I would like to talk to you about the voting at recruitment centers which I mentioned in my opening statement. As you know, one of the elements of the National Voter Registration Act is that armed services recruitment offices be a voter registration agency. It means that each potential recruit should be offered a voter registration form and help in filling out the form.

Could you give us an update as to how the program is faring and do you know how many potential recruits were registered to vote last year because of the program? If you do not know that number,

if you could find out that and submit it writing that would be great.

Ms. MCGINN. Mr. Chairman, in order to give you a full response, I need to submit it in writing. I am aware that our recruiting offices are doing the registration that they are supposed to be doing, but I do not have the full details of what you are asking.

Chairman SCHUMER. We need numbers to judge what kind of success we are having.

Ms. MCGINN. Absolutely.

Chairman SCHUMER. The Inspector General reports. Two weeks ago, the Inspector General's Office released the 2008 evaluation of the Voting Assistance Program and I understand that with the 2008 study, the Inspector General stated, quote, "We are not making any recommendations in this report for improvement."

Now, I have read a number of Inspector General reports. It is sort of a rare day when they do not make any suggestions. The question is: does that strike you as odd? I saw by your face you sort of answered it.

Ms. MCGINN. It is true they usually make recommendations and I have not spoken with him personally so I do not know what that is a reflection of. I think what they were doing was looking at the field to see the degree to which they were implementing the instructions and directives that we have out there. Obviously there are improvements to be made in many areas.

Chairman SCHUMER. Yes. The 2004 report concluded the Voting Assistance Program was not effective and that because, quote, and this is the 2004 report, "Voting assistance will always be a secondary duty. Senior leadership can expect significant improvement only if a radically different approach is applied."

Has there been such a radically different approach, since that report which was four years ago, applied?

Ms. MCGINN. I think since 2004, Mr. Chairman, of course, I have not been in this position since then.

Chairman SCHUMER. Right.

Ms. MCGINN. But I have observed my colleagues and my leadership at work. At least in the last four years, the command emphasis on this even to the extent of our previous Deputy Secretary, whenever he went to an installation, would ask to see the voting assistance officer, the number of training workshops that we have done, the web outreach, the publicity outreach.

I would say in the last four years it has been quite substantial and that could be the difference.

Chairman SCHUMER. Okay. Well, let us hope. It does not sound radical to me, but maybe the Inspector General was exaggerating or using too strong language, but that is something again we will want to look at.

Let us see. There was a recommendation, an effort that through the Federal Assistance Voting Program to notify election officials when members of the military have officially moved. That was the EAC survey, based on the EAC survey in 2006.

Do you know what the status of that recommendation is?

Ms. MCGINN. No, I am afraid I do not.

Chairman SCHUMER. Could you get that to us in writing?

Ms. MCGINN. Yes.

Chairman SCHUMER. And do you believe that kind of communication would encourage the improved delivery of military ballots?

Ms. MCGINN. I believe for local election officials to know where the military member is very important. I have, in preparing for this hearing, read some studies that said a percentage of ballots were returned because the address of the person was not known. And I noted in my opening remarks that is one of our problems is the mobility of our population. Whether that transmission of information would be the appropriate way to do it or not, I do not know. I will have to get back to you on that.

Chairman SCHUMER. And this is your own personal assessment and this will be my last question because my time is running out.

If we had one change to make this better, what would it be?

Ms. MCGINN. I would say it would be to encourage states to have more uniformity in their procedures so that there is not such a difficult explanation for each voter as to the processes they need to follow.

Can I have two?

Chairman SCHUMER. You can have three.

Ms. MCGINN. Okay. Good.

I also think that if we can improve technology which also goes to states accepting the use of technology so that we can start to do this in a 21st-century way, that that would be very helpful as well.

Chairman SCHUMER. Any third one? Those are the two most important.

Ms. MCGINN. I have a third one.

Chairman SCHUMER. I knew you would come up with it.

Ms. MCGINN. The third one would be that all of us agree on a data collection.

Chairman SCHUMER. Yes.

Ms. MCGINN. So that we really have statistics about what is happening out there because right now they come from many different sources.

Chairman SCHUMER. Good point.

Ms. MCGINN. In our 2008 report we are going to ask our Defense Manpower Data Center to provide the data through a survey of our service. Of course they are a world class operation.

Chairman SCHUMER. You bet.

Ms. MCGINN. So I think hopefully we can coalesce around those numbers and then help us go forward.

Chairman SCHUMER. Thank you.

Senator Chambliss.

Senator CHAMBLISS. Thank you, Mr. Chairman.

Ms. McGinn, thank you very much for your work in this area.

I have got some questions that I wanted to address to you to let you discuss generally the Help American Vote Act's requirements in connection with the UOCAVA as well as the Federal Voting Assistance Program. I think what I am going to do is submit that for the record because I would like for you to go into some detail particularly with reference to ways that you think that legislatively we can improve it, do you have the resources for what you need, and that sort of thing.

But let me drill down a little bit on the Federal Voting Assistance Program and the voting assistance officers. The 2005 DOD IG

report found that only 40 to 50 percent of military families received voting information either from the Voting Assistance Program and voting assistance officers.

What accounts for this poor performance? What do you think we can do to improve it? And as part of that, would you talk a little bit about how VAOs are selected, are they volunteers, and do we have a way of grading them. You talked a little bit in your statement about your personal experience. Was that a mandatory requirement that you train folks the way that you did that?

Ms. MCGINN. The voting assistance officers, the way we want to get information to people, my experience in all my years working for the Department of Defense is that it is very difficult to get information to people even if they are situated in a headquarters element.

So I think what the Federal Voting Assistance Program has tried to do is use all available mechanisms to do that with the establishment of a website, with the provision of monthly updates and all relevant information to the Federal Voting Assistance Officers, to posters and publications for federal voting and access to your federal voting assistance officer, through all the training. I think we have got 193 training workshops leading up to this last election, and through working with overseas foundations and groups to get the word out to American citizens.

So I think they have tried very hard in order to reach out to everyone and make sure that they have the information that they require. But again, you have got populations that are dispersed. You have got populations that may not have access to information sources for a while.

So that number is high. It would not surprise me that there are some who do not get the information they need. That number, 40 percent is an unacceptable number and I do believe that in the last few years the Department has really taken an aggressive stance at getting the word out to people.

The voting assistance officers, I do not know exactly the process by which they are chosen. I would assume that they are with the requirement to have, one, that you choose a young officer who is competent and has interest in this area for getting the job done for the unit or the installation or the organization where they are assigned.

We provide training. We provide workshops. We provide regular information, newsletters, voting assistance guides, as I said, website operations. So it appears to me to be a robust effort to get the word out and to use the voting assistance officers for that.

Senator CHAMBLISS. One of our witnesses on the next panel suggests having DOD provide registration materials at locations where service members receive other support services like pay offices, ID offices, check-in at bases, and whatnot.

Has the Federal Voting Assistance Program considered that and what sort of implementation measures are you taking if that is the case?

Ms. MCGINN. I honestly, sir, do not know if that has been considered by our Federal Voting Assistance Office. It is something that we can look at certainly.

Senator CHAMBLISS. Well, it seems like that might be, again, one of those education measures that we can take advantage of because everybody that comes to a new base goes through that support service office.

Ms. MCGINN. Yes, they do.

Senator CHAMBLISS. Well, thank you for your good work and we look forward to continuing to work with you.

Thank you, Mr. Chairman,

Ms. MCGINN. Thank you, Senator Chambliss.

Chairman SCHUMER. Thank you, Senator Chambliss.

Senator Nelson.

Senator NELSON. Thank you, Mr. Chairman.

Obviously, technology is going to be extremely important in resolving, taking away the challenges that exist because of time differences and the length of time for the ballots to be transported back and forth. Preserving anonymity is going to be a major focus of that I am sure. But it probably does not solve mobility, of identifying where people are.

So I am hopeful that in light of the experience that has been gained in the last three elections that perhaps there are some updates or revisions to DOD policy and procedures as set forth in the DOD Directive Number 1000.04, dated April 14, 2004, that might help us facilitate getting more success in voting by men and women in the military.

Could you comment on that?

Ms. MCGINN. Well, we are constantly trying to upgrade our own ability to do electronic work in order to facilitate the process. We have the ability right now for citizens to get a copy of the postcard application electronically, to fill out the postcard application electronically, to get a copy of the absentee voter ballot electronically, the federal absentee voter ballot electronically. So we are trying to continue to improve that.

I think that one of the lessons we have learned in going into elections is that, as we start to improve technology and put technology solutions out there, we need to start sooner than we started in the past. I think that is one of the challenges that we will have, to continually upgrade those solutions and to make sure that they are in a timely way so that the states know that they are there and know the capability that they bring.

Senator NELSON. Is there a difference in how you might deal with local elections that do not involve a federal election or every two or four years when you have a federal election, is that handled differently?

Ms. MCGINN. It is handled the same. I believe the difference is local elections uniformed members and their families vote in and so we push the same kind of information out to them. But I have noticed in, as I said, watching this program unfold for the last four years, that every two years there is this concerted effort. And of course, with the national election for the President, it is a little more heated, if you will, but there is still a level of effort that is very significant for elections every two years.

Senator NELSON. Of course you have the off-year elections in some states that do it in the odd years, not necessarily in the even

years. I know it is a monumental, Herculean task to try to achieve it all.

But I would hope that the use of technology both at the election commissioner's office as well as within DOD would help facilitate it because obviously those statistics would demonstrate that timing is a factor getting materials to the voter and materials from the voter back to the point of the election.

Have you thought about any kind of federal requirement that might make counting ballots that come from overseas, extend the time frame for counting those ballots in local elections or state elections or federal elections?

Ms. MCGINN. I think that is what we are trying to accomplish with the legislative issues that we have laid before the state as state issues. One is to extend 45 days for the receipt of the ballot and also to allow variations from procedures in special cases.

So I think we are trying to work with the states to do that. I do not know if that can be done nationally.

Senator NELSON. It probably could for a federal election. But I am not suggesting that we necessarily want to start dictating from Washington back to the states. But what kind of response are you getting from the states in connection with your suggestions?

Ms. MCGINN. We have gotten responses from them. I detail it in my statement. I guess what I would note from my reading is that we have had a lot of success in the acceptance of fax technology, that a lot of states are accepting faxes along the various ways, steps in the process, the voting and registering to vote. And we are starting to see some success in the electronic area too but not as much and robust as in the fax. So maybe that portends of the future that that will start to improve as we go forward.

Senator NELSON. Now, would the fax be for registration as opposed to a ballot?

Ms. MCGINN. For registration, for receipt of the ballot, even some states will even accept it for the ballot.

Senator NELSON. Thank you, Mr. Chairman.

Chairman SCHUMER. Thank you again, Ms. McGinn, for your excellent testimony.

Now, we have the second panel, but the vote has been called so I think it would be wise to take a brief recess now. We will go vote and come back and hear from the second panel.

Is that okay with everyone? Do you have any more questions, Saxby? Okay.

The committee will stand in brief recess.

[Recess.]

Chairman SCHUMER. Okay. Thank you, everybody, for your indulgence. The hearing will resume.

First, I would ask unanimous consent that a statement from Senator Feinstein, our former chair, previous chair, who has done a great job, be added to the record and without objection it will be.

[The prepared of Senator Feinstein follows:]

Chairman SCHUMER. And second, Senator Roberts had asked to make a brief statement. He has had a busy morning with Finance Committee and other things, and so before our panel begins, I am going to call on Senator Roberts.

OPENING STATEMENT OF SENATOR ROBERTS

Senator ROBERTS. Thank you, Mr. Chairman. I will take your advice to heart. The chairman indicated that I could make this short statement prior to the panel testifying and I apologize to the panel but only if I would shave. I plead extenuating circumstances, Mr. Chairman.

I had knee surgery and I was laid up for about three weeks and the only thing I did really was to watch Law and Order reruns. There are some things that you have to do but other things you do not, and one is shaving. Since coming back, I have heard a lot of commentary especially from folks like yourself and so I just decided to be stubborn, but I will shave because of your taking my request and so we will just make that promise to you.

Chairman SCHUMER. Just to interrupt. There is a constituency of one when it comes to beards as I have learned, and that is Frankie, your wife.

Senator ROBERTS. She says it is not that bad.

[Laughter.]

Chairman SCHUMER. Okay. You are way ahead of where I was when I grew a beard.

Senator CHAMBLISS. You have to look at what she is used to in that context.

[Laughter.]

Senator ROBERTS. I knew that was coming. Anyway, I am now the fourth stand in for Sean Connery. The fourth stand in is the body that they roll over.

Chairman SCHUMER. Having played basketball with you, I know you have a Connery-like figure.

Senator ROBERTS. That is because of all those blind-side moves that you used to complain about.

Chairman SCHUMER. That is right.

Senator ROBERTS. Alright. At any rate, thank you, Mr. Chairman, for holding this hearing and thanks to the panel and we will be reading that very carefully. As a Marine, I take this issue personally and it helps that we have 37,000 military men and women stationed in Kansas. So this is an issue that is of real concern to me.

I find it very disappointing that with all the incredible technology we have today, Mr. Chairman, that we ask for the military to vote the same way we have since World War II, and I do not think that is right. They can check their e-mail, video conference with their families, even upload the YouTube clips while deployed.

But despite all of these advances, we simply ask them to rely on a disparate system of state rules and requirements and the mail system to track them down if they want to have a say in our elections.

I think our service men and women certainly deserve more. In fact I do not think anybody in the room would ever disagree with the idea that the men and women defending our freedom deserve the right to have their votes counted. So let us give the tools to vote once they have performed their civic duty. Let us make sure their votes are counted.

I have signed a lot of letters on this topic and I have sponsored and co-sponsored a lot of legislation. There was one by John

Cornyn that passed the Senate by unanimous consent, but it was somehow dropped over in the other body, in the House.

And the media has certainly exposed some of the problems involved and we thank them for that. So I hope we can get back. I think everybody has talked about the bipartisan effort that we need here and I certainly support that. Maybe we can take the Cornyn bill or Cornyn II if improved, and it is time we worked in that kind of a fashion to make sure the votes of our service men and women are counted.

And I thank you, Mr. Chairman for allowing me to make this statement.

Chairman SCHUMER. Thank you for coming in and participating.

I now would like to introduce our five witnesses and ask them then to make their statements. And we are honored to have everyone of you here.

First, Patricia Hollarn recently retired after 20 years as supervisor at elections at Okaloosa County, Florida. She is a board member of the Overseas Vote Foundation. I have to say she is regarded as one of the experts nationally in this area.

We thank you for coming and she has some New York roots as well, which I am proud to acknowledge.

Mr. Donald Palmer is Director of the Division of Elections at the Florida Department of State. He worked earlier as an attorney for the voting section of the Civil Rights Division of the Department of Justice and as a legislative assistant in the House of Representatives.

To whom was that?

Mr. PALMER. Mr. Feeney.

Chairman SCHUMER. Very nice.

And as a Navy intelligence officer. From 1998 to 2005 he served in the Navy's Judge Advocate General Corp.

Lieutenant Colonel Joseph DeCaro, who both Senator Chambliss and I have mentioned, is on active duty in the United States Air Force. He lives in Florida. His remarks today are his own and do not reflect the views of the Air Force, the Department of Defense, or the current Administration.

Lieutenant Colonel Decaro joined the Air Force in 1986, served at Hunter Army Air Field in Georgia, Prince Sultan Air Base in Saudi Arabia, and the Al Udeid Air Base in Qatar.

We thank you for your service, Colonel.

And Mr. Eric Eversole worked as a litigation attorney in the voting section of the Civil Rights Division at the Department of Justice from 2005 through 2007, then served as an advisor to the 2008 McCain-Palin campaign.

Mr. Eversole was an officer in the Navy's Judge Advocate General Corp in 1999 to 2001.

And last, but not least, Mr. Robert Carey is a consultant to business and government whose experiences trying to vote while in the armed forces led him to join the National Defense Committee to help other soldiers exercise their voting rights. He has been called back to active duty three times since 2000. He has been awarded a number of military honors. Thank you for your service.

We will begin with Ms. Hollarn. We will ask each witness to take no more than five minutes and submit without objection their entire statements into the record.

Ms. Hollarn.

**STATEMENT OF PATRICIA HOLLARN, RETIRED ELECTIONS
DIRECTOR, OKALOOSA COUNTY, FLORIDA**

Ms. HOLLARN. Thank you. This is the first time in my memory that anyone has maintained interest and purpose beyond election day in improving opportunities for military voters anywhere and other American citizens overseas to register and vote.

So I am grateful to you, Senator Schumer, the Rules Committee members and staff for allowing me to participate in this much needed effort for legislative action.

I not only have been working with UOCAVA voters and the problems they confront for 20 years as the Supervisor of Elections in Okaloosa County, Florida, which has an extraordinarily large military constituency, but I was also an overseas military spouse who had these very same difficulties in the '60s and '70s during my husband's Air Force career.

The problems actually began with voter registration particularly when a person is not actually registered prior to leaving his or her legal voting residence. It is accepted that each state is entitled by the Constitution to have its own election laws and requirements, but it should also be accepted that the federal Uniformed And Overseas Citizens Absentee Voting Act, or UOCAVA, must be applied in every state to persons who fall under UOCAVA.

Unfortunately most of these affected persons are not at all familiar with the entitlements of UOCAVA to take advantage of them in a timely manner in accordance with the law and even more unfortunately many election officials are not sufficiently familiar both with UOCAVA and its correct implementation.

This leads to confusion about legal voting residency for military personnel stationed within the United States and even worst for those already overseas.

The law absolutely provides several options in these cases but often neither the voter nor the election official is well enough versed to resolve the situation as the law permits. And this in turn either delays or denies a prospective voter his ballot.

Once registered, the UOCAVA voter's only responsibility is to provide his or her correct mailing address or other contact information to the election official. That voter is absent from his voting jurisdiction and must be kept informed by the election official; but in the case of the highly mobile military member, that is still a problem just as much for the voter as for the election official.

Returned undeliverable mail not only can deprive the voter from receiving a ballot but jeopardizes active voter status for the future as well and that starts the cycle of re-registration problems all over again.

Obviously the issue of receiving and casting a ballot with the issuance of it being counted is the ultimate problem. I believe it is fair to say that almost all election officials want this process to be successful as much as the voter does and yet issues that are beyond their control often prevent that from happening.

First, I would talk about elections schedules in some jurisdictions or states that do not allow enough time after the ballot, candidates and issues are certified and the printing of ballots can begin. Work to prepare the lists of eligible voters can be done ahead of this period, but updating is continual and maintaining accuracy add complexity. If there is not a minimum of 45 days that is the deadline for mailing UOCAVA ballots, the chances lessen every day for solving any delivery problems.

The law provides at least by FVAP request for the 45-day deadline for overseas voters' ballots only. However, with more and more TDY and deployment, temporary duty, TDY is temporary duty, and deployment overseas assignments given at the last minute to military members many whose records show that they are located in the United States are actually overseas temporarily during election time.

Either they run out of time to request a ballot, to notify the election's office where to send the ballot or there is great difficulty in receiving ballots by mail or even fax in remote or combat locations taking too much time to have the ballot received, cast and counted.

Some states have laws that require specific forms and procedures for requesting absentee ballots that are clearly cumbersome and create time and frustration problems for UOCAVA voters.

HAVA eased some of the problem by making the request for ballots through two general elections, but the unintended consequence of that was to result in an excessive number of ballots that were return as undeliverable. Those jurisdictions which added additional procedures to verify addresses no later than 90 days before an election improved ballot delivery considerably but the practice was not wide spread enough to reduce the failures.

Many voters now eligible under UOCAVA are the Reserve and National Guard members who are serving much longer on active duty than their former two-week active duty service in the past in jurisdictions with few or no standard military installations and few military or expatriate citizens on the voter rolls.

Election officials who have had no real experience with implementing UOCAVA rights do not realize how they must now do so.

Combined with the lack of information about registration and voting provided to these activated personnel, the amount of voting problems among this group in all likelihood exceeded regular active duty members.

All UOCAVA voters are subject to the problems traced to mailing ballots. While the U.S. Postal Service created a separate department, new and worthy procedures, and good outreach to election officials to help expedite ballots in 2008, their efforts ended at the three ports, Miami, New York and San Francisco where the military postal system took over.

It would not be totally fair to criticize the military postal system which must operate with insufficient resources under very difficult circumstances in many instances but delays in it are inherent to the timely delivery problem.

It is sufficient to say that mailing ballots as well as other election related pieces is still the biggest problem for receiving, casting and counting the ballots.

I can speak at much greater length about problems and even more so about solutions and look forward to such an opportunity. I would like to, in the question and answer period, respond to some of the questions that were asked to the Defense Department and as well as to mention the electronic solutions that I think are possible.

[The prepared statement of Ms. Hollarn follows:]

Chairman SCHUMER. Thank you, Ms. Hollarn, for excellent testimony and excellent service.

Mr. Palmer.

STATEMENT OF DONALD PALMER, DIRECTOR, DIVISION OF ELECTIONS, FLORIDA DEPARTMENT OF STATE

Mr. PALMER. Thank you, Mr. Chairman and ranking member. Thank you for this invitation to discuss with you the challenges of military and overseas voters during the voting process and the great strides that Florida has made to increase the access to that voting franchise.

Florida makes every effort to meet the needs of our diverse population of 11.2 million registered voters and we are keenly aware of the particular needs of the military and overseas voter and overcoming the logistical challenges that they face in fully participating in our electoral system. As election administrators our job is to utilize the tools that you provide us with legislation to maximize participation.

With the leadership of state and local election officials in Florida using alternative means of transmission of ballot materials and the wisdom of the Florida legislature to repeal the second primary, Florida has become one of the national leaders of facilitating military and overseas voting participation.

In this testimony I hope to provide some reasons for that increase of access to the voting franchise.

First, the State of Florida requires the mailing of ballots to overseas voters 45 days prior to a general election. In Florida we have removed the second primary, and jurisdictions are able to provide 45 days for the transmission of ballots and to accept ballots up to the 10 days after the election as long the ballot is signed and dated by election day.

In this era of "snail mail," despite the improved efficiency of the Postal Express Service, allowing for 45 days for transmission is prudent and the additional window of time after the election in which to accept ballots provides a safety valve to receive any ballots that were delayed in the mail.

To allow a sailor on the ship or a soldier in the field the extra time to receive and return the ballot on time is absolutely necessary when relying solely on the mail service.

Second, State and local election officials in Florida have taken extra steps such as seeking updated addresses from FVAP and fully utilizing e-mail, fax, and the internet where appropriate, in the transmission of ballot materials to and from overseas voters.

In late September 2008, Secretary of State, Kurt Browning, traveled to the Middle East with other Secretaries of State to see firsthand how soldiers in the battle field receive and cast their absentee ballots. This was the first time the DOD has invited Secretaries of

State to travel to the areas of operation in Iraq, Afghanistan and Kuwait to personally observe the absentee balloting process.

This trip provided Secretary Browning an opportunity to ask the men and women in the field directly what they really need to successfully vote when faced with the challenges of the mail system and other events swirling around them in the battle zone.

He heard that they would like to use their computers and electronic mail to return voted ballots. While many states including Florida allow the use of a fax to return voted ballots, he heard that many of these service members simply no longer have fax technology readily available to them. Instead, most, if not all, have access to a computer, a scanner, e-mail and to the internet. When possible, they often use electronic mail as a primary method of communication with their local election official and expressed a similar desire to use an e-mail to vote because of its simplicity.

We also heard from service members that they are often anxious and frustrated with the rapidly approaching election day because they are often left in the dark as to the status of their ballot. They are concerned whether or not the ballot will get to them and, if they did, whether the ballot will make it back in time.

At present there is no systematic way of finding out the status of their request or when the ballot had been sent or whether the ballot has a realistic chance of being received back in time.

Because many soldiers and sailors are relying on their e-mail and the internet to communicate with the outside world and to our election officials, they believe it would be helpful to receive regular updates on when their ballot request had been received, when the ballot had been set and when local election officials received their voted ballot.

Third, Florida has maintained a spirit of ingenuity and transparency to use the latest technology and encryption measures available to reach our remote voters. Florida is open and flexible to incorporate the newest technology in our voting systems by testing, certifying and employing the latest voting systems for its use by its citizens.

In this past cycle the Florida division of elections was able to successfully review and certify the project application offered by the Okaloosa distance balloting pilot primarily because of the foresight of legislators in giving local election officials the ability to utilize the secure use of the Internet for voting purposes.

I am very proud of the pioneering spirit of our bureau in its first of a kind review of the source code and security plan submitted by Okaloosa County and its vendor, Scytl.

Fourth, Florida recognizes the huge role that the Voting Assistance Officers and the role they play for the men and women in uniform to register and vote. States also have an unique opportunity to work with their National Guard units.

The Florida National Guard developed a small but effective program to include voting information with their deployment briefing and to send updates on voting information to deployed unit e-mail addresses. Prior to deployment, the National Guard provided units the necessary voting information unique to Florida while stressing the importance of maintaining e-mail or phone communication with

their local election officials ensuring accurate address information and confirming ballot delivery.

The simple goal was to make each airmen, sailor and guardsmen election ready before they deployed and left U.S. soil, not after. This type of program could be easily implemented for deploying National Guard units across the country.

Fifth, Florida has developed a very close relationship with the United States Postal Service. In the run up to the 2008 election, Florida election officials met repeatedly with U.S. Postal Service representatives at the State and local level.

Together we explored different ways to use technology and properly prepare ballot envelopes to further streamline the postal mailing of the ballots. Together the Postal Service provided counties individual opportunities to design the ballot, to reduce error or confusion in the delivery and return process and use technology such as intelligent code to track absentee ballots while in the continental United States.

As a former military citizen stationed overseas and deployed on a ship where mail was delivered by the occasional COD leading on deck, I can assure you that these men and women want to participate and vote despite the swirl of daily activity around them. I remember being deployed on a carrier in the Mediterranean during the 1992 presidential election wondering if my ballot would ever make it to me and back in time.

Often the men and women serving overseas are frustrated and concerned that their vote will not be returned in time to be counted. However they are committed to the mission and they will not complain. Therefore it is our responsibility to review the facts presented on overseas military participation and point to potential deficiencies and use the tools necessary to facilitate that vote.

Thank you.

[The prepared statement of Mr. Palmer follows:]

Chairman SCHUMER. Thank you Mr. Palmer.

Lt. Colonel DeCaro.

**STATEMENT OF LIEUTENANT COLONEL JOSEPH DECARO,
UNITED STATES AIR FORCE**

Lt. Colonel DECARO. Chairman Schumer, members of the committee, thank you for allowing me the opportunity to speak here today.

My name is Joseph DeCaro. I am a Lieutenant Colonel on active duty in the United States Air Force. I was born and raised in Chicago, Illinois, and entered military service in July of 1986 when I started basic training at the United States Air Force Academy.

I am testifying in my personal capacity and my views do not represent those of the United States Air Force, the Department of Defense, or the current Administration.

Even before I was old enough to vote, I believed that it is important for every American to be aware of who their elected officials are, for the electorate to stay informed on local, state and national issues, and to know the positions of their elected officials on these issues. I have always done this myself and I have done my best to cast my ballots during primary and general elections. However as

a member of the armed forces, I have not always been home on or shortly before election day.

During the 2000 general election, I was on a temporary duty assignment to Hunter Army Air Field in Georgia. This was a forecast temporary duty and I requested an absentee ballot and that was how I voted that year.

On election night while conducting post-mission paperwork, members of my unit and I sat on the old B-47 alert ramp at the air field and listened to election results via FM radio. Most of us had cast our votes via absentee ballot; and as the process of determining the election dragged on and concerns over military absentee ballots were raised, we became concerned our votes might not be counted.

While I do believe our votes did count, it was frustrating to think that consideration and/or attempts were made to disenfranchise military members whose efforts protect and ensure that that very thing does not happen to other United States citizens.

From August to December of 2002, I was deployed to Prince Sultan Air Base, Saudi Arabia, as a task force liaison officer to the United States Central Command Combined Air Operations Center. This was a well established location and actually had an additional duty Voting Assistance Officer. It was through the Voting Assistance Officer that I received and cast an absentee ballot for the general election that year.

In December of 2003, I was deployed to Al Udeid Air Base in Qatar as the United States Central Command Joint Search and Rescue Director. This was a one-year deployment and I knew I would not be home to cast my ballot in person.

During my R & R leave during the spring of 2004, I went to the branch office of the county Supervisor of Elections and requested an absentee ballot.

During the months of August and September, in September the tempo of operations was very busy and I had to take a trip forward to Djibouti in the horn of Africa and a trip forward to Baghdad, Iraq. Both trips were several days in length and upon return from each, I expected my absentee ballot to have arrived, but that was not the case.

It was not uncommon for mail one way to or from home to take three weeks to arrive; and as the end of September approached, I was getting concerned that I might not have enough time to for my ballot to make it in before election day. Fortunately the telephone and internet connectivity at my deployed location was excellent.

In the beginning of October, I contacted the office of the Supervisor of Elections via the link on their website and requested the status of my absentee ballot. The office e-mailed back that my ballot had been mailed out and that I should have received it a month earlier. At that point I called my home base phone operator via the defense switching network and had them forward me to the branch office of the country Supervisor of Elections. I explained who I was and gave a synopsis of the e-mail traffic. The office was extremely helpful but even in this era of modern communication my only avenue for voting was via hard copy absentee ballot that would go through the military and United States postal systems. With that as the constraint, the office immediately mailed out another ballot

via priority mail and e-mailed electronic copies for me to review and shorten the turnaround time once the ballot arrived.

The Supervisor of Elections, Ms. Hollarn at the time, also personally e-mailed me about what was happening. Luckily the absentee ballot arrived about a week after the phone call and I sent it back the same duty day. Ms. Hollarn e-mailed me a week later to let me know that my ballot arrived. That was approximately two weeks before election day.

I am grateful for all the help the office of the Supervisor of Elections provided and for efforts and personal interest of Ms. Hollarn.

Following this deployment, I was fortunate enough to have continuous and reliable communication and that was key in being able to vote that year, but this was most certainly an added stressor to the environment in which I was working.

Every moment I spent researching and coordinating with state-side resources to be able to cast my ballot was against any personal time off. The mission is and always must be the main focus.

Being deployed to support and conduct combat operations is difficult as it is. I still had a family back home to worry back; and in addition to the normal trials and tribulations that are associated with military life, my wife and daughter were dealing with the aftermath of Hurricane Ivan during this period, a storm which caused damage to our home that I still had to repair when I returned from this deployment.

I cannot comment on the Soldier, Sailor, Airman or Marine who at a forward operating base without dedicated phone lines, no web connectivity and gets mail once a week. I think every American should do what they can to cast their ballot and make their voice heard.

As with many other citizens, I will continue to do this, but there should be a better way in which to cast their ballot while deployed.

This concludes my prepared remarks and I am happy to answer any questions.

[The prepared statement of Lt. Colonel DeCaro follows:]

Chairman SCHUMER. Thank you and thanks to Ms. Hollarn for helping you.

Mr. Eversole.

STATEMENT OF ERIC EVERSOLE, ATTORNEY

Mr. EVERSOLE. Thank you, Chairman Schumer, Senator Chambliss. Thank you for allowing me to testify today.

We ask our military members and their families to make great sacrifices on a daily basis. We send them around the world to defend America's interests, our freedom and our liberty. We send them to places like Iraq so that the Iraqis may enjoy the same rights that we enjoy, like the right to vote.

But when it comes to their rights, when it comes to the military members' right to vote, we seem to forget their sacrifices and we deny them the very voting rights that we ask them to defend. The 2008 election is a case in point.

In Florida, for example 26 percent of 340,000 military members were able to request an absentee ballot. That is 26 percent of 340,000. That means that 74 percent never requested an absentee ballot and did not even get in the ballpark. That is 240,000 service

members that never got a chance to receive an absentee ballot and most likely did not get a chance to participate in the election.

Figures in other states are very similar both at the rejection rate and the participation rate. And these figures are truly, truly a national embarrassment. The world's greatest democracy and we cannot ensure that our military members have an opportunity to vote in our federal elections. It is a national or a federal issue.

Sure, states could do a better job with the administration of the elections. All states should be required to mail out absentee ballots at least 45 before the election. I made that recommendation in my written testimony. I stand by it here today. But the real failures here, the areas where we can make the most significant improvements, are all controlled by the federal government. The Department of Defense controls access to military installations and access to its service members. The Department of Defense knows where these service members are located. They know where these families are.

It is the Federal Voting Assistance Program's responsibility to provide these service members with voting assistance. In the same way it is the Department of Defense or the Military Postal Service Agency that is responsible for delivering these absentee ballots. They have the ability to expedite both the delivery there and the return back. And it is the Department of Justice that enforces our Nation's voting laws.

In all three areas the federal government has failed. This has to be the starting point of any legislative solution.

First and foremost, the Federal Voting Assistance Program has to change its method for providing voting assistance. The current system which relies upon a voting assistance officer as a collateral duty does not work. The Inspector General reached that conclusion in 2004. He showed in 2006 that the number of service members that received information was still about 40 percent, less for family members, but little has changed.

If you want to increase military voter participation, FVAP has to provide voting assistance, as the Inspector General said, on a timely and consistent basis. They need the information when they move or deploy to a new installation or new post. Service members already have an obligation, as Senator Chambliss pointed out, to visit their pay and personnel office when they report to a new installation. They get a variety of federal forms when they are there. They most likely get a servicemen's group like insurance form to fill out. They may have to fill out a new W-2. They have to update their family's information.

They already fill out a variety of forms. One more form is not going to materially increase their burden, but it will ensure that that service member, when he is moved, will get a chance to update their registration in a timely and consistent manner. It is a small legislative change but a significant step forward.

Second, states have to mail absentee ballots at least 45 days before the election. I think every expert that has looked at the issue has agreed that 30 or 35 days is not sufficient. Again that is an area where the Uniformed and Citizens Absentee Voting Act will be modified with a fairly simple amendment, but it would make a

significant difference in the approximate 20 states that do not provide 45 days.

And third, Senator Cornyn and Senator Wyden reintroduced the Military Voter Protection Act yesterday as a bipartisan bill. I believe that this bill is a very important component to any legislative solution and has a very simple mandate. It tells the Federal Voting Assistance Program and the Military Postal Service Agency that if a service member gets that ballot in the mail at a collection point four days before the election, that ballot will make it home. It is a guarantee of sorts. You can track it. You can rest assured that it is going to get home and I think that is a very important guarantee for many of the reasons that the lieutenant colonel was pointing out, and I think it should be implemented in a very timely manner so it can be implemented by 2010.

With that said, thanks again for the opportunity to testify and look forward to your questions.

[The prepared statement of Mr. Eversole follows:]

Chairman SCHUMER. Thank you, Mr. Eversole.

Mr. Carey.

**STATEMENT OF ROBERT CAREY, EXECUTIVE DIRECTOR,
NATIONAL DEFENSE COMMITTEE**

Mr. CAREY. Mr. Chairman, Senator Chambliss, thank you for inviting National Defense Committee to speak here today.

The National Defense Committee is a grassroots military service organization focusing on individual rights of service members and strengthening the civil military relationship.

Since 2003 the committee has made military absentee voting a flagship issue and, for the 2008 election, started the military ballot protection program to provide election day protection of military ballots threatened with unjustifiable challenge or rejection.

I also have the honor of serving as a board member on the Overseas Vote Foundation.

Additionally the National Defense Committee is a founding member of the Alliance On Overseas Voting Rights, an umbrella organization of more than 25 military veterans and overseas citizen or voting reform advocacy organizations committed to substantial voting reform in military and overseas voting processes. Many of their representatives are here today and I believe they join me in applauding the committee for holding this hearing.

I personally became involved in the National Defense Committee in 2006 after my mobilization to the U.S. Navy Reserves just prior to the 2004 general election. Being mobilized two weeks prior to the election, I was unable to apply for an absentee ballot at my new delivery address and it was only by my taking leave at my mobilization preparation site, flying back at my own expense to New York City and voting in person, was I able to guarantee my right to vote.

My circumstances are by no means unique. Analysis of the 2006 election shows a significant systematic inability of military personnel to successfully cast their absentee ballots.

For example, while more than 85 percent of all absentee ballots were cast by the general voting population in 2006, only 26 percent of the absentee ballots requested by military personnel were suc-

cessfully cast that year. That translates into 484,000 military voters who requested absentee ballots but did not successfully cast them.

Let me restate that. Military voters representing more than a third of the military asked for a ballot in 2006 and did not successfully cast them.

A close analysis of that data is clear and unequivocal as to the most significant cause for this voting failure. States send out their ballots too late for military voters and postal mail delivery is not and cannot ever be quick enough to deliver and return those ballots in time to meet the absentee ballot return deadlines.

The predominant absentee balloting system used for decades in this country, sending ballots 30 to 45 days prior to an election by postal mail, was designed for sending ballots across town to local voters not across continents and oceans to far flung, deployed military personnel.

Even after seven years operating in Afghanistan and five years operating in Iraq, the Military Postal System Agency tells military voters that their ballots needed to be back in the mail from these two countries at least 28 days prior to the 2008 election date, implying a 56-day turnaround for military mail.

For other overseas military voters, the Military Postal System Agency recommended no less than 21 days to return to the states, implying a 42-day turnaround.

In January of this year the PEW Center on the States released a ground breaking study entitled “no time to vote” which found postal mail delivery delays and tight ballot return deadlines to be the key elements in whether or not overseas military votes could successfully complete the absentee balloting process.

In all, PEW found 23 states do not provide enough time for overseas military voters to successfully cast a private ballot.

For example, because no stage in the New York military voting process can be conducted by electronic means, New York’s overseas military voters require 82 days to navigate the absentee process, but they are only given 69 days to do so. For Utah, 88 days are required, but only 70 days are provided.

Because of this, PEW concludes if voters from these “no time to vote” jurisdictions actually succeeded in voting, they managed to do despite their state’s policies and practices, not because of them.

Now, the Overseas Vote Foundation 2008 survey also found that 52 percent of those surveyed either received their ballot too late to return them on time or never received them at all.

The National Defense Committee applauds the committee for holding this hearing. We note, however, that this is the sixth congressional hearing in which National Defense Committee members have either testified or submitted statements on military voting since 2004 and we know of at least three others in that same period. At each hearing witnesses like us tells senators and representatives the same thing I have today.

And it is scary that these comments closely mirrored those of President Truman in a letter he wrote in 1952 to the House of Representatives on exactly that these same problems, late ballot delivery, slow mail delivery.

Frankly, little has been done to address these issues despite the consistent, repeated, and passionate description of the problem. We implore you to go beyond the problem exploration stage and pass federal legislation this year to overcome these tight ballot deadlines and slow mail delivery.

We do applaud you holding this hearing today. It is important that we hold this especially in an odd number year, but we really need to start addressing this issue at the federal and state level in order to be able to make these changes permanent.

Thank you. I stand by for your questions.

[The prepared statement of Mr. Carey follows:]

Chairman SCHUMER. I want to thank all five witnesses for excellent testimony.

My first question is to the whole panel, particularly Ms. Hollarn and then Mr. Carey both of whom explicitly pointed out, you all did really, the problem, much of the problem does reside with the states, the differing systems each one has, the fact that they are not too quick to get out the ballots, et cetera.

And of course, our power over the states on local electoral matters is rather limited.

If you could make two or three suggestions as to how we implore the states to do a better job here, what would they be?

I am first going to ask Ms. Hollarn, then Mr. Carey and then the other witnesses.

Ms. HOLLARN. I think that if you are looking at the actual casting of a ballot, the absentee ballot process, there are some states that still have cumbersome means where someone has to go through forms in the mail to request the ballot. If some just sends an e-mail or telephones or even sends something written, then they are sent the form to make the request, but that kind of excess paper and time wasting has a great deal to do with it. Without mentioning names, I know of three states that have procedures like that.

So where we have the federal postcard application and that in itself needs serious revision because nobody reads the four point typed instruction to start with and it is also not written in a voter friendly manner. There is no explanation for some of the questions or anything like that. though. that I think are sufficient.

So the paperwork can be reduced where I think there can be a uniform procedure for ballots being requested which eliminates some of it, but UOCAVA already addresses that to a degree.

Chairman SCHUMER. Yes, with some success but not great success.

Ms. HOLLARN. I think a lot of it has to do with the enforcement. There are issues with the National Voter Registration Act that have to do with taking people off the rolls that are what I consider a total violation of NVRA and I have been exposed to them recently. So there is not very much follow-up by enforcement procedures and there is not consistent follow-up.

Chairman SCHUMER. Ms. Hollarn, if a state has just an inherently cumbersome process form, new form, et cetera, is there any way we can force them to change that process at least for federal elections or at least for military voters or overseas voters or both?

Ms. HOLLARN. I think there can be some specific action taken in the revision of UOCAVA that would implement that. For instance, the federal post card application essentially is good. At least having it electronically available, that is one thing; and they have simplified some of the form and the instruction in that process.

The fact of the matter is this opens up a black hole of problems with voting assistance officers and the things that perhaps the bureaucracy thinks are being done that are not being done; and so I think the simplification of requesting a ballot—you know, one of the things that is very poorly understood, very little understood is the ballot.

There seems to be often too often acceptance of the fact of “give me a ballot.” Well, there are ballot styles that are dependent on the jurisdictions in which you are eligible to vote so we end up with a huge complexity of what ballot to offer the person, and the federal write-in ballot goes a long way to solving that problem and then there are states that have write-in ballots as well. Florida does, has a state write-in ballot.

Chairman SCHUMER. Do you think if we forced the states to change the way they set up absentee ballot procedures for federal elections, they would then match it for their local elections?

Ms. HOLLARN. That has been the way, it starts out that way. I have to say, Florida is exceptional not just because I live there but it is because of the cooperative effort we have had in working, local election officials working with the state as well to not only pass conforming legislation but to reach out even beyond that and provide for even more than the federal legislation.

Perhaps we are not talking about enforcement where you are going to put your hands around the states' throats. Education is the key and this is where the Federal Voting Assistance Program—I think it starts with some specific measures in revising UOCAVA but then it goes to the education process with both the Federal Voting Assistance Program and the states.

One of the reason though I continue to work past this so-called retirement that I entered is the education of election officials across the country in understanding the federal law and implementing it, and that is where I think the problem basically lies which is preferable to actual enforcement.

Chairman SCHUMER. Mr. Carey. The same question.

Mr. CAREY. Mr. Chairman, actually I would say that Congress's constitutional authority to impose upon the states is pretty much unlimited. The Constitution gives the states the first right to determine the method of election but allows Congress to impose that. UOCAVA itself is a limited imposition by the Federal Government on the states of procedures for military and overseas voting.

Chairman SCHUMER. So you think we could pass a law on, let us say, how to treat military voters say, require separately, or overseas voters, I guess we do it for everybody, separate from other absentee ballot procedures.

Mr. CAREY. Yes, sir.

Chairman SCHUMER. And would that apply to local elections and to state elections?

Mr. CAREY. It would not be able to be federally mandated to apply at this stage. You could, but at this stage it does not.

Chairman SCHUMER. We could not do that and so the question is: Do we create more confusion by having two separate procedures?

Mr. CAREY. I think the state and local elections will always follow on the same dates as the federal election so anything you do on the federal elections will necessarily capture the state and local election.

Chairman SCHUMER. Do most of you agree with that, Mr. Palmer, DeCaro, Eversole, that if we did it, first, should we do it, and if we did it, would the states follow with their local? I mean, it is a big question. I would like to do it. You know me.

Mr. PALMER. Mr. Chairman, I think that my impression with other state election officials is that they feel that these voters are their voters and they want to provide their ballot to their voters. I think that there needs to be some leadership at FVAP and the Congress to develop a system of that ballot style, to provide that ballot to the men and women overseas and that is increased technology, it has increased resources, and it is leadership at the Federal Voting Assistance Program.

It will need more resources to make it happen, but I can tell you that the ground swells of support among state election officials is that they want these voters. They feel that they are their voters. They will take care of them. We have to provide, I guess on a federal level and when I say we, the federal level needs to provide the resources and the ability for that to happen and I think only technology will do it because we have been dealing with "snail mail" for the last 60 years.

Chairman SCHUMER. Anything to add either of the other two panelists?

Mr. EVERSOLE. I do. I do have some concerns about the Federal Government coming in and overriding all the states laws with respect to verifying their voters and assuring that the state procedures for determining residency and those types of things are actually enforced.

From my perspective, the area where the Federal Government can come in and make a big difference is mandating 45 days. UOCAVA currently is unclear with that regard. Mandating 45 days obviously is a mandate to the states, but it has caused some problems in litigation. It caused some problems in New York recently, in New York 20th. It caused some problems in Virginia. So that mandate would be helpful.

Where I start to have some concerns is where you go in and override the state procedures for ensuring that the balloting, the state law is followed. And as far as I can tell, at least on the states I have checked, the rejection rate for military votes that are returned is really no different than the rejection rate for absentee ballots in the same state.

For example, in Florida the military rejection rate for returned ballots was one percent, for military. It was one percent for regular absentee ballots.

Chairman SCHUMER. Do you have anything to add, Colonel? You do not have to, only if you want.

Lt. Colonel DECARO. Yes, sir. The only thing I would comment on is the standardization for the military members. We are not

from the same state. Even the same unit deploys with various states; and if you have numerous procedures to follow, you cannot possibly expect an additional duty voting assistance officer to be anything but a conduit for information. And if he cannot speak, he cannot speak.

Chairman SCHUMER. Now, let us go to the federal level where we have much more of sort of a complete say. All of you have touched on various problems that are at the federal level that we can do a lot more about. So I am going to ask each of you this question. This will be my last because my time has gone over and I want to give Saxby time.

If we could do one thing at the federal level, forgetting the states right now, but just one thing at the federal level, FVAP, what would you have us do to make it easier for our soldiers overseas to vote?

We will start with Mr. Carey and work our way that way.

Mr. CAREY. Only one. Mandate the ballots be sent out least 60 days before they are due.

Mr. EVERSOLE. My one recommendation would be to implement what FVAP has refused to which is radical change in the registration and the absentee ballot request process. I think certain offices at DOD have to be designated voter registration agencies under section 7 in NVRA.

Chairman SCHUMER. Thank you.

Colonel DeCaro.

Lt. Colonel DECARO. Sir, I would recommend that there is a way to leverage existing technology we have, i.e., the common access card that all military members have to use just to log in to an unclassified network, if it is possible to use something like that because we all have it regardless of location.

Chairman SCHUMER. Good idea.

Mr. Palmer.

Mr. PALMER. Sort of related to that, I think there should be dedicated HAVA monies to sort of put pilot projects on the horizon to give states the ability to do this. There are demands and pressures on the HAVA dollars, local and state. And so if there is dedicated moneys for overseas and military participation, states will experiment.

Chairman SCHUMER. And Ms. Hollarn.

Ms. HOLLARN. They have said it.

Chairman SCHUMER. I know. But the good news is, none of the four are contradictory.

Ms. HOLLARN. Right. And I would say, all of the above.

My concern is something that I am not sure how it is solved, but it does have to be solved on the federal level, and that is the fact that there is a disconnect between the Federal Voting Assistance Program or even the intent of Congress and what happens in the field, and that is caused a great deal by the Hatch Act.

In other words, we have the misunderstanding of the difference between campaigns and running for office and election administration.

Chairman SCHUMER. And voting.

Ms. HOLLARN. Yes. The voting is the connection between the two, but what you have is the fact that the VAOs are often very very

restricted by commanders and the fact is that commanders are very unwilling to allow certain things be done because of the nature of the Hatch Act.

Chairman SCHUMER. Right.

Ms. HOLLARN. Which is very very much—

Chairman SCHUMER. That is an education issue as much as anything else.

Ms. HOLLARN. Yes, it is. So that is the only think I could add.

Chairman SCHUMER. Good answers. Thank you.

I thank the witnesses and now I am going to call on Senator Chambliss.

Senator CHAMBLISS. Thanks, Mr. Chairman. There seems to be general agreement that the 30 days that DOJ has mandated for sending out of ballots too short. Frankly, I like your idea, Mr. Carey, of 60 days but I see a practical problem.

Florida has, as I recall, a September primary. New York has a September primary. What do we do with respect to states like that that have those late primaries and I may be wrong, but I was thinking Florida had a September primary.

Ms. HOLLARN. Well, ours was recently changed to ten weeks before the general election which right now is occurring the week before Labor Day. So basically we have only had that once and it was the last week in August, but the ten weeks would come out to be before Labor Day.

Senator CHAMBLISS. Still pretty—

Ms. HOLLARN. Actually the process, the only thing that holds up any ballots in Florida now with more than enough time is litigation by candidates that have some issue with the certification of the ballot.

As a matter of fact, in the last general election year, I got my ballots out probably like in 51, 52 days before the election and there were members of Congress that questioned whether I telling the truth or not, but yes, it was so.

I think the Florida election schedule, especially since we have eliminated the second primary, does allow sufficient time, and it is when litigation holds up the certification of a ballot that has caused any problem.

Senator CHAMBLISS. Mr. Carey, you were going to say something there?

Mr. CAREY. New York is a leader among states in allowing an extended period of time after the election for the ballot to be returned, up to 14 days. So the 60 days can be met if you allow the ballots to be returned after the election, but it is that 60-day turnaround that is critical.

Senator CHAMBLISS. Was Florida's change because of there not being enough time there? Do you all have any independent knowledge of that?

Ms. HOLLARN. The Florida Supervisors of Elections have lobbied for years to eliminate the second primary and it was basically a surprise gift that happened in 2002 that we had a temporary suspension of it, but then we had a final elimination of it and we have been under a consent order in Florida since 1982 since there was litigation back then about the three elections in nine weeks that made every ballot for every election be impossible to reach them so

the consent order included that we had to count absentee ballots for ten days, from overseas for ten days after the election as long as they were dated or postmarked by election day.

And the reason that it was finally dropped was to make the election schedule more preferable in hopes that we could get Justice to eliminate the consent decree.

Senator CHAMBLISS. Mr. Palmer, you mentioned that your Secretary of State heard from a lot of soldiers during his visit abroad that they wanted to return voted ballots by electronic mail. Now, in Georgia we have a photo ID requirement. I think in Florida you all had just implemented that or you are in the process of doing so.

How do you see this playing in from a practical stand point with relevance to security of that vote?

Mr. PALMER. Well, for absentee ballots obviously the individual goes through a verification process, but on all absentee ballots basically they will be comparing the signature to the signature on file at the local office. So there would not be a photo ID at the polls. So that is how that situation is remedied.

Senator CHAMBLISS. What about the actual verification requirement? Is there anything other than matching the signature from the electronic vote?

Ms. HOLLARN. Perhaps because I had the firsthand experience at it, Florida also has a law that was in place for commerce about accepting digital signatures. There is a difference between digitized and digital. And in the pilot project that we did, that is exactly what we used and they were all verified registered voters in order to obtain the ballot to start with.

And so in the absentee process, the only thing that is required is the signatures so those are all matched. But in the pilot project that we did, there was real time verification of the voter by entering certain information of the voter because in the kiosk environment, the voter registration is real time. Verification is real time so electronically I might say in a very broad sense, all things are possible in verifying a voter when you are looking at the kiosk situation, not from a personal computer, but from the kiosk situation. And although I have restrained myself for years from using the analogy to ATMs, I think visually that is the one way. Because now that we have done the kiosk process, there is a way to harden the voting process into something that would be similar to an ATM.

Senator CHAMBLISS. What was your kiosk experience from the standpoint of taking some of those abroad and letting soldiers vote that way?

Ms. HOLLARN. Well, we had 100 percent enthusiasm and support from all of the voters and dismay from those who could not participate, but of course it was limited to our county because no one else wanted to participate. But the fact is what we did was, first of all, a pilot project so it required human observation because everything had to be documented and there had to be evidence of how this took place.

So it was, I think, and you have to understand that the process that we used is in operation in other parts of the world as well with the particular kind of system that we used and so it was 100

percent successful both from the electronic standpoint and from the voter standpoint.

And we visualized, those of us who are still involved in it, with taking this to another level with multiple states participating and in a combat zone, but of course this is the point where I have to say that I do not want federal funds and now the only way to do it is with federal funds, but it is for the federally covered voters of UOCAVA that we are talking about.

So there are all kinds of possibilities and you have heard the word "electronic" mentioned over and over again and I realize there are two sides to that story but my side listens to the other side and now we would like others to listen to our side.

Senator CHAMBLISS. Lieutenant Colonel DeCaro, you are to be commended for being as vigilant as you were in making sure that your vote counted. How many E2s or E3s are going to follow the same procedure that you did and be as diligent as you were to get their vote counted in any election?

Lt. Colonel DECARO. Sir, I cannot give you an empirical number, but I would hazard to guess very few. A very few would probably have the opportunity or just the wherewithal to say, I need to research this. I tie back to a voting assistance officer that is only as effective as he is to get the message out. You go to large organizations with a high operations tempo and that is just not going to happen. I will tell you right now, it will not be a focus.

As I said in my testimony, the mission is going to be the focus. It may be the smattering of an e-mail that goes out or a face-to-face conversation, but when you are in Iraq or Afghanistan or some other deployed location, it will not be visible.

Senator CHAMBLISS. We have got an electronic voting method in Georgia that can be used. Frankly, I do not know how successful it was because we have not gotten the numbers from this year.

But if that were available, do you think that there is the motivation on the part of the leadership in the military to try to make sure that the folks that are serving under them do cast their ballot or is it going to have to be an individual motivation factor that gets them to vote?

Lt. Colonel DECARO. Well, sir, it is going to be both. A commander cannot order an individual to go and cast the ballot, but he can definitely make that time available. Guys have opportunity to go to the chow hall. They have the opportunity to go to the exchange when they are down range. If these kiosks are brought to those common access locations, there is no reason at all members, as long as you are not at a forward base without that capability, would have an inability to cast the ballot.

Senator CHAMBLISS. Go ahead, Mr. Chairman. I may have one more.

Mr. CAREY. Senator, you did have a question about the E1 and E3 and we have some data on that as well. We can forward it on to your office, but the fact of the matter is that the E1s through E3s have a substantially higher rate of disenfranchisement than the rest of the military and a substantially higher rate of inability to get the ballots than the rest of the military.

Chairman SCHUMER. We will ask you to submit that in writing just whatever information you have and we will add it to the record.

Senator CHAMBLISS. I did have one more, Mr. Carey. I am not picking on New York, but you used them as an example of being forward thinking with regard to that time framing, but apparently they do not have, New York does not have any electronic means for voting.

Has there been any effort by the legislature there to deal with this or is it too hot to discuss in the New York legislature?

Mr. CAREY. I am not sure about any initiatives at the state level. Maybe some of the other panelists has some information about the state legislative initiatives. I do know that in New York has had a number of broader issues regarding some of the implementation of Help America Vote Act and they have some policy differences with the Federal Government on that.

But you are right. They do not allow any part of the process, absentee ballot application, registration, absentee ballot receipt or transmittal to be done by any electronic means, fax or e-mail. And so the result is that it takes a really long time to navigate the New York overseas absentee voting process, upwards of 89 days when only about 70 are provided.

Senator CHAMBLISS. I will speak to the Senator from New York about that.

[Laughter.]

Mr. CAREY. At this stage that is a state-level issue. It could be overcome by federal action, but at this point, it is a state-level issue.

Senator CHAMBLISS. Mr. Chairman, it has been fascinating and I would say that it has been encouraging, but I think it has been a little discouraging in some respects, but I will have to say that I want to commend all of you all for really keeping this issue moving and for you folks at the local level, Ms. Hollarn, Mr. Palmer, thank you for your endurance and your perseverance in trying to make sure that the folks that are your constituents are having the opportunity to vote, military or otherwise, but we have got some real issue, Mr. Chairman, to deal with, but this has been an excellent hearing.

Thank you for holding this hearing and thank you all for testifying.

Chairman SCHUMER. Well, first, let me thank you, Senator Chambliss, for your interest in this issue which did not begin at this hearing for sure.

I want to thank each of the witnesses. Very good testimony. I agree, New York, we were the last to comply with HAVA. We still have even in terms of voting we have those old voting machines. They have run out of parts. They cannot get the parts for them. And they have to cannibalize existing machines to do the parts. It is not a record that any New Yorker can be proud of in terms of how the State has been lagging behind not just in overseas voting and military voting but in the whole process.

Having said that, I think the testimony has been excellent. There are a number of areas where legislation could improve the process for the voters as well as the stakeholders and I pledge myself to

work with the minority, try to come up with a bipartisan bill. This is one that there should not be any divisions in terms of ideology or anything else and I think we can get this done in a bipartisan manner this year and we are going to be working with you, Saxby, with Ben Nelson and with Bob Bennett, our ranking member, to try and come up with something.

So I want to thank our witnesses for testifying. It was great testimony as Saxby said and thank all of you for your service in one way or another and many of you for you or your spouse's military service as well.

The committee has received a number of statements for the hearing record. Without objection, I ask that these statements be submitted for the record.

[The information follows:]

Chairman SCHUMER. The record will be open for five business days for additional statements for members and the public. And if the witnesses have no objection, I will also have the record remain open for five days for additional questions for other members of the panel who may want to submit them to you if that is okay with all of you.

Since there is no further business, the committee is adjourned in the hopes that both we can get something done and thanks for the witnesses today.

[Whereupon, at 12.17 p.m., the Committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

Statement of Chairman Charles E. Schumer -- Rules Committee Hearing -- May 13, 2009
Problems for Military and Overseas Voters: Why Many Soldiers and Their Families Can't
Vote

I would like to thank my friend, Committee member Ben Nelson, who is also the Chairman of the Armed Services Subcommittee on Personnel and Readiness, for his participation in this hearing.

Every couple of years, especially on those years ending in even numbers — around election time, there is a large push to improve the process of military voting. However, as soon as the election is over, all too often, Congress forgets to continue the push for improved rights for military voters.

Let me say something clearly so everyone can hear it: Not this year. I have convened this hearing to uncover some of the major problems facing military and overseas voters.

Registration deadlines, notary requirements, lack of communication, mail delays, poor address information, and state laws that put in place untenable mailing dates are all severe problems.

We need to actively evaluate these problems, so that we can work in a bipartisan way to find solutions to these problems.

And today, we will hear about several studies that show how severe this problem is. One of those is a new study I commissioned from the Congressional Research Service.

While the 2008 Election Assistance Commission post- election report will be released a number of months from now, I wanted to see right now an initial snapshot of how voting went in the states with the largest number of military voters during the 2008 election.

I asked the Congressional Research Service to contact some of the largest military voting states and get initial data on the number of overseas ballots requested and the number of overseas ballots that were eventually counted. We were able to get preliminary data in advance of the complete survey to be released later this year.

These data show that in these states, up to 27% of the ballots requested by military and overseas voters were not counted. And those are just the voters who were actually able to get their requests for ballots answered. Studies from previous elections show that military and overseas voters have one of the lowest levels of recorded votes of all groups — because it is so hard for them to vote.

Additionally, as you can see from the chart behind me, 63 percent of local election officials reported receiving completed ballots *after* the deadline had passed.

This problem is compounded when 39 percent of military and overseas voters receive their ballots too late to return them in time. This number, from this past election, is up 14 percent from 2006. The situation is not getting better.

It is unacceptable that in the age of global communications, many active military, their families, and the thousands of other Americans living, working, and volunteering in foreign countries cannot cast ballots at home while they are serving overseas.

Imagine the frustration that soldiers feel when they're stationed in Iraq or Afghanistan and when their ballot finally arrives it's too late. They can fight and put their life on the line for their country, but they can't choose their next commander-in-chief.

To put a human face on these numbers, I want to share a letter describing some true stories reported to the Overseas Vote Foundation during the 2008 election:

One military voter wrote: "I submitted two registration forms via standard mail in January 2008 to Texas and received no confirmation that my registration form was received or processed. I did not receive ballots for the primaries or the general election."

Another soldier, this one from Alaska, said: "I hate that because of my military service overseas, I was precluded from voting. Of all people, deployed service members should have a guaranteed ability to vote in the presidential election. The state simply made it impossible for me to vote."

One final voter was able to get a ballot, but was unsure whether it was ever counted: "I called my hometown voting office to get assistance. Every time I called, they told me something different. I ended up doing three different things just to get my ballot and then I sent it in a week before the deadline...I'm hoping that my vote was counted."

In each of these stories, you can hear the effort these service men and women made to vote – calling several times, submitting their ballots early. But to no avail.

This is unacceptable and something we should not let continue.

We are here today to learn more about the source of these problems.

First, we will hear from the Acting Undersecretary of Defense for Personnel and Readiness. I understand that the Federal Voting Assistance Program is undergoing a period of transition, and that it is currently operating under an Acting Director. Senator Ben Nelson and I have sent a letter to Under Secretary McGinn, one of our witnesses here today, urging that a new Director be put in place as soon as possible. We look forward to working with the Department of Defense closely to improve the whole process.

We sent that letter to make it clear for the record that we believe that an effective Federal Voting Assistance Program is something that is very important to Members of Congress, and that we

want to work closely with the new Director to ensure that he or she receives the support from our respective Committees as well as Congress.

The leadership at the Department of Defense needs to use every available resource to increase the number of military voters who register, vote, and have that vote counted. This needs to be accomplished through a true assessment of the problems, and an innovative approach to structuring voting assistance, improving technology, and informing Congress and the states what laws need to be reformed to make it easier for these soldiers and their families to vote.

There are a number of ways that the military can work to improve the voting rights of members of the armed forces. Recently, I requested that President Obama work with the Department of Veterans Affairs to provide voter registration support to the veterans they serve.

Currently, the only federal offices that are required by statute to provide an opportunity to register and vote are the Armed Services Recruitment Centers. I'm interested in finding out more about how that program works, and whether it is successful.

I must mention one more of our witnesses as I wind down my opening remarks.

I'd like to thank Lieutenant Colonel Joseph DeCaro, from Florida, who is taking a very short leave from his duties with the Air Force, and is willing to speak about the difficulties he has faced as a member of the Air Force stationed overseas and trying to vote. Lt. Col. DeCaro, I appreciate your service, and I hope you know that you are performing an important service by telling your story here today.

A final, personal note – while we will hear from members of the armed forces who have encountered difficulties trying to vote, I found out that you don't have to look far to find these problems.

An intern in my Buffalo, New York office, Lisa Wickman, is a veteran, who was on active duty in the Navy from 2001 to 2006. She was stationed in Guam and was on shore duty during the 2004 election. Her problem was that she wanted to vote, but didn't know she had to vote absentee.

Despite weekly updates on a series of other important matters, her officers never gave her or her fellow sailors information about how to vote.

That shouldn't happen – not in the United States of America, where elections are the bedrock of our political system. Members of the armed services should receive accurate, timely information and the logistical support they need to make it easy for them to vote.

I look forward to hearing from all of you.

**Statement of Senator Robert Bennett
Senate Rules and Administration Committee Hearing
May 13, 2009**

Thank you for calling this hearing today, Mr. Chairman. I appreciate your efforts to look into this important subject.

When we have hearings here on voting related subjects we often get partisan divisions over what the problems are and what the solutions should be. Today, however, we are going to hear about the problems our military service personnel encounter when trying to vote and I think we will all agree that their right to vote needs to be protected and facilitated.

Our soldiers are literally putting their lives on the line to defend and preserve our rights. We need to make sure they are able to exercise theirs.

The members of our military make tremendous sacrifices in the performance of their duties. They have to move frequently and often on short notice. They have to live and serve in remote and dangerous parts of the globe where mail delivery can be slow, unreliable and hazardous. They are completely reliant on the acts of others (election officials, mail carriers and Defense Department personnel) to get their ballots to them and back in time to be counted.

While some of the problems military voters encounter are shared with other absentee voters, their service poses additional logistical problems that are unique to them. We need to do what we can to help them overcome those hurdles.

I am pleased our panel today will be able to look at this issue from a range of perspectives – from the federal and state level and also from the perspective of a local election official. Legislators make laws but these local election officials are responsible for implementing them, and without competent and dedicated people at that level nothing we do here will have any positive effect. Federal, state and local officials all need to work together to make sure these service members are able to exercise their right to vote.

I am pleased that we also have witnesses here today who served in the military and can talk about this issue from the perspective of a soldier and voter who has dealt with the problems that exist.

I thank the Chairman again for calling this hearing, and I look forward to the witness's testimony.

Senator Saxby Chambliss' Opening Statement

Committee on Rules and Administration on **Wednesday, May 13, 2009, at 10:00 a.m.** in SR-301, Russell Senate Office Building, concerning Problems for Military and Overseas Voters: Why Many Soldiers and Their Families Can't Vote –

Mr. Chairman, thank you for holding this hearing today. I welcome the opportunity to examine the problems faced by military voters and their families. I would also like to acknowledge the Ranking Member, Senator Bennett who could not be here this morning. I know he would have liked to be here and we appreciate his leadership on this Committee.

The challenge of assisting our military servicemen and women's participation in the electoral process is not new. Since our nation's founding, we have called upon the men and women of the military time and again to defend the rights and freedoms we Americans hold sacred. Our soldiers are asked to leave family and home, travel to foreign and hostile lands, endure hardships of every kind, and place their lives in peril for their country. It is appropriate that we in Congress do all that we can to ensure that these brave men and women are able to fully able to participate in the cause that they devote their lives to protecting.

Beginning with the Soldier Voting Act of 1942, Congress has sought legislative remedies to guarantee the voting rights for members of the Armed Forces. The current law, The Uniformed and Overseas Citizens Absentee Voting Act (or UOCAVA), was approved by Congress and signed into law by President Ronald Reagan in 1986. UOCAVA sought to alleviate the difficulty of navigating the voting process for uniformed personnel and overseas citizens by standardizing the forms required of military voters to register to vote and request absentee ballots. Additional provisions ensured that States would accept these standardized forms, the postal service would carry them expeditiously and free of charge, and that a presidential designee (the Secretary of Defense) would be responsible for administering the program.

Subsequent amendments included in the Help America Vote Act and various Defense Authorization Acts have attempted to remedy some of the original Act's shortcomings. This hearing provides us with a fresh opportunity to examine how we are doing in accomplishing our goal to protect the voting rights of our servicemen and women.

Unfortunately it seems that our soldiers are not participating at anywhere near the levels we would like to see. This is unacceptable. A 2006 survey conducted by the Defense Manpower Data Center, found that only 22% of the estimated UOCAVA population participated in the 2006 election.

Commentators have proposed any number of explanations for this shocking statistic. Some point to the continuing use of traditional postal services or “snail mail” to deliver voting materials to and from the field. Others call attention to the apparent ineffective assistance of the DOD’s Federal Voting Assistance Program, which the Department’s own Inspector General found to reach only 40-50% of military voters. I look forward to the testimony of our witnesses and hope they can shed some light on why this may be.

Among the witnesses are those who are, or have been, military voters themselves. I thank you for your service, sacrifice, and expertise. Additionally, we have election officials who serve a vital and often thankless job in ensuring that our elections run smoothly and securely. Nowhere is their job more challenging, or important, than in working with our men and women of the Armed Forces.

Finally, we have a representative of the Department of Defense. Our servicemen and women rely on the Department’s Federal Voting Assistance Program to help them exercise their voting rights. I hope that we will hear an honest assessment of the program’s execution of this very important responsibility and the results they have achieved.

Before closing, let me add a few comments based on my own, recent experience in my own election last Fall. I believe Georgia did a good job of reaching military and absentee voters in the general election in November. Georgia, as well as most other States, have excellent procedure in place for that. I have some ideas across the board about how those procedures can be improved but by and large, in my case, I think it worked well.

Unfortunately, that was not the case with the run-off election in December. Lots of factors combined to make the run-off election especially difficult for military and absentee voters based on the delayed, official announcement that there would be a run-off, followed by the short timelines to send and receive absentee ballots. I think this highlighted some of the weaknesses in the system, not necessarily in Georgia, but across the country, and I believe that we can use that example to make improvements and find ways to ensure our military and overseas voters are never disenfranchised.

Again, I thank the Chair for holding this hearing and our witnesses for your willingness to help this Committee better understand the challenges facing our military voters and their families in exercising their right to vote. I look forward to your testimony.

Senator Ben Nelson
Opening Statement
Problems for Military and Overseas Voters: Why Many Soldiers and
Their Families Can't Vote
May 13, 2009

Thank you, Mr. Chairman, for holding this hearing today on the very important topic of the challenges facing military and overseas voters. In addition to the privilege of serving with you on the Rules Committee, I am the Chairman of the Senate Armed Services Subcommittee on Personnel, so the needs of our military servicemembers are of particular concern to me.

I look forward to today's testimony from our witnesses to help shed light on the problems that our military personnel – especially those deployed overseas – encounter in trying to exercise their fundamental right to vote. I have seen disturbing statistics that indicate to me that our efforts to protect the franchise of military and overseas voters are falling short, including the alarming information from the 2006 Election Assistance Commission Military and Overseas Voting Report that only about *one third* of the Uniformed and Overseas Citizens Voting Act (UOCAVA) ballots requested were actually "cast or counted."

One disenfranchised service member is one too many, but when two out of three ballots are not counted – for whatever reason – we have a serious problem on our hands. I look forward to the 2008 report to hopefully see some progress in this area. At the same time, I recognize that much of the data on overseas voting needs to be improved and made more complete and consistent from county-to-county and state-to-state. I hope we can address that problem going forward, because this is an important issue which demands reliable information.

As we seek to identify the problems with military and overseas voting, it is important to keep perspective on the roles of the federal, state, and local governments in election administration. Clearly, this is an area where all levels of government must work together to improve the system, and I hope today's hearing can help clarify the roles of the Department of Defense, state and local election administrators, and help identify any opportunity for improved federal policy.

I look forward to working with you, Mr. Chairman, to take the information presented here today and use it to improve the process for military and overseas voters. I hope we can identify opportunities to increase coordination between state, local, and federal officials and find better ways to utilize technology to help military and overseas voters. Today's hearing is an important first step: identifying the problems. I hope we can build on today's hearing to put in place some policies that will improve military and overseas voting in upcoming elections.

Thank you, Mr. Chairman. I look forward to hearing from our witnesses.

Prepared Comments by Senator Pat Roberts
Washington, DC
Military Voting
May 13, 2009

Thank you, Mr. Chairman, for holding this hearing to examine military voting. As a Marine, I take this issue personally. Of course, it helps that we have over 37,000 military men and women stationed in Kansas.

I find it disappointing that with all the incredible technology we have today, we ask our military to vote the same way they have since World War II.

They can check their email, video conference with their families, and even upload YouTube clips while deployed.

Despite these advances, we ask them to rely on a disparate system of state rules and requirements, and the mail system to track them down if they want to have a say in our elections.

Our servicemen and women deserve more. In fact, I don't think anyone in the room would disagree with the idea that the men and women defending our freedom deserve the right to have their votes counted.

Let's give them the tools to vote, and once they perform this civic duty, let's make sure their votes are counted.

Now, I've signed letters on this topic. I've sponsored legislation. And the media has certainly exposed some of the problems involved.

At this point, Mr. Chairman, it is time we work in a bipartisan fashion to make sure the votes of our service men and women are counted.

Thank you.

U.S. Senator Dianne Feinstein
May 12, 2009

Statement for the Record
“Problems for Military and Overseas Voters: Why Many Soldiers and Their Families Can’t Vote”

I want to thank Chairman Schumer for holding this hearing today on the critically important issue of military and overseas voting.

The men and women of our armed forces perform an extraordinary service for our country. It is absolutely essential that we ensure that our election system makes it easy, not hard, for them and their families to cast votes while overseas.

Today, as many as six million military and overseas voters are eligible to cast absentee ballots in federal elections.

Six million. That is more people than live in most States – more people than Maryland, or Connecticut, or Wisconsin. This is a very large group of Americans.

In 2006, however, surveys found that only around one million ballots were successfully distributed to these voters, and only one-third of those ballots were actually cast or counted. In total, only 330,000 individuals cast overseas absentee ballots. This is a shockingly low number.

In 2008, we made improvements, but the problems nonetheless continued.

According to the Pew Foundation, more than one in five military and overseas voters who requested a ballot in 2008 did not receive one. As a result, approximately 900,000 individuals who wanted to vote, could not.

Today’s hearing gives us an opportunity to examine those problems in detail, see what happened, and look for commonsense solutions.

There is critical work to be done.

For example, in 2008, more than half of the overseas voters who tried to vote but could not were unable to because their ballots arrived late, or never arrived at all.

Approximately one quarter of those who were able to request a ballot by email did not receive one, and the same was true for one-fifth of those who requested a ballot by fax.

Even where ballots were received, state rules and requirements can be so onerous for overseas voters that they can act as a bar, preventing eligible voters from voting.

- In one-third of all States, the voting timetables and deadlines that have been set do not provide enough time for military personnel stationed overseas to vote. These states send out absentee ballots too late for military voters to receive them and meet all of the required deadlines.
- Another nine states provide only a few days cushion for people casting absentee ballots overseas.
- Finally, some states require that ballots be returned by fax or email – services that members of the military may or may not be able to access in the time required.

Additionally, States often impose conditions that are reasonable in the United States but that have the unintended effect of preventing overseas voters from casting their ballots.

- States sometimes require that voters cast absentee ballots on a certain size and stock of paper – paper that may or may not be available where the overseas voter is living; and
- Others require that absentee ballots be notarized – again, a service that may or may not be accessible in a short period of time overseas.

If you live in the United States, these requirements can pose a minor inconvenience; if you live abroad, they can act as a roadblock, preventing you from registering and casting your vote.

I think this situation is unacceptable, and I commend Chairman Schumer for holding this hearing to investigate the problems at hand.

In the last Congress, I introduced legislation that included provisions to prohibit States from rejecting overseas voter registration applications, absentee ballot applications, and ballots for non-essential reasons.

I remain committed to finding commonsense solutions to protect the fundamental rights of our military men and women to cast their ballots and have them counted.

I am very pleased to see that the Committee has taken up this issue today, and I look forward to working with Chairman Schumer and the other members to address these problems.

I believe we owe it to the men and women who protect and defend our country to do everything we can to make sure that their voices are heard in elections.

STATEMENT

Senator Kay Bailey Hutchison

Hearing on Problems for Military and Overseas Voters: Why Many
Soldiers and Their Families Can't Vote

Senate Committee on Rules and Administration

May 13, 2009

Thank you, Senator Schumer for holding this very important hearing,
and thank you to all of our witnesses for being here today.

We have been aware for some time that military personnel - whether
serving overseas or at other duty stations distant from their home -
face a series of impediments that make it all too difficult for them to
apply for absentee ballots and return them to their states in time to
meet the requirement to have their votes counted.

All too often we learn after an election that our military forces have
been politically disenfranchised by restrictive laws that have the effect
of barring them from the polls in their home states.

This issue is particularly important to me because nearly one in ten
military personnel claims Texas as their home state. When you add
in the military family members, over 400,000 active duty or family
members of active duty personnel are eligible to vote in Texas. That

voting populations represents fully 16 percent of the total military voting population.

Unfortunately, according to a report by the Defense Manpower Data Center, only 22% of military personnel voted in 2006 as compared to 40% of the non-military.

Given that those who serve in our armed forces as a group are better educated than the general population of voters, it seems likely that there is something other than voter apathy that accounts for those low turn out numbers and that there may well be some structural barriers or other legal impediments that make it difficult for absentee military voters to cast their ballots.

If that is the case, and I believe it is, we owe it to our military personnel to find a way to remove barriers to the ballot box and make it easier for them to participate in the political process.

Those who have volunteered to serve their nation in often difficult circumstances must be assured not just of the right to vote but to know that when they do and send their ballot in, it will be counted.

We MUST fix this problem this year and not go into another election cycle with the same problems.

We are here today to learn more about the problems that military voters must contend with and to hear recommendations for legislation.

Last year, I cosponsored the Military Voting Protection Act with my fellow Texas Senator, Senator Cornyn. The purpose of the bill was to expedite the handling of absentee ballots by the Postal Service. This bill passed in the Senate but didn't make it out of the House.

Senator Cornyn reintroduced the bill yesterday, and once again I cosponsored his legislation. This bill will go a long way toward solving the problem military personnel often have of meeting state deadlines for submission and return of their ballots by expediting the process.

We welcome the testimony of our witnesses here today, and we pledge to work with you to implement solutions to this problem.

I thank the Chair, and I look forward to hearing from today's witnesses.

STATEMENT OF
MS. GAIL H. MC GINN
PERFORMING DUTIES AS UNDER SECRETARY OF DEFENSE
FOR PERSONNEL AND READINESS

BEFORE THE
COMMITTEE ON RULES AND ADMINISTRATION

ON THE
FEDERAL VOTING ASSISTANCE PROGRAM

ON
MAY 13, 2009

NOT FOR PUBLICATION UNTIL
RELEASED BY THE COMMITTEE ON RULES AND ADMINISTRATION

Executive Summary

The *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)* safeguards the right to vote for federal offices by absent uniformed services members and their families, and overseas U. S. citizens. In the administration of this law, the Director, Federal Voting Assistance Program (FVAP) works cooperatively with state and local election officials to carry out its provisions.

The absentee voting process for *UOCAVA* citizens requires the successful completion of three basic steps. Step 1: Register to vote and request an absentee ballot. Step 2: Local election official determines the citizen's legal voting residence and provides a state absentee ballot. Step 3: Vote the ballot and return it to the local election official. Traditionally these steps have been accomplished by mail. Modern information technologies provide alternative methods to streamline the process to better support absentee voters. The Department continues to advocate for expanding use of technology through electronic transmission alternatives. Fax and email options for registering to vote, requesting an absentee ballot, receiving the absentee ballot, and returning the voted absentee ballot greatly reduce the amount of time needed to complete the absentee voting process, and gives *UOCAVA* voters additional alternatives when regular mail is slow or unreliable.

To prepare for upcoming elections, the FVAP staff members conduct voting assistance workshops. These workshops give Voting Assistance Officers the hands-on training they need to understand their mission and to perform their duties. To prepare for the 2008 election, the FVAP conducted a total of 193 workshops worldwide in addition to addressing election officials at conferences of national and international election official organizations.

Expediting ballots is a very important aspect of the absentee process. In 2004, 2006 and again in 2008, the FVAP, in conjunction with the U. S. Postal Service and Military Postal Service Agency, ensured that military absentee ballots were expedited. The U. S. Postal Service handled ballots using Express Mail procedures while those ballots were within its system. Additionally, FVAP redesigned its website to make it easier for *UOCAVA* citizens to register to vote and request a ballot via this website.

In July 2008, the FVAP launched the Voter Registration and Ballot Delivery (VRBD) system, continuing and improving on systems the Department provided in 2004 and 2006. This included an automated version of the Voter Registration/Ballot Request form that voters could print, sign, and submit to their local election officials, as well as receive their blank absentee ballot. FVAP is currently pursuing the next generation of electronic tools to include the online capability for completion of the Federal Write-In Absentee Ballot in the event a state ballot is not received.

The Department continues to build on the successes and take lessons learned from past elections to minimize or remove barriers that make it difficult or impossible for *UOCAVA* voters to exercise their right to vote. The ongoing efforts of the Department, the U.S. and Military Postal Services, the Department of State, other federal agencies, state and local governments, and a variety of not-for-profit and non-governmental organizations are giving more voters a greater opportunity to participate in elections. Through these collective efforts to improve ballot transit time and promote and implement expanded electronic transmission alternatives, voters will continue to reap the benefits of these improvements in this and future elections.

Mr. Chairman, Senator Bennett, and members of the Committee, thank you for this opportunity to testify on the problems faced by uniformed services and overseas voters. These voters face unique challenges in exercising their right to participate in our election process. The Department of Defense continues to identify the individual and systemic barriers to voting faced by these voters and to assist these voters in overcoming these obstacles. I will review some of the steps the Department's Federal Voting Assistance Program has taken and the plans to lessen the burdens faced by these voters.

Background

The *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)* safeguards the right to vote for federal offices by absent uniformed services members and their families, and overseas U. S. citizens. In the administration of this law, the Director, Federal Voting Assistance Program (FVAP) works cooperatively with state and local election officials to carry out its provisions. As mandated by the *Act*, the Director, Federal Voting Assistance Program prescribes the Federal Post Card Application which is a uniform registration and ballot request form, and the Federal Write-In Absentee Ballot which is used by voters as a back-up federal office ballot in cases where their requested state ballot does not arrive promptly. In 2005, both forms were revised to make them easier to use while safeguarding the citizen's private information, and providing additional important information to election officials such as the citizen's email address and his or her alternate mailing address.

The absentee voting process for *UOCAVA* citizens requires the successful completion of three basic steps. Step 1: The citizen registers to vote and requests an absentee ballot from his or her local election official using the Federal Post Card Application. Step 2: Upon receipt of the completed Federal Post Card Application, the local election official determines the citizen's legal voting residence based on the information provided, and provides a state absentee ballot to the citizen. Step 3: The citizen votes the ballot and returns it to his or her local election official. Traditionally these steps are accomplished by mail via the United States Postal Service, Military Postal Service Agency, and foreign postal systems. Modern information technologies provide various methods to streamline the process to better support absentee voters.

FVAP Goals

The goals for supporting all *UOCAVA* citizens in the absentee voting process are straight forward and enduring:

- all U.S. citizens are aware of their right to vote
- all *UOCAVA* citizens have the opportunity to vote and have their votes counted, and
- all states and territories adopt legislation and procedures to make the absentee voting process simple and uniform for *UOCAVA* citizens.

To accomplish these goals, the Department continues to reach out to *UOCAVA* citizens and to federal, state and local government officials to advocate the maximum incorporation of existing and emerging technologies into the absentee voting process and, to encourage states to adopt legislation that provides uniformity for all *UOCAVA* citizens. While we have worked

directly with the states on uniformity in legislation, we are now also working with the Uniformed Law Commission to accomplish this goal. The Federal Voting Assistance Program staff monitors the mailing of absentee ballots from local election officials to *UOCAVA* citizens and, when these ballots are not mailed in a timely manner, the Director, Federal Voting Assistance Program works with the Department of Justice to ensure these citizens have sufficient time to vote and have their votes counted.

Recent Statutory Direction

Title VII of the *Help America Vote Act of 2002* required the Secretary of Defense to prescribe regulations and procedures so that Voting Assistance Officers are provided time and resources necessary to perform their duties; to implement measures to ensure a postmark or other official proof of mailing is placed on ballots collected by the Department overseas or on vessels at sea; and to develop a standard oath for *UOCAVA* voting materials. All of these provisions required by Title VII have been successfully implemented. The Department and Service regulations require Commanding Officers to provide Voting Assistance Officers with the time and resources they need to perform their duties and the Military Postal Service Agency has provided postmarking devices to all overseas military post offices and the direction to ensure absentee ballots are properly postmarked. A standard oath has been proscribed to the states and has been incorporated in the 2005 revision of the Federal Post Card Application and Federal Write-In absentee Ballot forms.

The *Act* required states to designate a single office responsible for *UOCAVA* citizen procedures; to report to the Election Assistance Commission on the number of *UOCAVA* absentee ballots sent, received and cast; to extend the effective period of the Federal Post Card Application through the next two regularly scheduled general elections; to inform *UOCAVA* voters if their registration or ballot application was refused and the reason for the refusal; and to accept a Federal Post Card Application submitted early in the calendar year. The Director, Federal Voting Assistance Program issued a *Help America Vote Act* interpretative memorandum dealing with *UOCAVA* related issues and sent the memorandum to state and local election officials in August 2003. Title V, Subtitle I of the *Ronald Reagan National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2005* expanded the use of the Federal Write-In Absentee Ballot to allow for its use by uniformed service members and their eligible family members within the United States, thereby allowing all *UOCAVA* citizens to use the Federal Write-In Absentee Ballot if their state absentee ballot had been requested but not received, providing that the request was received by their local election jurisdiction either 30 days before the general election or the state deadline for registration and ballot request, whichever is later. These changes to the law have led to improvements in the absentee voting process by removing obstacles faced by *UOCAVA* voters.

The *NDAA for FY 2005* also required that, prior to proceeding with any electronic voting demonstration project, electronic absentee voting guidelines and standards must be established by the Election Assistance Commission. The Director, Federal Voting Assistance Program signed a Memorandum of Understanding with the Election Assistance Commission and the National Institute of Standards and Technology regarding responsibilities and roles in developing these guidelines and standards. The parties are developing a plan of action and milestones for

the issuance of guidelines and standards. The Department has provided the Election Assistance Commission and the National Institute of Standards and Technology with system design information and lessons learned from electronic voting projects previously carried out by the Federal Voting Assistance Program.

In May, 2007 the Government Accountability Office (GAO) issued a report recommending specific strategies for the DoD to apply in the planning and development of a future electronic voting project. The Department agrees with those recommendations and published similar observations in a report to Congress released prior to the GAO findings.

Progress in Working with State Governments

State legislatures are also moving forward to facilitate absentee voting. For several years, the Federal Voting Assistance Program has proposed legislative initiatives to state officials that would facilitate absentee voting for *UOCAVA* citizens. The current top legislative priorities are for states and territories to:

- Provide at least 45 days between the ballot mailing date and the date ballots are due
- Give State Chief Election Officials the emergency authority to alter election procedures in certain circumstances (e.g., to extend the ballot return deadline, or to allow electronic transmission of blank or voted ballots)
- Allow election officials to provide a state write-in absentee ballot, to be sent out 90-180 days before all elections. This state write-in absentee ballot would allow the voter to cast votes for federal and state offices
- Further expand the use of electronic transmission alternatives for voting materials

There have been many successes over the years through hard work by all the stakeholders concerned with absentee voting. Currently, 27 states, 3 territories and the District of Columbia provide at least 45 days between the ballot mailing date and the date ballots are due; 17 states and the District of Columbia give Chief Election Officials the emergency authority to alter election procedures in certain circumstances; 27 states allow election officials to provide a state write-in absentee ballot; and 47 states, 3 territories and the District of Columbia provide for the electronic transmission of AT LEAST SOME voting materials. We believe that with involvement of the National Conference of Commissioners of Uniform State Laws, more states will adopt uniform legislation.

A bipartisan group consisting of five Secretaries of State from Pennsylvania, Indiana, Mississippi, Florida and California was invited by the Secretary of Defense to visit the troops to promote voting participation. These are the Chief Election Officials of their states and, through their positions in national election organizations, represent all the states. The delegation travelled from September 28 to October 4, 2008 to Kuwait, Iraq, Afghanistan and Germany.

The delegation saw first-hand how the voting assistance programs operate at the installation and field level through meetings with installation commanders and key officials, Installation Voting Assistance Officers and with the troops both individually and in panel discussions. The delegation also visited Military Postal Service facilities and saw the priority

they placed on voting materials. Finally, they visited with wounded warriors at the hospitals at Balad Air Base in Afghanistan and Landstuhl Army Medical Center in Germany.

As a result of this visit, the Secretaries of State found that “Our troops are tune in to the electoral.... Many are eager to vote and are pleased with the efforts of their commanding officers and voting assistants to help them cast their ballots.” The Secretaries made several recommendations:

1. require local elections official to capture the email address of the military personnel at the time the request for absentee ballot is received
2. require the local election official to confirm via email the absentee request has been received and inform the voter the estimated date the ballot will be sent to the voter
3. require local election official to notify the voter via email that their voted absentee ballot was received
4. allow the transmission of balloting materials via email, both outgoing and incoming

Educating

The Department devotes considerable resources to inform *UOCAVA* citizens about the process of absentee voting. This includes formal training of Voting Assistance Officers, providing information to state and local election officials, and ensuring that *UOCAVA* citizens have access to the necessary materials and the means to request and submit their absentee ballot.

Federal Voting Assistance Program staff members conduct voting assistance workshops to prepare Voting Assistance Officers for upcoming elections. These workshops give Voting Assistance Officers the hands-on training they need to understand their mission and to perform their duties. To prepare for the 2008 election, the Federal Voting Assistance Program conducted a total of 193 workshops worldwide starting in September 2007 and continuing through September 2008. These workshops included:

- 27 at the Federal Voting Assistance Program headquarters in Rosslyn, Virginia
- 95 at military installations around the world
- 71 at Department of State posts for State Department personnel and members of overseas citizen organizations who help facilitate the process

For Voting Assistance Officers who were unable to attend an in-person workshop, learning options were available to complete certified training via the internet or CD-ROM. A slide presentation for use by installation or unit level Voting Assistance Officers was available online.

In addition to the in-person and on-line training opportunities, the Federal Voting Assistance Program maintains a website that provides Voting Assistance Officers and local election officials with a wealth of information that will help them fulfill their responsibilities.

Since state and local election officials are the individuals who administer elections, they are crucial allies in facilitating absentee voting. *UOCAVA* success relies on their actions. Many

states have adopted legislation that has brought simplicity, uniformity, consistency and clarity to the absentee voting process. It is important that these election officials be kept abreast of the latest issues with *UOCAVA* voting. The Federal Voting Assistance Program regularly sends memoranda and letters to local election officials providing education and clarification of *UOCAVA* issues. A monthly newsletter specifically addressing military and overseas citizens' issues for election officials is also provided by the Federal Voting Assistance Program. In addition, the Federal Voting Assistance Program staff addressed officials at conferences of these national and international election official organizations, such as the:

- National Association of Secretaries of State
- National Association of State Election Directors
- International Association of Clerks, Recorders, Election Officials and Treasurers
- National Association of Election Officials (Election Center) and the Joint Election Official Liaison Committee
- National Association of County Recorders, Election Officials and Clerks
- National Conference of Commissioners on Uniform State Laws

The Federal Voting Assistance Program staff addressed state and local election officials at conferences hosted by 32 different states.

When addressing these state and local election officials, the Director, Federal Voting Assistance Program recommends practices and procedures to maximize the effectiveness of *UOCAVA*. These recommendations include:

- Providing 45 days ballot transit time
- Providing simple ballot marking and return instructions with absentee ballots, including instructions to return the voted ballot by fax or email, where authorized
- Differentiating between *UOCAVA* and other state absentee voters in state and local literature, in state laws and administrative codes, and on state and local election websites
- Ensuring all employees in local election offices throughout the state are trained on their responsibilities under *UOCAVA*
- Preparing a state *UOCAVA* Voter Guide for publication on website and in hard copy
- Providing a webpage dedicated to *UOCAVA* citizens and elections in which *UOCAVA* citizens can participate, including portals for voter registration verification
- Using electronic alternatives for the transmission of balloting materials

The Department provides voters and Voting Assistance Officers the tools, materials, and information necessary to facilitate registration, ballot request, and ballot transmission. The Department uses a variety of communications media to inform uniformed service members and overseas citizens about upcoming elections and the procedures for registering and requesting an absentee ballot through commercial print and broadcast media outlets. Stories on absentee voting are run on the American Forces Radio and Television Service, the American Forces Network, the Pentagon Channel, American Forces Information Service, and Defense Link, as well as in private and military-focused print publications such as *Stars and Stripes* and in overseas publications.

At the installation and unit level, messages regarding absentee voting are included on Service websites, in the Plans of the Day, and at Commander's Call briefings. Billboards are posted on installations informing members of their right to vote. The Department's new Infonet system, which is made up of video screens throughout the Pentagon and the Navy Annex, are used to broadcast messages that encourage voters to register and vote. Installations supported Armed Forces Voters Week by conducting voter registration drives and voter awareness outreach events and were extended to family members through displays, voter registration drives, and information at Morale, Welfare and Recreation Facilities, Family Service Centers, medical facilities, commissaries and exchanges, and DoD Dependent Schools. As in years past, the Department used Absentee Voting Week to encourage voters to return their voted ballots for the General Election to their local election official offices.

Absentee voting information and materials are distributed to the Department of State posts through the State Department's internal communication networks. The Federal Voting Assistance Program provides on-site training to post Voting Assistance Officers to ensure that they are equipped to provide non-partisan voting assistance. Additionally, the Program supports overseas citizens groups by directly providing voting assistance and thousands of copies of the Federal Post Card Application, Federal Write-In Absentee Ballot, the *Voting Assistance Guide*, and other informational and motivational voting materials. Overseas Citizens Voters Week, scheduled by the Department biennially since 1994, is promoted through the Federal Voting Assistance Program's training workshops and their monthly newsletter, the *Voting Information News*. State Department posts and overseas citizens groups are encouraged to use this week to conduct voter registration drives, inform U.S. citizens residing abroad about their voting rights and responsibilities, and provide them with the materials they needed to successfully vote absentee.

The Federal Voting Assistance Program website (www.fvap.gov) provides uniformed service members, voting age family members, and overseas citizens with remote access to voting information. The site received 11,536,125 separate page requests during calendar year 2008. During that time period, the online version of the Federal Post Card Application was accessed 1,060,203 times. The site is updated frequently with information pertinent to absentee voters. Recognizing that the website is a vital resource for both persons who provide voting assistance and the voters, the site was redesigned to enhance content and improve usability for all visitors to the site by incorporating results from stakeholder usability testing. The most significant change to the website was to make it easier to register to vote and request a ballot.

The Federal Voting Assistance Program provides up-to-date information to Voting Assistance Officers through its monthly newsletter and issues special news releases to announce time sensitive information (e.g., changes in absentee procedures or the holding of special federal elections). Both the newsletter and the News Releases are distributed via email and posted on the Federal Voting Assistance Program website. The newsletter is also made available in a hardcopy format.

Currently, the Federal Voting Assistance Program is coordinating a completely revised *2010-2011 Voting Assistance Guide* with the individual states. The new streamlined *Guide* will be distributed in early September of this year. The Services distribute *Voting Assistance Guides*,

Federal Post Card Applications and Federal Write-in Absentee Ballots to their Voting Assistance Officers and individual voters through their normal supply chains. All of these materials are also available through the Federal Voting Assistance Program website.

Facilitating Ballot Transmission

The Department has taken extraordinary steps to ensure that members of the uniformed services, their family members, and overseas citizens have an opportunity to vote. Expediting ballots through any and all media accepted by state and local election officials is a very important aspect of the absentee process.

In 2004, 2006 and again in 2008, the Federal Voting Assistance Program, in conjunction with the U. S. Postal Service and Military Postal Service Agency, ensured that military absentee ballots were expedited. The U. S. Postal Service handled ballots using Express Mail procedures while those ballots were within its system. The Military Postal Service also used special handling and expediting procedures while transporting ballots outside the U.S. to and from overseas military post offices. These special handling procedures were used to ensure that absentee ballots arrived promptly. This expedited delivery included special marking and handling of absentee ballots. The Military Postal Service Agency ensured absentee ballots from overseas military postal activities were expedited back to the local election official.

The Department's effort to expedite delivery of ballots starts well before the election year. The Military Postal Service Agency (MPSA) ensured that its postal personnel are trained, certified and have the necessary resources to handle absentee ballots. For the 2008 elections, MPSA published a Voting Action Plan and Calendar, and sent monthly voting messages to all military postal activities reminding them of the proper ballot handling procedures. All military postal activities in forward deployed areas have postmarking devices to ensure that ballots are legibly postmarked. The Military Postal Service Agency published recommended mailing dates based on transit times and geographic locations to help ensure ballots were received by state deadlines and that service members were aware of these mailing deadlines.

For those citizens who may not be able to vote by mail, technology provides an alternative means for voters and local election officials to send and receive voting materials. In 1990, the Federal Voting Assistance Program initiated an emergency measure (with the cooperation of the states and territories) to use electronic transmission (facsimile technology) and established the Electronic Transmission Service so that uniformed services members deployed during Operation Desert Shield could participate in the upcoming general election. The Electronic Transmission Service allowed service members deployed to the Persian Gulf to fax their registration request application and the local election official to fax the blank ballot to the voter. What began as a special effort is now widely accepted by most states and institutionalized through state laws. Currently:

- 29 states, 2 territories and the District of Columbia allow *UOCAVA* voters to submit a Federal Post Card Application for registration by fax.
- 47 states, 3 territories and the District of Columbia allow *UOCAVA* voters to submit a Federal Post Card Application for absentee ballot request via fax.

- 36 states, the District of Columbia and the U.S. Virgin Islands allow *UOCAVA* voters to receive the blank ballot via fax.
- 23 states, the District of Columbia and the U.S. Virgin Islands allow *UOCAVA* voters to return the voted ballot via fax.

The Department aggressively advocates for expanding use of technology through electronic transmission alternatives. Fax and email options for registering to vote, requesting an absentee ballot, receiving the absentee ballot, and returning the voted absentee ballot greatly reduce the amount of time needed to complete the absentee voting process, and give *UOCAVA* voters additional alternatives when regular mail is slow or unreliable. The Department urges the states to provide as many options as possible to meet citizens' needs. Electronic transmission by fax, email or over the Internet have become worthwhile alternatives to the by-mail absentee voting process for our men and women in uniform and citizens overseas.

Many states and territories have expanded their electronic transmission alternative capabilities to include email. The Federal Voting Assistance Program urges states to consider using email as an integral part of the electronic alternatives made available to their citizens. Since many forward deployed soldiers have email capabilities but do not have access to fax capabilities, institutionalizing email ballot request, ballot delivery, and ballot return can be crucial to enfranchisement. Currently:

- Twenty-nine jurisdictions allow *UOCAVA* voters to submit a Federal Post Card Application for absentee ballot request via email.
- Sixteen states allow *UOCAVA* voters to submit a Federal Post Card Application for registration via email.
- Twenty-one states allow *UOCAVA* voters to receive the blank ballot via email.
- Eleven states allow *UOCAVA* voters to return the voted ballot via email.

Since 2005, the Federal Voting Assistance Program has encouraged states and territories to make available to citizens website portals that allow voters to check their registration status. To date, ballot registration status sites have been launched in 39 jurisdictions.

In July 2008, the Federal Voting Assistance Program launched the Voter Registration and Ballot Delivery (VRBD) system, continuing and improving on systems the Department provided in 2004 and 2006. This included an automated version of the Voter Registration/Ballot Request form (Federal Post Card Application or FPCA) embedded with state specific requirements that produced an electronic version of the FPCA that voters could print, sign, and submit to their local election officials. This feature provided all citizens covered by *UOCAVA* an easy way to fill out their FPCAs. In total, the system guided over 21,000 military and overseas citizens through completion of the form online.

The system also included options for states to receive the FPCA for registration and ballot request, as well as provide a blank ballot to the voter via a secure server. Only citizens from 425 local election offices from 11 states were able to use one or both of these features. From July 23 –November 4, 2008, 780 citizens uploaded ballot request forms to local election offices, and 124 voters downloaded their blank ballots.

The system used a multi-layer approach to security which ensured that the voter's personal information was not viewed by anyone except the intended recipient. The VRBD system provided military and overseas voters an easy way to register and request absentee ballots, as well as an alternative to the by-mail process of absentee voting, without sacrificing the security of the voter's identity.

FVAP is currently pursuing the next generation of electronic tools to assist *UOCAVA* voters called the Automated Register, Request and Receive Ballot Process (R3). R3 will expand the VRBD process to add the online capability for completion of the Federal Write-In Absentee Ballot in the event a state ballot is not received. R3 will expand and enhance the election community's means to provide blank ballots and, unlike all the previous initiatives, would be owned and operated by DoD and hosted at DoD secure facilities, thus mitigating potential threats to personal privacy data and permitting easy refinement and expansion in the future.

Results

There is no definitive information regarding voting participation rates, and there is no centralized system that accurately tracks who votes and who doesn't. However, to gauge participation in the voting process, DoD conducts a detailed survey after each Presidential election. This statistically-sound, random sample survey of *UOCAVA* citizens and local election officials is mandated by the *UOCAVA* and is conducted to gather post-election information on the effectiveness of assistance by the Federal Voting Assistance Program. The survey allows us to analyze uniformed services voter participation, overseas U.S. citizen participation, and State-Federal cooperation. The data of the DoD post-election survey for the 2008 general election are currently being analyzed and a report of the results will be provided to the President and Congress by December 2009. However, as soon as we have final results, we plan on briefing this committee, and the other committees that have oversight responsibilities for *UOCAVA* matters.

Other reports and surveys can provide useful information. But caution must be exercised when using or referring to those results if those results are based on self-selected, non-random populations.

UOCAVA requires the EAC to collect comprehensive data from the states on all of the ballots sent to and received from *UOCAVA* voters within 90 days after each regularly scheduled general election, and to make the data available to the general public. The EAC published data for the November 2006 mid-term election in September 2007. The data is collected from 49 states, the District of Columbia and America Samoa. It is worth noting that the report on the 2006 election cited problems with incomplete data and variations in the collecting and reporting of numbers from the states. The collection of quality data as required by *UOCAVA* is essential for proper evaluation of the administration of the absentee voting process. To obtain reliable results, rigorous, peer-reviewed, statistically sound methodologies must be applied when collecting the state data and preparing the summary information.

In both 2006 and 2008 the DoD and our sister Executive Branch agencies, and volunteers with American citizen organizations overseas conducted all-out efforts to inform our men and

women in uniform and citizens outside the U.S. about their right to vote, how to go about the absentee voting process, and provided assistance and materials to these citizens to help them participate in elections. In an April 2009, report to Congress, the Department of Defense Inspector General concluded that the Services' "... programs were effective and in compliance with DoD regulations and public law. The oversight programs of the FVAP Office and the Services continue to evolve, presenting opportunities to improve the effectiveness and compliance aspects of the Voting Assistance Program." We commit ourselves to continue concerted state and federal cooperative efforts to improve the absentee voting process and participation in elections by *UOCAVA* citizens.

Looking Forward

The Department continues to build on the successes and take lessons learned from past elections to minimize or remove barriers that make it difficult or impossible for *UOCAVA* citizens to exercise their right to vote. The ongoing efforts of the Department, the U.S. and Military Postal Services, the Department of Justice, the Department of State, other federal agencies, state and local governments, and a variety of not-for-profit and non-governmental organizations are giving more voters a greater opportunity to participate in elections. Through these collective efforts to improve ballot transit time and promote and implement expanded electronic transmission alternatives, voters will continue to reap the benefits of these improvements in this and future elections.



Biography



Gail H. McGinn

***SES, Deputy Under Secretary of Defense for Plans, performing the Duties of the Under Secretary of Defense (Personnel and Readiness)
Office of the Under Secretary for Personnel and Readiness
Washington, DC 20301-4000***

CURRENT ASSIGNMENT: Mrs. Gail H. McGinn was appointed as the Deputy Under Secretary of Defense for Plans in November 2002. She began performing the duties of the Under Secretary of Defense for Personnel and Readiness 11 April 2009. In her capacity as the DUSD(Plans), she serves as the official within the Office of the Under Secretary for Personnel and Readiness responsible for developing integrated evaluation processes to measure the success of personnel programs. She provides advice and assistance to the Under Secretary on the management of military and civilian personnel programs affecting over 2 million service members and employees; oversees the development of strategic plans for human resources; and directs involvement with oversight and consultant boards to achieve human resource goals. She was appointed as the Senior Language Authority for the Office of the Secretary of Defense in May of 2004, with responsibility for improving foreign language capability within the Department of Defense. She is also responsible for developing policies and approaches to address sexual assault within the Armed Forces and diversity management and equal opportunity for the entire DoD workforce. Mrs. McGinn recently assumed responsibility for managing the Senior Oversight Committee to support the wounded warrior and joint strategic planning efforts between the Department of Defense and the Department of Veterans Affairs.

PAST EXPERIENCES: Mrs. McGinn became a member of the Senior Executive Service in 1992. Her prior SES assignments include Principal Deputy Assistant Secretary of Defense for Force Management Policy and Principal Director for Personnel Support, Families and Education. Beginning her service in the Office of the Secretary of Defense in 1988 Mrs. McGinn provided personal leadership to the planning and development of military family support programs; child development programs; and family advocacy and domestic violence prevention programs. She also led a special effort to design a military funeral honors program for our nation's veterans. Before coming to the Office of the Secretary of Defense in 1988, Mrs. McGinn was the Director of Program Analysis and Evaluation at the U.S. Army Community and Family Support Center (1985-1988). From 1983-1985, Mrs. McGinn worked on the Army staff and served on a special task force that inaugurated family programs in the Department of the Army. She has also held a number of positions in the drug and alcohol field. These included positions at Headquarters V Corps in Frankfurt, Germany; and at Seneca Army Depot.

AWARDS: Mrs. McGinn is a recipient of the Presidential Distinguished Executive Rank Award and is a two-time recipient of the Presidential Meritorious Executive Rank Award. Her other awards include the Department of Defense Award for Distinguished Civilian Service; the Secretary of Defense Awards for Distinguished Civilian Service, Meritorious Civilian Service and for Exceptional Civilian Service; as well as the Department of the Army decoration for Meritorious Civilian Service, the Commander's Award for Civilian Service, and the Order of the White Plume. She is also the recipient of the Alumni Achievement Award from William Smith College and is an honorary member of the Phi Sigma Iota foreign language honor society.

EDUCATION: Born in East St. Louis, Illinois, and raised as a military child, Mrs. McGinn has lived in many locations in the U.S. and abroad. She attended William Smith College in Geneva, New York, where she graduated Magna Cum Laude with a B.A. in Psychology and was elected to Phi Beta Kappa. She completed graduate study with a Masters Degree in Education from Boston University. Mrs. McGinn has studied both French and German and spoke Danish as a child on the playgrounds of Odense, Denmark.

EXECUTIVE SUMMARY OF TESTIMONY ON UOCAVA PROBLEMS

Patricia M. (Pat) Hollarn

May 13, 2009

My experience includes serving a large military and overseas civilian voter population in 20 years as an election official in Okaloosa County, Florida, home of several large military installations. I also was an absentee military dependent overseas voter during my husband's Air Force career.

Problems actually begin with the registration process for many UOCAVA voters, caused by voters having little knowledge of the system and some election officials not fully understanding the proper implementation of UOCAVA itself. Questions on legal voting residency are often not adequately resolved.

Once a UOCAVA voter loses eligible voter status in a jurisdiction, for whatever reason, the registration problems start all over again. This either delays or denies a prospective voter his ballot.

Receiving and casting a ballot with the assurance of it being counted is the ultimate problem, to which the following are contributing factors:

- Election schedules that do not allow sufficient time for voter to receive and return a ballot in time to be counted.
- Forms and procedures that create obstacles to timely issuance, delivery, receipt, and counting of overseas ballot.
- Activated National Guard and Reserve military members who mistakenly do not get included as UOCAVA voters.
- Mailing of ballots to and from voters located in remote areas, combat zone, countries with known mail difficulties, have increased, not decreased over the years.

There are solutions to these problems that Congress can provide.

ISSUES FACING UOCAVA PERSONNEL IN VOTER REGISTRATION AND VOTING

Patricia M. (Pat) Hollarn

May 13, 2009

This is the first time in my memory that anyone has maintained interest and purpose, beyond Election Day, in improving the opportunities for military voters anywhere and other American citizens overseas to register and vote, so I am grateful to you, Senator Schumer, Rules Committee members and staff, for allowing me to participate in this much needed effort for legislative action. I not only have been working with UOCAVA voters and the problems they confront for 20 years as the Supervisor of Elections in Okaloosa County, Florida which has an extraordinarily large military constituency, but I was also an overseas military spouse who had these very difficulties in the 60's and 70's during my husband's Air Force career.

The problems actually begin with voter registration, particularly when a person is not actually registered prior to leaving his or her legal voting residence. It is accepted that each state is entitled by the Constitution to have its own election laws and requirements, but it should also be accepted that the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) must be applied in every state to persons who fall under UOCAVA. Unfortunately most of these affected persons are not at all familiar with the entitlements of UOCAVA to take advantage of them in a timely manner in accordance with the law. Even more unfortunately, many election officials are not sufficiently familiar both with UOCAVA and its correct implementation.

This leads to confusion about legal voting residency for military personnel stationed within the United States, often worse for those already overseas. The law absolutely provides several options in these cases, but often, neither the voter nor the election official is well enough versed to resolve the situation as the law permits. This, in turn, either delays or denies a prospective voter his ballot.

Once registered, the UOCAVA voter's only responsibility is to provide his or her correct mailing address or other contact information to the election official. That voter is absent from his voting jurisdiction and must be kept informed by the election official, but in the case of the highly mobile military member that is still a problem, just as much for the voter as for the election official. Returned undeliverable mail not only can deprive the voter from receiving a ballot but jeopardizes his active voter status for the future as well. That starts the cycle of re-registration problems once again.

Obviously the issue of receiving and casting a ballot with the assurance of it being counted is the ultimate problem. I believe it is fair to say that almost all election officials want this process to be successful as much as the voter does, and yet issues that are beyond their control often prevent that from happening.

- Election schedules in some jurisdictions or states do not allow enough time after the ballot candidates and issues are certified and printing of ballots can begin. Work to prepare the lists of

eligible voters can be done ahead of this period, but updating is continual and maintaining accuracy add complexity. If there is not a minimum of 45 days set as the deadline for mailing the UOCAVA ballots, the chances lessen every day for solving any delivery problems. The law provides, at least by FVAP request, for the 45-day deadline for overseas voters' ballots only, however, with more and more TDY and deployment overseas assignments given at the last minute to military members, many whose records show that they are located in the US are actually overseas temporarily during election time. Either they run out of time to request the ballot, to notify the elections office where to send the ballot, or there is great difficulty in receiving ballots by mail, or even fax, in remote or combat locations, taking too much time to have the ballot received, cast and counted.

- Some states have laws that require specific forms and procedures for requesting absentee ballots that are clearly cumbersome and create time and frustration problems for UOCAVA voters. HAVA eased some of the problem by making their requests valid through two general elections, but the unintended consequences of that was to result in an excessive number of ballots that were returned as undeliverable. Those jurisdictions which added additional procedures to verify addresses no later than 90 days before an election improved ballot delivery considerably but the practice was not wide-spread enough to reduce the failures.
- Many voters now eligible under UOCAVA are the Reserve and National Guard members who are serving much longer on active duty than their former two-week active service of the past. In jurisdictions with few or no standard military installations and few military or ex-patriate citizens on the voter rolls, election officials who have had no real experience with implementing UOCAVA rights do not realize how they must now do so. Combined with the lack of information about registration and voting provided to these activated personnel, the amount of voting problems among this group in all likelihood exceeded regular active duty members.
- All UOCAVA voters are subject to the problems traced to mailing ballots. While the U.S. Postal Service (USPS) created a separate department, new and worthy procedures, and good outreach to election officials to help expedite absentee ballots in 2008, their efforts ended at the three ports—Miami, New York, San Francisco—where the Military Postal (MPO) system took over. It would not be totally fair to criticize the MPO, which must operate with insufficient resources under very difficult circumstances in many instances, but delays within it are inherent to the timely delivery problem. It is sufficient to say that mailing ballots, as well as other election-related pieces, is still the biggest problem for receiving, casting, and counting of ballots.

I can speak at much greater length about both problems and solutions and look forward to such an opportunity. At this time, thank you again for your attention and consideration.

PATRICIA M. HOLLARN

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 Graduate work, 1957, New York University, NYC
 Graduate work, 1962-63, St. Mary's University, San Antonio TX
 Florida Center for Public Mgmt, Certificate, 1989-91, Florida State University
 Certified Election & Registration Administrator, 1999, Auburn University

Professional/Community Affiliations:

Florida State Association of Supervisors of Elections: All board positions,
 Committee chairs, President 1998-99, Federal Legislation Chair 2000-08
 The Election Center, Military Committee Chair, Legislative Committee
 National Task Forces on Elections 2001-02, 2003-04, 2009
 International Assn. of Clerks, Recorders, Election Officials & Treasurers
 Bridgeway Center (Mental Health), 1984-92, President 1990
 Fort Walton Beach Chamber of Commerce, Vice-President 1996-99
 Crestview Area Chamber of Commerce, Board member 1993-2002 and
 Chairman of Military Affairs 1999-2002
 Economic Development Council, Legislative Committee
 Emerald Coast Military Affairs Committee, Board Member 2007-present
 Institute of Senior Professionals, Northwest Florida State College
 Order Sons of Italy in America, Local Pres 1983-85, State officer 1985-89
 Air Force Association, 2003-

Honors/Awards: Emerald Coast Woman of the Year 1988
 Bridgeway Center Outstanding Board Member 1991
 Robert L.F. "Bob" Sikes Patriot of the Year Award 1996
 Honorary Squadron Commander 33rd FW 1997
 Commanders Group, USAF Air Combat Command HQ 1998-present
 Crestview Chamber's President's Award, 1999 and 2002
 Elected to Okaloosa County Women's Hall of Fame 2004
 Plew Outstanding Community Ambassador, Eglin AFB 2006

Previous Experience:

Editing and Publishing, Robert W. Kelly Publishing Corp., NYC
 Accountant, Harbaugh & Wright Construction, Enid OK
 Pat Hollarn Piano Studio, Shalimar FL

Personal: Husband Tom Hollarn, Lt Col Ret USAF, Lockheed Martin Flight Simulator
 Instructor, Whiting NAS, FL; Three daughters and six grandchildren

**Problems for Military and Overseas Voters:
Why Many Soldiers and Their Families Can't Vote
Donald Palmer, Director, Division of Elections, Florida Department of State**

Florida is keenly aware of the particular needs of its military and overseas voters in overcoming logistical challenges and fully participating in our electoral system.

In the last 25 years, there has been significant improvement in the way the State of Florida works with its military and overseas voters. With some of the finest Air Force and Navy installations in the country, Florida election officials have always worked to accommodate the needs of these military voters because of the vital mission they serve far away from home.

With the leadership of state and local election officials in using alternative means of transmission of ballot materials, and the wisdom of the Florida Legislature in repealing the second primary, Florida has become one of the national leaders in facilitating military and overseas voting participation.

Fundamental reasons for that increase of access to the overseas voter franchise: First, Florida requires the mailing of ballots to overseas voters 45 days prior to a General Election and accepts ballots up to 10 days after the election as long as the ballot is signed and dated by Election Day.

Second, state and local election officials in Florida have taken extra steps such as seeking updated addresses from FVAP and fully utilizing email, fax, and the Internet where appropriate, in the transmission of ballot materials to and from overseas and military voters. The military wish to use electronic mail to return voted ballots.

Third, Florida has maintained a spirit of ingenuity and transparency to use the latest technology and encryption measures available in its review and certification of a electronic voting system for remote voters in three overseas locations.

Fourth, Florida recognizes the huge role that the Voting Assistance Officers (VAOs) play in helping the military register and vote. Florida local election officials have made extra efforts to maximize the use of local VAOs at our installations. Prior to deployment, the National Guard provided deploying units the necessary registration information and voting deadlines. The goal was to make these airman, sailors, and guardsmen "election ready" before they deployed and left U.S. soil

Fifth, Florida has developed a very close relationship with the United States Postal Service. In the run-up to the 2008 General Election, Florida election officials met repeatedly with United States Postal Service representatives at the state and federal level. Together, we explored different ways to use technology and the preparation of ballot envelopes to reduce error or confusion in the delivery/return process.

Senate Rules Committee Hearing
Problems for Military and Overseas Voters:
Why Many Soldiers and Their Families Can't Vote
May 13, 2009

Donald Palmer
Director, Division of Elections
Florida Department of State

Mr. Chairman, Ranking Member, Committee Members,

Thank you for the invitation to discuss with this legislative body the challenges of military and overseas voters during the voting process and the great strides Florida has made to increase access to the voting franchise for these voters.

Florida makes every effort to meet the needs of our diverse population of 11.2 million registered voters. Florida is keenly aware of the particular needs of its military and overseas voters in overcoming logistical challenges and fully participating in our electoral system. As election administrators, our job is to utilize the tools that you provide us through legislation to maximize this participation.

In the last 25 years, there has been significant improvement in the way the State of Florida works with its military and overseas voters. With some of the finest Air Force and Navy installations in the country, Florida election officials have always worked to accommodate the needs of these military voters because of the vital mission they serve far away from home.

With the leadership of state and local election officials using alternative means of transmission of ballot materials, and the wisdom of the Florida Legislature to repeal the second primary, Florida has become one of the national leaders in facilitating military and overseas voting participation. In my review of the data available to me, Florida has the highest levels of voter participation of states with significant levels of military populations.

In the following testimony, I will provide the fundamental reasons for that increase of access to the voting franchise of overseas voters, and the areas of improvements that Florida is considering to help mitigate the challenges these voters face.

First, the State of Florida requires the mailing of ballots to overseas voters 45 days prior to a General Election.

In Florida, we have removed the second primary and jurisdictions are able to provide 45 days for the transmission of ballots and accept ballots up to 10 days after the election as long as the ballot is signed and dated by Election Day. If so, the ballot will count for federal races on the ballot.

In the era of snail mail, despite the improved efficiencies of the postal express service, allowing for 45 days for transmission is prudent and the additional window of time after the election in which to accept ballots provides a safety valve to receive any ballots that were delayed in the mail. To allow the sailor on the ship or the soldier in the field the extra time to receive and return the ballot on time is absolutely necessary when relying solely on the mail service.

Second, state and local election officials in Florida have taken extra steps such as seeking updated addresses from FVAP and fully utilizing email, fax, and the Internet where appropriate, in the transmission of ballot materials to and from overseas and military voters.

In late September of 2008, our Secretary of State, Kurt Browning, traveled to the Middle East with other Secretaries of State to see firsthand how soldiers in the battlefield received and cast their absentee ballot. This was the first time the Department of Defense had invited Secretaries of State to travel to areas of operation in Iraq, Afghanistan, and Kuwait to personally observe the absentee balloting process. This trip provided Secretary Browning an opportunity to ask the men and women in the theater of operation what they really needed to successfully vote when faced with the challenges of the mail system and other events swirling around them in a battle zone. He heard that they would like to use their computer and electronic mail to return voted ballots.

While many states, including Florida, allow use of the fax to return voted ballots, he heard that many of these service members simply no longer have fax technology readily available. Instead, most, if not all, have access to a computer, a scanner, email and to the Internet. When possible, they often use electronic mail as the primary method of communication with their local election official and expressed a similar desire to use email technology to vote because of its simplicity.

We also heard from the service members that they are often anxious and frustrated with a rapidly approaching election day because they are often left in the dark as to the status of their ballot. They are concerned whether their ballot will ever get to them and, if they did receive it, whether the ballot will make it back in time. At the present, there is no systematic way of finding out the status of their request or when the ballot had been sent or whether the ballot has a realistic chance of being received back in time.

Because many soldiers and sailors are reliant on their email and the Internet to communicate with the outside world and to our elected officials, they believe it would be helpful to receive regular updates on when their ballot request has been received, when the ballot has been sent, and when the local election official received their voted ballot.

In his visit, Secretary Browning saw the amazing and Herculean work of the men and women of the military and the military postal service who manage the operation of receipt, sorting and forwarding of huge volumes of mail at bases such as Balad, Iraq and Bagram, Afghanistan. He witnessed the management of multiple processes in an efficient and uniform manner across two theatres of operation in an effort to get that military ballot moving in the direction of mobile service members who may be deployed to a forward operating base or assigned to a unit in remote areas of operation.

Third, Florida has maintained a spirit of ingenuity and transparency to use the latest technology and encryption measures available to reach our remote voters.

Florida is open and flexible to incorporate the newest technology in our voting systems by testing, certifying, and deploying the latest voting systems for use by its citizens. In Florida, our Legislature has provided for the Bureau of Voting Systems Certification within the Division of Elections, to review, functionally test, and determine whether to certify voting systems for use in the state. With its certification program in place, Florida has become a leader in the testing and deployment of the latest optical scan and *ballot on demand* technology offered by our voting system vendors.

In this past cycle, the Florida Division of Elections was able to successfully review and certify the project application offered by the Okaloosa Distance Balloting Pilot (ODBP) primarily because of the foresight of legislators in giving local election officials the ability to utilize the secure use of the Internet for voting purposes. I am very proud of the pioneering spirit of our Bureau of Voting Systems Certification in its *first-of-its-kind* review of the source code and security plan submitted by Okaloosa County and its vendor Scytl.

After the public functionality testing of the system, including its cryptology protocols and use of secure sockets layer (SSL) virtual private network (VPN) technology, I provisionally certified this voting system for use in the 2008 General Election.

The pilot placed supervised voting kiosks in three locations overseas. Kiosk workers set up and operated the system at each site. Voters used touch-screen laptop computers to make their selections and could review a paper record of their choices before casting their vote. All ballots were digitally signed by the voters, then encrypted and transported to a secure data center using a Virtual Private Network (VPN) channel on the Internet. The local Canvassing Board decrypted and tabulated the ballots cast. The initial audit of the paper ballots with the decrypted electronic votes cast showed no irregularities and we await a final report on the entire project.

Based on the results of this pilot, we will work with the National Institute for Science and Technology (NIST) and the Election Assistance Commission

(EAC) to help develop voluntary system guidelines for states in the secure transmission of materials to remote voters.

While *Scytl- Secure Electronic Voting* has done work for other nations or military forces in Australia, United Kingdom, Switzerland, and Finland, this was the first use of the technology in the United States.

Since that time, I understand Scytl has submitted its system to the Election Assistance Commission (EAC) for federal certification and entered into a contract with France to provide remote voting in May 2009 to over 300,000 of its diplomatic overseas population, leading up to almost a million overseas French citizens eventually voting with the system.

Fourth, Florida recognizes the huge role that the Voting Assistance Officers (VAOs) play in helping the men and women in uniform to register and vote. Florida local election officials have made extra efforts to maximize the effectiveness of local VAOs at our installations by encouraging that all deploying personnel be provided voting information prior to deployment. The key is to provide updated information on the voting process for further dissemination and provide additional opportunities to service members for registration, address update, or absentee ballot request.

States also have a unique opportunity to work with their National Guard units. The Florida National Guard developed a small but effective program to include voting information with their pre-deployment briefings and send updates on voting information to deployed unit email addresses. Prior to deployment, the National Guard provided units the necessary voting information unique to Florida while stressing the importance of maintaining email or phone communication with their local elected officials, ensuring accurate address information, and confirming ballot delivery.

The simple goal was to make these airman, sailors, and guardsmen "election ready" before they deployed and left U.S. soil, not after. I believe a similar program has been implemented in the Minnesota National Guard in conjunction with election officials, and this type of program could be easily implemented for deploying National Guard units across the country.

Fifth, Florida has developed a very close working relationship with the United States Postal Service. In the run-up to the 2008 General Election, Florida election officials met repeatedly with United States Postal Service representatives at the state and federal level. On the county level, our election officials held numerous meetings with their local representatives, all in an attempt to explain the needs of our absentee and overseas absentee voters.

Together, we explored different ways to use technology and properly prepare ballot envelopes to further streamline the postal mailing of ballots. The postal service also provided counties individual opportunities to design envelopes to reduce error or confusion in the delivery and return process and use technology such as *Intelligent Code* to track absentee ballots while in the continental United States (INCONUS).

Exploring a way to track all ballots overseas should be considered as a great way to inform voters and local election officials alike where the ballots are in the process of delivery and return. One of the issues discussed was the large number of ballots sent to an incorrect or undeliverable address because the service member has either transferred to another command or war zone or the overseas address is no longer operative. This situation highlights the importance of finding a way to update the address of the service member when he goes from command to command.

Areas of Needed Improvement:

The Florida Department of State and Division of Elections are always looking for ways to improve our processes to increase overall voter participation. Based on our experience from the 2008 election cycle and the Secretary of State's visit overseas to the war zones, the Department of State offered some legislative recommendations on improving our system for overseas voters:

The Florida Department of State requested legislation that would help local election officials establish better communications with their overseas voters by use of email – the primary means of communication by service members. While a physical address may often change with a highly mobile

voter, the use of an email address established by the voter for communication with election officials can often serve as the one stable means of communication.

While even military email addresses often change, the establishment of one electronic mail address that can be used worldwide despite multiple moves from command to command would greatly facilitate the tracking service members.

The Florida Department of State also proposed language that would require local officials retain the overseas voter email address provided by the registrant; acknowledge receipt of a request for absentee ballots by email; provide notification that the absentee ballot has been sent; and send a notification by email that the ballot was received back from the overseas voter. The Florida Department of State also proposed language to join the approximately 14 other states that currently permit the use of electronic mail to transmit voted ballots. To ameliorate security concerns, the Bureau of Voting Systems Certification and local election officials would ensure that appropriate security is available and privacy procedures are in place.

Conclusion

As a former military citizen stationed overseas and deployed on a ship where mail was delivered by the occasional COD landing on deck, I can assure you that these men and women want to participate and vote despite the swirl of daily activity around them. I remember being deployed on a carrier in the Mediterranean during the 1992 Presidential Election wondering if my ballot would ever make it to me and back in time. Often the men and women serving overseas are frustrated and concerned that their vote will not return in time to be counted; however, they are committed to the mission and do not often complain. Therefore, it is our responsibility to review the facts presented on overseas and military participation that may point to potential deficiencies and use the tools necessary to facilitate their franchise to vote.

Biography – Donald Palmer

Donald Palmer is the current Director, Division of Elections, for the Florida Department of State and serves on the Executive Committee of the EAC Standards Board. Prior to coming to the Florida Department of State, he was a trial attorney with the Civil Rights Division, Department of Justice, where he enforced the Voting Rights Act (VRA), National Voter Registration Act (NVRA), and the Uniform and Overseas Citizens Absentee Voting Act (UOCAVA). He represented the United States in one of its first enforcement actions under the Help America Vote Act (HAVA).

Donald Palmer is a former Intelligence Officer serving onboard the USS John F. Kennedy with Carrier Air Group Three and Sea Control Squadron Twenty-Two. He later served as an Intelligence analyst with a reserve unit supporting United States Central Command. As a Navy Judge Advocate General (JAG) he served as defense counsel at Naval Station Jacksonville, Florida before deploying overseas to Naval Station, Naples, Italy for a three year tour. As a JAG, he served in Europe and Southwest Asia (EURSWA) as Senior Defense Counsel, representing Sailors and Marines accused of military offenses at Courts-Martial or administrative discharge hearings. To represent his clients, he often traveled as a MOJAG (mobile JAG) to various parts of his area of responsibility (AOR) ranging from ships in the Persian Gulf to bases in Bahrain, Crete, Germany and Sicily. Returning to the United States, he later handled the criminal appeals of Navy & Marine Corps appellants and provided oral representation for the Navy as one of their appellate government counsel. Don resides in Tallahassee with his wife and three children.

Executive Summary
Joseph L. DeCaro

Joseph L. DeCaro is a Lieutenant Colonel on active duty in the United States Air Force. He was born and raised in Chicago, Illinois and entered military service in July of 1986 when he started basic training at the United States Air Force Academy. He is testifying in his personnel capacity and his views do not represent those of the United States Air Force, the Department of Defense, or the current Administration.

During the 2000 general election he was on a forecast temporary duty assignment to Hunter Army Airfield in Georgia and voted via absentee ballot and that year. Most of his deployed unit had cast are votes via absentee ballot and because of the electoral contentions in the state of Florida that year, were concerned their votes might not been counted that year.

From August to December of 2002, he was deployed to United States Central Command Combined Air Operations Center and cast an absentee ballot for the general election that year.

In December of 2003, he was deployed again to United States Central Command. This was a one-year deployment and he knew he would have to cast an absentee ballot. He requested this ballot during his R & R leave in the spring of 2004 via the branch office of the county Supervisor of Elections. In September of 2004, during the period of time when the ballot should have arrived the tempo of operations was very busy and the ballot did not arrive when it was supposed to.

One way mail, both to and from home to the deployed location could take up to take three weeks to arrive. Lieutenant Colonel DeCaro had excellent telephone and internet connectivity and at the beginning of October contacted the Office of the Supervisor of Elections via the link on their website requesting the status of his absentee ballot. The office e-mailed back that his ballot had been mailed out and that he should have received it a month earlier. At that point he established phone communication with the branch office of the county Supervisor of Elections. He was informed that the military and United States Postal systems were the only methods of sending and receiving ballots and the office immediately mailed out another ballot via priority mail and e-mailed electronic copies for me to review. The Supervisor of Elections also personally became involved and provided status updates. The ballot arrived in time for it to be mailed back so that is arrived approximately two weeks before Election Day.

While communications at this location were excellent, ballot issues added stressors to a combat support and operations environment. This compounded normal deployed family stressors in addition to an active hurricane season.

This situation is unique to Lieutenant Colonel DeCaro and he cannot comment on the Soldier, Sailor, Airman or Marine who is at a forward operating base without dedicated phone lines, no web connectivity and gets mail once a week.

Testimony
Joseph L. DeCaro

Chairman Schumer, Ranking Member Bennet, thank you for allowing me the opportunity to speak here today.

My name is Joseph L. DeCaro. I am Lieutenant Colonel on active duty in the United States Air Force. I was born and raised in Chicago, Illinois and entered military service in July of 1986 when I started basic training at the United States Air Force Academy. I am testifying in my personnel capacity and my views do not represent those of the United States Air Force, the Department of Defense, or the current Administration.

Even before I was old enough to vote, I have believed that it is important for every American to be aware of who their elected officials are, for the electorate to stay informed on local, state, and national issues and to know the positions of their elected officials on these issues. I have always done this myself and I have done my best to cast my ballot(s) during primary and general elections. However, as a member of the armed forces I have not always been home on/or shortly before Election Day.

During the 2000 general election I was on a temporary duty assignment to Hunter Army Airfield in Georgia. This was a forecast temporary duty and I requested an absentee ballot and that was how I voted that year. While conducting post mission paperwork, members of my unit and I sat on the old B-47 alert ramp at the airfield and listened to election results via FM radio. Most of us had cast our votes via absentee ballot and as the process of determining the outcome dragged on, and concerns over military absentee ballots were raised, we became concerned our votes might not be counted. While I do believe our votes did count, it was frustrating to think that consideration and/or attempts were made to disenfranchise military members whose efforts protect and ensure that this very thing doesn't happen to other United States citizens.

From August to December of 2002, I was deployed to Prince Sultan Air Base Saudi Arabia as the Task Force Five liaison officer to the United States Central Command Combined Air Operations Center. This was a well established location and actually had an additional duty voting assistance officer. It was through the voting assistance officer that I received and cast an absentee ballot for the general election that year.

In December of 2003, I was deployed to Al Udeid Air Base, Qatar as the United States Central Command Joint Search and Rescue Center Director. This was a one-year deployment and I knew I would not be home to cast my ballot in person. During my R & R leave during the spring of 2004, I went to the branch office of the county Supervisor of Elections and requested an absentee ballot. During the months of August and September the tempo of operations was very busy and I had to take a trip forward to Djibouti (in the Horn of Africa) and a trip forward to Baghdad, Iraq. Both trips were several days in length and upon return from each I expected my

ballot to have arrived, but that was not the case. It was not uncommon for mail, one-way to and from home to take three weeks to arrive. As the end of September approached I was getting concerned that I might not have enough time to for my ballot to make it in before Election Day. Fortunately, the telephone and internet connectivity of my deployed location was excellent. In the beginning of October, I contacted the Office of the Supervisor of Elections via the link on their website and requested the status of my absentee ballot. The office e-mailed back that my ballot had been mailed out and that I should have received it a month earlier. At that point, I called home base phone operator via the Defense Switching Network and had them forward me to the branch office of the county Supervisor of Elections. I explained who I was and gave a synopsis of the e-mail traffic. The office was extremely helpful, but even this era of modern communication, my only avenue for voting was via a hard copy absentee ballot that would go through the military and United States Postal systems. With that as the constraint, the office immediately mailed out another ballot via priority mail and e-mailed electronic copies for me to review and shorten the turn-around time once the ballot arrived. The Supervisor of Elections, Mrs. Hollam at the time, also personally e-mailed me about what was happening. Luckily, the absentee ballot arrived about a week after the phone call and I sent it back the same duty day. Mrs. Hollam e-mailed me a week later to let me know that my ballot had arrived. That was approximately two weeks before Election Day. I am grateful for all the help the Office of the Supervisor of Elections provided and for the efforts and personal interest of Mrs. Hollam.

While on this deployment I was fortunate enough to have continuous and reliable communications and that was key in being able to vote that year. But this was most certainly an added stressor to the environment in which I was working. Every moment I spent working, researching and coordinating with stateside resources in able to cast my ballot was against any all personnel time off. The mission is and always must be the main focus.

Being deployed to support and conduct combat operations is difficult as it is. I still had a family back home to worry about, and in addition to the normal trials and tribulations that are associated with military life, my wife and daughter were dealing with the aftermath of Hurricane Ivan during this period. A storm which caused damage to our home that I still had to repair when I returned from this deployment.

I cannot comment on the Soldier, Sailor, Airman or Marine who is at a forward operating base without dedicated phone lines, no web connectivity and gets mail once a week. I think every American should do whatever they can to cast their ballot and make their voice heard. As with many other citizens, I will continue to do this, but there should be a better way in which to cast a ballot while deployed.

This concludes my prepared remarks. I am happy to answer any questions.

BIOGRAPHY

United States Air Force

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LIEUTENANT COLONEL JOSEPH L. DECARO

Lieutenant Colonel Joseph L. DeCaro is Director of Operation for the United States Air Force Special Operations School (USAFSOS) located at Hurlburt Field, Florida. He directs an organization of 50+ military, civilian, and contractor personnel. The school was founded in 1967 to meet USSOCOM professional education requirements. USAFSOS faculty and staff present 21 formal courses in subject areas of command and control, force protection, and cultural and threat awareness by region to over 9,000 Department of Defense, Department of State, NATO, Allied, and other government agency students annually. With an annual budget of \$2.5 million, the school develops courses to meet specific special operations needs and ensures both relevancy and currency of curriculum.

Lieutenant Colonel DeCaro graduated from the US Air Force Academy in 1990. He is a command pilot with over 2,600 flying hours in the UH-1H/N and MH-53J/M aircraft and has flown combat missions in Iraq. He has held a variety of assignments, which include pilot, instructor pilot, flight evaluator, and operations officer; as well as staff assignments at Headquarters, Air Force Special Operations Command and the Combined Forces Air Component of United States Central Command. His previous assignment was as the 20th Special Operations Squadron Operations Officer, Hurlburt Field Florida. Lieutenant Colonel DeCaro assumed his present duties on 1 November 2009.

EDUCATION:

1990 Bachelor of Science, US Air Force Academy, Colorado Springs, Colorado
1996 Squadron Officer School, Maxwell AFB, Alabama
2000 Master of Aeronautical Science, Embry-Riddle Aeronautical University,
2003 US Air Force Command and Staff College (correspondence)
2009 Air War College (correspondence)

ASSIGNMENTS:

1. 1990-1991, Student, Undergraduate Helicopter Training, Fort Rucker, Alabama
2. 1991-1993, Pilot and Aircraft Commander, Detachment 5, 37th Air Rescue Squadron, Malmstrom AFB, Montana
3. 1993-1994, Student, MH-53J Mission Qualification Training, 551st Special Operations Squadron, Kirtland AFB, New Mexico
4. 1994-1997, Aircraft Commander, Plans Officer, 20th Special Operations Squadron, Hurlburt Field, Florida
5. 1997-1998, Aircraft Commander, Instructor Pilot, War Readiness Flight Commander, 31st Special Operations Squadron, Osan AB, Republic of Korea
6. 1998-1999, Weapons and Tactics Flight Commander, 16th Operations Support Squadron, Hurlburt Field, Florida
7. 1999-2001, Combat Flight Commander, 20th Special Operations Squadron, Hurlburt Field, Florida

8. 2001-2003, Chief, Rotary-Wing Contingency Plans, Air Force Special Operations Command, Hurlburt Field, Florida
9. 2003-2004, Director, United States Central Command Joint Search and Rescue Center, Al Udeid AB, Qatar
10. 2004-2006, Chief, Rescue Division, Air Force Special Operations Command, Hurlburt Field, Florida
11. 2006-2008, Assistant Operations Officer/Operations Officer, 20th Special Operations Squadron, Hurlburt Field, Florida
12. 2008-Present, Director of Operations, USAF Special Operations School, Hurlburt Field, Florida

MAJOR AWARDS AND DECORATIONS:

Bronze Star Medal
Defense Meritorious Service Medal
Meritorious Service Medal
Air Medal
Aerial Achievement Medal with one oak leaf cluster
Air Force Commendation Medal with five oak leaf clusters
Joint Service Commendation Medal
Joint Service Achievement Medal

FLIGHT INFORMATION:

Rating: Command Pilot
Flight Hours: 2,600+
Aircraft Flown: UH-1H/N, MH-53J/M

EFFECTIVE DATES OF PROMOTION:

Second Lieutenant	May 30, 1990
First Lieutenant	May 30, 1992
Captain	May 30, 1994
Major	Jul 1, 2001
Lieutenant Colonel	Jun 1, 2006

(Current as of May 2009)

Testimony of Mr. Eric Eversole
Hearing on
Problems for Military and Overseas Voters:
Why Many Soldiers and Their Families Can't Vote

Before the United States Senate Committee on
Rules and Administration
May 13, 2009

Executive Summary

For many Americans, the 2008 election was an historic election, both in its outcome and the number of citizens who were able to vote for the first time. Election officials in many states reported record turnout and participation by many voters who were traditionally left out of the process. The same, however, cannot be said for America's military members and their families. For these voters, especially those serving in war zones, the 2008 presidential election was an embarrassing reminder that military voters are frequently disenfranchised by a voting process that does not work.

For example, in Minnesota, only 15.7 percent of its military voters were able to cast a vote that counted in the 2008 presidential election, even though 78 percent of the general population voted in the same election. In Florida, home to nearly 340,000 military voters, only 66,007 or 19.4 percent of military voters cast an absentee ballot that counted in the 2008 election. Other states, like California, Missouri, and Arkansas, witnessed similar levels of military disenfranchisement.

Congress must take immediate action to protect our military voters by addressing two significant obstacles. First, it must ensure that the Federal Voting Assistance Program—the federal agency within the Department of Defense designated to assist military voters—provides military voters with the assistance necessary to register and request an absentee ballot. Second, Congress must ensure that military voters are provided with sufficient time to receive and cast their ballots, even if they are located in a war zone. At a minimum, Congress should mandate that overseas military ballots be sent at least 45 days before the state election deadline and require expedited delivery of military absentee ballots from war zones.

While Americans may disagree on numerous aspects of election policy, no one questions our military members' right to vote or America's obligation to provide them with an opportunity to vote. Given their daily sacrifices and their willingness to defend our liberties at all costs, including their lives if necessary, America must do more to ensure that military members are provided with the same rights they are asked to defend.

Testimony of Mr. Eric Eversole

Hearing on

***Problems for Military and Overseas Voters:
Why Many Soldiers and Their Families Can't Vote***

**Before the United States Senate Committee on
Rules and Administration**

May 13, 2009

Mr. Chairman and members of the Committee, thank you for holding this hearing and discussing the problems faced by our military members and their families when they attempt to vote. I greatly appreciate the opportunity to testify before this Committee.

For many Americans, the 2008 election was an historic election, both in its outcome and the number of citizens who were able to vote for the first time. Election officials in many states reported record turnout and participation by many voters who were traditionally left out of the process. The same, however, cannot be said for America's military members and their families (collectively, military voters). For these voters, especially those serving in war zones, the 2008 presidential election was an embarrassing reminder that military voters are frequently disenfranchised by a voting process that does not work.

While Americans may disagree on numerous aspects of election policy, no one reasonably questions our military members' right to vote or America's obligation to provide them with an opportunity to vote. Given their daily sacrifices and their willingness to defend our liberties at all costs, including their lives if necessary, America must do more to ensure that military members are provided with the same rights they are asked to defend.

2008 Election

While official data for the 2008 election is still being collected by the Election Assistance Commission (EAC), the data that has been collected paints a dismal picture for military voters in 2008:

- **Minnesota:** in a state where 78 percent of the general population was able to vote in the 2008 election, only 5,745 of Minnesota's more than 21,000 military voters requested an absentee ballot—that is, 27.4 percent of the eligible military

voters requested an absentee ballot. Of this total, however, only 3,703 absentee ballots were returned and 3,362 were counted. In other words, only 15.7 percent of military voters in Minnesota cast an absentee that counted in the 2008 election. Military absentee voters were nearly twice as likely to have their absentee ballot rejected by local election officials, as compared to other, non-military absentee ballots (8.1 percent for military voters compared to 4.1 percent for non-military voters). The majority of the military absentee ballots were rejected because they arrived after the state deadline for receiving ballots.

- **Florida:** out of nearly 340,000 military voters, Florida election officials sent out 86,926 absentee ballots. Of the sent ballots, only 66,668 were returned and only 66,007 were counted. In other words, only 19.4 percent of Florida's 340,000 military voters cast an absentee ballot that counted in the 2008 presidential election. The rejection rate for military absentee ballots was nearly identical to the rejection rate for non-military absentee ballots (1 percent for both).
- **California:** of California's nearly 225,000 military voters, only 39,563 were able to request an absentee ballot for the 2008 election—that is, only 17.4 percent of the eligible number of military voters in the state requested an absentee ballot.
- **Missouri:** of the approximately 43,000 military voters in Missouri, only 8,101 were able to cast an absentee ballot in the 2008 general election—that is, a participation rate of 18.8 percent. Nearly 79 percent of the 635 rejected military and overseas ballots were rejected for being received after the state deadline.
- **Nebraska:** only 17.9 percent of eligible military voters requested an absentee ballot for the 2008 election and only 14.0 percent were able to return a completed absentee ballot. Nearly 8.8 percent of all military and overseas ballots were rejected because they were received after the state deadline.
- **Arkansas:** of the state's estimated 18,686 military voters, only 2,518 (13.5 percent) were able to return an absentee ballot to be counted in the 2008 election. Sixty-six percent of military and overseas ballots were rejected for being late.

Why Military Voters Are Disenfranchised

There are two fundamental factors preventing military voters from voting: (1) the voter did not understand the complex, multi-state process for absentee voting and did not receive the necessary assistance from the Department of Defense (DoD); and (2) even if the military voter navigated the registration and absentee ballot process, state law did not provide the voter with sufficient time to receive, cast and return his or her ballot.

1. Lack of Assistance

The DoD agency responsible for providing military voters with assistance, the Federal Voting Assistance Program (FVAP), has long failed to provide the assistance needed by military voters to participate in elections. In fact, after the 2004 election, the DoD Inspector General found widespread problems with FVAP's voter assistance program, noting that only 40 to 50 percent of military members received voting information from FVAP.¹ The primary failure was FVAP's reliance "on a labor-intensive, DoD-wide infrastructure of part-time voting assistance officers [VAOs] at all echelons whose attention to voting is periodic, despite the program's perennial schedule."² The report found that the VAO program, where officers are assigned VAO duties as a collateral duty, did not "get the consistent, focused attention" necessary to achieve FVAP's responsibilities.³ The Inspector General concluded that "senior leadership can expect significant improvement only if a radically different approach is applied."⁴

That different approach has not been forthcoming. Like the 2004 election, the Inspector General found widespread failures by FVAP and VAOs during the 2006 election.⁵ In particular, the Inspector General found that only 40 percent of military members received voting information from FVAP and VAOs in 2006.⁶ His report further found that only 33 percent of military voters knew about the Federal Post Card

¹ DoD Inspector General, *Evaluation of the Voting Assistance Program*, Report No. IE-2005-001, at 22 (Mar. 31, 2005) (http://www.dodig.mil/inspections/IE/Reports/Final_VoterAssistanceProgram.pdf) (2004 Report).

² *Id.* at 25.

³ *Id.* at 22.

⁴ *Id.* at 26.

⁵ DoD Inspector General, *Evaluation of the Voting Assistance Program*, Report No. IE-2007-004 (Mar. 31, 2007) (http://www.dodig.mil/inspections/IE/Reports/Final_2006%20Federal%20Voting%20Assistance%20Program_Mar%202007.pdf); see also H. Con. Res. 388, 110th Congress (2008).

⁶ *Id.* at 6.

Application—that is, the federal form that allows a military voter to register and request an absentee ballot.⁷

The effect of this failure is clear. When VAOs fail to provide military voters with voting assistance, military voters are significantly less likely to complete a Federal Post Card Application (or complete it accurately) and, thus, are unable to participate in the election. That is why only 22 percent of the military voted in the 2006 federal election.⁸ It also explains the low number of military voters that requested an absentee ballot for the 2008 election. These participation rates will increase significantly if FVAP provides, as stated by the Inspector General in 2004, consistent and focused approach to voting assistance.

2. Insufficient Time

Every federal agency and non-profit group examining the issue of ballot delivery times to military voters in war zones has concluded that ballots need to be sent *at least* 45 days before the state deadline for receiving absentee ballots. In fact, some government officials, like the Chief of Operations for the Military Postal Service Agency, recommend that absentee ballots be sent *60 days* before the state deadline. These recommendations are based on two critical factors: (1) it takes *at least* 12 to 18 days for a ballot to make the one-way transit from an election official to a designated mailbox in a combat zone;⁹ and (2) military exigencies (*i.e.*, fighting the war) further delay the delivery of ballots to military voters. In other words, it takes at least 36 days of mail time (18 days each way) for a ballot to be sent to and from a war zone and some additional amount of time to account for military exigencies. Anything less than 45 days guarantees that a significant number of military voters will be disenfranchised.

Unfortunately, nearly half of the states refuse to follow the 45-day standard. In fact, 10 states and the District of Columbia give military voters *less than* 35 days to receive, cast and return their ballots before the state deadline. Not only does 35 days fail to account for mail delivery times, it provides not time for the military vote receive and cast his or her absentee ballot. The following states provide less than 35 days: Arizona, California, Colorado, Connecticut, Hawaii, Massachusetts, Minnesota, New Hampshire, Oklahoma and Vermont. Eight additional states (Alabama, Alaska, Iowa,

⁷ *Id.*

⁸ Defense Manpower Data Center, Human Resources Strategic Assessment Program, *2006 Survey Results on Voting Assistance Among Military members and DoD Civilian Employees*, Survey Note No. 20007-010, Table 1 (May 7, 2007).

⁹ See Government Accountability Office, *Operation Iraqi Freedom: Long-standing Problems Hampering Mail Delivery Need to Be Resolved*, GAO-04-484, at 10-12 (April 14, 2004). However, the same study found that nearly 25 percent of test letters sent to war zones took more than 18 days. *Id.* at 13.

Nevada, New Jersey, North Dakota, Wisconsin, and Wyoming) allow military voters less than 40 days to receive and return their absentee ballots.

Not surprisingly, military voters in these states are more likely to be disenfranchised, especially if the state does not permit the electronic transmission of absentee ballots (*e.g.*, facsimile or email). The voters in these states receive their ballots so close to the election that the voter does not have time to return it or, even if the ballot is returned, it arrives after the election. Take for example, the treatment of military voters in Minnesota, where absentee ballots are sent approximately 30 days before the election. In Minnesota, military absentee ballots were twice as likely to be rejected as compared to non-military absentee ballots. The higher rejection rate is caused primarily by the number of absentee ballots that were delivered after the election deadline. If Minnesota would have met the 45-day standard (*i.e.*, it would have given military voters 10 or 15 more days to receive and return their ballots), a vast majority (if not all) of the late arriving military ballots would have been counted.

Recommendations

Military voters should not suffer another election where only 15 to 20 percent of them are able to vote. Significant improvement, however, does not require significant change. Three minor modifications to existing federal law would directly address the lack of assistance and timing issue and, more importantly, would substantially improve participation rates among military voters. There also must be greater enforcement of federal voting laws for military voters by the Voting Section of the Department of Justice.

1. Designate Military Voter Registration Agencies. To the extent that Congress wants to ensure that military voters receive adequate assistance, it must legislate the different approach FVAP has been unwilling to implement. Like state agencies designated as voter registration agencies under section 7 of the National Voter Registration Act (NVRA), 42 U.S.C. § 1973gg-5, the DoD could provide voting-related assistance at locations where military members already receive administrative support or social services (*e.g.*, pay offices, ID offices, etc.). Not only would such a program greatly improve the consistency of FVAP's program, it would ensure that military voters receive information when they need it most—*i.e.*, when they have a permanent change of duty station or when they deploy.

For example, in the Navy, Sailors are required to visit their Personnel Support Detachment (PSD) when they check-in to a new base. Soldiers in the Army have a similar obligation. As part of that visit, Sailors and Soldiers are required to complete various forms to update their contact information, the location of their dependents, and their Servicemen's Group Life Insurance. Having the military member complete one

additional form, the Federal Post Card Application, will not materially burden the process. It would, however, ensure that Soldiers and Sailors have an opportunity to complete a new Federal Post Card Application when their addresses have changed. This change would greatly increase participation rates, as well as the accuracy of information maintained by state election officials.

2. Make 45-Day Standard Mandatory under UOCAVA. Currently, the federal law that requires states to mail absentee ballots to military voters, the Uniform and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. § 1973ff-1(a)(1), does not specify when states are required to mail absentee ballots to military and overseas citizens. This oversight has allowed numerous states, as noted above, to avoid sending ballots at least 45 days before an election. This failure can be easily rectified with a minor modification to 42 U.S.C. § 1973ff-1 (additions shown in underline): “Each State shall-- (1) permit absent uniformed services voters and overseas voters to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office, and by ensuring that absentee ballots are sent at least 45 days before the state deadline for receiving absentee ballots”.

3. Require the Military to Provide Expedited Return Delivery. In 2008, Senator John Cornyn introduced the Military Voter Protection (MVP) Act of 2008 (S. 3073), which required the Department of Defense to use expedited delivery methods to return ballots from overseas military members. While the Senate passed the MVP Act, the House failed to bring the legislation to a floor vote and the legislation expired at the end of last term. I strongly urge the Senate to re-introduce the MVP Act and send it back to the House for a vote. This has to be done quickly so that it can be implemented before the 2010 federal election.

Even if Congress mandates a 45-day standard, as discussed above, the MVP Act serves an important function of providing an expedited delivery mechanism for overseas military absentee ballots. Notwithstanding the best efforts of states to send ballots at least 45 days before the state deadline, there are numerous factors that delay the delivery of mail to and from war zones. While mail delivery to and from war zones should take between 12 and 18 days, not all mail arrives within that time frame. In fact, a 2004 Government Accountability Office study found that nearly 25 percent of its test letters to Iraqi war zones took more than 18 days to be delivered.

Legislation like the MVP Act helps to resolve the uncertainty regarding mail delivery times and provides a guarantee that an overseas military voter’s ballot will be delivered in timely manner.

4. Conduct a Hearing Regarding DOJ’s Lack of Enforcement. Despite substantial evidence of systemic military voter disenfranchisement, the primary entity responsible for protecting military voters, the Voting Section of the Department of

Justice, has shown little interest lately in protecting their rights. Part of the problem is the Voting Section's refusal to require states to provide military and overseas voters with at least 45 days to receive and return their absentee ballots. Instead, the Voting Section, in conjunction with FVAP, has arbitrarily adopted a 30-day enforcement standard—that is, the Voting Section will not initiate a UOCAVA case until a state provides a military voter or overseas citizen with less than 30 days to receive and return an absentee ballot. The use of this 30-day standard is mind-boggling given the well established evidence that military voters need at least 45 days to receive and return their ballots. The Voting Section should be called to explain this standard.

Additionally, it appears that the Voting Section is unwilling to enforce federal laws against the FVAP. In August 2008, more than 20 members of Congress wrote a letter to the Attorney General requesting an investigation of whether FVAP was complying with its obligations to provide voter assistance, as required by section 701 of the Help America Vote Act (HAVA). The Department of Justice responded in a letter dated September 23, 2008, declining to investigate and saying that the "Attorney General's authority does not extend to enforcing the duties assigned to the Defense Department [FVAP] under that provision." Again, the Department should explain its refusal to enforce laws against FVAP.

Finally, even where the Voting Section has filed military voting lawsuit, those cases are filed too late to benefit many military voters. For example, after discovering widespread evidence that numerous counties in Virginia failed to mail military absentee ballots in a timely manner, the McCain campaign filed a lawsuit in the Eastern District of Virginia to protect these voters.¹⁰ The Voting Section, however, did not intervene in the case until 10 days after the election, at which time it was too late to order any relief because Virginia already certified the election. This failure raises serious questions regarding the Voting Section's investigative efforts before the election (*e.g.*, why didn't the Voting Section discover these violations) and why did it take the Voting Section nearly two weeks to intervene after the suit was filed.

Ultimately, Congress can pass laws, but if the Voting Section is unwilling to enforce those laws, military voters will continue to be disenfranchised. Congress needs to have some assurances that the Voting Section will actively investigate and pursue violations of military voting laws.

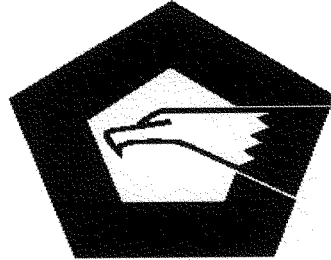
¹⁰ See *McCain-Palin 2008, Inc. v. Cunningham*, 3:08-cv-709 (E.D. Va. 2008).

M. ERIC EVERSELE

Mr. Eversole formerly worked as a litigation attorney in the Voting Section of the United States Department of Justice, Civil Rights Division, from September 2005 until December 2007. In that position, he investigated, litigated or worked on nearly a half-dozen cases under the Uniform and Overseas Citizen Absentee Voting Act (UOCAVA) including: *United States v. Connecticut*, No. 3:06-cv-1192 (D. Conn.); *United States v. North Carolina*, No. 5:06-cv-00118-H (E.D.N.C.), *United States v. Pennsylvania*, No. 1:CV-04-830 (M.D. Pa.). Mr. Eversole also litigated numerous cases under the Help America Vote Act (HAVA), Sections 2 and 203 of the Voting Rights Act of 1965, and the National Voter Registration Act (NVRA).

During the 2008 election cycle, Mr. Eversole served as an advisor to the McCain-Palin campaign. In that role, he led the campaign's efforts on military voter registration and military voter participation. Mr. Eversole also investigated and oversaw the campaign's UOCAVA lawsuit against Virginia. See *McCain-Palin 2008, Inc. v. Cunningham*, No. 3:08-cv-709 (E.D. Va.).

Mr. Eversole also served as an officer on active duty in the United States Navy's Judge Advocate General's Corps from 1999 until 2001.



National Defense Committee

**Continued Problems with
Military Voter
Registration, Absentee
Ballot Applications, and
Voting**

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

Bob Carey, Executive Director
5/13/2009

www.NationalDefenseCommittee.org

Summary

Military personnel do not register to vote, cast their absentee ballots, or execute their Constitutional right to vote at anywhere near the rate as their civilian counterparts. The voting process they are forced to navigate 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, many military voters never 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 who requested absentee ballots in 2006 but did not cast them.

By far the most significant hindrance to military voters successfully casting ballots is time it takes for absentee ballots to be delivered to military voters and returned to local election officials. 23% of military and overseas ballots rejected in 2006 were rejected because they arrived too late.² 39% of military and overseas voters stated they did not receive their absentee ballots until the last two weeks of October 2008.³ A recent report by the Pew Center on the States indicated that slow mail delivery was the single most significant part of the military absentee voting timeline, accounting for 75.6% of that entire process timeline for the State of New York,⁴ and 70.5% in Utah.⁵

The absentee balloting system was developed to deliver ballots around the corner to local voters, not around the world to military personnel deployed to remote, inhospitable, and combat zones. To expect the laws of physics regarding the time and distance realities of postal mail delivery to somehow make way for the desire to have mail delivered faster to military personnel is simply ignoring reality. Almost every reform considered to assist military voters and their families is a work-around for this one simple reality: most States send their ballots out too late, and by too slow a method, for most military voters to have a reasonable chance to receive them, vote them, and return them in time. Until those postal mail delivery times are extended, or quicker means of both delivering and returning ballots is implemented, little improvement is likely.

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.

² Elections Assistance Commission. See footnote 26.

³ 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), Table 14, p. 19.

⁴ 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).

⁵ The Pew Center on the States, *No Time to Vote: Challenges Facing America's Overseas Military Voters – Utah Fact Sheet* (Washington, DC: January 2009).

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 absentee ballots sent to military personnel and their dependents be sent by postal mail at least 60 days prior to their due date, and 30 days prior to Election Day (or postmark requirement date), if ballots need to be postmarked or otherwise certified as voted on or prior to Election Day.
- Mandate that all States send absentee ballots to military voters and their dependents by electronic mail, fax, or postal mail delivery, at the voter's choice of delivery method, at least 30 days prior to the ballot due date.
- 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.

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 Almost 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 29% of the total military population claiming residence in them; 227,234 in Texas⁶ and 184,000 in Florida,⁷ representing respectively 15.7% and 12.7% 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 190,000 military residents between them.⁸

⁶ J. Scott Weidmann to Hope Andrade, September 26, 2008, Letter to Texas, at "Legislative Initiatives" Web page, Federal Voting Assistance Program Web site <http://www.fvap.gov/resources/media/tx09init.pdf>, accessed May 8, 2009.

⁷ P. K. Brunelli to Kurt S. Browning, September 8, 2008, Letter to Florida, at "Legislative Initiatives" Web page, Federal Voting Assistance Program Web site, <http://www.fvap.gov/resources/media/fl09init.pdf>, accessed May 8, 2008.

⁸ The Federal Voting Assistance Program leadership wrote letters to each State detailing their military, military dependent, and overseas civilian populations. All States' letter can be found at the FVAP website, <http://www.fvap.gov/reference/laws/state-initiatives/index.html>.

Equally significant, the dependents of those service men and women are disproportionately residents of those States, with an estimated 170,500 (or 15.7% of the national total) military dependents claiming residency in Texas,⁹ and 139,000 (13.4%) military dependents claiming Florida.¹⁰ And again, Florida's military dependent resident population is also the same size as the next two States' combined (again California and New York).

In fact, the military and military dependent populations are highly concentrated:

- More than 52% of the military and military dependent populations are residents in just seven States: Texas, Florida, California, New York, Illinois, Washington, and Pennsylvania.
- The top 10 States (Texas, Florida, California, New York, Illinois, Washington, Pennsylvania, Michigan, Tennessee, and Ohio) have more than 62% of the total military and military dependent populations as residents of their States.

What this means is that significant improvements in military voting can be accomplished for a substantial portion of military voters with changes in only a few States. This is not to relieve the other States of their responsibility to make the necessary changes to ensure the franchise of military personnel and their families, but it does provide a guide to prioritizing voting reform efforts.

Preponderance of Absentee Voting for Military

The form that military personnel use for 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,¹¹ 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 Voting Statistics Shows Substantial Disenfranchisement

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

⁹ Weidmann, Letter to Texas.

¹⁰ Brunelli, Letter to Florida.

¹¹ 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.

VAP, and about 206,286,000 CVAP for the 2006 elections,¹² 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.

With approximately 31,000 non-citizen immigrants serving on active duty in the U.S. military,¹³ the military CVAP for the 2006 election was about 1.325 million men and women.¹⁴ 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.¹⁵ However, only 374,679 of those UOCAVA ballots requested were actually categorized in the data collected and reported by the States to the EAC.¹⁶ 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.¹⁷ Extrapolating this percentage to the entire UOCAVA ballot request population indicates that approximately 659,000 military and military dependent voters requested absentee ballots under the UOCAVA system.

This 659,000 represents 52.5% of the military CVAP,¹⁸ and is can serve as a rough measure of 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

¹² 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.

¹³ 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

¹⁴ 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.

¹⁵ U.S. Election Assistance Commission [EAC], *UOCAVA Survey Report Findings* (Washington, D.C.: September 2007), p. 1.

¹⁶ *Ibid.*, Table 22.

¹⁷ *Ibid.*

¹⁸ At this point, I will give the benefit of the doubt to the States by assuming that all of these absentee ballot requests were from military voters alone. The reality is that under UOCAVA, military dependents have the exact same absentee balloting rights as military personnel themselves. But the EAC data does not differentiate between military and military dependent voters. Given that military dependents make up 42% of the total military voting population under UOCAVA (1.449 million military personnel plus 1.09 million military dependents, from the FVAP data discussed earlier at footnote 6) But since the EAC data is based upon only 62% of the election officials reporting this data in 2006, extrapolating these calculations may not too far off. However, such an extrapolation may actually mask low absentee ballot request rates – and therefore low voter participation and absentee ballot cast rates – for military dependent voters.

election.¹⁹ 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%²⁰), the total military population of registered voters is approximately 859,000 service men and women.²¹ 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.²²

Military Voter Registration and Absentee Ballot Application 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. The Committee was kind enough to post the National Defense Committee's testimony before the March Rules Committee hearing on voter registration, where I detailed the voter registration and absentee ballot application process for military personnel and their dependents. I would recommend the Members and other interested parties to the Rules Committee website, or the National Defense Committee website to download that testimony where both those processes, and the considerable problems military and military dependent voters face in navigating the process, are detailed.

One item, however, bear closer scrutiny for this discussion today, that of the earliest registration and absentee ballot applications can be sent in by military and military dependent voters. UOCAVA currently only mandates that absentee ballot applications must be accepted in the calendar year of the election. For example, regardless of any State established start date for accepting voter registration or absentee ballot applications by military and military dependent voters, for the 2008 election, a State must accept a registration and/or absentee ballot application from January 1st, 2008 on to that State's deadlines. To take advantage of this, the Department of Defense sets its first Federal Post Card Application (FPCA) distribution deadline at January 15th. But the earlier and earlier dates set for Presidential Preference Primaries means that as many as 455,000 military voters, and 350,000 military dependent voters, were not able to participate in eight States' and the District of Columbia's Presidential Preference primaries given the combination of 2007 registration and absentee ballot deadlines, and the lack of a UOCAVA mandate to accept those FPCAs in 2007 and still have them count for the 2008 election.

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

¹⁹ DMDC, *2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees*, Survey Note No. 2007-010, table 1, p. 2.

²⁰ EAC, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings*, p. 12.

²¹ 659,703 military personnel requesting UOCAVA ballots plus 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).

²² EAC, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings*, p. 12.

Primary elections because of UOCAVA does not mandate that FBCAs be accepted earlier than the calendar year of the election.²³

Military Absentee Ballot Delivery and Return Process

The most significant factor in the delays for military voters to receive absentee ballots are the delays inherent in military mail delivery. 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. Again, my March testimony before this Committee highlights some of the problems inherent in military postal mail delivery, and some of the historical performance of that system.

But the most telling data was seen during the 2008 election season, where 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 a 57 day round-trip for military ballots to and from Iraq and Afghanistan, and a 43 day round-trip for all other overseas locations. And that assumes the military or military dependent voter returns the ballot the very next day. It provides very little time for the voter to research candidates, ballot propositions, or any other item on the ballots that may very well be first introduced to the voter when he or she first receives the ballot. Given the limited access by military voters to current news, voter information, and candidate and issue materials, such a short voting time is patently unfair, especially for the down-ticket contests, especially at the State and local level.

These recommended mailing deadlines are very significant. It indicates that even seven years after the start of contingency operations in Afghanistan, and five and a half years after the start of contingency operations in Iraq, the military mail system cannot guarantee anything better than a 56-day roundtrip for ballots. I do not believe this is a condemnation of the military mail system per se, but simply a fact we must accept as to the inherent limitations of such physical delivery systems. When lives and operational missions are on the line, to expect the military commanders to place military mail at the very front of the delivery line – ahead of wounded servicemen and women, ahead of weapons and ammunition, ahead of mission essential supplies – is not reasonable, especially when safe and secure electronic alternatives exist.

But these inherent postal mail delivery delays do take their toll on absentee ballot success rates. In 2008, the Overseas Vote Foundation found that of those participating in its survey, “More than half (52%) of those who tried but could not vote, were unable to because their ballots were late or did not arrive.”²⁴ Recalling that the Military Postal System Agency recommended getting 2008 ballots back into the mail at least 28 or 21 days before the election (for Afghanistan/Iraq and other overseas locations respectively), that means that ballots would have to have been

²³ 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.

²⁴ 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. 5.

received no later than October 6th or 13th, respectively to get the ballot back in the mail the day after receipt. But fully 30% of those surveyed by OVF in 2008 did not receive their ballots until after October 15th (11% either the week of the Election or after Election Day), and 22% never received their ballots at all. **To summarize, 52% of these surveyed voters either received their ballots too late or never received them at all.**²⁵

Unfortunately, such failures were also seen in the 2006 results reported by local election officials to the Election Assistance Commission. In 2006, more than 13% of all military ballots cast were rejected either because they were received after the absentee ballot deadline or because the ballot was returned by the postal systems as undeliverable.²⁶ By comparison, only 3.1% of absentee ballots were rejected in the general population, for any reason. The mail delivery-related rejection rate for military ballots is more than four times that for the overall rejection rate of general population absentee ballots.

The Absentee Ballot Process Doesn't Give Military 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.

Significantly, the Pew study found a direct linkage between how long the military voter had to receive and return a military ballot, whether or not any stages of the process could be completed by electronic means, and whether or not that State provided enough time to navigate the process for overseas military voters.

For example, because no stage of the New York military voting process can be conducted by electronic means, New York's overseas military voters require 82 days to navigate the absentee

²⁵ *Ibid.*, Table 14, p. 19. Table 14 details percentages of when ballots were received, but only amongst those who received ballots. 22% of the survey respondents never received their ballots, so the 30% late receipt figure is calculated by multiplying 39% (28% second half of October receipt, 9% week of the election receipt, 1% Election Day receipt, 1% post-Election Day receipt) by 78% (the percent that received ballots) to get 30.42%. 30% receiving ballots after October 15th, plus 22% never receiving ballots equals 52%.

²⁶ EAC, *UOCAVA Survey Report Findings*. Table 25a states 48,628 ballots were rejected, both military and overseas civilians. Assuming 175,179 military ballots cast, and that 66.4% of all these rejected ballots are military (assumption methodologies explained above), then 18.4% of all military ballots cast are rejected. Table 25b states 23.1% of all rejected UOCAVA ballots are because of late delivery, and 50.4% are because of undeliverable ballots. 73.5% times 18.4% equals 13.5%.

voting process, but are only given 69 days to do so.²⁷ For Utah, overseas military voters require 88 days to successfully navigate the process, but are only given 70. Other States represented on this Committee also fair poorly:²⁸

- Texas: 60 days required, 51 days provided.
- Tennessee: 85 days required, 70 days provided.
- Hawaii: 34 days required, 32 days provided.²⁹
- Georgia: 85 days required, 52 days provided.
- Connecticut: 57 days required, 44 days provided.
- Arkansas: 62 days required, 35 days provided.

Because of this, Pew concludes that their, “analysis shows that if voters from these [*No Time to Vote*] jurisdictions actually succeeded in voting, they managed to do so despite their states’ policies and practices, not because of them.”³⁰

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 blank ballots from election officials to military voters will reduce that step in the process from 30 days to five days.

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:

Distribution of blank ballots to the UOCAVA voter can be reliably facilitated and expedited by the use of fax, e-mail, or web transmission. The threats associated with using fax, e-mail, and web transmission can be mitigated through the use of procedural and technical security controls and therefore do not pose significant risks to the integrity of elections.³¹

²⁷ 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).

²⁸ Each State’s individual Fact Sheet can be found at http://www.pewcenteronthestates.org/uploadedFiles/wwwpewcenteronthestatesorg/Fact_Sheets/NTTV_FactSheets.pdf.

²⁹ If the military voter wanted to protect his or her secret ballot by sending it in by postal mail. Otherwise, faxing the voted ballot in provides enough time, but the voter must relinquish his or her right to a secret ballot as both voter identification and secrecy cannot be accommodated simultaneously with currently used fax transmission systems.

³⁰ The Pew Center on the States, *No Time to Vote* study, p. 18.

³¹ 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

Together, these two reports are powerful indictments of any absentee voting process that does not allow military and overseas voters to receive absentee ballots by e-mail or fax. Continued reliance on postal mail to deliver these forms will perpetuate military voters' disenfranchisement and inability to overcome the myriad of obstacles put before them, obstacles that are entirely avoidable.

However, recent research by the National Defense Committee indicates that fax transmission is not an effective option for military personnel, especially those suffering the greatest disenfranchisement in this process. The fact is that the military, being a much younger subset of the voting population than the general voting population, has a much higher proportion of first time voters, unfamiliar with normal registration and voting procedures, let alone the difficulties of the absentee voting process. National Defense Committee recently analyzed the detailed survey analysis of the Defense Manpower Data Center's 2006 voting survey, and found that while 22% of the military overall voted, only 11% of the junior enlisted personnel voted.³² Furthermore, only 39% of all junior enlisted personnel had daily access to a fax machine.³³

Daily access is necessary if States like Hawaii or Rhode Island are going to be able to take advantage of the Pew study's "Time to Vote, But With Concerns" classification where the fax transmission of balloting materials on a next day basis is necessary to achieve that dubious status. 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.

Conclusion and Recommendations

Significant improvements in military voting can be achieved with relatively simple changes to military voting procedures, chief amongst them allowing at least 60 days for military absentee ballots to make the round-trip from election official to military voter and back. Second, is to mandate the e-mailing of blank ballots to military voters and their dependents. Historical performance data discussed in my March testimony and today 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.
- Military voters do not regularly receive their ballots in enough time to return them by State-set absentee ballot return deadlines.
- The postal mail systems cannot deliver mail back to election officials in time to meet the State-set absentee ballot return deadlines.

electronically transmitting registration forms and absentee ballot applications from military and overseas voters to election officials.

³² Defense Manpower Data Center, *December 2006 Status of Forces Survey of Active-Duty Members: Tabulations of Responses*, DMDC Report No. 2007-009, Table 64, p. 184. Paygrades E1 to E4.

³³ *Ibid.*, Table 63, p. 182.

- Military absentee ballots are rejected at almost six times the rate general absentee ballots are rejected (18.4% vs. 3.1%).
- Military voters successfully cast absentee ballots at less than a third of the rate of the general population (26.5% vs. 85.8%).
- Military voters only vote at just over half the rate of general population (22% vs. 39.8%).

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 send out absentee ballots at least 60 days before the election.

If seven years after the initiation of contingency operations in Afghanistan the best the postal systems can do is 56 days round-trip for military ballots, then no number of work-arounds or criticism of the postal systems will improve that. These timelines are the reality of postal delivery of absentee ballots. For States to provide less than 60 days is to guarantee military voter disenfranchisement.

2. Mandate that all States transmit absentee ballots by electronic mail and/or fax, at the discretion of the military and military dependent voter.

Given the inherent delays in postal mail delivery to military personnel, the oft changing postal mail addresses for frequently transferring military personnel and families, the poor access most military personnel have to fax machines, the much greater access they have to e-mail accounts, and the constancy of military e-mail addresses, States that do not allow for the e-mailing of blank ballots to military personnel are systematically ensuring their continued disenfranchisement, especially when such States have short absentee ballot return deadlines.

3. 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 or military e-mail accounts,³⁴ only 43% have daily access to fax machines.³⁵ For the junior enlisted personnel discussed above, 71% have daily access to e-mail but only 39% have daily access to fax.³⁶ 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

³⁴ 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

$$(P[\text{email}_{\text{military}}] + P[\text{email}_{\text{personal}}]) - (P[\text{email}_{\text{military}}] * P[\text{email}_{\text{personal}}])$$

or in this case:

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

³⁵ Ibid., p. 47.

³⁶ 46% daily access to DoD e-mail and 47% daily access to non-DoD e-mail equals 71% daily access to one or the other.

military and overseas voters,³⁷ the only effective alternative is to allow for the e-mail transmission of Federal Post Card Applications at the voter's request.

4. **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 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.
5. **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.
6. **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.

³⁷ Regenscheid and Hastings, *A Threat Analysis on UOCAVA Voting Systems*.

7. **Prohibit notarization or additional witness requirements for military voter Federal Post Card Applications and military/military dependents' ballots for federal, State or local elections.** The Federal Voting Assistance Program,³⁸ the Pew Center on the States,³⁹ and the Overseas Vote Foundation⁴⁰ 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.

³⁸ Federal Voting Assistance Program, "State Legislative Initiatives," at <http://www.fvap.gov/reference/laws/state-initiatives/index.html>, accessed March 10th, 2009.

³⁹ Pew Center on the States, *No Time to Vote*, p. 29.

⁴⁰ Smith, Dzieduszycka-Suinat, and Mecl, *2008 OVF Post Election UOCAVA Survey Report and Analysis*, p. 7.

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Senior Fellow, National Defense Committee

Bob Carey was born and raised in Birmingham, Michigan, outside of Detroit. After graduating from Brother Rice High School, he attended the University of Pennsylvania in Philadelphia. While at Penn, Bob attended the London School of Economics his junior year, and graduating with a Bachelor of Arts degree in Economics in 1985. During his summer breaks, Bob interned at the Office of Management and Budget, the Joint Economic Committee of Congress, and the Export-Import Bank.

Upon his graduation, Bob was commissioned an Ensign in the United States Navy, and embarked on almost 10 years of active duty service. Starting out as a Surface Warfare Officer on the USS COMTE DE GRASSE (DD-974), Bob transferred to Naval Aviation in 1988 as a Naval Flight Officer, and was selected for training as an A-6E "Intruder" Bombardier/Navigator. Assigned to "Bombing Buckeyes" of Attack Squadron EIGHTY-FIVE, the squadron immediately deployed onboard the USS AMERICA to support allied operations against Iraq in DESERT STORM. Bob flew over 35 combat missions to Iraq and Kuwait.

In 1993, Bob was assigned as the Middle East and South Asia Politico-Military Affairs Officer for the Chief of Naval Operations. Bob left active duty in 1995, but continues to serve as a Commander in the US Navy Reserves, having completed three commanding officer tours, and three post-9/11 recalls to active duty in support of Operations NOBLE EAGLE, ENDURING FREEDOM, and IRAQI FREEDOM.

Upon leaving active duty, Bob signed-on to the staff of then-Senator Spence Abraham, progressing from his Defense and Foreign Affairs Legislative Assistant, to Senior Legislative Assistant handling Budget, Tax, and Appropriations matters, and finally as Legislative Director. After Secretary Abraham left the Senate, Bob transferred to the Office of Senator George Allen where he served as Legislative Director.

In January 2002, Bob was reactivated to the US Navy in support of Operation NOBLE EAGLE, serving in the Office of the Chief of Naval Operations as a Reserve Forces Advisor. Upon his deactivation in July 2002, Bob returned to public service as a Deputy Chief Financial Officer in the Department of Energy, handling all budget, management, and climate change issues for the Under Secretary of Energy, Science and Environment.

He was again recalled to active duty in February 2003 to serve as the Chief Staff Officer of the Navy's Seaport Detachment in New York City, responsible for all naval operations in New York harbor, including Fleet Week. Bob again returned to the Department of Energy in November 2003 as a member of the Senior Executive Service, this time to take over as Program Director of the ailing Energy Employees Occupational Illness Compensation Program. Under his leadership, sick-worker claims processing increased 12-fold in six months, exceeding planned production by more than 20%, while simultaneously saving over \$30 million through regulatory reforms.

In July 2004, Bob established Empire-Capitol Strategies, a strategic planning and policy development consulting service, provided consulting services to Pfizer, Inc.'s Science and Medical Advocacy unit, the Secretary of Energy, two Senatorial campaigns, and the US Department of Interior's Minerals Management Service. The firm's development was interrupted for Bob's third recall to active duty in October 2004, this time as Director of the Coalition Operations Center for US Naval Forces, Central Command in the Persian Gulf, and as Vice Admiral Nichol's Executive Assistant.

Bob returned to New York and Empire-Capitol Strategies in November 2005, when he was also named a Senior Fellow with the National Defense Committee, conducting in-depth research on current military and foreign affairs policy and homeland security/counter-terrorism issues. In 2007, Bob returned to active duty to assist in establishing a new Navy unit at the Naval War College tasked with teaching joint and multinational operational procedures to the US Navy Fleet staffs around the world.

Throughout his military duty, Bob has been awarded the Meritorious Service Medal, four Air Medals (two with Combat "V" and two Strike/Flight), five Navy Commendation Medals (two with Combat "V"), the Navy Achievement Medal, as well as unit awards, campaign and service ribbons. As a civilian in the US Department of

Energy, Bob was awarded the Department's Special Act Service Award twice, the only member of the Secretary's immediate staff so awarded.

He resides in Newport with his wife Anne and sons Kitts and Ridge.



DEMOCRATS ABROAD

May 12, 2009

The Honorable Charles E. Schumer
Chair, Committee on Rules & Administration
325A Russell Building
Washington, DC 20510

Senator Schumer:

Attached please find a statement submitted on behalf of Democrats Abroad by International Chair Christine Schon Marques for the record.

This should be entered into the record for the Committee Hearing on "Problems for military & overseas voters" on May 13, 2009.

Should you have any questions don't hesitate to contact our office at 202.488.5073.

Sincerely,

Lindsey Reynolds
Executive Director
Democrats Abroad

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Lindsey Reynolds
Executive Director

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DEMOCRATS ABROAD

Statement of Record

Problems for military & overseas voters: Why many soldiers and their families can't vote

**United States Senate
Committee on Rules and Administration
May 13, 2009**

As both overseas voters and volunteers who have helped absentee voters through the complex process – in all 50 states and DC – from registration to ballot request to returning the ballot, official or write-in, the focus of this committee is greatly appreciated. Overseas voters face many challenges, whether it is the civilian in Afghanistan who used the write-in because there is no mail service, the student on a junior-year abroad program in London who faces an early registration deadline, the first-time voter who was born overseas and is unable to vote at all. So the opportunity to raise some of these issues with Senator Schumer, the members of the Committee on Rules and Administration, and their staff, is very welcome.

Democrats Abroad has over 30 years experience promoting and facilitating the right to vote of Americans living around the world. We've held thousands and thousands of voter registration events for all Americans overseas, and have a network of trained volunteers who help Americans register every election year. Our Voter Troubleshooting team provides services for those facing challenges which they are unable to resolve on their own, working with local election officials to help solve any number of issues. More recently, a survey on UOCAVA voting experience among Democrats Abroad members (ABSENTEE VOTING 2008 REVIEW, Washington, D.C., April 24, 2009) quantified some of those challenges that voters face. Major differences were found by state, by prior voter experience, by the timely submission of the Federal Post Card Application.

Common challenges include:

- 1. A maze of regulations, contact points and deadlines** creates a complex and sometimes confusing system for UOCAVA voters. While US federal elections are organized and managed largely at the state level, a great deal of responsibility and authority is devolved to the county or town level, a complex and sometimes confusing system for UOCAVA voters.

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2. **Communicating with our local elections officials can be difficult at times**, given that overseas voters live in many time zones. The greatest number of requests for assistance involved confirming registration, through state voter registration websites, phone calls, and email. The second most important issue was no ballot; the third, obtaining the correct local election office address. Some survey respondents noted a lack of responsiveness—including unanswered phone calls, emails, and letters.
3. **Differences in election administration and regulations across states can dramatically impact** the likelihood of an overseas voter's exercising her or his right to vote in a federal election. Voter-judged likelihood of a ballot reaching the election office in time to be counted ranges from 92 percent in one state to a low of 50 percent in another.

Although only one state now requires notarization, a number of others require ballot certification, a special oath, or an affidavit affirming residency (confusing if one is residing overseas and voting in the US). Some specify that the certification must be that of another American citizen, a requirement posing difficulties for voters far from American communities or Consular facilities. One state might strictly apply arcane rules concerning paper weight, or even the size of the paper. With European paper sizes varying, this could be difficult for computer-generated FPCAs to be considered valid.

4. **The system serves experienced voters better than new voters.** Nearly 82 percent of experienced voters judge that their ballots reached election offices by the relevant state deadline; that figure falls to 76 percent among first-time voters.
5. **Knowledge of federal laws and availability of appropriate training resources** appear to vary among some agencies implementing federal laws regarding UOCAVA voting. Few state reporting systems, for example, comply with HAVA provisions regarding the separate reporting of UOCAVA ballots.
6. **Registering using the FPCA also serves as a request for a ballot.** The FPCA form states its dual function, but many voters find that confusing, and some states insist on the use of a state ballot request or registration form as well.

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7. **Children born abroad of US parents** were another common concern. A number of states do allow such offspring, who are US citizens by birth, to vote in the district where one of the parents last resided before moving abroad, or have no specific restriction. But other states do not extend the right to vote. The decision whether to allow the offspring to vote is sometimes made at the LEO level. The troubleshooting team was told by one state office that such children could not vote, even at the federal level; however, one LEO in the same state accepted the application. Although in this case the outcome favored the voter, the wide latitude accorded LEOs in interpreting state laws remains a major concern for UOCAVA voters.
8. **Most Americans abroad have a few options to return their ballots.** Limitations are, however, imposed by state law. One state's regulations prohibit the use of courier services for the return of absentee ballots from outside the US; some states require postmarks or certification of the date of transmission. In some locations, the use of the diplomatic pouch can be the only viable option for many citizens.
9. **Decisions about accepting Federal Write-In Absentee Ballot** are in the hands of perhaps thousands of election officials across the U.S. While it is impossible to definitively measure the impact of the FWAB, too many voters are unaware of its existence.
10. **As importantly, doubts remain about when absentee ballots are counted.** We know that they do make a difference in races around the country – but all ballots should be counted and accounted for at the same time.

Americans overseas, military and civilian, face significant challenges in ensuring that their voted ballots arrive in time to count. Engaged in ever increasing numbers in our political process at home, your efforts to address these issues today is not only timely but of critical importance to the millions of Americans around the world.

We look forward to the opportunity to speak with you again about both the obstacles mentioned above and potential solutions that help Americans abroad cast their votes.

Respectfully submitted on behalf of Democrats Abroad,
Christine Schon Marques
International Chair

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The Honorable Charles Schumer
 Chairman, Committee on Rules and Administration
 United States Senate
 305 Russell Senate Office Building
 Washington, DC 20510

May 19, 2009

Re: Senate Hearing on Problems for Military and Overseas Voters
 Wednesday May 13, 2009, 10:00am

Dear Chairman Schumer,

Thank you for ensuring that the problems that military and overseas voters have in participating in the democratic process – and knowing their votes are counted – is not forgotten with the end of the 2008 federal election cycle. And thank you especially for looking for solutions to this very serious problem.

Everyone Counts was founded with the mission of ensuring Universal Access to a full ballot for all citizens entitled to vote, and additionally ensuring that each submitted ballot is securely delivered and reliably counted. Our work has provided secure and accessible voting channels for voters in the UK, Australian military voters serving alongside our own military in Iraq and Afghanistan, Democrats living abroad, and most recently, voters in Honolulu Hawaii in federal, state and local elections throughout the past decade. We ensure that voters have the ability to vote privately, securely and independently, and that those ballots are reliably counted – no matter where the voter is on Election Day.

And we would be honored to help election officials in the US learn how to provide those same benefits for UOCAVA voters from the US. Attached you will find our whitepaper comparing the various methods – mail, email, fax and secure Internet and telephone voting – for serving UOCAVA voters, as well as our whitepaper demonstrating the successful results of providing secure and accessible online voting for the Australian military serving in Iraq and Afghanistan for their federal Parliamentary election in 2007 and Democrats Abroad for the US Presidential primary in 2008.

As I write this, Everyone Counts and the City and County of Honolulu are demonstrating the ability to provide these same secure voting channels to voters on US soil. The world's first completely digital Universal Access election opened on May 6 and will run through May 22, offering secure online and telephone voting for a local Honolulu election. This is a model for increasing access and security for voters, while saving costs for governments.

Senator, thank you for taking steps to ensure that the long-term and serious challenge that US voters living or serving overseas face comes to a stop. We would be delighted to provide you with greater detail on the success we have had in serving overseas voters, as well as any other questions you may have.

Sincerely,

Lori J. Steele
 Chief Executive Officer,
 Everyone Counts, Inc.
 lori@everyonecounts.com



Secure Remote Voting for Overseas and Disabled Voters

by Aaron Contorer

Chief of Products and Partnerships

Everyone Counts, Inc.

May 2009

Election officials are now taking online electronic voting seriously. Computer and phone networks can be useful channels for remote voters including soldiers and civilians overseas (UOCAVA), disabled (HAVA), and others.

Are computers and phones more or less secure than paper? What about fax? Can email be relied upon? How about the web or the Internet itself?

In this paper we explore what can and cannot be done with online voting technologies.

Reliable and timely access to a blank ballot

As a recent report from the National Institute of Standards and Technology (NIST) explained, the easiest-to-solve portion of UOCAVA voting is simply delivering ballots to voters. Technologies as simple as email and fax can transmit a blank ballot quickly anywhere in the world.

However, *a ballot which cannot be successfully voted and returned and counted is no better than no ballot at all.* Thus, the rest of this paper explores the rest of the problem.

Safe and reliable return of ballots

As the NIST report said, "election officials must be able to ascertain that an electronically returned voted ballot has come from a registered voter and that it has not been changed in transit. Because of this and other security-related issues, the threats to the return of voted ballots by email and Web are difficult to overcome."

Do you bank online? And is any money still in your account? Despite unlimited motivation to break into these systems, criminals are unable to penetrate online banking systems and drain the money. So we know that Internet services purpose-built for security can work well.

Does your bank let you withdraw money by email? Banks know that email is not secure. By the mid 1990s computer experts knew that in mere seconds an email can be made to appear "from" any person and any organization, regardless of its true origin. Better email software has been invented, but the system most Internet users use today is no more secure than it was in 1990. Furthermore, most email systems provide no privacy from the eyes of the sender's computer system administrator. Until we replace or reconfigure voters' email software worldwide, email is clearly not the answer to returning secret ballots securely.

Would you send a legal document by fax? You certainly can, and it works, and it's legal. Would you send a secret legal document by fax? Only if you are a very trusting individual. Voting rights advocates are furious about cases where citizens are required to vote by fax: this often involves completely sacrificing their right to a secret ballot. Faxes can be read on a phone line, and they often sit in plain sight at the receiving station. Making an altering or invalidating mark on a faxed ballot requires only a pen. And far from anonymous, faxes are automatically marked with their location of origin (whether accurate or faked). Fax is a handy technology, but utterly unsuitable for the return of secret ballots.

How does the military convey critical, time-sensitive, secret information? The answer is *digital encryption*. Extremely complicated mathematical formulas scramble the message with long numeric passwords or *keys*, yielding a series of numbers that read as nonsense to anyone lacking the secret decoding passwords.

Our company currently uses a military-grade system with an ever-changing 168-digit binary key, to encrypt each completed ballot before sending it to the tabulation office. Computers pick a new secret key for each ballot. Even a spy using a giant supercomputer could not hope to decode a single boxful of these ballots.

Encryption protects privacy but also prevents alteration: any change to the stream of numbers results in only gibberish when decoded.

Preventing invalidation

As we work to protect the rights of overseas and disabled voters, preventing the accidental invalidation of their ballots is crucial. We have all seen overseas military personnel going to great effort to vote, only to find their ballots discarded due to extraneous marks, overvoting, or the failure to fill out a signature block in the required format. Voters with disabilities have sent in many ballots whose intents were clear, but that were invalidated due to technical mistakes or extraneous marks.

Fax doesn't help, nor does email – even paper and a postage stamp do nothing to prevent accidental invalidation. Online voting, with real-time error checking before final submission, helps protect voters' right to be counted.

Assistive devices

Many blind, motor-impaired, or otherwise disabled persons have a computer or telephone which has been adapted to suit their needs. Online voting, by working with these adaptive devices, allows disabled voters to vote from home without the loss of privacy implied by manual assistance.

The secure audit trail

Auditors must ensure the proper custody and treatment of each ballot, from the moment it was cast until the count is complete.

The most auditable systems are the fully-online systems, in which each ballot can be tagged with an anonymous tracking number if desired.

The least auditable system is email. The Internet's system for routing emails was never designed to be auditable, and it is impossible to verify the path taken by an ordinary email between the sender's PC and the receiving machine. The email may go through any number of "server" computers in between – and as most are totally unencrypted, any server has the power to change or add to the contents. It is *routine* for servers to add to or alter emails, such as by adding routing information or noting whether the content looks suspicious. Many even discard emails without notice, as a defense from spam. Today's worldwide email infrastructure can be neither trusted nor audited.

Similarly, faxes may be electronically relayed and may be edited by the relayer manually or automatically. This is only common in large organizations, which use "e-fax" rather than "direct-dial fax" systems. The final receiver has no way to determine the number of relays or

edits a fax has been through, due to the lack of encryption.

Preventing “mystery software”

Mechanical balloting and mechanical tabulation introduced the “black box” problem: what is really happening inside that machine? Tests are routinely administered to detect defects and fraud attempts, yet tales of machine-assisted election tampering go back many years.

While even the simplest voting machine is subject to tampering, doubts grow dramatically when the machine contains parts – such as secret software – that election officials are *not allowed to see*. Computer experts agree this constitutes a serious risk – we must know what the machine is doing with the ballots, that they are being recorded and tabulated accurately and honestly.

The solution is *open code*. The technical workings of any device that handles votes should be fully open for inspection by officials. Software that is available to inspect is called *open code*. Open doesn’t imply “free to copy” – seeing my blueprints doesn’t license you to build my device. Many software experts believe that any voting computer should – or must – use open code.

Proof of receipt

Computers can effortlessly index vast amounts of information. Secure tabulation computers can let voters look up their ballots long after election day is over. Days after the election, a voter can visit a web site, enter his or her receipt number, and see a secret word or phrase he chose as proof that his ballot arrived safely.

This feature is one example of the power of technology to increase voter access and trust to levels impossible with paper ballots. In coming years we will see more such innovations throughout the voting systems industry.

Immunity from tampering

A well-designed trusted service can use other less-trusted technologies without danger. For example, paper ballots can be delivered using ordinary mail, not special “voter mail,” because the security is provided by special envelopes, ballot boxes, and careful handling procedures. Similarly, online voting systems can use ordinary Internet technologies to move information around the globe, as long as the voting systems add proper security to what’s already there.

The Internet equivalent of an envelope is encryption. When a message is encrypted, just like a paper inside a safety envelope, it cannot be read or altered along the way. Voting software using military-grade encryption can safely deliver ballots across any kind of Internet connection with no risk of spying or tampering. The better the voting software, the safer the ballot, regardless of how poor the voter’s Internet connection may be.

What about *paper*?

None of us would demonstrably and routinely *obstruct* participation in elections. Yet that is just what voting by paper does, especially when the voter is overseas.

The Australian Electoral Commission state that when they provided the option for overseas soldiers to vote online, the number who were able to vote on time and be counted rose from 22 percent to 75 percent. And as reported in the *National Journal*, when the US Democratic

Party allowed expatriates in the recent Presidential primary to vote abroad, voter registration increased tenfold, and 54% chose to vote online (vs. only 3% for paper mail and fax combined).

Many completed ballots arrive late or never, and many will be invalidated – and the great majority will never exist at all, because soldiers and other expats are simply too busy to deal with balloting by mail.

Paper gets a failing grade for ease of access (wait for it to come in the mail), security (a dishonest postal official can read or even alter your ballot), reliability (foreign postal services are notorious for delaying and losing mail), and access for the blind and motor-impaired. There is no encryption of the contents, nor timely verification of delivery.

If paper were not a familiar old technology, we would never seriously propose using it today. While we all like paper, its obviousness and its tangibility, modern online technology is more secure, accessible, timely, reliable, and usable.

Continuity of Service

One of the risks with any technology is that it will break. This gets worse when someone is motivated to break it on purpose.

Polling stations are subject to any number of obstructionist techniques. However illegal, we all know that these happen. Similarly, those with criminal intent may interfere with the mail. And absentee ballots can be mishandled by relatives or volunteers claiming to help.

Electronic technologies are not immune from these sorts of shenanigans. Malicious individuals seeking to interfere with an election can attempt to jam up phone lines, fax lines, or

Internet connections, or to somehow cause a malfunction of the receiving phone system, fax system, or computer system.

Fortunately technologists have many years of experience protecting technical infrastructure from such threats. Large corporations routinely receive threats from criminals hoping to extort money from them; yet the web sites continue to run, telephones continue to be answered, merchandise continues to be shipped, and bank accounts continue to reflect the deposits made.

Every election technology will always be subject to malicious behavior from the enemies of democracy, or from sore losers who don't expect to win the day's election. We must be ever vigilant against such attacks. Technology does not make human nature better or worse, but it does provide us with tools and well-tested techniques for security.

Protecting voters from misdirection

Lately we have heard about fake or incorrect registration information sent to voters in the mail. The citizen who thinks he has registered but has not, or who thinks he has cast a ballot but has not, has effectively been cut out of the election.

Every channel has some "point of entry" where the voter shows up ready to vote, and must not be fooled by cheaters. While it is hard to secretly build a fake polling place, or to somehow answer a voting phone number that you don't own, it is relatively easy to print a fake paper absentee ballot.

Somewhere in between these two is the difficulty of building a fake web site. Fortunately there are techniques for a website to prove its authenticity. These can be as simple as telling

each voter a personal secret number which the website must present, or as sophisticated as using an encrypted digital signature to prove the website's identity.

Overall we should consider telephone voting the hardest nut to crack for would-be fake pollsters; computer voting is also challenging; and paper voting is probably the easiest. Since we currently use paper for almost all absentee voting, this problem will get better through the use of technology.

Conclusions

Remote and disabled citizens must have their constitutionally mandated right to vote. Today's solution, paper, is failing miserably on timeliness, usability, and reliability – and it shows in the low numbers of military and overseas citizens who get their votes counted, and the great dissatisfaction of disabled advocacy groups. Technology can be used to solve many or even all of these problems – but

it must be the right technology. Email is a totally unacceptable solution, and fax has numerous limitations. Online (computer and phone) systems have the most potential to serve remote and disabled users, as seen in use by banks and the military, when designed and used correctly to deliver on their security promises.

□□☒

About the Author

Aaron Contorer is Chief of Products and Partnerships at Everyone Counts, Inc., which provides accessible, transparent, and verifiably secure multi-channel election services.

Mr. Contorer is a former executive of Microsoft, where he served as Bill Gates' technology advisor, and as architect for the transition of MSN onto the Internet. He is an inventor on over a dozen patents in computer security and networking.

See summary table on next page.

Appendix: Technical Approaches to UOCAVA Access

Scale: None – Poor – Fair – Good – Excellent

<i>Requirement</i>	<i>Paper</i>	<i>Email</i>	<i>Fax</i>	<i>Online Phone</i>	<i>Online PC</i>
<i>Deliver Blank Ballot</i>	Slow	Fast	Fast	Instant	Instant
<i>Prevent Invalidation</i>	None	None to Fair	None	Excellent	Excellent
<i>Privacy</i>	Good (if not disabled)	Poor - Fair	Poor	Good - Excellent	Excellent
<i>Prevent Alteration</i>	Fair	Poor	Poor to Fair	Excellent	Excellent
<i>Access for Blind</i>	None - Poor	Good	None - Poor	Excellent	Good
<i>Access for Motor Impaired</i>	Poor	Good	Poor	Excellent	Good
<i>Audit</i>	Good - Excellent	Poor	Poor to Good	Excellent	Excellent
<i>Evidence of Receipt</i>	None	Fair	Good	Excellent	Excellent
<i>Black Box Solved</i>	Excellent	Poor	Good	Excellent	Excellent
<i>Prevent Denial of Service</i>	Good	Good	Good	Good	Good
<i>Prevent Misdirection</i>	Poor	Fair	Fair	Good	Good

Proven Innovation Solves Problems Surrounding Military & Overseas Voters' Ability to Fully Participation in Elections

By Paul DeGregorio

What if only one in six eligible Americans attempted to vote in a general election? And then what if only one-third of those who attempted actually had their ballots cast or counted? Why didn't the other 83% even try? How can an election be fair when nearly 95% of voters are unable to participate and have their votes counted?ⁱ

*This is currently the case for America's military and overseas voters.*ⁱⁱ

But the USA is not alone in this regard. Nearly 250 million people throughout the world reside outside of their regular electoral constituencies.ⁱⁱⁱ And over 100 countries require their election officials to serve these remote voters while they are outside the country.^{iv}

Increasingly, many officials are recognizing that the continued use of 100-year old voting methods won't work to solve these issues.^v

In countries outside of the United States, tried, tested, and transparent online voting channels are now bringing the reach of democracy to the millions of overseas and disabled voters who have until now, been unable to participate.

Online voting is now accepted for a wide range of high integrity private elections such as shareholder votes and labor union ballots, with demand increasing each year. Use in binding public elections, which have typically been subject to controlled pilots, is also increasing worldwide.^{vi}

The earliest pilot to serve military voters was deployed by the U.S. Department of Defense in 2000 in a very limited trial. Since then, pilots have continued throughout the world: Intensive government pilots of online voting have run for more than 8 years in the UK, an ex-patriot voting system has been deployed in the Netherlands, online local voting is ongoing in Switzerland and Canada,

and in 2007 the national election in Estonia included an online voting channel for all voters, including disabled voters, and in Australia, military voters serving in Iraq and Afghanistan were able to vote via the Internet in a hotly-contested national Parliamentary election. In addition, political parties in the USA, UK and Canada have been utilizing online voting to increase participation of their members since 2000.

The U.S. remains behind, with only one attempt at implementation since the success of 2000. In 2004 the Secure Electronic Registration and Voting Experiment (SERVE) sought to provide true remote Internet voting for military serving abroad. However, the contracted system was questioned close to the deployment date in 2004 and the system shelved.^{vii}

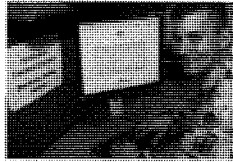
Some of those questions involved the security of online voting. In fact, while some electronic voting devices and traditional ballot boxes can be attractive targets for fraud, given that each collects hundreds of votes, a remote voter's PC is a far less attractive target for fraud. One remote PC is likely to collect only one or two votes. Further, an attacker has no way of accurately knowing which PCs will be used for remote voting.

Online voting applications can benefit voters by increasing accuracy. Computer-based voting can prevent over-votes and minimize under-votes and also can use multiple languages and even pictures and audio to assist with illiteracy.^{viii} Unlike many current systems, however, remote online voting also provides for very strong receipting.

This paper highlights two case studies that demonstrate how proven channels of voting are being used abroad to decrease barriers and increase participation of the groups most disenfranchised by current voting systems.

Australia: Increasing Access for Military Voters

Australia is a parliamentary democracy whose elections are often called just 30 days or so before polling day. This makes it difficult—if not impossible—for



ballots to be mailed to voters overseas and even more difficult for their ballots to be returned in time to be counted. Because of this, while voting is compulsory for most Australians, it is not for military personnel.

To verify the magnitude of the problem, a study was completed after the 2004 Federal Election by the Australian Electoral Commission (AEC). The study showed a problem similar to that in the United States: postal ballots were received for the election from only 22.8% of military personnel deployed overseas to operational areas.

Recognizing the seriousness of such a high disenfranchisement rate, the AEC brought the issue to the attention of the Australian parliament, who took decisive action to rectify the problem. They set a plan in motion to ensure that when the next parliamentary election was called, the AEC would be ready to enfranchise their military voters through secured online voting.

And ready they were.^{ix}

In 2006, the AEC established a project that would involve a partnership between its office, military representatives in the Department of Defense, and Everyone Counts, Inc., a company with extensive experience in providing secure innovative solutions utilizing online and telephone voting systems.^x

The system provided by Everyone Counts had to meet stringent audit requirements before it could be used and installed on a specially purposed array of servers within the DoD that would be controlled by the Australian Electoral Commission. A test lab

contracted by the AEC performed an independent deep audit of the source code. It was required to prove that the source code was resistant to any malicious tampering, presented an accurate representation of votes cast in the printed record and was unable to allow the association of a voter with the vote cast.

In addition, the AEC observed builds of the software and any changes to the code that were requested. Access to the voting servers was highly restricted.

Cryptography and encryption ensured votes remained secret and protected. Voter authentication took place via the server (not the voting applet) using a technique where non-identifying credentials form the basis of uniqueness and sparseness and identifying credentials (such as DOB, SSN or similar) were strongly hashed by the applet. All votes were authenticated at least twice. To increase security and prevent the potential for internal security breaches, decryption took place on an off-line system using a private key that was protected by a thresholding system.

The net result of this very successful online voting pilot was a system that increased military voter participation in the November 2007 parliamentary election four-fold. Not a single vote was challenged or contested. The system was universally praised by voters and election officials.

Increasing Access for US Voters Abroad in 2008

Democrats Abroad (DA) is an official body of the U.S. Democratic National Committee, representing thousands of U.S. voters affiliated with the Democratic Party. Clearly aware of the difficulty that Americans living abroad have in obtaining and returning a ballot in time to be counted in U.S. elections, Democrats Abroad researched options to facilitate participation in the DA presidential primary scheduled for February 2008. Observing that online voting had been utilized successfully by political parties in other countries, they announced the first-ever multi-channel "Global" primary election.

Democrats Abroad offered their members the ability to vote in one of four ways. Once registered with DA, overseas Democrats could choose to vote in person at one of 100 designated caucus sites located in 30 countries; receive and mail a ballot to their DA country representative; receive and send their ballot by fax; or cast their ballot online. Internet voting was offered through a secured system developed by Everyone Counts, Inc.

DA designated the period of February 5-12, 2008 for the balloting, with a deadline of January 31 for voters to join and sign up at their website, www.votefromabroad.com. Once registration closed, a voting list was developed and qualified voters were sent authentication and voting information. The Internet voting mechanism was web-based and utilized a secure server that was continually monitored for attacks (none occurred). The voting applet gave voters the opportunity to vote for any one of the Democratic Party candidates. The system allowed for voters to print a copy of their voted ballot and also have their online ballot cancelled before close of voting if they received and voted an absentee ballot from their home state (they were asked to vote in either one or the other).

Adding an online voting channel resulted in a seven-fold increase in participation, with military and civilian Americans casting their online ballots from 164 countries, including Antarctica. Voters chose voting by Internet more than 2 to 1 over voting in person, by mail and by fax, combined!

Like the Australian military voting project, the first-ever Democrats Abroad online Global Presidential Primary was a tremendous success. Many voters who have been disenfranchised before were able to vote.

These case studies, along with successful Internet voting projects elsewhere, prove that the time is now for policymakers and election officials to offer more – not fewer – opportunities for voters to have their voices heard – and have their votes counted.

Paul DeGregaria is the former Chairman of the U.S. Election Assistance Commission (EAC), COO of IFES-Democracy at Large and Director of Elections in St. Louis County, Missouri USA. He is currently COO of Everyone Counts, Inc (www.everyonecounts.com) and can be reached at paul@everyonecounts.com

¹ See EAC UOCAVA Report on 2006 election; Tables 21c and 22. http://www.eac.gov/News/docs/uocava-report-final-4-printing.pdf/attachment_download/file

² See "Sam Wright: Another Election Decided by Disenfranchised Military Personnel" http://www.military.com/Opinions/0_Wright_122704_00.html

³ See Jeremy Grace: *Challenging the Norms and Standards of Election Administration: External and Absentee Voting* (IFES, 2007), p. 35-58

⁴ International Institute for Democracy and Electoral Assistance (International IDEA) www.coe.int/t/.../democracy/EVoting/IDEA%20-%20Gratchew%20-%20EA%20Stasbourg%20November%202006.pdf

⁵ See "Military Voting and the Law: Procedural and Technological Solutions to the Ballot Transit Problem" found at: www.vote.caltech.edu/media/documents/eps/vte_wp53.pdf and Medill Reports: "Military voting riddled with complications, inconsistencies" 3/08.

<http://news.medill.northwestern.edu/washington/news.aspx?tc=80619> and "Despite Laws, Disabled Voters Face Barriers at Polls" 10/06

<http://newstandardnews.net/content/index.cfm/item/3822>

⁶ See "Online Voting Clicks in Estonia" Wired, 3/07 www.wired.com/politics/security/news/2007/03/72846?currentPage=all

⁷ See "'Point, Click, and Vote: *The Future of Internet Voting*," R. Michael Alvarez and Thad E. Hall. Brookings Institution Press, 2004. Washington, DC. <http://www.brookings.edu/press/books/2004/pointclickandvote.aspx>

⁸ See "Electronic Elections: *The Perils and Promises of Digital Democracy*" by R. Michael Alvarez & Thad E. Hall; Princeton University Press 2008.

⁹ See: Remote Overseas Voting for Australian Defence Force Personnel

http://www.aec.gov.au/Voting/e_voting/adf.htm

¹⁰ See <http://www.everyonecounts.com/index.php/news/39/37>

Submitted to the National Association of Secretaries of State (NASS) for their White Paper Series. July 2008



THE FEDERATION OF AMERICAN WOMEN'S CLUBS OVERSEAS, INC.
Founded 1931

May 15, 2009

The Honorable Charles E. Schumer, Chairman
Senate Committee on Rules and Administration
305 Russell Senate Office Building
Washington, D.C. 20510
Fax: 1 202-224-1912

Re: Statement by 3 organizations representing overseas civilian voters, relating to the Senate Rules Committee hearing on May 13 on military and overseas voters

Dear Senator Schumer,

I am writing as the official representative of FAWCO but also on behalf of two other organizations with whom we work, the Association of Americans Resident Overseas (AARO) and American Citizens Abroad (ACA). FAWCO and AARO have worked together since the Seventies to obtain, defend and expand the voting rights of overseas American citizens.

We are sorry not to have been able to testify at your May 13 hearing but are pleased to submit the attached statement which is based, essentially, on changes we advocated during our annual Overseas Americans Week in Washington in early April. At that time, as is the case every time I am in Washington, I met with the staff of the Rules Committee to discuss these changes and possible solutions. I deeply appreciate the willingness of your staff to work directly with and consult those most directly affected by and familiar with the issues you were investigating last week.

As you will see, many of your conclusions at that hearing coincide with our hopes. There are certain small things which can make a huge difference in the ability of overseas Americans to participate in their nation's democratic process: expanding the use of electronic transmission of electoral materials, adapting time frames between ballot transmission and receipt to the serious obstacles facing many overseas and particularly military voters, adapting registration and ballot requirements to this far-flung population so eager to vote...

We feel confident that, as was the case following the 2000 election, our legislators will join across political boundaries to eliminate many of the obstacles that continue to prevent us from voting, discourage some from even trying to vote, and cause us to lose confidence in a system where, despite our best efforts, our ballots may not even be counted.

Thank you for your dedication to this issue. We wish you every success and hope to be able to be of assistance as you and your colleagues progress toward enacting new electoral reforms.

Very sincerely,

Lucy Stensland Laederich, FAWCO U.S. Liaison

FAWCO U.S. Liaison: 21 Boulevard Lefebvre, F-75015 Paris, France
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OVERSEAS AMERICANS WEEK
WWW.OVERSEASAMERICANSWEEK.COM

Statement on voting reforms needed for military and overseas voters

Senate Rules Committee hearing on "Problems for Military and Overseas Voters"
 May 13, 2009

Americans abroad are proud of their citizenship and vigilant in guarding their constitutional right to help elect their President, Vice President and Members of Congress. For most overseas Americans, their right to vote is the primary means available to them to participate in the American democratic process. Civilian voter turnout overseas has increased steadily in recent years, and overseas Americans have historically had higher election participation rates than their state-side counterparts – typically 3+% of votes cast, although they comprise only about 2% of the electorate. The vast majority of local election officials surveyed after the 2008 federal election noted increased overseas voter participation compared with previous years. Unfortunately – and despite some recent reforms – overseas voters continue to face a range of obstacles and bureaucratic pitfalls that all too frequently frustrate their efforts to exercise their cherished democratic rights.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986 defines the rights of military and overseas U.S. citizens to vote in U.S. federal elections, and sets out the parameters for registering and voting by absentee ballot from overseas. UOCAVA was complemented by the Help America Vote Act of 2002 that addressed a plethora of problems in voting domestically and attempted to eliminate some of those faced by overseas absentee voters.

Nevertheless, overseas citizens still face a number of obstacles in casting their votes and having them counted. In the Overseas Vote Foundation 2008 Post Election Voter Survey, more than one in five (22%) of the 24,000 respondents did not receive the official ballot they expected; nearly one-third (31%) of experienced overseas voters still had questions or problems when registering to vote; and more than half (52%) of those who tried but could not vote, were unable to because their ballots were late or did not arrive at all.

We urge Congress to enact legislation in time for the 2010 federal election, addressing the problems still encountered by Americans attempting to vote from abroad.

Voting procedure reforms still needed

Timely expedition of ballots: The lateness of many states in sending out their absentee ballots often makes registration and voting impossible; slow foreign mail systems exacerbate the problem. All states should accept the Federal Write-in Absentee Ballot (FWAB) as a *"same day" registration request and completed ballot*, as is now the case for some. Optimally sixty but no less than forty-five days should be the *minimum interval* between transmittal of ballots and the deadline for voted ballots to be received by local election officials. New methods of *electronic transmission* of electoral materials should be further developed, including the possibility of faxing the federal application form and of downloading ballots from the Internet, to be completed and returned by mail.

No voted ballots should be required to be received before the official Election Day. In the event of *special emergency elections*, the period between announcement of the elections and receipt of *all* ballots should be uniformly fixed at 60 days.

1/2



Voter registration, ballots and/or Federal Write-in Absentee Ballots *should not be refused for any reason that can disadvantage overseas voters*, such as "non-standard" size, shape, weight or color of paper of the application, envelope or ballot (given that such materials are now often downloaded using non-American machines and paper); notary, witness or oath requirements (given the often prohibitive cost of access to notary services outside the United States); delivery of the application or ballot by a method other than the Post Office (to allow for hand delivery, courier or express mail services); voter identification requiring proof (e.g. in-state driver's license) not available to overseas citizens; or arbitrary requirements that are not necessary to prevent fraud.

American citizens who do not meet state residency requirements should have *the right to vote* in all states and the District of Columbia at the legal voting residence of their U.S. citizen parent(s). Today, only seventeen states explicitly enable Americans who cannot satisfy state residency requirements to exercise their constitutional right to vote in federal elections, though some states are introducing new initiatives.

Postmark and date stamp requirements should be eliminated; all dated ballots should be accepted.

In addition, we urge full implementation of certain provisions of the Help America Vote Act (HAVA):

Voting assistance programs which, under HAVA, are to be expanded for absent uniformed services voters. *The same should apply to civilian overseas voters.*

Statewide voter registration databases: dependent on funding and essential to the constitution of complete, accurate, regularly updated lists of voters and to the generation of statistics which will enable refining procedures in the future. *Full implementation of all such databases must be accelerated.*

The single state office which provides information to overseas voters on registration and absentee ballot application procedures: Congress also *recommended* that this same office accept registration applications, absentee ballot applications, and absentee ballots (including Federal Write-In Absentee Ballots) for the entire state. *This recommendation can greatly facilitate and simplify voting from overseas.*

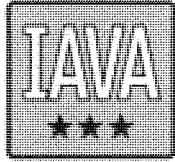
Statistical reporting: now available on the number of overseas absentee ballots transmitted and received. In HAVA, Congress recommended that these statistics include the number of registration applications received, the number rejected, the number of ballots requested, the number of ballots rejected and the reasons for any rejection in all cases. *This is needed to continue to improve voting procedures for overseas and military voters.*

Appropriations requirements: There still remains a shortfall in total HAVA funding and, in view of the considerable needs, we *continue to call for its full funding* at a bare minimum.

Conclusion

Our organizations are all original members of the newly formed *Alliance for Military and Overseas Voting Rights (AMOVR)*, grouping overseas citizens' advocacy organizations; state, local and federal election officials; and all branches of the military including active and retired service members and their families. The stated goals of the Alliance are to effect real change in voting procedures for UOCAVA voters before the 2012 elections and to ensure that absent military and overseas civilian voters enjoy an equal right and ability to vote. We are greatly encouraged by the initiatives being undertaken in both Houses of Congress and hope to work with our legislators to ensure that, with every year that passes, fewer and fewer Americans are deprived of their most precious right and responsibility as citizens: the right to vote.





IRAQ *and* AFGHANISTAN VETERANS *of* AMERICA

Testimony for the Record of
Tom Tarantino
Legislative Associate, Iraq and Afghanistan Veterans of America
May 13, 2009

Senate Rules Committee Hearing on Problems for Military and Overseas Voters: Why Many Soldiers and Their Families Can't Vote

As servicemembers, our most basic charge is to defend our country and the freedom of our fellow citizens. One would think that, for those charged with freedom's defense, casting a vote would be simple. Sadly, this is not the case. For those serving overseas, voting is difficult, and for those deployed to a combat zone, casting a ballot is often practically impossible.

I began my military career in 1997 when I enlisted in the U.S. Army Reserves as a Civil Affairs Specialist. In 2003 I was commissioned a 2LT in the Armor Branch and deployed to Iraq as a Platoon Leader from 2005-2006. Currently, I am a Legislative Associate for the Iraq and Afghanistan Veterans of America; the first and largest nonpartisan nonprofit organization for veterans of the current conflict.

In 2000, I was deployed to Bosnia during the Presidential primary elections. Knowing beforehand that I would be deployed, I applied for an absentee ballot. I did not know where I would be stationed, so I had the ballot sent to my parents' house. I assumed that they would be able to send it to me, and that I could return it in time. But my parents did not receive my ballot until 30 days prior to the election, and when they sent it to Bosnia, it took two weeks to get to me at Camp Tuzla. Another two weeks passed while my vote made its way to California, and it missed the deadline. Like thousands of others, my military service left me disenfranchised.

For every servicemember serving overseas, the military voting system must be revised. Currently the DOD uses the [Federal Voter Assistance Program](#), which provides a 460-page instruction manual for how to fill out Federal Post Card Application (FPCA), which is a combined voter registration and absentee ballot application. In principle, it should simplify the process of applying for an absentee ballot. But because states have a variety of different requirements for registration and voting, the catch-all FPCA is difficult to fill out. [According to a Pew Research](#) study, 40,000 military FPCA voter applications were rejected in 2006 due to errors in meeting state requirements.

The people tasked with helping troops through this bureaucratic minefield of an application are the Voter Assistance Officers. But Voter Assistance Officers are not given proper training – or in some cases, any training at all. I should know; in 2004, I was appointed as the Voter Assistance Officer (VAO) for my Troop. The only information or guidance I received was the one-page memo assigning me the extra duty. Feeling responsible for helping my soldiers vote, I set out on my own to find resources to get my soldiers registered. For making this effort, I was the exception rather than the rule; the Pew study shows that in 2004 VAOs reached only 50% of military voters.

In addition to complexity of the overseas registration and absentee voting forms, there are logistical barriers created by the military postal system. Those of us who have been deployed know that the system is functional, but chaotic. It is near impossible to deal with anything time sensitive. In 2006, 86% of the FPCAs were sent via the mail, and with the military postal system average round trip being 24-36 days to and from Iraq and Afghanistan, there is little-to-no room for error. Moreover, given that most service members transfer units every two to three years, and are deployed every 18- 24 months, most addresses are obsolete by the next election cycle. In 2006, this resulted in 35,000 military and overseas citizen absentee ballots being returned to local election officials as undeliverable.

IAVA recommends requiring the DOD to ensure the safe and timely passage of military ballots to their home districts. Ensuring that military overseas voters are able to receive and return their ballots in a timely and predictable fashion is the most immediate step that the Congress can take in protecting the voting rights of servicemen and women. Congress should also address the variance in state registration requirements, and provide the FVAP broader authorities in reducing barriers for military voters. IAVA will continue to work with Congress and our partners in the veterans' community to ensure that no servicemember's vote is lost.

Respectfully submitted,

Tom Tarantino

Legislative Associate
Iraq and Afghanistan Veterans of America



Senator Charles Schumer
Chairman, Senate Rules Committee
305 Russell Senate Office Building
Washington, D.C. 20510

May 8, 2009

Subject: Problems Facing UOCAVA Voters in the 2008 Election

Dear Chairman Schumer,

Overseas Vote Foundation (OVF) is a nonprofit, nonpartisan organization that helps overseas and military voters participate in federal elections. We do this by providing public access to interactive web services including voter registration, ballot download, election official contact information, dates and deadline information, voter help desk and express ballot return services.

Overseas American citizens, State Department employees, and active duty uniformed service members and their accompanying families within and outside of the United States vote under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and can all register to vote from abroad using OVF's services.

OVF launched its current suite of integrated voter services for overseas and military voters in October 2007, in time for the start to the Presidential Preference Primaries voter registration "season."

2008 was a very busy year for OVF. In 2008 OVF launched and managed 17 overseas and military voters' services sites including 7 for individual states. 4.75 M individuals visited the sites to use OVF's seven voter services. Furthermore, OVF teamed with FedEx to offer "Express Your Vote," the first express ballot return delivery program, from mid September through October 2008. Approximately 10,000 voters took advantage of Express Your Vote in 2008.

Through our 2008 Post-Election Survey of 24,000 overseas voters and over 1,000 local elections officials, OVF was able to identify the key problems facing UOCAVA voters:

- More than half (52%) of those who tried but could not vote, were unable to because their ballots were late or did not arrive.

- Despite concerted efforts, less than half of UOCAVA voters are aware of the Federal Write-in Absentee Ballot.
- Early state attempts to apply fax and email technologies are not improving chances of receiving ballots. 23.8% of respondents who sent in a request by email did not receive a ballot and 21.5% of respondents who used fax did not receive a ballot.
- Although Local Election Officials (LEOs) appear to be increasingly satisfied with their processes, undeliverable ballots continue to be a problem. LEOs confirm the frustrations of the voters: missed deadlines are a persistent problem

In short, registrations continue to be rejected because of state specific requirements, ballots are late and many citizens are not aware of their options.

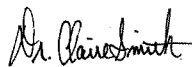
OVF reached out to military voters via its Military Voter Services website. 8,000 individuals utilized the balloting and registration services of this website. Furthermore, OVF received considerable feedback regarding the voting process. Military voters contacted OVF's help desk and responded to the 2008 Post-Election Survey.

Questions to the OVF military help desk often came from family members. Because their loved ones were stationed overseas, some in combat zones, they did not have regular access to email and thus family members acted on their behalf. OVF also received inquiries from Voting Assistance Officers (VAO), who sought more specific information.

For example, one wife wrote in on behalf of her husband who was at boot camp and had no access to a telephone or email. Her husband had no idea how to register, even though a VAO should have been assigned to his unit.

Below you will find examples of the problems and issues communicated to OVF. Attached are additional problems with registration.

Sincerely,



Dr. Claire M. Smith
OVF Research Director



Susan Dzieduszycka-Suinat
President and CEO, Overseas Vote Foundation

OVF is an information source for military personnel:

- Dear OVF: I want to provide my marines the ability to complete the backup federal write-in absentee ballot. Where can I find a list of the candidates that will be on the ballot for each State, i.e. a list of Senators and Representatives for each state and for state offices?

(Received September 17, 2008)

- Dear OVF: I was just recently appointed as my unit's Voting Assistance Officer. Yesterday I had all of my soldiers fill out the Standard Form 76 (Registration and Absentee Ballot Request). Is it too late to send these in? We are in Iraq and I just read that the deadline is 3 OCT for states to receive these. What is my best course of action to make sure that their vote is counted? Thanks in advance.

(Received by OVF on September 29, 2008)

- Dear OVF: My name is (X) and I am the Voting Assistance Officer for a (X) Company for an Army National Guard unit currently stationed in Iraq. There are 82 soldiers here with me who are very interested in this year's election. But one question keeps arising that is very disconcerting and stems from a lack of education on the United State's electoral process. Does our absentee vote get counted? Is it counted alongside the votes of in country citizens and does it carry equal weight? Can one vote (no matter how unlikely) dictate the results of an election or does that vote only influence an Electoral College? Sorry to request such a question, but it's much needed for 82 American soldiers who care. Thank you!

(Received by OVF on October 12, 2008)

OVF's online FWAB is also a valuable tool:

- First Email: DEAR OVF: I want to vote. I have sent in a FPCA 8 years in a row now, and have only received an absentee ballot once and then it was less than a week before the deadline. Is this some form of voter fraud? I vote in Ohio. Please help me vote this year. Can you look into this and see if there is some form of voter fraud? My name is (X) and my home of record is (X).
- Second Email: I sent the FPCA in 2 months ago. I always send it 3 months ahead of elections. I did get a hold of the board of elections yesterday and they told me that they did not have the ballots yet. The deadline is about 30 days from now. I don't see how it will be possible to receive my ballot with enough time to send it back in before the deadline. Unless they mail it in the next week. I am leaving for Iraq with the Air Force in 6 days. There is no possible way for me to vote now without an absentee ballot. I am curious about the online ballot option you spoke of. Can I vote the local and state on that one as well?

- (OVF sent him information regarding the online FWAB)
- Third Email: Thank you it will be in the mail tomorrow. I can't thank you enough for allowing me the opportunity to vote. I am also the unit voting rep in my squadron and will be sure to pass this web site on to the other voting reps on the base as well as all the members of my squadron.

Even when military personnel fill in the forms properly, the mail system hinders their ability to vote. We received this complaint via our 2008 Post-Election Survey.

- I filed the FWAB with the Voting Assistance Officer here in Qatar when I found out I would not be back home in (X) before the elections. I was given a tracking number and was told the ballot envelope would be tracked by the military postal service agency until it was received at my local elections office. I logged onto the grayhairsoftware.com/ballotrack website several times, to include Nov 4th, and watch the ballot reached only two post offices, one in Jamaica NY, and one in St Louis, MO. It was not ever received in FL. Also on the 4th, I called the Supervisor of Elections office in my home county to confirm they had my ballot, but was told they had no record of my vote.

Other comments and complaints received by military voters from the 2008 Post-Election Survey:

- It would be helpful if reminders were sent a few months before FVAP forms are due to expire, which would remind us to fill out a new one. I did not receive my Primary ballot in time due to my FVAP expiring.
- My reason for not voting was late registration due to the fact that I didn't know how to register. When the registration was due and by the time I received notification of absentee balloting it was too late for me to register and with the slowness of military mail it would have been impossible. An easier online version would be better, with a scanning capability or a secure email capability.
- My unit never set up for us soldiers to vote over here in Iraq.
- There are way too many steps to qualify to vote in a state and precinct in which I have already been voting for years. The military mail is far too slow and things keep getting lost. I can't send or receive faxes from overseas combat theater. This needs to be done by secure military or government email addresses. I simply can't spare enough time from the mission to perform all the steps necessary to re-qualify someplace that I have resided since 1990.
- I moved back to the US midyear, and so I originally re-registered while out of the country and then was stationed stateside. I had to complete the paperwork three times before I received confirmation that I was good to go and could vote in this election. There has got to be a better way. I mean, the US Army has SIPRnet for goodness sakes.

- I am not sure if I applied for the absentee ballot in the correct manner because I received a civilian ballot and I am Active Duty. Until this survey I didn't even know there was a difference. I am also not aware if my vote even got counted. I have not received a confirmation that my ballot was received or not.
- The voting assistance officer was no were to be found. The information that was given was not enough to help and it is upsetting because my vote will never count in the biggest election in history. I think things need to be a little different.
- Many of my fellow U.S. active duty service members chose to not vote at all because the process was so unclear and frustrating. Many people were unaware of registration deadlines and many more were frustrated that they did not receive their ballots in the mail even when requested in a timely manner.
- I feel that the military should have voter registration booths overseas. I think our votes are just as important as civilians and it should be treated that way. We have a commitment in the military and the election results greatly impact our lives. There were many of us that wanted to vote but were unable to.

**2008 OVF POST ELECTION
UOCAVA SURVEY REPORT
AND ANALYSIS**

A DETAILED LOOK AT HOW
OVERSEAS AND MILITARY VOTERS
AND ELECTION OFFICIALS FARED
IN THE 2008 GENERAL ELECTION
AND WHAT TO DO ABOUT IT

FEBRUARY 2009



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We also thank the voters and the local election officials, whose participation made this report possible.

For additional information on Overseas Vote Foundation, please visit
www.overseasvotefoundation.org.

February 2009

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4786 N. Williamsburg Blvd., Arlington, VA 22207

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I. EXECUTIVE SUMMARY

Overseas Vote Foundation (OVF) is proud to release the results of its 2008 Post Election UOCAVA Voter Survey and its Local Election Officials Survey.¹ These surveys, now in their third year, provide a unique look into the voting experiences of overseas citizens, and are an unequalled resource in OVF's ongoing mission to help overseas and military Americans register and vote in federal elections. In 2008 more than 24,000 voters in 186 countries and more than 1,000 local election officials in the US participated in the OVF surveys.

The results of the 2008 surveys demonstrate that America is still not doing enough to eliminate the problems that interfere with UOCAVA voting. Although voter satisfaction was high, our report reveals that too many things that should have improved have not yet changed:

- More than one in four, 22%, of the 24,000 voter survey respondents did not receive the official ballot they expected. Of the total respondent pool, 8% used the FWAB when their official ballot did not arrive, and the resulting number of voters that hoped for their ballot but did not vote was 14%.
- Nearly one-quarter, 23.7%, of experienced overseas voters still have questions or problems when registering to vote.
- 4% of experienced voters with questions, had questions about re-filing registration forms.
- More than half (52%) of those who tried but could not vote, were unable to because their ballots were late or did not arrive.
- Despite concerted efforts, less than half of UOCAVA voters are aware of the Federal Write-in Absentee Ballot as a fallback option to a regular, locally-supplied ballot.

¹ The *Uniformed and Overseas Citizens Absentee Voting Act* is commonly referred to as *UOCAVA*. *UOCAVA* citizens are U.S. citizens who are active members of the Uniformed Services of the Merchant Marine, and the commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration, their family members, and U.S. citizens residing outside the United States. The Act, passed in 1986, provides the legal basis for absentee voting requirements for these citizens.

- Early state attempts to apply fax and email technologies are not improving chances of receiving ballots. 23.8% of respondents who sent in a request by email did not receive a ballot and 21.5% of respondents who used fax did not receive a ballot.
- Minnesota was identified as an example of a state that pursued UOCAVA friendly voter policies (such as a late registration deadline, electronic ballot delivery, and voter outreach programs), which increased voter satisfaction by almost 8%.

Based on the results of OVF's surveys and our experience supporting UOCAVA voters, OVF makes the following recommendations:

1. We call for ensuring the important role of UOCAVA through legislative updates, in particular those that pursue greater uniformity in the application of this key act.
2. We encourage adoption of the anticipated UOCAVA Uniform Law intended to harmonize UOCAVA implementation for overseas and military voters across all states and territories.
3. We suggest the implementation of technology measures including online ballot request for registered voters and online blank ballot delivery to alleviate the transmission and timing difficulties inherent in the UOCAVA equation.
4. We encourage innovation and investment in the Federal Write-in Absentee Ballot and broadening the practice of "Same Day Registration and Balloting" for UOCAVA voters.
5. We underscore the importance of privacy and security considerations when applying technology to UOCAVA processes.
6. We propose a willingness to include UOCAVA voters into any federal "universal voter registration" initiative as they stand to benefit from such legislation.

The full report can be downloaded from the OVF website:
<https://www.overseasvotefoundation.org/initiatives-research>

Since OVF's first survey in 2004, a growing awareness of the problems of overseas voting and a growing participation by voters living abroad has changed the reform landscape. The Americans Abroad Caucus was formed, Overseas Vote Foundation launched a new set of integrated applications, and the 2008 OVF UOCAVA Summit took place in Munich, Germany with strong Washington, D.C. and U.S. election official participation. A new Alliance for Military and Overseas Voting Rights has just been announced. There is momentum and support from all sides to improve overseas and military voting. The OVF 2008 Post Election UOCAVA Voter Survey results reflect some of these efforts. For example, increasing numbers of UOCAVA registrations and ballot requests, coupled with improved levels of satisfaction with the overseas voting process, provide evidence of some overall progress. In an election cycle that included historic increases in participation, especially among first-time voters, these observations might not be given the full attention that they deserve.

Despite some improvements, however, progress is uneven, and the surveys point to numerous areas ripe for reform. Indeed, OVF's 2008 survey findings corroborate FVAP legislative initiatives put forward to the states. Similarly, the results provide evidence of the need to prioritize select FVAP election administration enhancements as recommended in The Pew Charitable Trusts' highly valuable report, "No Time to Vote," which included a list of potential reforms.²

2008 Post Election Survey of UOCAVA Voters

OVF's 47-question 2008 Post Election Survey of UOCAVA Voters was launched on Election Day, November 4, 2008 and ran through January 12, 2009. 24,031 UOCAVA voters completed the survey, resulting in a 23% response rate. The survey focused primarily on matters affecting their voting experience with intent to gain both quantitative and qualitative data. This is OVF's third post election voter survey.

2008 Local Election Official (LEO) Survey

The 2008 Local Election Official (LEO) survey was sent to 4,944 LEOs in jurisdictions around the US. All 50 states, the

District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands were included in the survey distribution. The 46-question LEO survey ran from December 5, 2008 through January 12, 2009, and 1,025 LEOs responded. It was the second post election LEO survey that OVF has executed.

About Overseas Vote Foundation

Overseas Vote Foundation (OVF) helps overseas and military voters participate in federal elections. We do this by providing public access to innovative voter registration tools and services. If you are an overseas or military voter, OVF's goal is to make it easy for you to get your ballot and vote.

Overseas American citizens, State Department employees, and active duty uniformed service members and their accompanying families within and outside of the United States vote under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and can all register to vote from abroad using OVF's services.

OVF is not connected in any way with any US government or US military organization. OVF is a 501(c)(3) nonprofit, non-partisan public charity incorporated in Delaware.

OVF is committed to open dialogue, and aims to nurture a renewed constructive discussion on the role and use of technology in UOCAVA voting. OVF believes that, when applied appropriately and transparently, new technologies and the power of the Internet can bring UOCAVA forward faster than any other element in the mix of tools. In 2008, 4.75 million visitors to our websites utilized OVF's Internet-based voter services.

² The Pew Charitable Trusts' Center on the States: No Time to Vote, January 2009; http://www.pewcenteronthestates.org/news_room_detail.aspx?id=47962, accessed January 24, 2009.

II. POLICY RECOMMENDATIONS AND CONCERNS

A. KEEP UOCAVA DYNAMIC AND RELEVANT

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) is the legal foundation protecting the voting rights of U.S. citizens who are active members of the uniformed services, their family members, and other U.S. citizens residing outside the United States. Signed into law by Ronald Reagan in 1986, UOCAVA is administered by the Federal Voting Assistance Program, which is part of the Department of Defense.

With each post election survey, we learn more about UOCAVA's implementation, both from the standpoint of election officials and directly from voters. In 2008 OVF once again captured the growing size and active participation of the UOCAVA population in federal elections. As a nonpartisan organization serving voters and election officials alike, OVF has built a reputation for providing reliable and unbiased data and analysis to policy makers, journalists, election officials and overseas voters.

Based on our survey findings, several aspects of UOCAVA implementation stand out as priorities: late ballots, ballot delivery timing and methods; use of the write-in ballot; and uniformity of requirements across states, to name a few. This section of our report deals with these issues. Our findings complement the recently-released report by The Pew Charitable Trusts' Center on the States, "No Time to Vote".

Overseas voters face a long series of small but significant hurdles in order to register and vote successfully. The cumulative effect of these persistent issues is significant. Requirements regarding affidavits and signatures on envelopes; to use pre-paid postmarking; to have ballots notarized or witnessed; and to follow allowable ballot return methods chip away at the total percentage of UOCAVA voters who are successful and satisfied with the process.

UOCAVA must remain dynamic, and Congress should move to amend UOCAVA to address the long-running problems

identified in this report. Our survey data and experience, which is derived from technical support to individual voters provided by OVF's Voter Help Desk over four years, reveal some of the most nagging issues:

1. Uniform laws
2. Blank ballot delivery methods
3. Completed ballot return methods
4. Ballot envelope and postmarking issues
5. Voting residence terminology on ballot affidavits
6. Notarization and witness requirements
7. Federal Write-in Absentee Ballot limitations
8. Election administration issues plaguing UOCAVA ballot request validity and voter address maintenance
9. Problematic and various deadlines amongst states

B. MAKE STATE LAWS MORE UNIFORM

Since the Help America Vote Act of 2002, the U.S. government has attempted to increase and improve information and processes for UOCAVA voters. However, there is plenty of room for improvement.

OVF's survey research demonstrates that the UOCAVA voting process still confounds many. For example, nearly one quarter (23.7%) of experienced overseas voters continue to have problems and questions about re-registration or filing requirements. First-time voters had many questions about the process of voting, such as deadlines, voting addresses, and filing requirements. Why all this confusion?

While FVAP is the designated federal agency administering UOCAVA, it actually falls to state and local officials to make sure that overseas voters are treated according to the law. These thousands of jurisdictions operate under different requirements and resources, and often develop processes that are arduously complex. These prerequisites to registration, receipt and submission of a valid ballot range from the type of identification, to extra documented proof of citizenship, to identifying your overseas employer or previous voting address.

OVF's post election survey findings have consistently shown that many voters worry that their request may be denied for lack of compliance.

To properly develop the OVF software applications, OVF first analyzed state requirements as documented in the federal Voting Assistance Guide. We worked to incorporate the details and differences across states. What is striking is how what might appear to be small differences in state requirements can have major effects on overseas voters.

To illustrate, would you know how to handle these circumstances?

- You are from Oklahoma and don't have a valid US driver's license.
- You are from Ohio and forget to indicate the length of time you lived in Ohio prior to moving overseas.
- You don't know whether your state wants a complete nine-digit Social Security Number, or if it, like most other states, accepts the last 4 digits.
- Or you are from Virginia and don't know that you must provide the name and address of your employer.

These are just a few examples of the level and variety of detail that states require. Systems for handling UOCAVA voters often differ at the sub-state or jurisdictional level.

There is growing consensus for increased uniformity in state requirements. Increased uniformity would enhance voter confidence in the UOCAVA program by reducing the unintentional consequences caused by disparate rules and regulations, and also increase confidence in its equitable implementation. A "no surprises" system would fundamentally support greater participation and user confidence.

There are many regulations that need to be addressed. However, the most important are those directly related to accurate and timely ballot receipt and submission: filing deadlines, required identification, and notarization and witnessing of registration and or ballots. To this end, the Uniform Law Commission (ULC) is developing a proposed set of guidelines for uniformity in implementing UOCAVA across all states.

A study committee met in December 2008, and additional ULC meetings will be held in February and March 2009 with the objective of delineating the recommended common implementation of UOCAVA. OVF encourages broad participation from a diverse group of delegates from overseas and military voter groups, states and legislators, using research, data and experience available to determine the recommended uniform law implementation of UOCAVA.

C. REFORM UOCAVA BALLOTING

C.1. Move to Online Ballot Delivery

The survey results in this report underscore the need to move away from postal systems for ballot delivery to online systems for ballot delivery or access. This is a crucial policy recommendation.

Our research indicates that in 2008, two out of every five (39%) of voters received their ballots during the second half of October or later, which is too late to guarantee return in a timely manner. This finding represents an increase from the one in four (25%) who reported receiving late ballots in 2006 mid-term election, despite the increasing attention paid to the problems of overseas voters in the intervening years. Given that the majority of overseas voters must rely upon traditional post to return completed and valid ballots in order to comply with voter regulations, many individuals face the very real possibility that their ballots will not meet receipt deadlines. Indeed, election officials cite "late arriving ballots" as the number one reason for ballot rejection.

Furthermore, 6% of survey participants did not send in their official ballots. Among voters who did not return their ballots, more than half (52%) cited the chief reason as "late ballot receipt." This is consistent with the findings of the 2004 and 2006 OVF Post Election surveys. The results of three post election surveys show one common reason for not voting: I didn't get my ballot on time.

Online ballot delivery is simple and helps solve the problem of timely registration and ballot submission. After a voter has submitted a ballot request, the local election official can email, fax or provide online access to a blank ballot. The voter then prints the ballot, fills it in and mails it. This system eliminates up to two weeks in the balloting process.

Online ballot delivery supports the trend toward paper balloting in the US. Online ballots, when formatted to A4 international standard paper size, can be easily printed and returned by standard physical post. Voters can print ballots they receive or are able to access directly online and benefit from quicker returns on delivery time. As documented by NIST, online ballot delivery can be implemented safely and need not introduce unmitigated risk into our election system.

C.2. Improve Write-in Ballots

The Federal Write-in Absentee Ballot (FWAB) is more than a brilliant solution to late ballot receipt issues – it also presents an opportunity to reduce what is now a multi-step process. To date, it has been largely limited to registered voters who filed the UOCAVA voter registration/ballot request “FPCA” by the filing deadline of the state (or 30 days prior to the election, whichever provides the most time).

OVF recommends the following:

- a) the FWAB function simultaneously as a voter registration/ballot request and as a completed ballot;
- b) the FWAB be considered for upgrade investments to optimize its function;
- c) state and local level voting be better integrated into the FWAB;
- d) state level candidate information be openly available in a standard open format to support third party development initiatives.

C.2.i. Boost FWAB Awareness

Unfortunately, the FWAB in its current format remains largely invisible to most voters. Information about the required processes may not be widely communicated by local election officials.

In 2008 we asked those respondents who did not receive a ballot if they were aware of the FWAB. About half, (52%) of these voters were not aware of the FWAB. We also asked those voters who received ballots if they were aware of the FWAB. Again, more than half of voters (58%) were not aware of the FWAB. It is important to note that awareness of available FWAB must also address educational outreach efforts,

which are necessary to inform the high percentage of first time overseas voters.

C.2.ii. Collapse the UOCAVA Absentee Voting Timeline

Several states allow the FWAB to be used in federal elections as a simultaneous voter registration/ballot request and completed ballot, effectively collapsing the UOCAVA voting process into one step. For voters initiating the UOCAVA ballot request process after the primaries, which our research shows is the most common practice, this presents an ideal solution. 66% of voters attend to their registration and balloting request in the 60 days prior to the election.

It should be noted that the “cover page” of the FWAB is nearly identical to the official FPCA registration form. That is, the critical information required for UOCAVA voter registration and ballot request is duplicated on the FWAB cover page.

We suggest that all states accept the FWAB whether or not the voter requested a ballot prior to sending in their FWAB and simply treat it as a combined registration/ballot request form and ballot. Extension of this practice to other states would greatly alleviate the extended time period that is otherwise required to register and vote from overseas. As noted in the Pew “No Time to Vote” report, nearly half the states’ processes for UOCAVA do not allow the time necessary for overseas military to effectively vote. A “same day” federal write-in absentee registration and ballot provides a ready solution to that 25 state problem.

C.2.iii. Upgrade the FWAB System

In 2008, with support from Pew’s Center on the States, OVF upgraded the online FWAB concept to create a “Vote-Print-Mail” FWAB (VPM-FWAB) system. The system builds on OVF’s suite of tools and provides integrated zip-to-district matching and dynamic candidate list generation. The voter enters his/her US voting residence address, and the system determines the list of federal candidates on the ballot in the voter’s jurisdiction. The voter can point, click, vote, and print the ballot with complete instructions, including notarization requirements where applicable, their specific election jurisdiction mailing address, and a completed fax form for states that

permit fax transmission. The output prints in the form of the FWAB. However, this is completely flexible and the output could also be any other ballot style.

The VPM-FWAB, when combined with the new "Express Your Vote" OVF-FedEx reduced-rate international ballot return shipping, created an affordable, express ballot return solution for US citizens and military voters overseas. Approximately 10,000 voters used Express Your Vote to return their ballots in 2008. Although this was fewer than anticipated, it was enough to sufficiently prove and test the concept as well as the back-end systems and processes for use future elections. We recommend further development of the online VPM-FWAB application.

C.2.iv. Adopt the FWAB as the Standard State Write-in Absentee Ballot

Rather than initiating separate forms and processes for State Write-in Absentee Ballots, OVF strongly encourages common adoption of the FWAB form as the standard for voting in state contests as well. The current form of the FWAB is quite rudimentary and may require an upgrade. It does, however, contain blank lines below the federal offices section to allow for write-in of state candidates.

C.2.v. Make it Easier for Voters to Vote in State and Local Elections

It would be very useful if states made available, in a standard format, information about the contests and candidates on the ballot in their state. This would enable further development of online absentee ballot solutions and encourage overseas voters to participate in races below the federal elections. Currently voters are divided up by Congressional districts. There are some state and local contests that will be on every ballot in that district. The state could provide a listing, for each federal district, of all such state/local contests. This approach might include contests like governor, state propositions, state bond measures, etc. With this information available in an open standard format, OVF, the states, the FVAP or other third parties could use it to expand the online VPM-FWAB application to assist eligible overseas voters vote not just on federal races but also on many state races. One final note about the FWAB: Of great concern to OVF

is the rejection rate of FWABs. It is not only a question of whether voters know to use the FWAB, but what the administrators do with it. Close examination of the upcoming US EAC's 2009 Election Day Survey may shed further light on this topic.

D. ENHANCE BOTH TECHNOLOGY AND SECURITY

OVF believes that technologies can be used without compromising voter's identities or ballot security, and that there are tremendous technology developments and practical solutions to look forward to in the coming years. We recommend that security considerations be maintained in the key areas of online ballot request and voted ballot return, and for privacy assurance.

D.1. Online Ballot Request

OVF recommends that registered UOCAVA voters with signatures or other authentication data on file be able to request a ballot through online methods.

- States worried about security could make such services available only to voters who have already registered or requested a ballot once in the past.
- States could work with OVF or FVAP to link this into the registration/ballot request "FPCA" process that they already provide. When the voter gets to the end of the process, instead of being given a PDF to mail back in, the voter can "submit" the information electronically to the state.
- The primary technical issue is that states/counties must authenticate voters. For voters who have already registered, the voter registration rolls should contain plenty of information for their authentication. For instance, the state could have a web page where the voter enters in their name, last US address, driver's license number or social security number, and the web site uses that to authenticate the voter and then allows the voter request a ballot online.

D.2. Security Measures for Electronic Return of Voted Ballots

Voting systems that involve electronic return/transmission of voted ballots over public telecommunications networks incur

special risks, as well documented in the recent NIST report. Suggested guiding principles include:

- **Seek technical experts:** There are people with special expertise on these subjects. Involve them in the process.
- **Conduct an independent security evaluation:** When buying voting systems from a vendor, don't rely upon the vendor; get a second opinion from independent experts who don't have any commercial interest in the subject. Part of the state certification process should include an independent technical evaluation of the system, including its security, reliability, and other technical properties. Experts should be given full access to the system, including source code, technical documents, and user documentation, plus access to the developers. The final report should be published.
- **Embrace transparency:** Use of the Internet and other networks for electronic ballot return is controversial. In light of this, transparency is important. Publish all technical documents. Conduct a public hearing. Seek to involve important parties in the process to air concerns early, rather than delivering a fait-accompli.
- **Consider requiring software disclosure:** One thing that exacerbates controversy is the use of proprietary software that is not available for scrutiny by interested parties. This heightens tensions because it puts vendors in a privileged position: they can make strong claims about their software, making it impossible for independent parties to evaluate the evidence directly.

Without access to source code, advocates on both sides of the debate are denied access to information that would be needed to present evidence for their position. The result is that advocates often end up arguing based upon first principles rather than from hard evidence, which might contribute to increased polarization. When procuring new voting systems, states may want to consider the benefits of solutions that enable them to provide access to the source code to interested parties.

D.3. Privacy Protection

Designers of online ballot request and ballot delivery systems should be sensitive to privacy risks and should protect voters from identity theft and related risks. Techniques to mitigate

these risks include: minimizing the amount of personal information requested and retained; providing controls to prevent unauthorized access to this information; avoiding 'clear-text' unsecured online transmission of sensitive personally identifiable information; protecting against phishing attacks; avoiding asking or training users to behave in unsafe ways that make them more susceptible to phishing and other problems online; and following best practices from the commercial world.

E. UOCAVA AND UNIVERSAL VOTER REGISTRATION

Universal Voter Registration (UVR) is currently at the top of the wish list for many in the election reform community. With UOCAVA voting, the universe of UVR moves geographically beyond the US border. Close examination of how any federal universal voting legislation would impact UOCAVA is necessary, and UVR, should it come about, is no exception.

Although it would not eliminate the need to determine one's proper US voting residence address or to maintain an up-to-date ballot delivery address with the voting jurisdiction, UOCAVA voters stand to benefit enormously from a properly implemented UVR. US citizenship is not the only guiding principal in whether voters can vote under UOCAVA. As discussed in an earlier section of this document, there are unlimited varieties of state implementations of UOCAVA and the registration guidelines that encumber the registration process. Tremendous discretion rests with the local election authorities and is complicated by individual circumstances that overseas voters may have in determining their right to vote.

Voters and election officials invest tremendous amounts of time maintaining up to date UOCAVA voter registration. Some states allow permanent UOCAVA absentee voter registration status, but not all. There is confusion on this point. Data reveals that the top reason that voters did not send in a new form is that they thought they were already registered and their ballot would simply arrive. Re-registration and re-filing requirements also represented the number one question of experienced UOCAVA voters.

Presently the FPCA form grants UOCAVA voters ballots for four years; however, due to the high mobility of these voters, many states nonetheless require submission of the FPCA as a

"ballot request" for each election. This is to confirm the voter's address, but it is not consistently applied and some voters are unaware of this requirement. This is a double edged sword affecting election officials as well: UOCAVA voter address maintenance is yet again the number one problematic issue arising from our post election survey of local election officials, with more than one-third (37%) of respondents citing it as the greatest problem.

American citizens living overseas can be rejected from the voting process as ineligible. Citizenship is currently no guarantee of voting rights where overseas citizens are involved, for example children born to U.S. citizens overseas who are U.S. citizens themselves but who may not have established a U.S. residence and therefore do not have a previous U.S. address to use as their voting residence address when requesting a ballot. Although they may be passport- and social security card-holding Americans and they are required to file taxes, currently only 16 states allow these U.S. citizens to vote using their U.S. parent/s' voting residence address. We would assert that these 16 states have sufficiently vetted the process for the remaining states. However, expansion of this right is virtually stagnant. It's nothing short of tragic that many young, would-be, first-time voters were denied the right to cast ballots in the last election. With UVR, the fundamental question of whether to allow these US citizens to vote would finally have just one answer: affirmative.

F. UOCAVA VOTER RESPONSIBILITIES

A UVR system would not abdicate overseas voters from certain responsibilities. If a US citizen is leaving the country, and there is no requirement to report his/her new address to the State department or other US government entity, there remains a measure of direct responsibility on the voter to inform his/her election official of his/her new address overseas and desire to receive a ballot. This holds true for each time the voter changes his/her address. In effect, address maintenance is essential with or without universal voter registration rights. Not all critical aspects of UOCAVA evaporate.

An effective ballot request system for overseas and military voters to support the necessary address update and "voter status and type" update to the database must be taken into

account when designing any new systems. This same system might be used for when such voters return to the U.S. and re-establish domestic voter status.

If new UVR tracking systems are developed, they should be planned from the start to accommodate "voter status" (local, domestic absentee, overseas elector, military absentee, etc.) and to track multiple addresses (voting residence, forwarding address, current address). Other key voter data, such as "temporarily or indefinitely" overseas, plays a determining role in whether the voter is provided with a full-state or federal-only ballot.

The US Census does not collect data on citizens overseas and the USPS does not forward to overseas addresses. The default best starting list for overseas voters is likely a compilation of existing UOCAVA registration lists from past and current years, coupled with proactive outreach to the voters to confirm their locations. State department lists maintained by local U.S. Consulates and Embassies around the world may also provide additional voter data. Military voter addresses would likely be derived from and regularly updated through integration with the DEERS database.

With the current system, registered UOCAVA voters fall off the voting rolls every four years if they do not re-file the FPCA form. Most voters do not understand the four-year / two-year election cycle timing and many forget where they stand on this point. If voters were considered "registered" and the overseas process was largely designed, not to determine eligibility, but to provide them their ballot in a timely manner, perhaps the information requested on the ballot request form could be altered with security in mind - enough to make it perfectly safe to send overseas by electronic means.

III. POST ELECTION SURVEY

In 2008, for the third straight election cycle, OVF sponsored its unique post election survey of overseas and military voters. Launched on Election Day, November 4, 2008, the survey was completed by 24,031 UOCAVA voters as of January 12, 2009.¹ The 47-question voter survey focused primarily on issues affecting their voting experiences. The data will support the efforts of OVF, election officials at the local, state and federal levels, scholars and advocates to understand and improve voting and registration for citizens who live abroad or serve in the military. In the following pages we review the findings of the survey and compare it to OVF's previous surveys from 2004 and 2006.

A. METHODOLOGY AND DATA CONSIDERATIONS

Three different groups took the online voter survey. The content and form of the survey remained constant across the three groups. In the first group, OVF invited 105,759 individuals to complete the survey. These invitations allowed one-time completion of the survey and were auto-disabled after use or if forwarded. This list of individuals was compiled from the OVF mailing list. 23,369 (22.1%) of those invited completed the survey. In the second distinct group, OVF set up an open URL to the survey for the use of any overseas voter wanting to complete the survey. 529 individuals completed the survey, but were not specifically invited by OVF. In the final group, 133 students were sent the survey URL by their study-abroad program office. The total number of respondents is 24,031.

Because Americans are not required to register when they move overseas, it is not easy to identify the exact number of overseas voters and how to contact them. Thus, it is difficult to gather a completely representative random sample of respondents. In light of these limitations OVF was committed to gathering as many responses as possible. OVF is a nonpartisan organization and its services are customized and offered through many other types of websites ranging from Secretaries of State websites to overseas and domestic voter outreach

¹ The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), first enacted in 1986, is the current federal legislation for overseas and military absentee voters.

organization sites to political campaigns. Therefore, it was possible to develop the survey invitation list from multiple sources. With a variety of list sources, combined with its sheer size and the resulting number and diversity of the respondent pool, we believe the sample offers strong representation of the target group. Respondents lived across 186 countries and voted in all states and territories.

Partially completed surveys were not included in the calculated response rates or analyses. Unless indicated, the reported results are for the total number of respondents from all three groups.

B. RESPONDENT PROFILE AND DEMOGRAPHICS

Although there was greater youth participation than in previous years, the respondent profile was consistent with past surveys. The average respondent was over the age of 30 and highly educated. Respondents have generally lived overseas indefinitely, have lived overseas longer than 10 years and live overseas for personal reasons (i.e. marriage or preference).

B.1. Voter Respondent Types

Nearly three-quarters of respondents to the survey live outside of the U.S. indefinitely or permanently. This is a decrease from 2006, which indicates that OVF is successfully reaching out to Americans who are living abroad temporarily. While military voters continue to be under-represented in our survey, they made up three times the share in 2008 than they did in 2006, which is a sign that OVF's voter services are increasingly being utilized by military voters and their families.

TABLE 1: VOTER RESPONDENT TYPES

Description	2008	2006
U.S. citizen residing outside of the U.S. Temporarily	23%	14.4%
U.S. citizen residing outside of the U.S. Indefinitely or Permanently	72%	80.9%
Active Duty Military or Spouse or dependent of Active Duty Military	4.8%	1.6%

NOTE: Respondents were asked, "Which of the following best describes you?" Question was not asked in 2004. Figures represent percent of respondents.

Other notable characteristics include:²

- 41% of respondents have lived overseas for more than 10 years (compared to 56% in 2006, and 46% in 2004). Once again, the second largest group of respondents has lived overseas for between 5 and 10 years (17%).
- 76% of the respondents had higher education degrees (i.e. a BA, MA, PhD, or Post Doctorate).
- 16.9% of the respondents were under the age of 30.
- In regards to the respondents' profile, the results for the Youth Sample (between the ages of 18 and 29) are different from those of the merged data, in that 77% of youth voters are outside the U.S. temporarily and 21% are outside the U.S. indefinitely. Youth voters have lived outside the U.S. for a short amount of time and are predominantly female (72%). Among youth voters, 88% were either first time voters or voting outside the U.S. for the first time.
- The primary reasons for living overseas were "marriage/partnership" (29%), "employment" (24%), and "personal preference" (15.3%).

B.2. Where Survey Respondents Live

The data includes respondents from 186 countries, which is an increase from 142 countries in 2006. However, 61.1% of voters lived in just 10 countries; most in Western Europe. This result represents a larger dispersion than in 2006, when 70% of respondents lived in 10 countries.

² These characteristics are slightly different when we consider OVF website users only. See Section V for more information. These differences demonstrate that we were able to reach a wider audience outside of OVF.

TABLE 2: WHERE SURVEY RESPONDENTS LIVE

Country	2008	2006	2004
Canada	14%	25%	26%
United Kingdom	13%	11%	13%
Germany	8%	8%	6%
France	5%	6%	6%
Israel	5%	2%	3%
Australia	4%	5%	5%
Switzerland	4%	3%	5%
Japan	3%	4%	4%
Italy	3%	3%	3%
China	2.6%	1%	1%

NOTE: Respondents were asked, "In which country were you living at the time of the November 4, 2008 General Election." Figures represent percent of respondents.

The number of respondents in China and Israel increased from 2006 and 2004. Note that two Asian countries, Japan and China, are now in the top 10 of survey respondents reflecting shifts in US overseas population. However, Mexico is still underrepresented in the sample. Although approximately 1 million Americans live in Mexico, only 2.3% of our respondents live in this country. Americans in Mexico report to OVF that not only is the postal mail service unreliable and slow, but telecom and Internet services are also not widely available. Due to the lack of a reliable communications infrastructure we see lower participation than one might expect in Mexico and Latin America as a whole. 319 respondents (1.3%) reported being "active duty military within the U.S."

B.3. Voting History

Voting history can impact the number of problems that a respondent experiences. **52.3% of respondents had voted previously either overseas or as domestic US voters.**

TABLE 3: VOTING HISTORY

Possible Responses	2008	2006	2004
First time voting	13.9%	4%	25%
Voted before in the US, but never as an overseas voter	33.8%	11%	48%
Voted before, but only as an overseas voter	10.3%	18%	3.4%
Voted before in the U.S. and as an overseas voter	42.0%	67%	20%

NOTE: Respondents were asked, "What is your voting history?" Figures represent percent of respondents.

If we compare 2004 and 2008, we can see that OVF is reaching more experienced voters. This may reflect repeat users of the OVF website. Since 2006 was a congressional election, the election tended to draw more experienced voters with a keen interest in politics.

B.4. Where UOCAVA Voters Registered

Voters who participated in the survey came from all 50 states, with the highest number of UOCAVA registrants coming from California, New York, Texas, Florida and Pennsylvania. This is unchanged from the 2006 results.

TABLE 4: WHERE VOTERS WERE REGISTERED

State	2008	2006	2004
California	14.1%	17%	15.8%
New York	12.6%	17%	12.8%
Texas	8.6%	5%	4.7%
Florida	4.7%	4%	4.1%
Pennsylvania	4.1%	5%	4.9%
Illinois	3.8%	5%	4.9%
Massachusetts	3.7%	4%	4.7%
New Jersey	3.7%	3%	
Ohio	3.3%	3%	
Minnesota	3.3%	3%	

NOTE: Respondents were asked, "In which U.S. state or territory did you register or would you have registered to vote?" Figures represent percent of respondents to the question.

The most significant change is the number of survey respondents from Texas. We attribute this to the state's launching of their customized OVF State Hosted System. After the launch of the system, Texas rose to the top of the OVF state website usage ranking.

C. UOCAVA VOTER REGISTRATION ISSUES

Section C highlights how **increasing numbers of voters are using the Internet to register to vote.**³ While the sample of this Internet-based survey may be skewed toward those most likely to use the Internet to register, the change from previous years suggests that this is not wholly attributable to our mode of collection.

As seen below in Table 5, 84% of respondents sent in a registration form or ballot request. These results are similar to 2006 and 2004. Approximately 4% of respondents were still not able to complete the process.

TABLE 5: VOTER REGISTRATION/BALLOT REQUEST

Registration	2008	2006	2004
I sent in a voter registration/request form	20150 83.9%	66%	88%
I did not send in voter registration/request form	1100 4.6%	21%	3%
My ballot arrived without filing a new form	1763 7.3%		
I tried, but was unable to complete the process.	1018 4.2%	4%	9%

NOTE: Respondents were asked, "Did you file a voter registration/ballot request form for any of the 2008 elections?" "My ballot arrived without filing a new form" was not a response option in the 2006 and 2004 surveys. Figures represent percent of respondents to the question.

C.1. Top 5 Registration/Ballot Request Methods

In comparison to 2006, when 31% of the voters continued to use a combination of manual and online voter registration/ballot request methods, in 2008 the majority of respondents used website programs to complete their request forms.

³ Because so many respondents used the OVF website to register, the case of registration for overseas voters as a whole may be overstated.

TABLE 6: TOP REGISTRATION METHODS

Method	2008	2006	2004
OVF Website	67%	41.3%	49.2%
Paper Provided by Local Election Office	6.6%	30.9%	
FVAP Website	5.7%	12.6%	18%
State Website	5.2%		
Youth Vote Overseas Website	3.2%		
FPCA Form			17.9%

NOTE: Respondents were asked, "Which of the following did you use to complete the registration/request form for the 2008 election?" "State Website" and "Youth Vote Overseas Website" were not response options in the 2006 and 2004 surveys. "FPCA Form" was not a response option in 2006 and 2008. Figures represent percent of respondents to the question.

C.2. Sending in the Registration/Ballot Request

More individuals also used electronic methods such as fax and email to return their ballot requests than in 2006 (18.2% in 2008 versus 11% in 2006). However, traditional post was still the dominant method, which could have resulted in a higher risk of missed deadlines and late ballots. Combined physical delivery methods represented 80% of registration/ballot request return in 2008.

TABLE 7: METHODS FOR SENDING IN REGISTRATION/BALLOT REQUESTS

Method	2008	2006
Regular Mail	59.9%	73%
Email	5.9%	5%
Certified Mail	5.5%	7%
FAX + original by mail	4.7%	6%
FedEx, DHL or other commercial courier	4.3%	2%
Email + original by mail	3.9%	
FAX	3.7%	
Delivered in person or mailed in the US	3.2%	2%
Embassy or Consulate mail pouch	2.3%	2%
Express Your Vote (OVF/FedEx)	2.1%	
Military Post	2.0%	2%
Other	1.9%	

NOTE: Respondents were asked, "How did you return your voter registration/ballot request form?" In 2004 questions about the

method for sending in registration request was combined with questions about ballot return. See Table 15 for details. Figures represent percent of respondents to the question.

The increased use of email and fax may speed up the registration process, but it also introduces privacy and security issues of which many voters may not be aware. The NIST report recommended that, "While the threats to telephone, e-mail, and web can be mitigated through the use of procedural and technical security controls, they are still more serious and challenging to overcome."⁴ Although online solutions for UOCAVA voting are attractive from many perspectives, OVF continues to recommend caution. Appropriate online solutions should not risk the security, confidentiality, or identity of voters.

As seen below in Table 8, how a registration form/ballot request was sent in also influenced whether or not a voter received a ballot. 23.8% of respondents who sent in a request by email did not receive a ballot and 21.5% of respondents who used fax did not receive a ballot. Voters don't always realize that an emailed or faxed request in most states does not exempt the voter from sending in the signed original. "In effect it is twice the work and therefore we are not actively encouraging it," stated Katie Blinn, Assistant Director of Elections, Washington State Secretary of State. "Our state still requires that the signed form arrive by the deadline, regardless of the earlier electronic transmission, and for voters this practice can be misleading."

⁴ Regenscheid, Andrew and Nelson Hastings. 2008. "A Threat Analysis on UOCAVA Voting Systems." National Institute of Standards and Technology, US Department of Commerce.

TABLE 8: METHODS FOR SENDING IN REGISTRATION/BALLOT REQUESTS

How did you return your voter registration/ballot request form?	Did you receive a ballot from your U.S. election office?		
	Yes	No	Total
Regular Mail or International Mail	10347 62.2%	1638 48.8%	11985 59.9%
Certified Mail	951 5.7%	151 4.5%	1102 5.5%
Express Your Vote (OVV/FedEx)	320 1.9%	91 2.7%	411 2.1%
FedEx, DHL or other commercial courier	690 4.1%	167 5.0%	857 4.3%
Military Post	357 2.1%	47 1.4%	404 2.0%
Embassy or Consulate mail pouch	357 2.1%	101 3.0%	458 2.3%
FAX	576 3.5%	156 4.7%	732 3.7%
FAX + original form by mail	734 4.4%	203 6.1%	937 4.7%
Email	854 5.1%	324 9.7%	1178 5.9%
Email + original form by mail	631 3.8%	139 4.1%	770 3.9%
Sent it to FVAP	32 .2%	11 .3%	43 .2%
Emailed it to the FVAP	59 .4%	38 1.1%	97 .5%
Delivered in person or mailed in the US	541 3.3%	103 3.1%	644 3.2%
Other	190 1.1%	185 5.5%	375 1.9%
Total	16639	3354	19993

NOTE: Figures represent percent of respondents. Respondents were asked, "How did you return your voter registration/ballot request form?" "Did you receive a ballot from your U.S. election office for the Nov. 4, 2008 General (Presidential) Election?"

C.3. What Gets in the Way of Registering to Vote?

4.6% of respondents did not send in a registration form. Below are the top five reasons that voters did not send in a form. Compared to 2004 and 2006 more respondents missed the deadline for voter registration and ballot requests. Furthermore, many survey participants are still having problems obtaining information during the registration and ballot request process.⁵ The higher number of infrequent or first-time voters in 2008 compared to the Congressional election of 2006 may explain some of this increase.

TABLE 9: TOP 5 REASONS A BALLOT REQUEST WAS NOT SENT IN

Reason	2008	2006	2004
I thought I was still registered.	339 18%	154 20%	
"Other"	247 22%	423 46%	218 71%
I missed the deadline.	208 25%	194 20%	51 17%
The process seemed too complicated.	170 16%	81 9%	
I didn't feel my vote would matter.	99 9%	89 10%	22 7%

NOTE: Respondents were asked, "Why didn't you send in a voter registration/ballot request form for the 2008 elections. (Check all that apply.) Percentages are based on the number of respondents to the question and not the number of respondents for the survey. Figures represent percent of respondents to the question and sample size.

4.2% of respondents tried to send in a voter registration/ballot request, but were unable to complete the process. What hindered them? As we can see below, voters are still confused about the registration/ballot request process, and despite increased efforts by OVF, FVAP and PEW, many individuals are still missing registration deadlines.

⁵ This result is also reflected in the comments left on the OVF website. Many voters contacted OVF using misinformation from friends in other states. "Because my friend from state X..." Variations in state laws cause confusion and dampen registration.

TABLE 10: TOP 5 OBSTACLES TO COMPLETING THE VOTER REGISTRATION PROCESS

Obstacle	2008	2006
I missed the deadline.	358 36%	45 27%
Problems with process	348 34%	
I thought my form was sent online.	208 20%	
I didn't mail my original form.	158 16%	
I didn't know who to contact.	137 13%	28 17%

NOTE: Respondents were asked, "What prevented you from completing the voter registration/ballot request process? (Check all that apply.)" Question was not asked in 2004. Figures represent percent of respondents to the question and respondent size.

When encountering these obstacles, voters develop a number of questions. Hypothetically, individuals who have voted before may experience fewer problems because they have been through the process before. However, as seen below in Table 11, 48% of those respondents that had questions or problems with the process were experienced overseas voters.

TABLE 11: VOTING HISTORY AND REGISTRATION QUESTIONS

"In the voter registration/ballot request process, did you have any questions and/or problems?"

Did you have a problem?	What is your voting history?			Total
	First Time Voter or First Time Overseas Voter	Experienced Overseas Voter		
Yes	2601 (52%)	2387 (48%)		4988
No	7341 (49%)	7745 (51%)		15086

NOTE: The responses for the question "What is your voting history?" are collapsed into two categories. "First time voters" and "Voted before but never as an overseas voter" are put into one category. "Voted before but only as an overseas voter" and "Voted both in the U.S. and as an overseas voter" are put into the second category.

In Table 12 below, we see that the nature of the questions that first time voters and experienced voters have differ. Experi-

enced voters had more questions about re-registration or filing requirements. First time voters had more questions about their voting address and electronically produced forms. However, it is telling that even experienced overseas voters still have problems with registration and ballot requests. Both groups had trouble identifying appropriate deadlines.

TABLE 12: VOTING HISTORY AND REGISTRATION QUESTIONS

"What did your questions and/or problems concern? (Check all that apply)"

Type of Problem	What is your voting history?	
	First Time Voter or First Time Overseas Voter	Experienced Overseas Voter
Voting Eligibility	202 (5%)	159 (4%)
Voting rights for Citizens who never lived in the U.S.	85 (2%)	62 (2%)
Registration Deadlines	601 (14%)	469 (13%)
Re-Registration or filing requirements	360 (9%)	508 (14%)
Misunderstandings in the form was transmitted electronically on paper	492 (12%)	375 (10%)
My US voting residence	421 (10%)	278 (7%)
Personal Identification Requirements	193 (5%)	147 (4%)
Notarization or Witness requirements	123 (3%)	129 (3%)
Election office mailing address	187 (4%)	133 (4%)
My election office required additional forms	134 (3%)	98 (3%)
Mistakes on the forms	111 (3%)	134 (4%)
Tax Implications	33 (1%)	40 (1%)
Other	1287 (30%)	1208 (32%)
TOTAL	4229	3740

NOTE: The responses for the question "What is your voting history?" are collapsed into two categories. "First time voters" and "Voted before but never as an overseas voter" are put into one category. "Voted before but only as an overseas voter" and "Voted both in the U.S. and as an overseas voter" are put into the second category. Respondents were asked, "What did your questions and/or problems [regarding the registration/ballot request process] concern? (Check all that apply.)"

From the above, we can conclude that straightforward, easy to access information about the process is the key to increasing registration. If even experienced overseas voters are having problems, then both government agencies and NGOs need to ensure that deadlines and forms are explained consistently on all websites.

C.4. Registration Satisfaction Rate and Confirmation

Receiving a confirmation of their ballot request appears to be an important determinant of voter satisfaction. 42% of respondents received confirmation of their ballot request. 75.6% (or 14,918 out of 19,731 participants) indicated that they were either “very satisfied” or “satisfied” with the voter registration and ballot request process. 14.2% were either “dissatisfied” or “very dissatisfied.”

These two variables appear to be related and positively correlated.⁶ As can be seen in Table 13 below, voters that receive confirmation of their registration are more likely to be satisfied with the process.

TABLE 13: REGISTRATION CONFIRMATION AND VOTER SATISFACTION

Satisfaction with registration	Did you receive confirmation that your registration form was accepted?	
	Yes	No
Very Satisfied	4789 (58%)	3587 (31%)
Satisfied	2370 (29%)	4172 (36%)
Neutral	509 (6%)	1513 (13%)
Dissatisfied	310 (4%)	1155 (10%)
Very Dissatisfied	314 (4%)	1012 (9%)
Total	8292 (100%)	11439 (100%)

NOTE: Respondents were asked, “Did you receive confirmation that your registration form was accepted?” and “How satisfied were you with the registration process?”

Providing confirmation for registration and ballot requests is costly, however it not only improves voter satisfaction, but might also increase absentee voting. These results are sup-

⁶ There is a Cramer’s V of .281 with a significance of .001

ported by the comments that respondents made during the survey:

- *“...all states need to institute a receipt policy, to let people know that their registration or ballot was received.”*
“I then was unable to determine whether this [my registration form] was received until I actually received the ballot.”

D. OVERSEAS BALLOT ISSUES

D.1. Reasons Why UOCAVA Voters Didn’t Vote

After registration, the next step in successful absentee voting is receiving a ballot. The FVAP recommends that states send out their ballots 30 to 45 days before an election. Overseas voters who receive ballots two weeks before the election have little time to return them via traditional post. In 2008, 78% of respondents received their ballots. However, as we see in Table 14 below, 39% of voters received their ballots after the middle of October. Although this is better than 2004 when 43% of voters received their ballots late or not at all, it is worse than 2006. Despite the increasing attention paid to the problems of overseas voters, 2008 was worse than the 25% who reported receiving late ballots in 2006. Given that the majority of overseas voters still use traditional post to send in their ballots, many individuals face the possibility that their ballots will not meet return deadlines.

TABLE 14: BALLOT RECEIPT

When did you receive your ballot?	2008	2006	2004
September or earlier	18%	36%	22%
1st half of October	42%	37%	37%
2nd half of October	28%	20%	29%
Week of the Election	9%	5%	
Election Day	1%	1%	5%
After Election Day	1%		
Don’t know/remember	2%		
Never			9%

NOTE: Respondents were asked, “When did your official ballot from your election office for the November 4, 2008 General Election arrive?” In 2004, responses for “Election Day or after” are combined. Figures represent percent of respondents to the question.

Table 14 does not reflect the large number of respondents who reported in comments that they never received a ballot. The question, "When did you receive your ballot?" was posed only to voters who indicated in an earlier question that they had received a ballot. Fully one-fifth, 22% of voter respondents, claimed they did not receive their ballot at all. But just one third, 35%, of these voters were aware of and used the Federal Write-in Absentee Ballot.

Of those who did receive their official ballots, 6% did not send them in. Slightly over half, 52%, of the total number of voters who did not return their ballots, cited the reason as late ballot receipt. This is consistent with the findings of the 2004 and 2006 Post Election Surveys. The main reasons why voters were unable to vote in 2006 stemmed from the combination of late and non-arriving ballots (45% of the total who did not vote or 20% of the total of all respondents). Thus, although it appears the number of survey participants who wanted to vote may have increased, many continue not to be able to because of late ballots or ballots not being sent to them by their election office. These frustrations were echoed in the comments left by respondents:

- *"I did FINALLY receive a ballot from my county in [state], but it arrived on November 4, and the postmark was October 28. Who thought it was OK to send an absentee ballot out on October 28, knowing that it needs to be postmarked by November 3 (going back to the US) to be counted at all?"*
- *"My ballot arrived only 2 days prior to general election, I would have preferred to receive it earlier in order not to have to pay for express-mailing."*
- *"How unfortunate that I was finally inspired to vote in the 2008 Presidential elections and the ballot did not arrive."*
- *"Registered to vote. Serving in Afghanistan. Never received a ballot. Tried to use the Federal Absentee Write in process - still required me to mail in the ballot and I was out of time. Got screwed by my state and am VERY angry!"*
- *"The mail sent from Iraq seems to arrive without any problems but the mail to Iraq is not delivered consistently. I think [state] should have allowed me to vote electronically, by e-mail or on-line. I am very disappointed to have lost my opportunity to vote because of an inadequate mail system. I even went to the Post Office here where they allowed me to look through the mail and I still couldn't find my ballot."*

- *"I was disappointed not to receive my absentee ballot from my local election office, although they told me in a long-distance phone call from Sweden that I was registered. Many friends here in Sweden experienced the same thing and were consequently too late in submitting an emergency absentee ballot. They unfortunately were unable to vote."*

D.2. Ballot Issues

The number of issues related to the use of ballots appears to have declined since 2006. However, problems remain.

First, 433 respondents reported receiving ballots marked "Sample." This was a problem in one county, and more voters contacted OVF reporting the issue. Although the ballots were valid and should have been used, many voters were understandably confused and some threw them away.

Second, many respondents (97 total) were not sure who they were eligible to vote for, i.e. whether for federal offices only or for state and local offices too. Of those individuals who received ballots, 9.5% received a full ballot when they only expected to vote for federal offices. 7% received a limited ballot when they should have received a full ballot.

As in 2004 and 2006, concerns about signing a ballot affidavit existed. 261 respondents reported affidavits. These affidavits states that the voter was "currently resident" at their stateside voting address. In 2006 OVF recommended simple modifications or clarifications regarding terminology on ballots sent overseas which could make a difference. This recommendation holds. Voters need a small clarification to inform them that their US "voting residence address" is not their "current overseas living address," rather it is their previous US address which is used for voting purposes only.

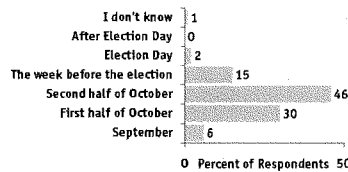
In the comments section several survey participants complained about the required paper size being US standard instead of Din A4, which is used worldwide with exception of Japan, which uses a similar size to Din A4. As the comments demonstrate below, some states format their ballots to US Legal size paper. Thus, even voters in Canada have problems, as they cannot easily get US legal size paper. It appears that printing your own state ballot has introduced a new set of problems.

- "I received my ballot electronically, but the paper size they said I should use doesn't exist in this country. I emailed my county office to see if it was okay to use a different size and they said yes, but seemed a little confused about it. I hope my ballot counted even though it wasn't the same size!"
- "Some pages in my ballot PDF document were landscape format, which made it VERY difficult to print, especially as paper is not US letter size outside of the US. I recommend that all non-military ballots be designed for A4 paper, which is used by everyone else (except Japan uses a modified, very similar size)."
- "The email ballot instructions were to print the ballot on 8 1/2" by 14" inch paper which is nearly impossible to get outside of the US."
- "In this election, a PDF of the ballot was sent via email. I printed it out, but the ballot would not fit on A4 paper. I had to reduce the size to about 90% to get it on one sheet of paper. I filled it in and sent it back via airmail. However, I am doubtful if scanning equipment will properly register the results since the size and positions are different than the actual ballot."
- "It would have been very nice for those of us receiving email ballots to have been able to print them at 8.5x11 instead of 8.5x14 because I had a difficult time finding a print shop that would print at that size. It put off my ability to send my ballot by almost a week."

D.3. Ballot Return

17,418 respondents (72.4% of the entire data set) reported receiving an official ballot and using it. 75% of respondents in 2006 reported receiving a ballot. As in 2006, the majority of voters sent their ballots back during or after the second half of October.

FIGURE 1: BALLOT RETURN



NOTE: Respondents were asked, "When did you return your completed ballot for the November 4, 2008 General (Presidential Election)?"

Similar to 2006, some form of physical post was used to return ballots in 88% of cases. 520 voters (3%) reported using the Express Your Vote (OVF/FedEx) Courier Express Ballot Return Program. The number of respondents using the military post office is low because only 3% of the sample represents military voters.

TABLE 15: METHODS FOR RETURNING BALLOTS

Method	2008	2006	2004
Regular Mail	68%	79%	62%
Certified Mail	7%	7%	21%
FedEx, DHL or other commercial courier	5%	3%	6%
Embassy or Consulate mail pouch	3%	2%	4%
Express Your Vote (OVF/FedEx)	3%		
Military Post	2%	1%	1%

NOTE: Respondents were asked, "How did you return your completed ballot for the November 4, 2008 Presidential (General) Election?" In 2004 questions about the method for sending in registration request was combined with questions about ballot return. Figures represent percent of respondents.

The consistency of return methods overtime indicates that traditional post is the dominant method of ballot return. If we are going to seek ways to "save time" in the overseas voting process, then ballot return may not be the easiest element to change. Although it is a growing trend, only a small percentage of UOCAVA voters use electronic means to return ballots. To gain time in the process, electronic means to deliver the ballots to the voter may be the fastest manner of reducing the overall duration of the voting process.

D.4. Ballot Return Envelopes

Those voters who were able to return their ballots indicated several problems with return envelopes. Election officials should be careful when designing overseas absentee ballot envelopes, and should consider international postal norms. As the difficulty of envelope use increases, then the probability that a ballot will be returned decreases. Over one quarter, 27% of respondents receiving ballots, cited problems with ballot envelopes, and certain problems persist.

TABLE 16: TOP 5 BALLOT RETURN ENVELOPE PROBLEMS

Problem	2008	2006	2004
Postage required / not required	1612 10%	824 25%	505 31%
"USA" not included in address	1527 9%	609 19%	81 3%
Size of the return envelope	591 4%	212 7%	402 23%
Missing ballot secrecy envelope/sleeve	402 2%	78 2%	
Witness or notary requirements	321 2%	96 3%	214 12%

NOTE: Respondents were asked, "Ballot return envelope: Did any of the following cause problems? (Check all that apply.)" Figures represent percent of respondents and sample size.

Many Americans abroad are used to the "Postage not required" stamp on government envelopes. Unfortunately, these envelopes are only valid if the document is mailed within the domestic or U.S. Military Postal system. Many voters either do not put the correct postage on these non-standard, oversized envelopes or overlook the postage entirely. They see the postage-paid insignia, ignore the fine print, and drop it in the mailbox. It begs the question: should civilian absentee and military absentee overseas voters receive different envelopes? Many respondents shared this concern in their comments.

D.5. Satisfaction with the Balloting Process

Despite deadlines and problems with envelopes, 85% of those voters who received a ballot and voted reported being either "very satisfied" or "satisfied" with the process. This is consistent with previous years. We can conclude that satisfaction is fairly high for those that are able to navigate the process and has not changed over time.

TABLE 17: SATISFACTION WITH THE VOTING PROCESS

Satisfaction	2008		2006		2004
	Registration	Balloting	Registration	Balloting	
Very Satisfied	43%	47%	45%	44%	
Satisfied	33%	38%	35%	42%	72%
Neutral	10%	9%	10%	9%	
Dissatisfied	7%	4%	4%	4%	28%
Very dissatisfied	7%	2%	5%	2%	

NOTE: Respondents were asked, "How satisfied were you with the registration aspect / balloting aspect of your November 4, 2008 voting experience?" In 2004 respondents were asked if they were satisfied or dissatisfied with the experience as a whole.

E. FWAB

The Federal Write-in Absentee Ballot (FWAB) is an alternative, downloadable ballot which voters can use in General Elections for the offices of President/Vice President, U.S. Representative, and U.S. Senator, as well as the non-voting congressional representatives from the District of Columbia, Puerto Rico, etc.⁷ The FWAB, by federal law, is accepted by all states and territories.

OVF asked questions about the FWAB to two sets of voters: those who did not get a ballot and used the FWAB, and those who received a ballot but also used the FWAB. 18% of those respondents who received a ballot used the FWAB before getting their ballot.

⁷ A few states allow the FWAB to be used as a combined registration and ballot. Some states also allow use of the FWAB for non-federal and for primary elections.

E.1. Awareness

We asked those respondents (5330) who did not receive a ballot if they were aware of the FWAB. 52% of these voters (2779 respondents) were not aware of the FWAB. 35% were aware of the FWAB and used it and 13% were aware of the FWAB but did not use it. We also asked those voters who received ballots if they were aware of the FWAB. 58% were not aware (8795 respondents).

This appears to indicate a decrease in awareness. In 2006 only 46% percent knew about the FWAB. 14% of the respondents who voted used the FWAB, of which 3% also ended-up sending in their state ballot as well. 48% of respondents in 2004 were aware of the FWAB. These results are summarized in Table 18 below, which collapses the two groups into one.

TABLE 18: FWAB AWARENESS

Awareness	2008	2006	2004
Yes	44%	46%	48%
No	56%	54%	52%

NOTE: Respondents were asked, "The Federal Write-in Absentee Ballot (FWAB) is a ballot option for registered voters whose official ballots do not arrive in time. Were you aware of the FWAB?"

This finding is discouraging. The 2008 efforts of the FVAP, OVF and Pew's Center on the States into building FWAB awareness, do not show significant impact. However, these results may also reflect the high percentage of first time overseas voters to whom the concept of the FWAB is entirely new.

E.2. Access

For the first time, OVF actively promoted the new FWAB and incorporated new questions into its yearly survey. As seen below in Table 19, the majority of respondents received their FWAB via the Internet.

TABLE 19: WHERE DID YOU OBTAIN YOUR FWAB?

Where	Respondents who used the FWAB	Respondents who received a ballot and used the FWAB
Overseas Vote Foundation	62%	38%
Youth Vote Overseas	3%	3%
OVF Admin's Voter Services	4%	1%
Federal Voting Assistance Program (FVAP)	11%	8%
Voting Assistance Center (VAC)	1%	1%
US Consulate or Embassy	6%	4%
Sent by local election office	2%	14%
State Election Website	4%	5%
Other voter registration organization	2%	2%
Political Party	4%	2%
Other	3%	3%

NOTE: Respondents were asked, "Where did you obtain your FWAB?" The total number of respondents for both columns is 5089.

This finding is confirmed in Table 20, which indicates that the majority downloaded an online version of the FWAB.

TABLE 20: PAPER VS ONLINE FWAB

Version	Respondents who used the FWAB	Respondents who received a ballot and used the FWAB
Paper version	14%	33%
Downloaded an online version	86%	67%

NOTE: Respondents were asked, "Did you receive a paper version of the FWAB or did you use and download an online version?" The total number of respondents for both columns is 5182.

E.3. Usage

21.6% of our respondents (5182 individuals) used an FWAB. As we can see in Table 21, the FWAB is used as a last resort by many voters and sent it during the second half of October or later. Those who received a ballot and used the FWAB appear to have used the FWAB earlier out of concern that their ballot was late. Thus, voters are using it after mid-October as FVAP and OVF advise.

TABLE 21: WHEN DID YOU RETURN YOUR COMPLETED FWAB?

When	Respondents who used the FWAB	Respondents who received a ballot and used the FWAB
September	6%	18%
First half of October	22%	32%
Second half of October	37%	32%
Week before the Election	27%	10%
Election Day	6%	2%
I don't remember	2%	7%

NOTE: Respondents were asked, "When did you obtain your FWAB?" The total number of respondents for both columns is 5027.

Approximately 35% of those individuals, who received a ballot but did not use it, said that was because they had already used an FWAB. These voters may have understood that if their official ballot arrives after using the FWAB, they should send it in. Results of the US Election Assistance Commission's Election Day Survey, expected by mid-2009, will provide another view of FWAB usage from the standpoint of election officials.

In Appendix 2 and 3, FWAB usage by state is listed. These tables demonstrate that the largest numbers of FWAB users voted in California, New York, Texas, Florida and Pennsylvania.

F. VOTER OUTREACH

Since the Help America Vote Act of 2002, the U.S. government has attempted to increase and improve information for overseas voters. However, as has been mentioned throughout this report, the need for more straightforward information is still paramount to successful voting. Each state can have different deadlines or additional registration requirements. This can confuse voters and we see that they use a variety of websites for information.

TABLE 22: SOURCES OF VOTER INFORMATION

Top 5 Voter Websites	Number of Respondents
Overseas Vote Foundation	19,268
Political Party (Any)	2,262
Political Campaign (Any)	1,951
American Citizens Abroad	1,788
Youth Vote Overseas	1,171

Top 5 Government Organizations or Websites

	Number of Respondents
Federal Voting Assistance Program (FVAP)	5,295
Local Election Office or Website in US	4,372
State Board of Elections/Secretary of State	3,052
US Embassy or Consulate	2,849
US Department of State	768

NOTE: Respondents were asked, "Which of the following websites did you consult for voting information or assistance? (Check all that apply.)" "Which of the following government organizations or websites did you consult for voting information or assistance? (Check all that apply.)"

As seen above in Table 22, the Overseas Vote Foundation was the number one voter website and the FVAP was the number

one government organization.⁸ An import step in future research is an investigation and comparison of these websites in order to identify information inconsistencies.

F.1. Youth Voters

In 2008 OVF targeted youth voters (i.e. between 18 and 29 years of age) via our special Youth Vote Overseas website. 17% of our respondents were between the age of 18 and 29, of which only 22% had experience voting overseas. Only 23% of youth voters were students studying abroad, of which 64% were involved in undergraduate studies. 10% of youth respondents were born abroad and 17% were working abroad.

86.4% of youth voters sent in a voter registration form. 70% were either "satisfied" or "very satisfied" with the registration process and 80% were satisfied with balloting. Family or friends were the number one consultant for voting information followed by OVF or Youth Vote Overseas. 84% of students found it easy to locate information about overseas voting.

Quotes from young voters:

- *"I think absentee ballots should be sent out earlier. Mine came in LATE October and I was getting really nervous."*
- *"I would have liked some type of email or confirmation that my ballot request was received. I was worried for weeks that I was not going to receive a ballot in time."*
- *"This will be the first time I am voting. I was excited but did not get my ballot I requested."*
- *"It was made very easy because of the help from the administration of my study abroad program."*

It seems young voters found information and registered, but many had to wait nervously for their ballots to arrive. Some never received their ballots, which caused deep disappointment. Receiving ballots in the first or second week of October is just too late for voters who live in Chile, Uruguay, or even Italy (to mention just a few) to return them to the United States by postal mail in order to meet their state's ballot return deadlines. Those who knew about the FWAB were still able to vote, but for those who didn't, as those quoted above, their first election experience was not positive.

⁸ These results may be an artifact of the data, i.e. the OVF email list was used to invite people to take the survey. However, when compared to the open sample, the rankings stayed the same. Voters were not asked about their satisfaction with these websites as they were in 2006 and 2004.

F.2. Military Voters

In 2008 OVF also hosted a special site for military voter services. 1,140 of our respondents were either military voters or spouses and dependents of military voters. 63% of these participants were new to overseas voting. The information resources used by military voters were slightly different than the civilian population. Whereas the majority of respondents used the OVF website to complete their voter registration request, 22.5% of military voters used the FVAP website and 5.7% used a paper form provided by their Voting Assistance Officer (VAO). 18% of military voters used the military post to return their ballot request forms. Only 70% were "satisfied" or "very satisfied" with the registration process and 85% were satisfied with the balloting process.

27.5 % of military voters did not get their ballots, as opposed to the 22% of civilian voters who did not get a ballot. This is an improvement over 2006 when 36% of military voters did not get their ballots. Unfortunately, of those respondents who received a ballot, 40% got their ballots late, which is the same result as 2006.

Given that military voters suffer even more from late ballots, the FWAB option is very important to this set of voters. 59% of military voters are aware of the FWAB option, which is higher than the nonmilitary results. Of those voters who did not receive a ballot, 39% used an FWAB. It appears that FWAB awareness and usage is higher in the military sample than in the civilian sample.

G. STATE SPECIFIC EXPERIENCES: MINNESOTA, CALIFORNIA AND NEW YORK

By examining state specific examples, we can see which states have been the most successful in implementing new policies. These results provide us with direction in making policy recommendations. Below we examine three different states which exhibit variation in voting policies: Minnesota, a "progressive" state; California, a mixed policy state; and New York, a state with traditional overseas voting laws.

Minnesota is a "progressive" state in terms of overseas voting. The deadline for registration is "late" (i.e. November 3), providing the voter with a lot of time. Voters may submit an absentee ballot application by mail, email or fax. Voters may

also choose whether to receive their ballot by mail, email or fax. Regardless of how it is received, ballots must be returned by mail or an express delivery service by Election Day. Furthermore, the Minnesota Secretary of State Office was proactive in reaching out to overseas voters. They had a customized OVF state hosted system, and employed an outreach staff person for UOCAVA voters. There were 785 Minnesota respondents to the survey.

California, on the other hand, has a mixture of progressive and standard policies on overseas voting. The state features a late ballot request deadline for registered voters (October 28). They allow ballot requests to be transmitted by fax, but not by email. However, faxed new voter registration/ballot request forms must arrive by October 20 and be followed by original, signed forms in the mail. Ballots are sent via traditional post. There were 3,377 California respondents to the survey.

Finally, New York is the least progressive of these three states in their voting materials transmission options. In addition, they have a very late primary, which often results in ballot being sent out late to UOCAVA voters. The registration deadline was earlier (i.e. October 10 for unregistered voters) and fax or email requests are not permitted. Furthermore, if a ballot mailing envelope lacks the required postmark or other date/time marking or indicia, it should be witnessed when signed. There were 3,016 New York respondents to the survey.

Only 28% of Minnesota voters reported receiving their ballots late. 32% of California voters and 48% of New York voters reported late ballots.⁹ 37% of New York voters who had a late ballot used an FWAB, compared to 34% in California and 36% in Minnesota. As seen below in Table 23, Minnesota voters also appear more satisfied with the voting experience.

TABLE 23: SATISFACTION WITH THE VOTING PROCESS

	Percent of Respondents Who were "Satisfied" or "Very Satisfied"	
	Registration	Balloting
California	73.6%	80.9%
Minnesota	81.4%	87.2%
New York	71.1%	84.5%

NOTE: Respondents were asked, "How satisfied were you with the registration aspect / balloting aspect of your November 4, 2008 voting experience?"

The progressive policies of Minnesota appear to work. Minnesota voters get their ballots on time and when they do not, they are aware of the FWAB and use it. They are also more satisfied with the voting process.

⁹ Ballot arrival by state is summarized in Appendix I.

IV. 2008 LOCAL ELECTION OFFICIAL SURVEY REPORT

A. INTRODUCTION

Local election officials (LEOs) are the frontline administrators of elections in the United States. Our goal in this survey is to examine the various issues that LEOs encounter in serving voters who are covered by the Uniformed and Overseas Civilian Absentee Voting Act (UOCAVA). By gathering information on the current problems that are encountered by LEOs, Overseas Vote Foundation (OVF) hopes to raise awareness and suggest ways in which such problems can be ameliorated. OVF conducted its first survey of LEOs after the 2006 mid-term election.

Following the 2008 general election, OVF once again surveyed LEOs in the United States. The 46-question survey covered a wide variety of overseas and military voting issues. Among the notable results:

- 45% of LEOs said that they saw a noticeable increase in both military registration/ballot requests and civilian registration/ballot requests. Only 10% of LEOs witnessed a noticeable drop in registration/ballot requests for military voters, and only 8% saw a noticeable drop in registration/ballot requests for civilians.
- 33% of the responding jurisdictions reported sending out a record number of overseas and military ballots in 2008.
- 36% of LEOs said they saw an increase in the use of the Federal Postcard Application (FPCA) for registration/ballot requests versus other forms, although 17% said they required information in addition to the FPCA.
- Problems with voter registration and a voter's ability to vote persisted from 2006 into 2008. The most common reason cited for rejecting registrations, ballot requests, and ballots was missed deadlines. This provides more evidence of the longstanding problems associated with getting ballots and other materials back and forth over long distances in traditional postal delivery. Incomplete forms and missed signatures continue to be a problem, particularly in those states that insist on witnessed or notarized signatures.
- LEOs expressed confidence that their processes were working well, and most do not think changes need to be made to the system. 91% said the training they received was sufficient. However, OVF has concerns that the acceptance of the current status of UOCAVA voting administration could allow the problems cited above to persist long into the future or slow the rate of improvement. Impetus for change coming from the LEO level is a vital component to developments in the UOCAVA program.
- The forms of communication used by LEOs are changing rapidly. A majority now say that email is their primary form of communication, almost twice what was reported in 2006. The increasing utilization of email is a major step in overseas voting as it cuts out the lag time of normal postal mail communication and significantly improves the communications between LEOs and voters. In many individual cases, the speed of email communications is the enabler of the UOCAVA franchise. The acceptance of this online technology is a marked advancement since 2006. Unfortunately, email ballot requests combined with signature requirements can lead to confusion and even more voters falling out of the process.

B. SURVEY RESPONSE RATE

The survey was sent to 4,944 local election officials in jurisdictions around the US. The survey was issued through an online survey program that provided a unique one-time use URL link to each participant in the survey. State-level election officials did not receive survey invitations. All 50 states, the District of Columbia, American Samoa, Guam, Puerto Rico, and the Virgin Islands were included in the survey distribution. The survey ran from December 5, 2008 through January 12, 2009. 1,025 fully completed surveys were received, resulting in a 20.7% response rate.¹ Partially completed surveys were not included in the results analysis.

We received responses from 48 states, as well as Guam and Puerto Rico. As can be seen below in Table 1, 53% of our

¹ In 2006, 3,814 LEOs were invited to complete the survey. 690 fully completed surveys were received resulting in an 18% response rate.

responses came from just 10 states. However, this represents a higher dispersion than in 2006, which indicates that OVF was able to reach a wider variety of LEOs. 94% of these respondents reported that they were either the election official in charge of overseas and military absentee voting in the jurisdiction or one of several officials in charge.

TABLE 1: TOP RESPONDING STATES

State	2008	2006
Wisconsin	16%	29%
Texas	7%	5%
Connecticut	5%	2%
Virginia	5%	3%
Vermont	4%	2%
North Carolina	4%	5%
Ohio	3%	2%
Missouri	3%	0%
Georgia	3%	2%
Tennessee	3%	2%

NOTE: Figures represent percent of respondents.

C. UOCAVA VOTER PARTICIPATION: REGISTRATION AND BALLOT REQUESTS

Although the relative size of each LEO's jurisdiction varied, the majority had fewer than 100,000 registered voters. Of the surveyed LEOs, 73% of respondents had 0 to 24,999 registered voters, 13% had 25,000 to 49,999 registered voters, and the remaining 14% had more than 100,000 registered voters in their jurisdictions.

82% of survey respondents (1006) reported an estimated 0 to 99 ballot requests from military voters in their jurisdiction for the 2008 General Election. This represents a 2% increase from the 2006 Midterm Elections. Another 14% estimated 100 to 499 requests. The remaining 4% estimated that there were more than 1,000 military requests, which is similar to the 2006 sample.

Although the number of ballot requests is consistent from 2006 to 2008, when asked if they noticed an increase or decrease in military ballot requests, 45% said that they noticed an increase, which is comparable to the 50% increase that LEOs experienced in 2006. Only 10% of LEOs said they saw

a decrease in registration and ballot requests from military voters. This may be because the reporting jurisdictions are so small that an increase, for example from 20 to 90 requests, is significant.

Of the sampled LEOs approximately 87% estimated that 0 to 99 civilian voters requested ballots in their jurisdiction for the 2008 General Election. Another 8% estimated that 100 to 499 civilian voters requested ballots in their jurisdictions, and 5% projected that more than 1,000 overseas civilians requested ballots. Similar to estimates of military requests, when asked if there were increases or decreases in civilian registrations and ballot requests, 45% said they saw a noticeable increase in overseas civilian registrations and ballot requests. Only 8% of LEOs said they saw a decrease in civilian overseas voting registration and ballot requests.

TABLE 2: ESTIMATED BALLOT REQUESTS FROM OVERSEAS CIVILIAN AND MILITARY VOTERS

	Jurisdiction Size			Total
	1 to 24,999	25,000 to 99,999	More than 100,000	
Total Overseas Civilian Voters				
Under 100	71.1%	14.3%	1.2%	86.5%
100-999	2.0%	3.5%	5.0%	10.5%
Over 1,000	0.3%	0.6%	1.6%	2.5%
Don't Know	0.0%	0.4%	0.1%	0.5%
	Jurisdiction Size			
	1 to 24,999	25,000 to 99,999	More than 100,000	Total
Total Military Voters				
Under 100	70.7%	10.0%	0.8%	81.5%
100-999	2.7%	8.0%	5.3%	15.9%
Over 1,000	0.0%	0.6%	1.7%	2.3%
Don't Know	0.0%	0.2%	0.1%	0.3%

NOTE: Data represents percentage of respondents to the questions, "How many overseas civilian voters / military voters in your jurisdiction do you estimate requested ballots for the 2008 General Election?" There are 1005 respondents to the civilian question and 1006 respondents to the military question.

These results are summarized above in Table 2, which reports the results according to the size of the LEO's jurisdiction. As we see can see, the majority of LEOs reported that fewer than 100 overseas civilian or military voters requested ballots in 2008. These results are consistent with the 2006 survey and suggest a strong growth trend in UOCAVA voter participation. However, 33% of LEO did report sending out a record number of ballots in 2008.

As predicted in the 2006 LEO report, the 2008 election witnessed an increase in overseas voters. However, although the number of overseas registrations and ballot requests continues to go up, Table 2 illustrates one of the problems confronting calls for reform of overseas voter legislation and processes. In many jurisdictions the number of overseas voters is still not sufficient to trigger the additional administrative support voters need to register and vote. Furthermore, it remains to be seen if this record level of turnout can be maintained or whether participation will decrease in the next election.

D. LEO PROCESSES: REGISTRATION AND BALLOTING

LEOs encounter a number of complex problems when attempting to register overseas voters and send them their ballots. OVF asked election officials about the processes of overseas voting in order to help identify areas that work well, as well as areas that need improvement.

D.1. Sending Ballots

The first step in the process of voting is registration. UOCAVA specifies that an FPCA registration form is valid for four years during which time the election official should continue to send ballots. However, when faced with the challenge of UOCAVA address maintenance and the enormity of waste caused by sending ballots to 'dead addresses,' many jurisdictions insist on some form of a 'ballot request' as well as registration. There is great inconsistency amongst jurisdictions as to how to

balance even applicability of the law with practical problems surrounding address maintenance for UOCAVA voters.

As seen in OVF's 2008 Post Election UOCAVA Voter Survey, experienced voters had many questions about registration and re-filing requirements.² 57% of election officials reported that overseas and military voters who registered in 2006 received a 2008 ballot without filing a new form. However, only 7.3% of voters reported getting a ballot without filing a new form.

19.5% of LEOs said that if a person registered to vote in 2006 and contacted the LEO in any manner (mail, telephone, fax, and email) then a ballot was sent to them. In only 6% of cases did election officials require that a voter who registered in 2006 file a new ballot request in order to receive any 2008 ballot. As seen below in Table 3, these results are consistent with our 2006 findings. This indicates that few jurisdictions have changed their requirements since 2006.

TABLE 3: REGISTRATION SYSTEM FOR PREVIOUS VOTERS

Registration System	2008	2006
Those who registered in the last election received ballots without filing a new form	57%	59%
Those who voted in the last election were required to file a new ballot request	6%	5%
If they were registered and contacted us, we sent a ballot	20%	17%
We did not have any overseas voters	7%	
I don't know	4%	2%
Other	6%	16%

NOTE: Respondents were asked, "Which of the following best describes your system for sending ballots to overseas and military voters who registered previously?"

When we examine these responses by jurisdiction size, then the result is also similar to 2006. Larger jurisdictions are more likely to automatically to send a ballot than smaller jurisdictions. This may be a result of the ability to register as a 'permanent' overseas absentee voter in these jurisdictions or a variation in the maintenance of active voter status and addresses.

² See section C.2 of the OVF Post Election UOCAVA Voter Survey.

D.2. The Use of Federal Postcard Applications

The Federal Postcard Application (FPCA) "serves as an application for registration and/or request for absentee ballot for all persons covered by the Uniformed and Overseas Citizens Absentee Voting Act."³ Of the sampled LEOs, 76% said that most overseas and military voters use the FPCA to register to vote/request their absentee ballots in their jurisdiction. This represents a 5% increase over the 2006 results. Furthermore, 36% of LEOs said they have seen an increase in the usage of FPCAs by voters since the 2004 Presidential Election. This increase may be attributable to new Internet-based UOCAVA voter services, which use the FPCA as the standard form across all states.

The specific requirements regarding FPCA completion by the voter vary by state, and several states require additional information, such as additional identification (social security number, driver's license, etc), additional proof of citizenship, additional proof of residency, and additional address information.⁴ These varying requirements can confuse voters. 17% of LEOs said some other form of additional information was required. Table 4 below summarizes the top five additional requirements. For example, 70% of those jurisdictions that have additional requirements demand additional identification.

TABLE 4: TOP 5 ADDITIONAL REGISTRATION REQUIREMENTS

Requirement	2008	2006
Additional Identification	70%	25%
Date of Birth	43%	
Other	29%	44%
Additional Address Information	17%	47%
Additional Proof of Previous Residency	7%	19%

NOTE: Respondents were asked, "Does your jurisdiction require a voter to submit any information in addition to what is required on the FPCA? (Check all that apply.)" Data entries represent percent of respondents to the question. 168 respondents indicated requirements in 2008 and 32 respondents in 2006. Because respondents were allowed to check multiple responses, percentages do not add to 100.

³ Federal Voting Assistance Program, 2008-09 Voting Assistance Guide, http://www.fvap.gov/resources/media/appendix_f.pdf.
⁴ *Ibid.*

When a state requests additional information, it adds processing time to the voter registration process and another opportunity for incomplete or invalid forms to block a voter from registering on time.

D.3. Obstacles to Voting

As seen in section C.3 of the OVF 2008 Post Election UOCAVA Voter Survey, voters most often cited "still thought I was registered" and "missed deadline" as the reasons for not submitting a ballot request. Of those voters that could not complete the registration process, deadlines and the complicated process hindered them.

LEOs were asked to identify the top three reasons a registration form and/or ballot request was rejected during this election cycle, as seen in Table 5 below. These results show a doubling of rejection rates due to missing signatures when compared to the 2006 LEO survey. This may be cause for concern.

TABLE 5: REASONS FOR REGISTRATION FORM REJECTION

Registration Forms: Reason for Rejection	2008	2006
Missed deadline: Form arrived too late	49%	50%
Form was Incomplete	36%	36%
Signature and/or date missing	29%	15%

NOTE: Respondents were asked, "Identify the top three most common reasons for rejecting registration forms and/or ballot requests from overseas and military voters in your jurisdiction?" Data entries represent percentage of respondents.

LEOs were also asked to identify the top three causes of overseas and military voters' not being able to vote, as seen in Table 6 below. The results in Table 5 and Table 6 reflect voter concerns with missing deadlines. However, it appears again, consistent with the data in table 5 above, that missing signatures is an increasing problem. This could be attributed to the increased use of email and fax as a form of registration/ballot request transmission. In nearly all states, election officials require that new UOCAVA registrations send in an original FPCA form. Many voters do not send the signed

original after faxing or emailing their form. Regardless of the electronic transmission, missing signatures or dates is in most cases, a problem that must be fixed through the postal system, which can add a significant time hurdle to the process.

TABLE 6: INABILITY TO VOTE

Reason for Voters' Inability to Vote	2008	2006
Missed registration/ballot request deadline	42%	36%
Out-of-date mailing address	40%	44%
No signature and/or date on the ballot or ballot envelope	26%	18%

NOTE: Respondents were asked, "Identify the top three causes of overseas and military voters' inability to vote in your jurisdiction?" Data entries represent percentage of respondents.

When given the opportunity to expand on common problems many LEOs cited problems with the delivery and return of ballots. This can be attributed to invalid address information, problems with the delivery of ballots in some countries, and errors by the local election offices.

The most frequent reasons for rejecting registration forms and ballot requests clearly present challenges and there appears to be a difference between what voters think and what LEOs expect. Better communication regarding deadlines, requirements, and mailing address details could lower the number of voters dropping out of the voting process. This requires effort by both the voter (e.g. keeping in touch with LEOs regarding their current address) and LEOs (e.g. making registration requirements and deadlines explicit). Unfortunately these are the same persistent problems that have been reported in the past.

E. PROCESS MANAGEMENT

OVF also asked LEOs about their UOCAVA administrative process management. This part of the survey was designed to gain insight into how local resources are applied to UOCAVA voting and where practical problems may lie. As we can see below, the majority of LEOs have a small staff dedicated to overseas voters. And although LEOs are, in general, satisfied

with their processes, many are frustrated about undeliverable ballots and voter address maintenance.

E.1. Staff Size

Staff is a key factor in providing voters with information and services. The number of staff assigned to the task of overseas and military election administration varies by jurisdiction. 51% of LEOs reported that one person is dedicated to the management of military and overseas voting in their jurisdiction. 31% said that two or more people managed the military and overseas in their jurisdiction, and 12% of LEOs said that the management process of this task was not precisely defined in their jurisdiction. As seen below in Table 7, the number of staff is related to the size of the jurisdiction. That is, the larger the jurisdiction, the more staff that are assigned to overseas issues. These results are comparable with the 2006 LEO survey.

TABLE 7: STAFF SIZE BY SIZE OF JURISDICTION

Overseas Voting Staff	Size of Jurisdiction							
	0-24,999	25,000-49,999	50,000-99,999	100,000-249,999	250,000-499,999	500,000-999,999	1,000,000 or more	
What person is dedicated to the management of military and overseas voting?	37%	63%	13%	28%	4%	3%	1%	
Two or more persons manage military and overseas voting	192	51	29	20	13	6	1	
The management process for this task is not precisely defined	109	8	5	1	0	0	0	
I don't know	9	1	0	0	0	0	0	
Other, please specify	48	2	2	2	0	0	0	
TOTAL	734	130	59	51	17	9	2	

NOTE: Respondents were asked, "How many registered voters of all types including domestic local and absentee and overseas and military absentee do you estimate in your jurisdiction?" "How does your jurisdiction staff the management of overseas and military absentee voting?" The results in this table are based on responses to both questions.

E.2. What Works Well

Next, we asked LEOs about what works well in their jurisdiction. 81% of all respondents said that their overall process worked well, which is a very positive increase from 63% in 2006. As seen below in Table 8, election officials also reported confidence in their ability to pro-actively deal with voter questions and/or problems, and in their tracking and reporting. It appears that confidence in the overall process has increased, whereas confidence in specific areas has decreased.

TABLE 8: WHAT WORKS WELL

	2008	2006
Our overall process works well	81%	63%
Ability to deal with voter questions and/or problems	16%	28%
Tracking and Reporting systems	12%	27%
Voter address maintenance	10%	17%
Confirmation to voters of acceptance or denial	9%	17%

NOTE: Respondents were asked, "What works well in your jurisdiction's processes for managing overseas and military absentee voting? (Check all that apply.)" Data entries represent percent of respondents to the question. Because respondents were allowed to check multiple responses, percentages do not add to 100.

E.3. What Does Not Work Well

Finally, we asked LEO respondents what did not work well in their jurisdiction. The most frequent response was "undeliverable ballots," with 37% of LEOs selecting this option. 22% of participants indicated that voter address maintenance is a problem. The second most frequent problem reported was "postal service or delivery problems", and the third was voter "address maintenance. Only 1% of the respondents said that the overall process of overseas and military voting does not work well. This is consistent with the results of the 2006 survey, as seen below in Table 9.

TABLE 9: WHAT DOES NOT WORK?

	2008	2006
Our overall process does not work well	1%	2%
Undeliverable ballots	38%	42%
Postal service or delivery problems	23%	
Voter address maintenance	22%	44%
I don't know	22%	
Other	14%	12%

NOTE: Respondents were asked, "What does not work well in your jurisdiction's processes for managing overseas and military voting? (Check all that apply.)" Data entries represent percent of respondents to the question. Because respondents were allowed to check multiple responses, percentages do not add to 100. Response options were different in 2006 and 2008.

Postal service and undeliverable ballots represent a serious process-management problem in an alarming number of jurisdictions and deserves much greater attention. Clarifications of requirements for address confirmation prior to ballot sending are needed for voters and election officials alike. For election officials, undeliverable ballots represent wasted time, money and lost votes. This issue was flagged in both OVFs and the U.S. Election Assistance Commission's 2006 post election surveys and has yet to be satisfactorily addressed. The comments left on the survey reflect the frustrations of many LEOs.

"They move so much that we have hard time keeping up with who is and who is out and at what base or country."

"The problem this year was the US Postal Service. I was in email contact with an overseas voter who mailed her ballot in time but it didn't arrive until the end of Nov. I emailed another ballot to her about a week before the election but it came a few days late. She missed the FedEx deadline by just a few hours so put it in the mail."

In general, a very large majority of the respondents feel the overall process over overseas and military voting works well, which is similar to the 67% of LEOs who reported being satisfied with the way overseas and military voting was managed

in their jurisdiction in 2006. One of the challenges faced in reforming the overseas voting process may be the natural sense among state and local officials that voting problems are happening somewhere else, and not in their own jurisdictions. Mandatory UOCAVA reporting in the upcoming U.S. Election Assistance Commission's 2008 Election Day Survey may help us pinpoint those states and counties which are indeed having problems with their service to overseas voters.

E.4. Changes

The satisfaction level among LEOs is reflected in their desire, or lack thereof, for change. Only 7% of LEOs said that they are planning to change anything with the management of the overseas and military voting in the next 4 years before 2012. Training (48%), communications (35%), and staffing (29%) are the top changes planned.

Although most said there were no planned changes for their jurisdictions, the survey still asked these LEOs what they "would change if they could change" anything. The most popular response was voter address maintenance with 29% of respondents selecting this answer. This is directly related to the undeliverable ballot problem as discussed in section E.2. above. Some LEOs would also like to change communications (17%) and ballot request requirements (15%).

In 2006 11% of respondents reported plans for change to their systems. These planned changes included training, IT systems and staffing. It is difficult to determine from the 2008 if these changes actually took place. However, the satisfaction among LEOs has gone up and the dissatisfaction with voter address maintenance, which could be solved with better IT systems, has gone down.

F. TRAINING

In order to keep up with developments in voting legislation and technology, LEOs receive information updates and/or training from a number of different sources. In fact 83% of LEOs report getting information and training, which is an increase from 2006. The State Elections Office (Secretary of State, Board of Elections, etc.) was the most common source. The Federal Voter Assistance Program (FVAP) was also a popular resource. These findings are consistent with 2006, as seen below in Table 10. It does appear that LEOs are receiving more information. Furthermore, LEOs get the majority of

their information from the state or local level rather than the national level.

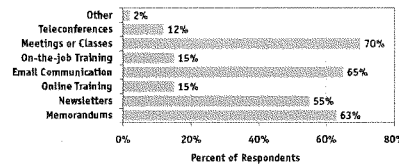
TABLE 10: SOURCES OF INFORMATION AND TRAINING

	2008	2006
State Elections Office (Sec. of State, Board of Elections, etc.)	95%	91%
The Federal Voter Assistance Program (FVAP)	41%	35%
State person in charge of UOCAVA voting	18%	16%
County Clerk	15%	
The Election Center	10%	13%

NOTE: Respondents were asked, "Who provides you with updates/information and/or training regarding overseas and military voting? (Check all that apply.)" Data entries represent percent of respondents to the question. Because respondents were allowed to check multiple responses, percentages do not add to 100. Response options were different in 2006 and 2008.

Meetings or classes, as well as email and memorandums are the most popular forms of training. These results are summarized below in Figure 1. The 2008 results are consistent with the 2006 findings. However, in 2006 only 10% of respondents reported receiving online training. In 2008, 15% of participants indicated that they receive this type of training, an indication that LEOs are moving towards new technologies.

FIGURE 1: TYPE OF TRAINING



NOTE: Respondents were asked, "Please identify the type of information and/or training you receive. (Check all that apply.)" Data entries represent percent of respondents to the question. Because respondents were allowed to check multiple responses, percentages do not add to 100.

Overall, 62% of LEOs said that they received more training on overseas and military voting in 2008 than they had in the past, and 91% said this training was sufficient or very sufficient. In addition, 39% said that their jurisdiction undertook special efforts beyond what was required by federal law. It is encouraging to see that so many states increased training for UOCAVA election administration.

"...our secretary of state elections director does an outstanding job with the central voter registry system and training staff."

LEOs were divided over whether or not they wanted more training. 36% indicated that they would like more training, whereas 38% said "no" and 26% were not sure. When posed the question of what type of training they preferred, three responses were preferred: meetings or classes, online training, and email communication.

In 2006 only 60% of respondents felt that their training was sufficient and 41% indicated a desire for more training. When compared with the results above, we can see that the satisfaction level of LEOs with their training has increased.

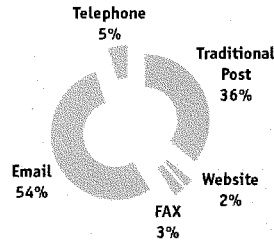
G. ASSISTANCE AND COMMUNICATION TO OVERSEAS AND MILITARY VOTERS

LEOs reported a diverse number of ways in which they assist overseas civilian and military voters. 62% said they gave priority to voting materials mailing. 56% reported using email communications to assist voters. And finally 52% said they contacted relatives to confirm voter addresses. In addition to these methods of assistance, 33% of LEOs reported using special postal mailings and 34% provided information on their website in order to assist voters. These results are slightly different from 2006, when special postal mailings and email communications were the top methods. However, this can be attributed to the survey question. That is, in 2008 participants were presented with more response options.

As seen below in Figure 2, 54% of LEOs reported that email was their most frequently used form of communication with overseas and military voters. The second most common form was written communication by mail. These statistics have changed dramatically since 2006, when 63% of LEOs report-

ed written communication by mail as the most common form of communication, and only 29% of LEOs cited email.

FIGURE 2: COMMUNICATION BETWEEN LEOs AND VOTERS



NOTE: Respondents were asked, "What is your most frequently used form of communication with overseas and military voters?" Data entries represent percent of respondents to the question.

Furthermore, 80% of jurisdictions either have a website or refer voters to a website, which is a 5% increase over 2006. That is, 45% of local jurisdictions reported having their own website in 2008. If they did not have a website, then 35% of LEOs referred overseas civilian and military voters to the State Board of Elections website or the Secretary of State's website.

As seen in the Post Election Survey of Voters, many voters had problems and questions with the registration process. In order to help voters, 38% of jurisdictions with websites say that their website has specific instructions on registration/ballot requests to overseas voters, which is an improvement over 2006. However, only 57% of jurisdictions with websites reported linking to other websites offering special assistance to overseas and military voters. Although this is an increase from 2006 when only 47% of websites provided external links, LEOs might do more when using this valuable tool.

G.1. Email

The results detailed above indicate that electronic forms of communication are clearly becoming more common. 83% of LEOs reported that they communicate with overseas and military voters via email. Electronic forms of communication, es-

pecially email, are faster and cheaper than traditional post and ideal for geographically dispersed UOCAVA voters. LEOs appear to be very satisfied with this method of communication.

"Email and internet access to the voter is the most efficient method for expediting ballot requests and receiving ballots."

"I feel like a proud parent to every one of these people who respond to my e-mails so I can get their ballot to them."

"Having the email contact has been such as asset to the overseas and military voting problems previously encountered with snail mail."

Jurisdictions are recognizing the importance in developing email communications ability, and 54% of LEOs said that they collect email addresses for overseas and military voters, a clear increase from 32% in 2006. Of those LEOs who use email, 86% reported that email works well for them for contacting overseas and military voters, which is also an increase from 65% in 2006. They also said that the number of emails from voters is increasing, with 68% reporting a noticeable increase.

"I really appreciated the space on the forms for voters' email addresses. That helped so much to get in touch with them if there was a problem with their form. I believe this helped cut down on a lot of the rejected ballots and the majority of the voters did include the email address."

Of those jurisdictions that do not use email communication (15%), 39% said that email is not necessary. Another 23% indicated that they are in touch with voters' families already. The personal involvement of election officials to the extent that they reach out to other family members in an effort to help a relative serving or living abroad cast a ballot is a genuine and valued measure of the care that election officials take with UOCAVA voters.

H. CONCLUSION

The 2008 LEO survey indicates an increase in UOCAVA voting activity. Although LEOs appear to be increasingly satisfied with their processes, undeliverable ballots continue to be a

problem. LEOs confirm the frustrations of the voters: missed deadlines are a persistent problem.

More election officials are embracing technology as a means to fix problems in the voting process. Email is an effective form of communication, and the Internet is used by many voters and LEOs alike. However, as in the 2008 Post Election UOCAVA Voter Survey, OVF urges caution in the implementation of new technology and the change of requirements that it may impose on voters. Although email may speed up the process, when coupled with signature requirements on forms, many voters continue to fall out of the process due to not following up their online communications with posted originals.

V. OVERSEAS VOTE FOUNDATION 2008: WEBSITE USAGE STATISTICS

2008 was a very busy year for OVF. In 2008 OVF launched and managed 17 overseas and military voters' services sites. 4.75 M individuals visited the sites to use OVF's seven voter services. Furthermore, OVF teamed with FedEx to offer "Express Your Vote," the first express ballot return delivery program, from mid September through October 2008. Approximately 10,000 voters took advantage of the new system. We should also note several important characteristics of OVF website users:

- Two of five (40%) voters utilizing the OVF registration and balloting systems were under the age of 30.
- Three-fourths (73%) were first time UOCAVA voters and 29% voted for the first time ever.
- One fourth (24%) of OVF registration and balloting systems users are members of the US Uniformed Services or their families.
- After launching their new OVF "State Hosted System," Texas catapulted to the top state of OVF usage.

A. OVF VOTER SERVICES

OVF launched its current suite of integrated voter services for overseas and military voters in October 2007, in time for the start to the Presidential Preference Primaries voter registration "season." The generous support of The Pew Charitable Trusts' Make Voting Work (MVW) initiative made the development and launch of the new set of web tools possible. We introduced six voter services, with the seventh added later in the year. Several were significant upgrades of previous application versions and others were brand new concepts. These services include:

- **Registration and Absentee Voter Application (RAVA):** a state-by-state customized automated voter registration wizard
- **Federal Write-in Absentee Ballot (FWAB):** a state-by-state customized automated write-in ballot generator. In mid-September 2008, OVF, together with Pew's MVW, released a vastly upgraded version of the FWAB, which incorporated zip-to-district matching and presented vot-

ers with dynamically generated candidate lists.

- **Election Official Directory (EOD):** a comprehensive local election official contact information for all election jurisdictions including physical, express courier and mailing addresses, multiple contacts, phone, fax, email and website addresses. Address data from the EOD is integrated into the RAVA, FWAB and EYV applications.
- **Voter Help Desk (VHD):** The help desk contains a vast knowledgebase written expressly for voters. The data is available through an instant response system. As voters type their questions, the system provides suggested answers. Personal questions can also be submitted and each question is individually answered. A 'customer support ticket system' assures that no questions go unanswered.
- **State-specific Voter Information Directory (SVID):** state-by-state charts with election dates, deadlines and state contact information. All of the data is verified directly with the states prior to posting and can be updated in real time across all sites.
- **My Voter Account (MVA):** an optional voter account system allowing voters to save their registration data and quickly re-access it to reprint registration and ballot forms
- **Express Your Vote (EYV):** In close collaboration, including technical integration with FedEx, OVF launched a groundbreaking worldwide express ballot return program, "Express Your Vote." The program ran from mid-September to the end of October 2008. EYV provided special OVF rates for FedEx ballot return to the U.S. for approximately ten thousand voters in 2008

B. OVF WEBSITES AND HOSTED SYSTEM STRATEGY

Over the course of 2008, OVF introduced 3 additional targeted voter services sites: Youth Vote Overseas; Military Voter Services; and a low-bandwidth, light-graphic site for remote voters, especially useful for UOCAVA voters such as remotely stationed military members, Peace Corps members, USAID, missionaries and others living in locations or in geographic areas with only limited internet access. This

special consideration to specific voter audiences was well received.

In addition, three states, Alabama, Minnesota and Ohio pioneered OVF's State Hosted Systems concept. These "early adopters" paved the way for the JEHT Foundation's decision to support the OVF Hosted Systems Program, which helped establish a new UOCAVA online voter services usability and interface standard. In addition, the state-hosted systems ushered in a new way of directly helping states improve the quality and breadth of services to their UOCAVA voters. Kentucky, Texas, West Virginia, and Vermont adopted similar tailored Hosted Systems solutions and began to offer the OVF standard voter services suite of applications.

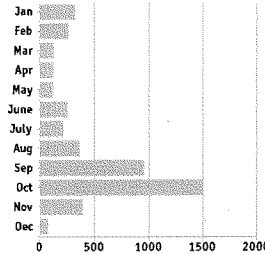
In 2008, OVF ran a total of 17 websites featuring our complete suite of voter services, which comprise the backbone of OVF's broadening Hosted Systems. These websites included: 4 targeted OVF sites: OVF "Classic," Youth Vote Overseas, Military Voter Services, and OVF "Lite" (low-bandwidth, light-graphic)

- 7 customized State sites:
AL, KY, MN, OH, TX, VT, WV
- 3 major voter outreach organizations:
The League of Women Voters' VOTE411;
Rock the Vote and the Federation of American Women's Clubs Overseas
- 1 private corporation: ExxonMobil
- 2 leading political campaigns: Obama/Biden and McCain/Palin
- Other collaborations: The National Association of Secretaries of State (NASS) licenses the Election Official Directory for their www.canivote.org website

C. OVF SITE VISITORS

The combined total number of visitors to all OVF sites through 2008 was 4,748,000. These numbers are of actual visitor/users, which came to the sites to use any number or type of services OVF provides, informational or interactive.

FIGURE 1: TOTAL VISITORS TO ALL OVF SITES, 2008



SOURCE: Webalyzer – web analytics

Below the visitors to OVF Sites are ranked by website and country.¹

- **OVF Classic:**
US, UK, Canada, Germany, Israel, Australia, France, Japan, Switzerland, China
- **Youth Vote Overseas:**
US, UK, Germany, Canada, France, Australia, Japan, India, Israel, China
- **Military Voter Services:**
US, Germany, Japan, Iraq, UK, South Korea, Italy, Kuwait, Guam, Egypt
- **OVF Lite (low bandwidth):**
US, Japan, Germany, Canada, China, UK, India, Israel, Australia, Thailand

D. REGISTRATION AND BALLOT SYSTEMS USERS

The number of voters amongst all states using the Registration and Absentee Voting Application (RAVA) registration and the FWAB Vote-Print-Mail ballot programs was 119,342. It remains unknown precisely how many of the voters who generated FPCA and FWAB forms mailed the original signed documents to their election jurisdictions. It is possible that they could have saved their work and never sent in their forms. This is an inherent limitation to the current UOCAVA administrative process: the forms must be printed, signed and transmitted to the voters' election jurisdiction with original signatures.

¹ Source: Google Analytics

Site visits/usage was very high (4.75M visits) compared to the number of voters actually using the registration and balloting systems (approximately 120K). The distinction between these voter subgroups is key to the understanding the demand for a broader range of services. For example, select voters may already be registered and using a paper form, and therefore are only looking up their election official to call and confirm they are on the voter rolls. For them, the OVF sites provide value beyond the registration and balloting applications, which is different from, yet complementary to, those services sought by others, such as first-time voters.

Typical of Internet users, many site visitors are looking to OVF or a hosted system site in their search for voting information. We provide them with election official contact details, deadline information, and answers to specific questions. The Election Official Directory, the State-specific Voter Information Directory and the Voter Help Desk are extremely popular tools serving voters both overseas and in the U.S. The statistics support the theory that maintaining and providing precise data and information is as relevant and valuable to voters and election officials. OVF's services provide timely access to accurate information, which is a necessary component to address concerns widely associated with untimely delays in voter registration forms and write-in ballots.

Table 1 and Table 2 below reveal the number of voters using the registration (RAVA) and balloting (FWAB) services amongst the 17 sites.

TABLE 1: NUMBERS OF VOTERS USING REGISTRATION AND BALLOTING SYSTEMS ACROSS OVF SITES

OVF Websites - Registration and Ballot Systems Usage Only:

Site	# Voters
OVF "Classic"	63,891
Youth Vote Overseas	9,498
Military Voter Services	8,010
Lite (low bandwidth)	1,900
Total	83,299

NOTE: Includes voters utilizing registration and balloting services only

TABLE 2: HOSTED SYSTEMS ACTIVITY: NUMBERS OF VOTERS USING OVF HOSTED REGISTRATION AND BALLOTING SYSTEMS

Hosted Systems Activity: Registration and Ballots Systems Usage Only

State	# Voters	Organization	# Voters
Alabama	918	ExxonMobil	368
Kentucky	643	FAWCO	434
Minnesota	4,853	McCain	325
Ohio	1,367	Obama	12,288
Texas	8,089	Rock the Vote	1,842
West Virginia	95	VOTE411.org	4,747
Vermont	74		
Total State Hosted Systems	16,039	Total Hosted Systems	20,004

NOTE: Includes voters utilizing registration and balloting services only

We can trace variations in usage of the hosted systems solutions to a number of factors. For example, the prominence of an "Overseas and Military Voter Registration" link on the Secretaries of State websites made a noticeable difference in traffic driven to the sites, as well as whether local election office websites featured links to their own state system.

The Texas website links are an example of those that caught attention. Texas simply put a tiny, highlighted "NEW!" note next to the link on their Secretary of State's website, which successfully directed voters to their services.²

Timing in release of the system also made a difference. The sites for Kentucky, West Virginia and Vermont were launched later in the year and this impacted overall their total numbers. In addition West Virginia and Kentucky worked multiple strategies for overseas and military voters. They worked with FVAP as well as OVF. Minnesota's actions in the areas of voter outreach and their strong communications efforts helped

² <https://texas.overseasvotefoundation.org>

bring their performance up visibly during the course of 2008. With their site, the state soared into OVF's top five states.³

The League of Women Voters is an outstanding example of a domestic voter registration site capturing tremendous overseas voter traffic. Their navigation is clear and despite a post mid-year launch, the site performed well. The most outstanding, however, was the Obama/Biden site.⁴ Although their site came online for only the two months prior to the election, they drove a significant portion of the registration traffic during that time with their outreach and advertising.

TABLE 3: REGISTRATIONS AND BALLOTS APPLICATIONS USAGE AMONG OVF RESPONDENTS, 2008

State	# Voters	% All States
Texas	17,521	14.0%
California	15,317	12.3%
New York	11,322	9.1%
Minnesota	7,155	5.8%
Florida	6,092	4.9%
Ohio	4,510	3.6%
Illinois	4,264	3.4%
Pennsylvania	4,190	3.4%
New Jersey	3,991	3.2%
Massachusetts	3,425	2.7%
Total of Top 10 States	77,787	62.4%

After launching their hosted system site, Texas swiftly climbed to the number one OVF position, passing California and New York. In previous years, Texas was ranked third or fourth. The same is true for Minnesota's site, which brought the state from an OVF ranking below 10 to number 4, just below the most highly populous states, which we can see above in Table 3.

³ <https://minnesota.overseasvotefoundation.org>

⁴ <https://obama.overseasvotefoundation.org>

TABLE 4: OVF WEBSITE USERS BY TYPE

Voter Type	% Total
Uniformed Services member, spouse or dependent	23.7%
US Citizen residing outside of the US temporarily	35.8%
US Citizen residing outside of the US permanently	40.5%

A more balanced range of voter types used the OVF systems this year than we have seen in previous years. Most notable, the Uniformed Services voters were strongly represented with approximately 24% of all registrations completed by them, as we see above in Table 4. In previous years the representation had been a nominal 3%. OVF's Military Services site contributed to this trend.⁵

TABLE 5: TOP COUNTRIES REPORTED AMONG OVF USERS

Top 10 Countries	
United States	21.8%
United Kingdom	10.5%
Canada	7.7%
Germany	4.9%
Israel	4.8%
France	3.5%
Australia	3.4%
Switzerland	2.4%
China	2.4%
United States Uniformed Services	2.2%

As seen above in Table 5, 2008 brought shifts in high-population voter locations. Israel entered the top five of countries with active US voters and held its position throughout the election year. China also came in as a new stronghold for democratically active Americans. The high percentage of voters choosing the US as their country of residence is attributable to a high number of uniformed services voters who vote UOCAVA absentee military voters.

⁵ <https://military.overseasvotefoundation.org>

As seen below in Table 6, 73% of the voters using the OVF websites were first time UOCAVA voters. For 29%, this was their first voting experience.

TABLE 6: OVF WEBSITE USERS BY VOTING HISTORY

Voters by Voting History	% Total
First time voter	29%
Voted as domestic and overseas voter	13%
Voted as a domestic voter	44%
Voted as a uniformed services and domestic voter	3%
Voted as a uniformed services voter	3%
Voted as an overseas voter	8%

In conclusion, we have seen over the past 3 General Election cycles that the movement toward the Internet as a vehicle for voter information, service and support extends itself naturally to the UOCAVA paradigm. It is an ideal voter outreach tool for UOCAVA voters living, working, studying and serving our nation around the globe. New online UOCAVA tools effectively enable American citizens to participate in our democracy from virtually anywhere – bringing them instant information, instruction, and advice.

VI. APPENDIX 1 - BALLOT ARRIVAL BY STATE

	When did your official ballot from your election office for the November 4, 2008 General Election arrive?							Total
	September	1st Half of October	2nd Half of October	Week before the Election	Election Day	After Elec- tion Day	Don't Know	
Alabama	11 .3%	63 .8%	28 .5%	16 1.0%	3 1.4%	1 1.0%	5 1.4%	127 .7%
Alaska	4 .1%	14 .2%	15 .3%	2 .1%	1 .5%	2 1.9%	2 .6%	40 .2%
Arizona	48 1.4%	96 1.2%	46 .9%	21 1.3%	6 2.9%	2 1.9%	5 1.4%	224 1.2%
Arkansas	5 .2%	32 .4%	18 .3%	1 .1%	0 .0%	1 1.0%	2 .6%	59 .3%
California	708 21.4%	937 12.0%	574 11.1%	206 12.9%	24 11.6%	12 11.7%	70 19.3%	2531 13.6%
Colorado	21 .6%	148 1.9%	229 4.4%	62 3.9%	5 2.4%	3 2.9%	3 .8%	471 2.5%
Connecticut	69 2.1%	190 2.4%	88 1.7%	17 1.1%	5 2.4%	1 1.0%	9 2.5%	379 2.0%
Delaware	18 .5%	18 .2%	7 .1%	1 .1%	0 .0%	0 .0%	3 .8%	47 .3%
DC	3 .1%	6 .1%	67 1.3%	72 4.5%	6 2.9%	5 4.9%	2 .6%	161 9%
Florida	259 7.8%	338 4.3%	176 3.4%	59 3.7%	6 2.9%	6 5.8%	18 5.0%	862 4.6%
Georgia	63 1.9%	121 1.5%	58 1.1%	14 .9%	1 .5%	1 1.0%	5 1.4%	263 1.4%
Guam	2 .1%	3 .0%	0 .0%	1 .1%	0 .0%	0 .0%	0 .0%	6 .0%
Hawaii	13 .4%	71 .9%	30 .6%	5 .3%	0 .0%	0 .0%	1 .3%	120 .6%
Idaho	13 .4%	27 .3%	10 .2%	8 .5%	1 5%	0 .0%	1 .3%	60 .3%
Illinois	172 5.2%	338 4.3%	158 3.1%	42 2.6%	4 1.9%	2 1.9%	21 5.8%	737 4.0%
Indiana	22 .7%	107 1.4%	67 1.3%	31 1.9%	0 .0%	2 1.9%	4 1.1%	233 1.3%
Iowa	34 1.0%	44 .6%	26 .5%	8 .5%	0 .0%	0 .0%	2 .6%	114 .6%
Kansas	32 1.0%	53 .7%	17 .3%	12 .8%	2 1.0%	0 .0%	2 .6%	118 .6%

**When did your official ballot
from your election office for the November 4, 2008 General Election arrive?**

	September	1st Half of October	2nd Half of October	Week before the Election	Election Day	After Elec- tion Day	Don't Know	Total
Kentucky	37 1.1%	52 .7%	25 .5%	6 .4%	0 .0%	0 .0%	3 .8%	123 .7%
Louisiana	21 .6%	39 .5%	39 .8%	21 1.3%	3 1.4%	0 .0%	1 .3%	124 .7%
Maine	8 .2%	49 .6%	25 .5%	8 .5%	3 1.4%	1 1.0%	1 .3%	95 5%
Maryland	78 2.4%	198 2.5%	115 2.2%	41 2.6%	6 2.9%	1 1.0%	9 2.5%	448 2.4%
Massachusetts	17 .5%	194 2.5%	386 7.5%	86 5.4%	10 4.8%	6 5.8%	6 1.7%	705 3.8%
Michigan	97 2.9%	250 3.2%	123 2.4%	58 3.6%	13 6.3%	6 5.8%	8 2.2%	555 3.0%
Minnesota	88 2.7%	366 4.7%	142 2.8%	36 2.2%	2 1.0%	0 .0%	9 2.5%	643 3.5%
Mississippi	4 .1%	11 .1%	8 .2%	5 .3%	0 .0%	0 .0%	0 .0%	28 .2%
Missouri	49 1.5%	99 1.3%	48 .9%	19 1.2%	1 .5%	0 .0%	4 1.1%	220 1.2%
Montana	11 .3%	25 .3%	9 .2%	0 .0%	1 .5%	0 .0%	1 .3%	47 .3%
Nebraska	9 .3%	21 .3%	11 .2%	2 .1%	2 1.0%	0 .0%	3 .8%	48 .3%
Nevada	20 .6%	37 .5%	24 .5%	10 .6%	1 .5%	0 .0%	2 .6%	94 5%
New Hampshire	14 .4%	58 .7%	42 .8%	8 .5%	1 .5%	0 .0%	0 .0%	123 .7%
New Jersey	100 3.0%	300 3.8%	197 3.8%	49 3.1%	6 2.9%	0 .0%	18 5.0%	670 3.6%
New Mexico	10 .3%	59 .8%	45 .9%	11 .7%	2 1.0%	0 .0%	1 .3%	128 .7%
New York	133 4.0%	1043 13.3%	854 16.6%	240 15.0%	31 15.0%	17 16.5%	37 10.2%	2355 12.7%
North Carolina	109 3.3%	132 1.7%	57 1.1%	16 1.0%	2 1.0%	1 1.0%	3 .8%	320 1.7%
North Dakota	6 .2%	10 .1%	6 .1%	2 .1%	0 .0%	0 .0%	1 .3%	25 .1%
Ohio	46 1.4%	279 3.6%	227 4.4%	57 3.6%	8 3.9%	4 3.9%	6 1.7%	627 3.4%

**When did your official ballot
from your election office for the November 4, 2008 General Election arrive?**

	September	1st Half of October	2nd Half of October	Week before the Election	Election Day	After Elec- tion Day	Don't Know	Total
Oklahoma	14 .4%	34 .4%	21 .4%	2 .1%	0 .0%	1 1.0%	0 .0%	72 .4%
Oregon	91 2.7%	124 1.6%	48 .9%	10 .6%	5 2.4%	1 1.0%	4 1.1%	283 1.5%
Pennsylvania	247 7.5%	307 3.9%	143 2.8%	41 2.6%	7 3.4%	5 4.9%	22 6.1%	772 4.2%
Puerto Rico	0 .0%	0 .0%	2 .0%	0 .0%	1 .5%	0 .0%	0 .0%	3 .0%
Rhode Island	6 .2%	41 .5%	19 .4%	4 .2%	0 .0%	0 .0%	1 .3%	71 .4%
South Carolina	21 .6%	36 .5%	19 .4%	6 .4%	1 .5%	0 .0%	2 .6%	85 .5%
South Dakota	8 .2%	12 .2%	6 .1%	1 .1%	0 .0%	0 .0%	1 .3%	28 .2%
Tennessee	47 1.4%	48 .6%	19 .4%	11 .7%	1 .5%	0 .0%	5 1.4%	131 .7%
Texas	293 8.8%	661 8.4%	402 7.8%	154 9.6%	26 12.6%	15 14.6%	28 7.7%	1579 8.5%
Utah	18 .5%	18 .2%	32 .6%	15 .9%	0 .0%	1 1.0%	1 .3%	85 .5%
Vermont	5 .2%	39 .5%	25 .5%	8 .5%	0 .0%	1 1.0%	2 .6%	80 .4%
Virginia	132 4.0%	235 3.0%	92 1.8%	23 1.4%	1 .5%	1 1.0%	9 2.5%	493 2.7%
Washington	47 1.4%	288 3.7%	196 3.8%	50 3.1%	8 3.9%	3 2.9%	14 3.9%	606 3.3%
West Virginia	4 .1%	22 .3%	15 .3%	3 .2%	0 .0%	0 .0%	4 1.1%	48 .3%
Wisconsin	22 .7%	135 1.7%	116 2.2%	18 1.1%	1 .5%	1 1.0%	1 .3%	294 1.6%
Wyoming	4 .1%	10 .1%	5 .1%	1 .1%	0 .0%	0 .0%	1 .3%	21 .1%
Total	3313 100.0%	7838 100.0%	5157 100.0%	1600 100.0%	207 100.0%	103 100.0%	363 100.0%	18581 100.0%

VII. APPENDIX 2 - FWAB USE BY STATE, GROUP I

When you didn't receive your ballot from your election office,
did you use the FWAB to vote?

	Yes I was aware of FWAB and used it	I was aware of FWAB, but did not use it	No, I was not aware of FWAB	Total
Alabama	8 .4%	2 .3%	23 .8%	33 .6%
Alaska	3 .2%	6 .9%	11 .4%	20 .4%
American Samoa	1 .1%	0 .0%	0 .0%	1 .0%
Arizona	20 1.1%	9 1.3%	53 1.9%	82 1.5%
Arkansas	3 .2%	2 .3%	12 .4%	17 .3%
California	287 15.4%	124 18.4%	422 15.4%	833 15.7%
Colorado	65 3.5%	16 2.4%	63 2.3%	144 2.7%
Connecticut	25 1.3%	12 1.8%	41 1.5%	78 1.5%
Delaware	8 .4%	5 .7%	2 .1%	15 .3%
DC	42 2.2%	10 1.5%	28 1.0%	80 1.5%
Florida	84 4.5%	36 5.3%	150 5.5%	270 5.1%
Georgia	37 2.0%	16 2.4%	58 2.1%	111 2.1%
Guam	0 .0%	0 .0%	1 .0%	1 .0%
Hawaii	8 .4%	5 .7%	18 .7%	31 .6%
Idaho	5 .3%	1 .1%	11 .4%	17 .3%
Illinois	52 2.8%	23 3.4%	103 3.7%	178 3.4%
Indiana	39 2.1%	5 .7%	37 1.3%	81 1.5%
Iowa	14 .7%	2 .3%	4 .1%	20 .4%

When you didn't receive your ballot from your election office,
did you use the FWAB to vote?

	Yes I was aware of FWAB and used it	I was aware of FWAB, but did not use it	No, I was not aware of FWAB	Total
Kansas	10 .5%	4 .6%	20 .7%	34 .6%
Kentucky	11 .6%	6 .9%	24 .9%	41 .8%
Louisiana	15 .8%	4 .6%	11 .4%	30 .6%
Maine	5 .3%	4 .6%	13 .5%	22 .4%
Maryland	33 1.8%	13 1.9%	56 2.0%	102 1.9%
Massachusetts	63 3.4%	17 2.5%	93 3.4%	173 3.3%
Michigan	37 2.0%	26 3.9%	69 2.5%	132 2.5%
Minnesota	50 2.7%	19 2.8%	71 2.6%	140 2.6%
Mississippi	2 .1%	2 .3%	9 .3%	13 .2%
Missouri	23 1.2%	5 .7%	30 1.1%	58 1.1%
Montana	11 .6%	1 .1%	9 .3%	21 .4%
Nebraska	2 .1%	3 .4%	7 .3%	12 .2%
Nevada	11 .6%	6 .9%	18 .7%	35 .7%
New Hampshire	14 .7%	5 .7%	7 .3%	26 .5%
New Jersey	76 4.1%	21 3.1%	108 3.9%	205 3.9%
New Mexico	26 1.4%	7 1.0%	29 1.1%	62 1.2%
New York	242 12.9%	84 12.5%	324 11.8%	650 12.3%
North Carolina	27 1.4%	5 .7%	47 1.7%	79 1.5%
North Dakota	1 .1%	0 .0%	6 .2%	7 .1%

When you didn't receive your ballot from your election office,
did you use the FWAB to vote?

	Yes I was aware of FWAB and used it	I was aware of FWAB, but did not use it	No, I was not aware of FWAB	Total
Ohio	69 3.7%	23 3.4%	84 3.1%	176 3.3%
Oklahoma	4 .2%	2 .3%	7 .3%	13 .2%
Oregon	20 1.1%	7 1.0%	35 1.3%	62 1.2%
Pennsylvania	78 4.2%	27 4.0%	99 3.6%	204 3.9%
Puerto Rico	1 .1%	0 .0%	4 .1%	5 .1%
Rhode Island	5 .3%	3 .4%	8 .3%	16 .3%
South Carolina	18 1.0%	5 .7%	22 .8%	45 .9%
South Dakota	6 .3%	1 .1%	5 .2%	12 .2%
Tennessee	12 .6%	5 .7%	24 .9%	41 .8%
Texas	177 9.5%	44 6.5%	253 9.2%	474 9.0%
Utah	7 .4%	3 .4%	26 .9%	36 .7%
Vermont	7 .4%	2 .3%	10 .4%	19 .4%
Virgin Islands	1 .1%	0 .0%	2 .1%	3 .1%
Virginia	39 2.1%	16 2.4%	83 3.0%	138 2.6%
Washington	39 2.1%	13 1.9%	48 1.7%	100 1.9%
West Virginia	3 .2%	3 .4%	6 .2%	12 .2%
Wisconsin	21 1.1%	14 2.1%	40 1.5%	75 1.4%
Wyoming	2 .1%	0 .0%	5 .2%	7 .1%
Total	1869 100.0%	674 100.0%	2749 100.0%	5292

VIII. APPENDIX 3 - FWAB USE BY STATE, GROUP II

	Prior to receiving your official ballot, did you use the FWAB?		
	Yes	No	Total
Alabama	22 .7%	105 .7%	127 .7%
Alaska	10 .3%	31 .2%	41 .2%
Arizona	39 1.2%	186 1.2%	225 1.2%
Arkansas	4 .1%	55 .4%	59 .3%
California	466 14.1%	2077 13.5%	2543 13.6%
Colorado	91 2.8%	381 2.5%	472 2.5%
Connecticut	71 2.2%	310 2.0%	381 2.0%
Delaware	2 .1%	45 .3%	47 .3%
DC	70 2.1%	92 .6%	162 .9%
Florida	146 4.4%	720 4.7%	866 4.6%
Georgia	43 1.3%	220 1.4%	263 1.4%
Guam	2 .1%	4 .0%	6 .0%
Hawaii	18 .5%	102 .7%	120 .6%
Idaho	5 .2%	55 .4%	60 .3%
Illinois	141 4.3%	600 3.9%	741 4.0%
Indiana	43 1.3%	193 1.3%	236 1.3%
Iowa	9 .3%	105 .7%	114 .6%
Kansas	14 .4%	104 .7%	118 .6%

**Prior to receiving your official ballot,
did you use the FWAB?**

	Yes	No	Total
Kentucky	15 .5%	109 .7%	124 .7%
Louisiana	24 .7%	100 .7%	124 .7%
Maine	19 .6%	77 .5%	96 .5%
Maryland	70 2.1%	379 2.5%	449 2.4%
Massachusetts	147 4.5%	560 3.6%	707 3.8%
Michigan	83 2.5%	476 3.1%	559 3.0%
Minnesota	79 2.4%	566 3.7%	645 3.5%
Mississippi	3 .1%	26 .2%	29 .2%
Missouri	34 1.0%	189 1.2%	223 1.2%
Montana	7 .2%	40 .3%	47 .3%
Nebraska	9 .3%	39 .3%	48 .3%
Nevada	18 .5%	76 .5%	94 .5%
New Hampshire	11 .3%	113 .7%	124 .7%
New Jersey	115 3.5%	558 3.6%	673 3.6%
New Mexico	39 1.2%	90 .6%	129 .7%
New York	508 15.4%	1858 12.1%	2366 12.7%
North Carolina	49 1.5%	272 1.8%	321 1.7%
North Dakota	3 .1%	22 .1%	25 .1%
Ohio	104 3.2%	525 3.4%	629 3.4%
Oklahoma	17 .5%	56 .4%	73 .4%

**Prior to receiving your official ballot,
did you use the FWAB?**

	Yes	No	Total
Oregon	34 1.0%	251 1.6%	285 1.5%
Pennsylvania	142 4.3%	633 4.1%	775 4.2%
Puerto Rico	1 .0%	2 .0%	3 .0%
Rhode Island	26 .8%	45 .3%	71 .4%
South Carolina	16 .5%	70 .5%	86 .5%
South Dakota	4 .1%	24 .2%	28 .2%
Tennessee	23 .7%	108 .7%	131 .7%
Texas	269 8.2%	1315 8.6%	1584 8.5%
Utah	8 .2%	77 .5%	85 .5%
Vermont	5 .2%	75 .5%	80 .4%
Virginia	71 2.2%	426 2.8%	497 2.7%
Washington	87 2.6%	520 3.4%	607 3.3%
West Virginia	4 .1%	44 .3%	48 .3%
Wisconsin	57 1.7%	238 1.5%	295 1.6%
Wyoming	2 .1%	19 .1%	21 .1%
Total	3299 100.0%	15363 100.0%	18662 100.0%

IX. APPENDIX 4 - QUOTES FROM SURVEY PARTICIPANTS

The OVF 2008 Post Election UOCAVA Voter Survey contained 46 questions. As seen in section IV, 24,031 voters responded to the survey. The survey also featured several open-ended questions which allowed the participants space to leave comments and individual thoughts. Over 10,000 detailed comments were received.

A small selection of comments has been organized by the categories of issues addressed. As you read them, please keep in mind, that this is only a sample of the thousands of comments received.

A. LATE AND NEVER-RECEIVED BALLOTS

- *We received our ballots way too late to mail them back. Fortunately my husband was travelling to the U.S. and could hand deliver them. Our election office told us that their ballots were not printed on time so they could not mail them out any earlier. It seems that there was incredibly poor planning, extreme incompetence, or an attempt to decrease the likelihood of overseas voters getting their votes in.*
- *It was extremely disappointing that we did not receive our ballots. My daughter 19 and son 18 were also first time voters.*
- *I was so disappointed not to receive the ballot and so were many of my friends and relatives. We thought it would come without a hitch.*
- *I did FINALLY receive a ballot from my county in [state], but it arrived on November 4, and the postmark was October 28. Who thought it was OK to send an absentee ballot out on October 28, knowing that it needs to be postmarked by November 3 (going back to the US) to be counted at all?*
- *I received several ballots from the board of election in [state]; but I did not receive the ballot for President.*
- *My ballot was postmarked [city, state] October 6th, but didn't arrive here until Election Day! Yes, I completed it and mailed it November 4th morning.*
- *This will be the first time I am voting. I was excited but did not get my ballot I requested. There are a few other people here that did not get theirs either. Some of us requested by mail and others email. I am disappointed because I do not know where I can get to vote. I am registered.*
- *I never received my ballot. I am devastated.*
- *Ballots are not set up so that they can be returned in time. Sometimes it can take more than 3 weeks for mail to arrive here from the US. I had the ballot sent to my sister's home in NY so that she could FedEx it to me.*
- *I was disappointed not to receive my absentee ballot from my local election office, although they told me in a long-distance phone call from Sweden that I was registered. Many friends here in Sweden experienced the same thing and were consequently too late in submitting an emergency absentee ballot. They unfortunately were unable to vote.*
- *The primary ballot came three weeks late, but I thought maybe they would do better with the November ballot. It has still not arrived. I am very disappointed, and didn't try to get the Write-In Ballot until Nov. 4th and gave up because I didn't have a printer.*
- *I was disappointed that my state doesn't allow electronic submission of absentee votes, like many states do. I received my ballot on November 4th, but it had to be returned by November 3rd, a day earlier than I received it.*
- *I filled out a change of address voting registration application in the Board of Elections and Ethics headquarters in my district [state] in person around September 17, 2008... On November 7th, after the election, I received my official ballot. However, inside the instructions, I was informed that it was too late to use this ballot! I am highly disturbed by this. I want something to be done on my behalf to make sure my right to vote is not hindered or stolen from me. Please help me do so. Thank you.*

- *This is our 3rd presidential election overseas with our voting rooted in our last place of residence in the US before moving to Japan in 1999. They have screwed it up all 3 elections and I have NEVER received a ballot in time to actually use it to vote. I have used a Federal Write-In Ballot in 2004 and 2008 (after missing the vote in 2000) but this is unsatisfactory. My [county] election office just does NOT get it and they have yet to get the process right. They did express mail my ballot (once my wife express mailed hers and my Write-In ballot) but it was not received until Oct. 27 (Friday night here) and it was too late to send it back by the required Election Day. They never responded when we asked them to confirm the Write-In Ballot was received, that both ballots were acceptable and would count in the election. We wrote back AGAIN and complained but they have never responded. They have given no electronic options to register or vote, so everything has to be hard-copy by mail.... It's obvious they haven't learned anything in the 9 years we've been stuck voting through them.*
 - *I live in a capital city. Were I to live outside the capital, the ballot would never arrive before the elections and certainly not in time to mail it back in.*
 - *Although I applied to vote abroad, I never received my ballot, which made me very sad because I would have loved to have voted in such an important election.*
 - *Very unhappy I didn't receive my ballot as requested. I wonder how many military members and other civilians living abroad didn't either and didn't know about the absentee write in ballot.*
 - *Even after registering ahead of time I never received the election ballot. Someone must resolve this, as I believe it is unacceptable for a country like ours to have such problems, it is beyond my belief.*
 - *How unfortunate that I was finally inspired to vote in the 2008 Presidential elections and the ballot did not arrive.*
 - *My ballot never came.*
 - *I'm still waiting for a ballot.*
- B. DOES MY VOTE COUNT?**
- *I heard that mailed in ballots from overseas were not counted because the election was not a close one. Is this true?*
- C. COMMENTS REGARDING COMMUNICATIONS WITH ELECTION OFFICIALS**
- *I had to call [state] voting office 3X in order to get my ballot. The staff did not know where Austria or Europe were and thought I was in the US. Two staff members could not find my registration but eventually they e-mailed me a ballot.*
 - *I ended up paying almost \$100.00 to talk to the responsible person for the invalid ballot they had sent me.*
 - *The main reason I was unable to vote was the odd requirement of Wisconsin that I have a US citizen sign my application and envelope as a witness to my ballot request and FWAB. I missed the initial mailing deadline for a regular ballot request, but I still had a window of opportunity to use the FWAB. I decided to go to my local consulate for help, but they were closed for more than a week before the election. I VERY MUCH wanted to vote, but simply could not manage all the rules, regulations and deadlines. I hope this information helps someone improve the voting process for overseas citizens. Thank you.*
 - *When I applied for my absentee ballot, my state said they could not accept my passport number as identification. I told them they were wrong and to check again. (This was the first time in several experiences of voting overseas that my application was questioned.) Apparently, someone did check and realized everything was fine because I received my primary ballot on time as expected.*
 - *My ballot was not sent to me by my Town Clerk, who assumed the address was bad because of the unusual, but CORRECT, UK zip code. In future, I will have them e-mail it so I do not miss the deadline. I assumed the ballot would come, but it did not, then I missed the FWAB deadline, too.*

- *I had a lot of difficulty convincing my home town clerk that I was allowed to register for the primary...my FPCA card was ignored and my parents had to go three times to the town hall before they would accept my paperwork. This happened in 2004 as well, and that time I never received a ballot. At least this time I eventually received everything, after starting the process a year ahead of the election.*
- *Overall, my experience was successful because the local election office in my hometown in [state] was extremely helpful and because we knew people going to the States right before the election to send our ballots directly from the states. If that was not the case, I don't know if we would have had time to get our ballots in on time.*
- *Back in September I went to the U.S. Consulate in Istanbul to deliver my absentee ballot request/ registration form for my state. I never received my ballot from my state. I emailed my county election office and they replied saying they never received my request. I then forwarded the email to the consulate and they sent me a reply with no signature saying they don't guarantee delivery. I didn't vote.*
- *I was sent an email 3 days prior to Election Day telling me that the Absentee Ballot I had sent in wasn't valid.*
- *The website of the county I last lived in said I had to be there in person to register before they could send an absentee ballot.*
- *My local office [county, state] didn't send me a ballot, and then told me if I wanted to vote, I had to waive my right to a secret ballot and email my completed ballot to them. I asked explicitly if there were any other options, and they said NO and acted as if I was wasting their time asking. So I emailed my ballot. I found out only later—from a friend—that I could've posted a Federal Write-In Ballot, and that I had until the 4th to do so. My local official didn't see any problem at all with requiring me to waive my right to secrecy in order to take part in the democratic process of the country of which I'm a citizen. What are we coming to?*
- *The process went fine, except I had to call my local voting office ... to see where my ballot was. It turns out it was attached to my application and had I not called, I would not have gotten my ballot. I know now to call earlier.*
- *The US Embassy was useless and downright rude about answering questions.*
- *The information and updates from our US Consulate were very helpful.*

D. CONFUSION

- *I was confused about whether I had to submit a registration form, or whether the ballot would be sent to me automatically.*
- *I had thought I had requested my ballot by email, but then realized much later that I had to print and mail the application.*
- *I was a little confused about why I would complete an email vote and then complete a physical paper ballot.*
- *I received two ballots - the second of which was called re-issued - I don't know why it was re-issued and felt very uncertain when sending in the ballot.*
- *There was a lot of confusion among Americans living in Dar es Salaam, Tanzania, in trying to figure out if their ballots could be postmarked in the US. People here often send their mail with friends traveling back and ask them to mail it in the US. Some states allow a US postmark on the ballot, but others do not. This caused some stress as different people voting in different states were getting conflicting information. I called the Embassy and wrote to your website to clarify this for NY State.*
- *Too many absentee voting options make it all confusing - we need ONE OFFICIAL information source. I do not know who to trust or which is correct.*
- *On the California ballot, I was required to give my last ad-*

dress in San Francisco but there was a warning that if it was not my current address then I would be liable for prosecution for voter fraud.

- *It is not useful to provide a postage-paid envelope that only works in the US.*
- *One of my daughters didn't put on a stamp [on the envelope] and the other didn't notice that you had to write USA yourself, so we doubt that their ballots got to where they were supposed to [go]. More explicit information about this is definitely needed, preferably from the Town Council itself, of course, but also from any voters-abroad organization.*
- *I would like to know that my ballot was received and counted. I don't know if that is a possibility or not, but it would be great. Also, I received my ballot in my email so I was uncertain the best way to send it back to the U.S. (what type of envelope, where to tape the signature page).*
- *My ballot from my [city] district was so poorly elaborated that I had to call international long distance for instructions as to where to place my 'mark'. We are [a public charity] in Mexico City and we aided about 300 people to register and then later to vote. Many got their ballots uncomfortably late.*
- *It's unnerving when your ballot says SAMPLE on it but the small print says you should vote with it...as they would not be able to mail a "real" ballot in time.*
- *The only problem I had with voting was that the [FWAB] ballot did not contain any choices for office--everything was write-in. It was very difficult to locate information about who was running for local offices and then to make sure that I was voting for the correct districts, counties, etc. and spelling candidates names correctly. If I spelled something wrong, would my ballot be considered void?*

E. COMMENTS RELATED TO MAILING OR ELECTRONIC TRANSMISSION OF VOTING MATERIALS

- *The mail sent from Iraq seems to arrive without any problems but the mail to Iraq is not delivered consistently. I*

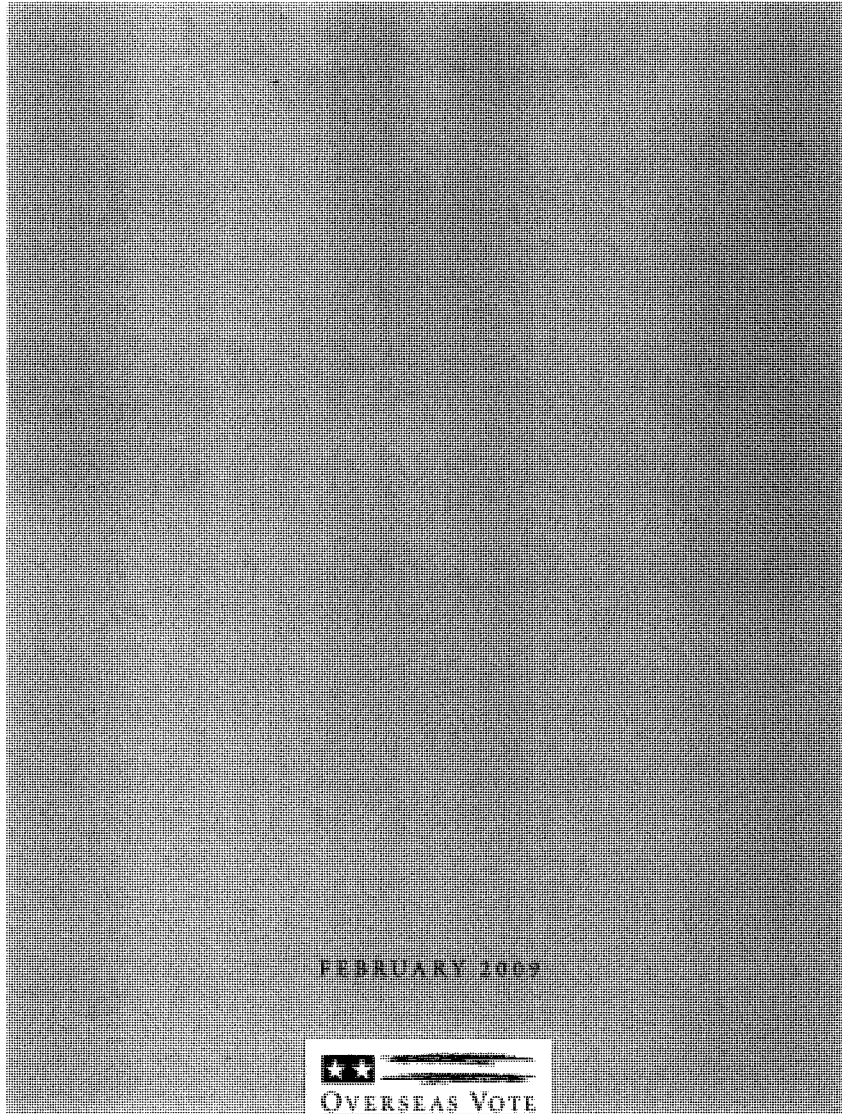
think [state] should have allowed me to vote electronically, by email or online. I am very disappointed to have lost my opportunity to vote because of an inadequate mail system. I even went to the Post Office here where they allowed me to look through the mail and I still couldn't find my ballot.

- *The weak link in the chain is the local mail service here in Israel. My initial ballot request disappeared in the Israeli mail system, and had I not thought to make a phone call directly to the California registrar's office, I would probably never have received my ballot.*
- *Trying to receive official ballots from USA by mail then return them in time doesn't work easily. When voting just for President, why can't "write in" ballots be sent earlier? Thanks.*
- *The U.S. Federal and local governments should primarily fax and email ballots. Foreign mail cannot be trusted for privacy and reasonable delivery time. Paper ballots are not necessary or convenient for voting overseas.*
- *In this election, a PDF of the ballot was sent via email. I printed it out, but the ballot would not fit on A4 paper. I had to reduce the size to about 90% to get it on one sheet of paper. I filled it in and sent it back via airmail. However, I am doubtful if scanning equipment will properly register the results since the size and positions are different than the actual ballot.*
- *I filed the FWAB with the Voting Assistance Officer here in Qatar when I found out I would not be back home in [state] before the elections. I was given a tracking number and was told the ballot envelope would be tracked by the military postal service agency until it was received at my local elections office. I logged onto the grayhairsoftware.com/ballot-track website several times, to include Nov 4th, and watch the ballot reached only two post offices, one in Jamaica NY, and one in St Louis, MO. It was never received by my [local election office] in my state. Also on the 4th, I called the Supervisor of Elections in my home county to confirm they had my ballot, but was told they had no record of my vote.*

- *The Absentee Voting program is not difficult if you plan ahead. Since I knew I was deploying, I requested my ballot be sent to my deployed location. The MPS provided an online tracking program to I was able to see that my ballot did reach my polling place before the deadline.*
- *The main problem I and many other embassy officials had was that we requested absentee ballots in plenty of time but they were late arriving. Mine, my spouse and colleague's were mailed from our [county election office] in plenty of time but they were held up at the APO sorting facility in NY [sic] for weeks. In fact, my county told me they had mailed one ballot 10 days ahead of another one, but they both arrived here the same day. So the problem was with the postal service. They clearly were holding ballots. Two colleagues received their ballots YESTERDAY from the same sorting facility. I realize that this part is really not your problem but it is outrageous that the postal system allowed this to happen. I think it needs to be looked into by someone, if not your office.*
- *Actually, my first ballot was received very early. I believe early October. However, the postal carrier left it in the rain. I sent it back as a spoiled ballot, changed the delivery address to my work address and got another fairly quickly. However, the problem was I returned my ballot via Express Mail Service, EMS, shipping from the Korea Post Office. I mail stuff home all the time via regular mail and it usually takes just 7 or 8 days. This time, my ballot sat in US customs for 6 days! It was clearly addressed to my department of elections, so I don't understand what the delay was and I'm concerned that my ballot isn't the only one left to languish in customs. It did get delivered because I'd mailed it early enough. I hate to think that it might still be en route had I sent it regular mail.*
- *My state election office [city, state] emailed both primary and general election ballots to me. I thought this service was fabulous! I also heard that early voting was available in my state and some other states, and also think this is great progress in our election process. I work for the Peace Corps in [country], and was very happy that we had access to so many voting resources to help our volunteers easily participate in the election process. The process was much easier now since there are more [transmission] options than in the past.*
- *Thank you FedEx for sending in all ballots for FREE from American citizens living in China! That helped a lot!*
- *I also voted from overseas in the 2004 US Presidential Election, and found it to be much easier this year, mainly due to the OVF/FedEx initiative. Thank you very much for offering this service -- it really makes a difference!*
- *Possibility of sending ballot by FedEx or other service was not included with voting material received from my [state]. Flyer said "Postal service only."*
- *I was travelling when my ballot arrived, and would not make the deadline if I mailed in my vote, so I chose the option of faxing in my ballot. The fax number for the [county] Supervisor of Elections, as stated in the instructions, never worked. I tried for 6 days. Sometimes I got a busy signal, but every time the fax machine 'answered' and I tried to send my ballot, it would not receive it.*
- *Expected to receive ballots in the post, and nearly missed the election waiting for it.*
- *Our 230-year-old system is outdated and in bad need of complete reform. We should be able to just walk into our consulate with passport in hand and vote (as in many other democracies, e.g., Sweden, Spain, Australia, etc.), with no other byzantine registration or ballot request or FWAB problems. We lead the world in IT and Internet technology; there is no excuse in the 21st century.*
- *It is 2008. Why can't we offer Internet voting?... I personally want to see this put in place for the next election. Tag it a green movement - save paper and gasoline - and maybe something will get done.*
- *Registered to vote. Serving in Afghanistan. Never received a ballot. Tried to use the Federal Absentee Write in process - still required me to mail in the ballot and I was out of time. Got screwed by my state and am VERY angry!*

F. OTHER

- *It would have been very nice for those of us receiving email ballots to have been able to print them at 8.5x11 instead of 8.5x14 because I had a difficult time finding a print shop that would print at that size. It put off my ability to send my ballot by almost a week.*
- *I am thrilled to be questioned. Americans living abroad need better representation in Congress and elsewhere to protect our rights.*
- *Why does the ballot have to be marked with a PENCIL? This facilitates ballot manipulation! Ink pen should be required.*
- *I think all states need to institute a receipt policy, to let people know that their registration or ballot was received.*
- *I think that voter registration should be simultaneous with social security registration*
- *The process should be made uniform for all Americans abroad, independent of their state/county of origin specific voting policies.*
- *Friends from other countries marvel at the difficulty we have had and remark that no wonder we have such a low turnout rate compared to their own country.*
- *How can Brazil have such a better, electronic, more efficient system of voting, which is mandatory, than the US?! You cannot believe the embarrassment this causes Americans living abroad. It seems obvious that the voting system must be made more uniform and made completely electronic so that you can even vote from home if you wish. There is no need to "invent" such a system since it already exists in many countries. Simply study how it works in Germany, Switzerland, etc. and modify it to the US's needs.*



FEBRUARY 2009





Statement to the United States Senate Committee on Rules and Administration
For the Hearing: "Problems for Military and Overseas Voters:
Why Many Soldiers and Their Families Can't Vote," May 13, 2009

Overseas Vote Foundation (OVF) is a nonpartisan, nonprofit, charitable organization dedicated to increasing participation of overseas and military absentee voters in US elections. We submit the following letter and report and request that it be included in the hearing record.

Between **4 and 6 million Americans** live or serve our country outside of the United States. Current estimates state that 4.9 million Americans who live abroad are eligible to vote. Despite their sizable number, a large portion of these US overseas military and citizens continue to have problems voting. Insights as to why are not always forthcoming. That has changed.

We call your attention to the results of our expansive 2008 Post Election Survey which bring unbiased, non-politicized insights into the real issues facing military and overseas voters and recommendations for increasing participation. Our results are based on the responses of **24,031 overseas and military voters** in 186 countries, and more than **1,000 local election officials** in the United States. The findings are astonishing and demonstrate that **America is still not doing enough to eliminate the problems that interfere with overseas and military voting**. OVF's report reveals that approximately 20% of eligible voters, who wanted to vote, could not. Given the overseas population, that is about 900,000 individuals or the city of Jacksonville, Florida.

Military voters fared especially poorly. More than one in four, 27.5%, did not receive their ballots – a dramatic 5.5% greater than the overall average but less than the 36% reported in 2006. Of the military voters who did not get their ballots, 39% used an FWAB to vote.

Typical of the frustration of military voters, one soldier wrote in, "Registered to vote. Serving in Afghanistan. Never received a ballot. Tried to use the Federal Absentee Write in process – still required me to mail in the ballot and I was out of time...[I] am very angry!"

For both civilian and military voters who did receive their ballots, a high percentage of their ballots, 39% and 40% respectively, arrived after mid-October, thus jeopardizing their on-time return. With military post averaging 12 to 18 days for one-way delivery, this short timeframe jeopardizes the timely receipt and counting of the ballots. This is the number one problem facing overseas and military voters.

Results revealed that 45% of election jurisdictions reported a noticeable increase in military and overseas registrations and ballot requests in 2008. Our study shows increased interest in voting from overseas and military voters. OVF's web services are helping these voters to register and request ballots, but they still face many barriers to participation.

State attempts to apply fax and email technologies did not appear to improve the odds of receiving ballots. 23.8% of respondents who sent in a request by email did not receive a ballot and 21.5% of respondents who used fax did not receive a ballot. Voters do not always realize that an emailed or faxed request in most states does not exempt the voter from sending in the signed original.

Although voters who were able to cast ballots said they were satisfied, OVF's report reveals that problems remain:

- Nearly one-quarter, 23.7%, of experienced overseas voters still have questions or problems when registering to vote and 14% indicated that they were unsure if they needed to re-file a registration form.
- Despite concerted efforts, less than half of overseas and military voters are aware of the Federal Write-in Absentee Ballot as a fallback option when their requested ballot does not arrive in time.
- Election officials continue to cite overseas and military voter address maintenance as their number one problem.

In an effort to inspire effective action, the OVF report details policy recommendations for election administrators at the federal and state levels. Chief amongst these are:

- Implementation of technology measures including online ballot request for registered voters and online blank ballot delivery to alleviate the transmission and timing difficulties inherent in the overseas and military voting process
- Innovation and investment in the Federal Write-in Absentee Ballot to broaden the practice of "Same Day Registration and Balloting" for overseas and military voters effectively collapsing the required voting timeline
- Inclusion of overseas and military voters into any federal "universal voter registration" initiative where they stand to benefit from such legislation

The complete survey report is available at: www.overseasvotefoundation.org/initiatives-research

About the surveys

OVF's 47-question 2008 Post Election Survey of Overseas and Military Voters was launched on Election Day, November 4, 2008 and ran through January 12, 2009. 24,031 UOCAVA voters completed the survey, resulting in a 23% response rate. This was OVF's third post-election voter survey. The 2008 Local Election Official (LEO) survey was sent to 4,944 LEOs in the US. All states and territories were included in the survey distribution. The 46-question LEO survey ran from December 5, 2008 through January 12, 2009, and 1,025 LEOs responded resulting in a 20% response rate. It was the second post-election LEO survey that OVF has executed.

OVF was assisted in the design and analysis of the survey by North Carolina-based RTI International, one of the nation's leading non-profit research institutes and a leader in survey research design.

About Overseas Vote Foundation

Overseas Vote Foundation (OVF) helps overseas and military voters participate in federal elections by providing public access to secure, web-based voter registration tools and services.

OVF is committed to open dialogue and aims to nurture a renewed constructive discussion on the role and use of technology in overseas and military voting. OVF believes that when applied appropriately and transparently, new technologies and the power of the Internet can help overseas voters more rapidly than any other element in the mix of tools. In 2008, 4.75 million visitors utilized OVF's Internet-based voter services.

Dr. Claire M. Smith
Research Director, Overseas Vote Foundation

Susan Dzieduszycka-Suinat
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May 12, 2009

The Honorable Charles Schumer
 Chairman, Committee on Rules and Administration
 United States Senate
 305 Russell Senate Office Building
 Washington, DC 20510

Dear Chairman Schumer:

Thank you for addressing the daunting problems that millions of American military personnel and citizens who live overseas face every year when attempting to vote. Although the federal 1986 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) guarantees the right to vote in federal elections for millions of Americans, variations in the administration of the absentee voting process in the 50 states and the District of Columbia prevent many military and overseas civilians from participating in U.S. elections. Problems arise at every step of the process—from maintaining accurate registration rolls for this highly mobile population, to casting ballots and ensuring those votes are counted, to providing access to the information required to navigate the election process. Pew is working to advance solutions on all of these fronts.

As part of our efforts, the Pew Center on the States recently published *No Time to Vote: Challenges Facing America's Overseas Military Voters*, a comprehensive report on the administrative obstacles overseas military voters are confronted with in casting their ballots. This report has already sparked discussion in state legislatures about how to remove impediments to voting for Americans abroad. We respectfully submit the attached copy of *No Time to Vote* for the record of the Senate Committee on Rules and Administration hearing on "Problems for Military and Overseas Voters: Why Many Soldiers and Their Families Can't Vote" on Wednesday, May 13, 2009.

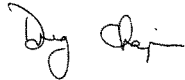
American military and overseas voters deserve access to an election system that provides the highest standards of accuracy, convenience, efficiency and security. Although many state and local election officials have attempted to improve the situation for military and overseas voters, too many continue to fall short. Indeed, *No Time to Vote* found that when delivery time is included as a factor, 25 states and the District of Columbia do not provide enough time for overseas military voters to return their ballots in order to be counted. To rectify these problems, *No Time to Vote* makes several recommendations for changes to state or federal law, including sending out overseas absentee ballots sooner, eliminating notary and witness requirements and harnessing technology to allow for the electronic transmission of ballots and election materials to voters overseas. The Pew Center on the States is also working with the Uniform Law Commission to craft a uniform state law which would implement these recommendations.

On other fronts, we are actively engaged with our partners at Google to help state and local election officials make official voting information available on the Internet through the Voting Information Project (VIP). VIP presents the promise of automatically-generated write-in ballots via the Internet (complete with federal, state and local contests) which would streamline the voting process for Americans abroad. Pew also founded and helps to coordinate the Alliance for Military and Overseas Voting Rights (AMOVR) and is leading a design initiative with state and local election officials and technology experts striving to modernize our outmoded voter registration system.

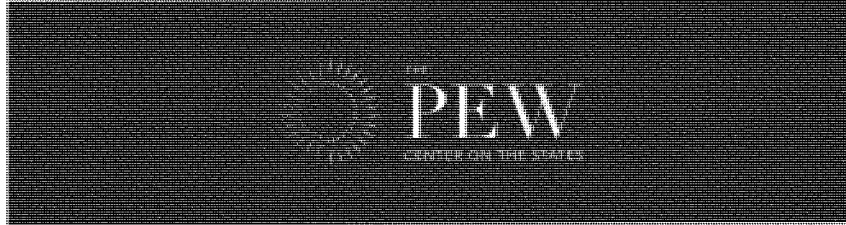
We commend your efforts to improve access to our election system for the men and women serving overseas. Thank you for your consideration of our request for *No Time to Vote: Challenges Facing America's Overseas Military Voters* to be introduced into the record of the May 13 Committee hearing. We are also available to brief you in greater detail on these or other election issues within the Committee's jurisdiction.

Please contact me at 202-552-2113 or dchapin@pewtrusts.org if you have any questions.

Sincerely,

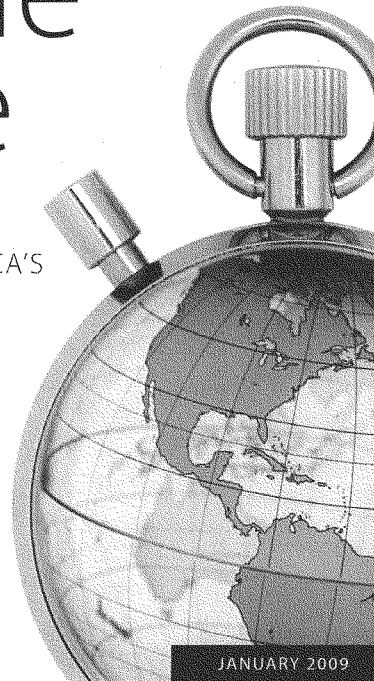
A handwritten signature in black ink, appearing to read "Doug Chapin". The signature is fluid and cursive, with the first name "Doug" being more prominent than the last name "Chapin".

Doug Chapin
Director, Election Initiatives
The Pew Center on the States



No Time to Vote

CHALLENGES FACING AMERICA'S OVERSEAS MILITARY VOTERS



JANUARY 2009

The Pew Charitable Trusts applies the power of knowledge to solve today's most challenging problems. Our Pew Center on the States (PCS) identifies and advances effective policy approaches to critical issues facing states. Make Voting Work, a project of PCS, seeks to foster an election system that achieves the highest standards of accuracy, convenience, efficiency and security.

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For additional information on the Pew Center on the States, please visit www.pewcenteronthestates.org.

January 2009

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January 2009

Dear Reader:

American democracy is based on a very simple bargain: We agree to live within the bounds of civil society because we have a say in how it works. Unfortunately, some military personnel who put their lives on the line for our country are being cut out of that bargain. Because of the time it takes military personnel serving overseas to request, receive and return absentee ballots, too many of these men and women do not get a say in how America operates.

No Time to Vote: Challenges Facing America's Overseas Military Voters, a new report from the Pew Center on the States, found that more than a third of states do not provide military voters stationed abroad with enough time to vote or are at high risk of not providing enough time. An additional six states provide time to vote only if their military personnel overseas return their completed absentee ballots by fax or e-mail—a practice that raises important questions about their access to this technology and the privacy and security of their votes. All told, 25 states and Washington, D.C., need to improve their absentee balloting rules for military voters abroad. In fact, given our conservative assumptions, the other 25 states would better serve these voters by giving them additional time to request and return their ballots as well.

This report underscores that your ability to cast a ballot and have it counted depends on your home state. Imagine two Americans, one from Alabama and one from Kansas, stationed together in Iraq. Thanks to differences in the states' laws, Jane from Kansas will get her ballot sooner and have more time to return it and have it counted than will her fellow soldier John from Alabama. It shouldn't matter what state you're from—all Americans at home or abroad should have access to an election system that works for them.

A bipartisan Tarrance/Lake poll found that 96 percent of Americans believe it is important that military and overseas voters have the opportunity to participate in U.S. elections and have their votes count—and nearly two-thirds of Americans think the system for these voters is not serving them well.

Fortunately, common-sense solutions are available to solve many of the problems highlighted in this report. The Pew Center on the States is committed to improving how the election system works for all voters, including those serving in our armed services and living overseas. Individual states have adopted a wide range of improvements to serve military and overseas voters—but the result is a confusing, 50-state patchwork of rules and deadlines. Pew is working with the Uniform Law Commission to explore the feasibility of developing a uniform law for all voters covered under the federal UOCAVA Act, including members of the military, their families and other U.S. citizens living abroad. Our goal is to have such a law adopted by states in time for the 2012 federal election.

We hope this report informs important deliberations at the state and federal level to ensure that all Americans—regardless of where they are—are able to exercise their right to vote.

Sincerely,

Sue Urahn
Managing Director, The Pew Center on the States



Executive Summary

Thanks to a federal law passed in 1986—the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)—an estimated six million military and overseas civilian voters have the right to cast absentee ballots in America's federal elections, including last year's historic presidential contest. But it is the laws and practices of the 50 states and the District of Columbia that determine how and when these voters participate—and, most important, whether they can successfully cast a ballot.

Many state and local election officials are doing a remarkable job trying to ensure that American military voters serving around the world are able to participate in our federal elections. But *No Time to Vote: Challenges Facing America's Overseas Military Voters* shows that 25 states and the District of Columbia have to improve their absentee voting process for their military citizens abroad. We do not yet know how many military voters stationed overseas cast absentee ballots in the 2008 elections, or how many of those ballots actually were counted. But according to our analysis, those who may have voted successfully last fall did so in the face of procedural hurdles and tight deadlines in half the states and Washington, D.C. These challenges ranged from blank ballots being mailed out too late to completed ballots being returned by fax or e-mail, which raises questions about the privacy and security of the votes. In fact, given our conservative assumptions, the remaining states, with time to vote, would also benefit from giving their voters additional time to request and return their ballots.

Our Focus

Comprehensive, solid data on absentee voting for military and overseas voters are hard to come by, but some studies suggest states' systems are not working as well as they should. According to the federal Election Assistance Commission, of the estimated one million ballots distributed to UOCAVA voters for the 2006 election, just one third actually were cast or counted.¹ No doubt

25 states and the District of Columbia have to improve their absentee voting process for their military citizens abroad.

some of these voters simply decided not to return their ballots—but surveys of military personnel show that this population historically has been frustrated by obstacles in the process. Among military personnel who reported not voting in 2004, 30 percent said they were not able to vote because their ballots never arrived or arrived too late. Another 28 percent said they did

EXECUTIVE SUMMARY

not know how to get a ballot, found the process too complicated, or were unable to register.²

Given these concerns, we sought to assess whether states are providing military and overseas civilian voters with enough time to vote and have their votes counted. We looked at the three groups of voters covered under UOCAVA: civilians living overseas; military personnel stationed in the

United States and their dependents; and military personnel stationed abroad and their dependents.³ Our analysis ultimately focuses only on military voters based abroad. Unfortunately, we lacked the necessary information—reliable estimates of international mail time for civilians, among other data—to complete the assessment for overseas civilian voters. We also could not assess the experience of military voters stationed in the U.S.;

Exhibit 1
STATES' TIME TO VOTE STATUS

State	Military Voters Serving Overseas	State	Military Voters Serving Overseas
Alabama	No Time to Vote	Montana	Time to Vote
Alaska	Time to Vote, but with concerns	Nebraska	Time to Vote
Arizona	Time to Vote, but with concerns	Nevada	Time to Vote
Arkansas	No Time to Vote	New Hampshire	No Time to Vote
California	Time to Vote, but with concerns	New Jersey	Time to Vote
Colorado	Time to Vote, but with concerns	New Mexico	Time to Vote
Connecticut	No Time to Vote	New York	No Time to Vote
Delaware	Time to Vote	North Carolina	Time to Vote
District of Columbia	No Time to Vote	North Dakota	Time to Vote
Florida	Time to Vote	Ohio	Time to Vote
Georgia	No Time to Vote	Oklahoma	No Time to Vote
Hawaii	Time to Vote, but with concerns	Oregon	Time to Vote
Idaho	Time to Vote	Pennsylvania	At Risk
Illinois	Time to Vote	Rhode Island	Time to Vote, but with concerns
Indiana	Time to Vote	South Carolina	Time to Vote
Iowa	Time to Vote	South Dakota	No Time to Vote
Kansas	Time to Vote	Tennessee	No Time to Vote
Kentucky	Time to Vote	Texas	No Time to Vote
Louisiana	Time to Vote	Utah	No Time to Vote
Maine	No Time to Vote	Vermont	At Risk
Maryland	Time to Vote	Virginia	Time to Vote
Massachusetts	No Time to Vote	Washington	Time to Vote
Michigan	No Time to Vote	West Virginia	Time to Vote
Minnesota	At Risk	Wisconsin	Time to Vote
Mississippi	Time to Vote	Wyoming	No Time to Vote
Missouri	No Time to Vote		

LEGEND

No Time to Vote: States that send out their absentee ballots after the date necessary for military voters to meet all of the required deadlines.

At Risk: States where voters have only five days or less of extra time (one business week or less) to complete the process.

Time to Vote, but with concerns: States that afford time to vote, but at a price. Overseas military voters only have time to vote if they return their completed ballots by fax or e-mail—practices that raise concerns about voters' privacy and the security of the ballot.

Time to Vote: States that provide more than five days of extra time—that is, beyond the absolute minimum required for returning a ballot—in their voting process to allow for delays.

EXECUTIVE SUMMARY

we did not have reliable estimates for domestic military mail delivery, and with an unknown number of uniformed personnel using the U.S. Postal Service (rather than military mail) to cast their absentee ballots, we faced significant obstacles in calculating regular mail delivery times.

For each of the 50 states and the District of Columbia, we calculated the amount of time it takes for overseas military voters and election officials to complete each step of the absentee voting process. Next, we determined if all the steps could be completed in time for that state's election deadlines. We then assessed whether the state's overseas military voters have enough time to vote (Exhibit 1).

Findings

- All told, 25 states and the District of Columbia need to improve their absentee voting process for overseas military voters.
 - Sixteen states and the District of Columbia do not provide enough time to vote for their military men and women stationed overseas. These states send out their absentee ballots after the date necessary for military voters to meet all of the required deadlines.
 - An additional three states are at risk of not allowing their overseas military residents enough time to vote, providing just five days or less of extra time to accommodate any delays in the process.
 - Thirty-one states provide enough time for their military residents stationed overseas to vote. But 19 of these allow voters to return their completed ballots by fax or e-mail—raising concerns about access to this technology and privacy and security of the votes. In 13 of the 19 states, the problem is easily eliminated: overseas military personnel still have time to vote even if they send back completed ballots by traditional mail. But that is not the case in the remaining six states. If they cast their ballots through regular mail, military voters from Rhode Island, for example, will not have time to vote—and those from the remaining five states are at risk of being disenfranchised because they are afforded fewer than five days of extra time to accommodate potential delays. In effect, military voters from these six states must risk the privacy and security of their ballots to ensure their votes will get counted.
- Given our conservative assumptions, all states would benefit from providing their overseas military voters additional time to request and return their ballots.
- For active-duty military serving overseas, the voting process takes an average of 29 days to complete in states that allow time to vote. For voters abroad hailing from “no time to vote” states, the process takes 66 days on average. The length of the process, however, can vary widely. For example, in Arizona and Kansas, the process can be as short as eight days, while it can take overseas military voters from Alabama 88 days from start to finish.
- Whether a state's absentee voting process allows enough time depends largely on how well the different steps in the process work together. So fixing one step may not be enough if other steps are not working well. In states where laws and practices have been cobbled together over decades, the problem is a failure to take into account how the system works as a whole.

EXECUTIVE SUMMARY

Lessons Learned

Why do so many states give their military personnel insufficient time to vote? There is no one reason; states' absentee voting systems for these citizens are diverse and complex, so what might cause a problem for one state may work just fine for another. But our study identified three important lessons:

1. When a state's process relies entirely or partially on mail delivery, military voters need more time to complete all of the steps required and are less likely to have time to vote. *Simply sending blank ballots out via fax or e-mail can give military citizens abroad enough time to complete the process.*
2. The later a state's absentee ballot is mailed to military voters, the less likely they will have time to vote. *States should seek to distribute blank ballots to their overseas military voters as early as possible.*
3. The earlier the state's deadline for returning a completed ballot—especially if the state mailed its absentee ballots out late—the less likely a military voter will have time to vote. *States should provide more time for completed ballots from military voters overseas to reach local election offices.*

Potential Reforms

We analyzed whether four particular policy options would benefit the 25 states and the District of Columbia that need to improve their voting process for military absentee voters:

- expanding the use of the Federal Write-in Absentee Ballot, a back-up measure when military voters do not receive their state ballots in time;
- allowing election materials to be transmitted electronically;
- building at least 45 days into the process for ballots to travel between voters and election offices; and
- eliminating a requirement that military voters have their completed ballots notarized before returning them.

Of 10 legislative changes proposed by the U.S. Department of Defense's Federal Voting Assistance Program, these four are the most focused on streamlining and shortening the voting process for both voters and election officials.

Our analysis shows that all four policy options can help, although not every reform is right for every state. Two of the reforms are particularly noteworthy—but neither is a magic bullet.

EXECUTIVE SUMMARY

First, every state would ensure its overseas military personnel time to vote by adopting a fully electronic process for transmitting all election materials between voters and election offices. As noted earlier, important questions have been raised about the privacy and security of returning completed ballots by fax or e-mail—but the odds of successfully voting improve for military citizens even if a state simply sends out blank ballots electronically rather than by traditional mail. In fact, we found that 13 “no time to vote” jurisdictions would ensure adequate time by adopting this reform.

Second, every state would ensure time to vote by expanding its use of the Federal Write-in Absentee Ballot—although this tool is only a back-up measure and has limitations.

No Time to Vote is supplemented by individual fact sheets for the 26 jurisdictions that need to improve their voting process for military absentee voters. The fact sheets are also available on our Web site at www.pewcenteronthestates.org.

These materials are products of the Pew Center on the States’ Make Voting Work project, which partners with state and local election officials, the private sector and others to foster an election system that achieves the highest standards of accuracy, convenience, efficiency and security. To ensure our election system works optimally for military and civilian voters overseas, Make Voting Work publishes case studies and reports to highlight the challenges these voters face, and supports pilot programs and new technologies to test potential solutions. Make Voting Work also promotes efforts to establish consistent approaches for military and civilian voters abroad, including exploring the feasibility of a uniform state law that could potentially establish consistent timelines, requirements and standards for registration, absentee ballot distribution and ballot voting for military and overseas civilian voters covered under UOCAVA.

The Voting Process

The federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), enacted in 1986, gives an estimated six million Americans—uniformed service members, their spouses and dependents, and overseas civilians—the right to vote in any race for federal office. This includes primary, runoff and special elections that occur throughout the year, as well as the presidential and general elections.⁴ (In addition, 22 states⁵ allow UOCAVA voters to cast absentee ballots in elections for state and local offices, and for state and local referendums.) But states' laws and practices determine how and when UOCAVA voters cast absentee ballots, and how likely their ballots are to be counted.⁶

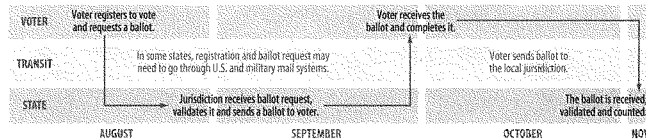
There is tremendous variation in how the 50 states and the District of Columbia administer the election process for Americans covered under this federal law. Each has its own requirements, timing and modes of absentee voting. States' approaches vary so much, in fact, that a U.S. Department of Defense (DoD) manual for UOCAVA voters runs 460 pages long, with five

to 10 pages of instructions describing each state's requirements and procedures. For instance, some states send ballots out and allow voters to return them via e-mail or fax, while others rely entirely on postal mail to transmit blank and receive completed ballots. Some states require military and overseas voters to register first, before they can receive a ballot, while others do not—and some give voters an opportunity to register and ask for a ballot simultaneously. Some states require voters to get their ballots notarized or witnessed before returning them. Many states require absentee ballots from UOCAVA voters to be returned by Election Day, while others count them even if they come in afterward.

Four Key Steps

The absentee voting process for voters covered under UOCAVA can be broken down into four main steps: a voter registers and requests a ballot; election officials validate the registration and send out a ballot; the voter receives and completes the ballot; and, finally, the voter

Exhibit 2
HOW THE PROCESS WORKS FOR VOTERS ABROAD



SOURCE: Pew Center on the States 2008

THE VOTING PROCESS

returns the ballot for election officials to count (Exhibit 2).

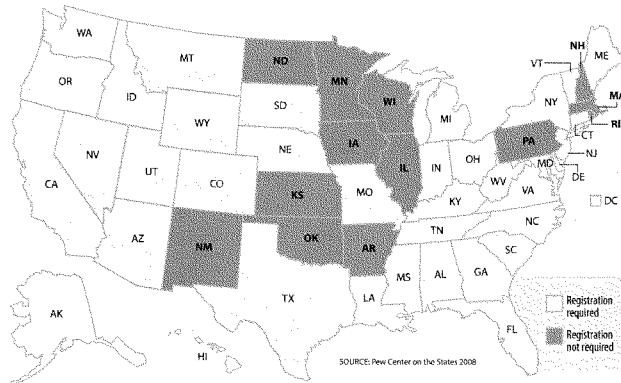
election offices before they can request an absentee ballot.

Step 1: Voter registers to vote and requests a ballot.

Most states' voter registration rules require that citizens who wish to vote must register to vote and maintain their registration while serving in the military or living overseas during an election. Thirteen states have waived the voter registration requirement (Exhibit 3). Voters from the other 37 states and the District of Columbia, however, first must complete and submit a registration form, then await approval by their home states'

This two-step process can be averted if military personnel and civilians abroad use the Federal Post Card Application (FPCA), which allows voters to simultaneously register and request an absentee ballot with a single form. The FPCA is accepted by all states and territories and is postage-paid in the U.S. and military postal systems.⁷ (Even when using the FPCA, military and civilian overseas voters must abide by their states' deadlines for voter registration and absentee ballot requests.)

Exhibit 3
13 STATES THAT WAIVE REGISTRATION



THE VOTING PROCESS

Step 2: Local election office receives the registration and ballot request, validates the registration and sends a blank ballot to the voter.

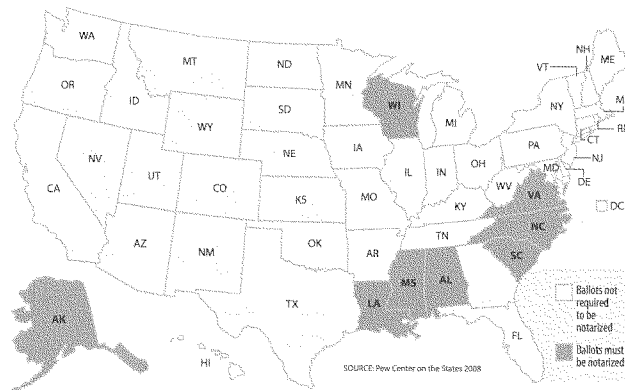
After receiving a military or overseas voter's request for an absentee ballot, the local election office processes and approves it (assuming there are no valid reasons for rejecting the request). The office then generates an official blank ballot for the voter and sends it out. There is enormous variation in when these ballots are sent to voters: states mail out ballots anywhere from 21 to 60 days before an election. And there also is enormous variation in how ballots are sent out. A total of 32 states allow their local election offices to use some form of electronic transmission for sending out blank ballots to UOCAVA voters. Fourteen allow transmission by fax only, while 18 allow

transmission by either fax or e-mail. An additional six states allow voters to receive a blank ballot by fax under special circumstances; for example, if the voter is in a hostile country or war zone.⁸ Including these special circumstances, a total of 37 states plus the District of Columbia allow blank ballots to be sent to UOCAVA voters by fax, 19 of which also allow blank ballots to be transmitted by e-mail.⁹

Step 3: Voter receives the ballot and completes it.

Eight states require that voters have the ballot notarized or signed by a witness before it can be returned (Exhibit 4). In these cases, notarization may be performed by a military voting assistance officer, U.S. commissioned officer, embassy or consular officer, or another official authorized to administer oaths.

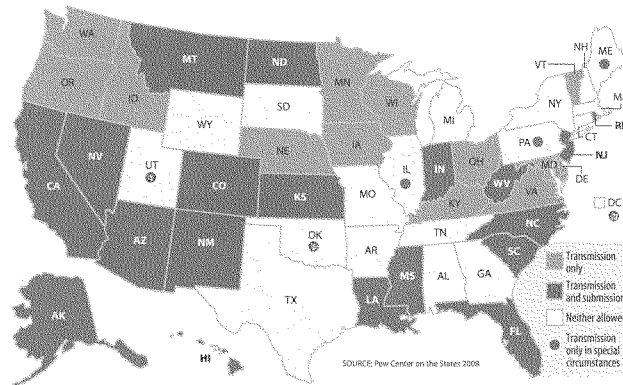
Exhibit 4
8 STATES REQUIRE VOTERS TO GET THEIR BALLOTS NOTARIZED



THE VOTING PROCESS

Exhibit 3
STATES THAT ALLOW ELECTRONIC TRANSMISSION AND SUBMISSION

Thirty-two states allow for the electronic transmission of a blank ballot to voters and 19 of these states also allow for the electronic submission of completed ballots.



What happens if a voter requests a blank ballot by the state's deadline, but never receives the ballot, or does not receive it with enough time to turn it around? The Federal Write-in Absentee Ballot (FWAB) is a back-up measure for military and overseas voters who do not receive their state ballots at least 30 days before the election or the state's deadline, whichever is later. In these cases, voters can download the FWAB, write in their preferences, and send them back to their local election office. (All states accept the FWAB.) This is an important "fail-safe" option that provides military and overseas civilian voters the ability to cast a ballot if some aspect of their states' voting process goes awry. However, as we explain in Chapter 4, the FWAB has limitations.

Step 4: Voter sends completed ballot to the local election office to be validated and counted.

The majority of states require completed absentee ballots from military bases or abroad to be transmitted by postal mail. To reach military units, mail is transferred from the United States Postal Service (USPS) to the Military Postal System Agency and then shipped through military logistics channels. This mail sometimes competes against military supplies for space, often causing delivery delays. Hostile and remote locations can further delay mail delivery.

When it comes to returning completed ballots, 19 states allow all of their military and overseas voters to do so by fax or e-mail. An additional



Our Methodology

We sought to assess whether and to what degree states protect the franchise of military and overseas civilian voters across the globe by ensuring they have adequate time to vote. We wanted to examine the process for voters covered under UOCAVA: civilians living overseas and active-duty military (and their dependents). As described in more detail below, we lacked the reliable information necessary to complete assessments for either overseas civilian voters or military citizens stationed in the U.S. So this report focuses just on military voters based abroad.

In analyzing the process faced by these voters, the key variable is time. This report assesses how long it takes UOCAVA voters and election officials to complete the voting process, and how long it takes ballots and other election materials to travel via postal mail or electronic means, such as fax or e-mail.

To measure the time associated with each step in a state's voting process, the Pew Center on the States developed time estimates based on a survey of election officials, the USPS mail assistant tool (which estimates domestic mail transit times), mail estimates from the Military Postal Service Agency, and research examining mail and process times. We used this information to calculate the amount of time required to comply with states' absentee voter processes and laws—that is, the amount of time it takes for both voters and states to complete each and every step of the voting process. Next, we determined if all the steps could be completed

by the election deadlines established by state law. Based on each state's requirements, we sought to assess whether overseas military voters from each state have enough time to vote. (See Appendix A for additional information about our methodology.)

Assumptions

As with most models based on human interaction, ours cannot perfectly simulate every circumstance. Voting processes are complex and cannot be replicated exactly—so we made assumptions and simplifications. When data from the 2008 election become available (to the extent they become available),¹⁰ we may find that some overseas military citizens were, in fact, able to vote absentee in states that we identified as not providing time to vote. Across the states, many election officials work extremely hard to ensure that voters are able to participate and have their votes counted, even in the face of procedural hurdles and tight deadlines. And voters may use various tactics—such as sending in completed ballots via express mail or using the FWAB—to overcome obstacles in the process. Still, because our analysis largely assumed perfect action by perfect actors—voters, states and the mail systems—our findings actually are conservative. In other words, we likely underestimate the problems facing overseas military absentee voters.

Our analysis considers three principal variables: voters, states and the mail systems.

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Voters

We assumed voters are like the perfectly rational actor of modern economic models. We assumed voters know, have access to¹¹ and use the quickest methods to complete all aspects of the absentee voting process in their control, such as registering to vote, requesting a ballot and completing and sending a ballot. In our model, voters know all the requirements it takes to complete the whole voting process, have access to e-mail and fax machines—when applicable—and fulfill these requirements as early and as quickly as possible. They fill out their ballots as soon as they receive them and send them as soon as they are able to. Finally, voters complete the process perfectly, making no errors at any stage along the way.

Since it is reasonable to assume a number of military voters deviate from these expectations, our analysis errs on the side of understating the impact of the challenges facing these voters.

States

Similarly, in modeling states, we assumed a lot of homogeneity in their processes. We assumed that within states, there are no jurisdictional differences among local election offices, and that statewide rules apply universally. We assumed that local election offices meet all deadlines and do not make any mistakes. In addition, we assumed the elections are federal elections and voters are not participating in state and local elections. (Adding state and local elections makes the process longer and more complicated and will be discussed later in terms of the Federal Write-in Absentee Ballot (FWAB).) Finally, we assumed that nationwide, all administrative voting process times are equal—that is, it takes election officials in all states an

equal amount of time to complete the same steps in the voting process.

State election laws shape each stage of the absentee voting process for military citizens. To measure the number of days each state-mandated step takes, we surveyed election officials to impute time estimates, various assumptions and simplifications in our model. We examined state laws that dictate deadlines by which certain steps need to be completed. We also looked at whether states have adopted legislative proposals recommended by the DoD's Federal Voting Assistance Program (FVAP). We drew from an FVAP synopsis of state laws posted online, and verified the information with state election directors. We assumed that election officials and the FVAP guide properly and accurately described state election laws at the time of our analysis, and that these laws are implemented uniformly across each state. We checked this information up until November 4, 2008, to ensure our analysis took into account the states' laws in effect at the time of the most recent general election.

Mail Systems

To estimate delivery times for military and civilian mail—both crucial to the voting process—we took some of our assumptions from existing literature and, where necessary, made conservative estimates.

Military Voters

Domestic mail. To measure the postal mail delivery times for our analysis of military voters overseas, we used the USPS mail assistant, which is based on the Transit Time Measurement System administered by IBM Business Consulting Services. This system allows the user to obtain

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approximate delivery times between domestic, military and international locations. We assumed there are no delays with mail delivery or other transmission methods. For military personnel stationed in the United States but voting absentee, we could not conduct an analysis in part because we assume a number of these voters use USPS (rather than military mail) to return their completed ballots, and there was no effective way to calculate domestic mail delivery times given the tremendous variation in where domestic military are based and where they are sending their completed ballots. (We also did not have reliable estimates for domestic military mail delivery for those voters using military mail to return their completed ballots.)

Military Mail. Among the Americans covered under UOCAVA are active-duty military citizens abroad, and these armed service members use the Military Postal Service Agency for mail delivery. We used mail assumptions that fall within DoD's standard guidelines of 12 to 18 days.¹²

For overseas military mail, we applied the model using two different assumptions for how long military mail takes. DoD cites 11 to 13 day transit times for one-way delivery even to remote operational sites in Iraq and Afghanistan (for example, the time for a state to send a blank ballot to an overseas office).¹³ The U.S. Government Accountability Office (GAO) determined that the Military Postal Service Agency's methodology for computing that average mail delivery time is flawed and weighted to underestimate actual average transit times. The GAO concluded, "the 'weighted average' methodology...significantly understate[s] actual transit time."¹⁴

Under our first assumption, employed in most of our analysis, we use 18 days for military mail times one way based on the GAO study, which found that delivery times can—at times—exceed the military's 12 to 18 day standard.¹⁵ Under our second assumption, we assume that it takes 15 days to transmit a ballot and 13 days to return it, which are averaged using the 12 to 18 day guidelines published by the DoD.¹⁶ However, there were no substantial differences between the two time estimates in terms of the number of states that do not afford time to vote.

Mail delivery times are critical, especially for blank and completed ballots. On average, states do not send out blank absentee ballots until 35 to 40 days before the election. This leaves little to no room for delay or error, as standard military mail delivery times range from 24 to 36 days round-trip, according to the DoD guidelines and the GAO estimate.

Overseas Civilian Voters

International Mail. The challenges overseas civilian voters may encounter depend on a number of different factors—in particular, the times associated with the delivery and return of a ballot via international mail. While we had good information on many aspects of the absentee voting process, we lacked one key set of data: solid, reliable estimates for international mail transit time. This made it problematic to try to analyze the absentee voting experience of overseas civilians. Using USPS data, which says that mail from the United States to any international location takes six to 10 days, we had transit time data for one-way, "outbound" mail from the local election official to the overseas civilian voter. But we lacked similar information for mail transit times associated with the

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"inbound" return of the ballot. International postal transit times for mail coming back to the United States vary by country and cannot be regarded as a single, uniform time to be applied consistently throughout our model. Unlike the Military Postal Service Agency, international mail cannot be studied and analyzed as one system.

Because of a lack of reliable data for international mail times and other information challenges, such as where the U.S. overseas civilian population is located, we could not calculate whether states provide enough time for citizens living abroad to complete the voting process. It is reasonable to suspect that overseas civilian voters face similar challenges as our military citizens serving abroad, but we lack sufficient information to conduct this particular analysis.

Calculations

Assessing State Voting Processes and Days Necessary to Vote

We made two principal calculations: (1) whether a state provides its military absentee voters abroad enough time to vote (Time to Vote), and (2) how long it takes such voters to complete the voting process according to the requirements of their states (Days Needed to Vote). A state's Time to Vote assessment primarily is determined by whether a state sends its absentee ballots out in enough time for its military voters abroad to complete and return ballots to the state election office by the deadline to have the votes counted. In our analysis, we always assumed that such voters used the fastest means available to them.¹⁷ In some instances where pilot programs or special provisions are made for a small portion of the military or overseas population (e.g., those

living in hostile countries or war zones), we did not apply those improvements to a state's Time to Vote assessment. If a state's laws did not apply uniformly to the whole military, it was noted but not included in our modeling of a state's election process. The calculation of Days Needed to Vote in each state is the amount of time it takes a voter from taking the first step—registering to vote or requesting a ballot—to having the ballot counted.

States have different deadlines for key stages of the process. We looked at three deadlines, varying across the states: (1) the date when the voter must have the ballot notarized; (2) the date by which a ballot must be postmarked to count; and (3) the date by which a state must receive the ballot to count. Many states do not have all three requirements and therefore all three possible start dates do not apply to all states.

The Total Days Needed to Vote category is calculated similarly to the Time to Vote status, first calculating when a voter must start the process to meet any and all legislated deadlines. Unlike Time to Vote estimates, Days Needed to Vote estimates are based on actions that must be completed by both the states and voters, depending on a state's rules. The actual start date for a voter is calculated first by identifying what a state requires its voter to do and by when (depending on the state and voters' registration status, voters start the process by either registering to vote or requesting a ballot).¹⁸ We then calculate the number of days necessary to meet the state's requirements. The answer is subtracted from the deadline for that step to identify the necessary start date for voters, if the voter is to have a chance at successfully completing the entire voting process.

Findings

No one has a reliable estimate of the number of Americans living or working abroad. Even the U.S. Census Bureau has been stymied by the cost and difficulty in counting this population.¹⁹ Given the challenge of even determining the number of U.S. citizens living and working overseas and given the fact that American voters are spread across the world, many state and local election officials have been remarkably successful in creating systems in which military and overseas civilian voters can participate fully in our electoral process. Still, our analysis shows that even with the best intentions, half the states and the District of Columbia make it challenging for our overseas military personnel to vote, and to have their votes counted.²⁰

How Military Voters Fare

Roughly six million Americans—uniformed service members, their spouses and dependents, and overseas civilians—are ensured the right to vote under UOCAVA. Of this population, approximately 1.4 million are active-duty military personnel, and an estimated 24 percent of those were abroad on Election Day in 2006.²¹

A total of 17 jurisdictions—16 states and the District of Columbia—do not allow their military men and women stationed overseas time to vote, even factoring in grace periods for late ballots. Voters in these jurisdictions need an average of 12 days more to complete the process.

CATEGORIZING THE STATES

We classified states into four categories based on whether they provide enough time for their overseas military citizens to vote absentee:

- 1) *No time to vote.* States allow “no time to vote” if they send out their absentee ballots after the date necessary for military voters to meet all of their required deadlines.
- 2) *At risk.* States where voters have only five days or less of extra time (one business week or less) in the process are considered “at risk” of not allowing their military citizens enough time to vote absentee. Such states are at risk because even minimal delays in the process—whether because of the voter, state or mail systems—will result in voters from these states being less likely to return their completed ballot to the states in time to be counted.
- 3) *Time to vote, but with concerns.* These are states where voters have time to vote but only if they submit their ballots via fax or e-mail. Transmitting completed ballots raises concerns about privacy and security. In these states, even if overseas military voters return submitted ballots via traditional mail, they will run out of time because of other factors in the states’ process. The voters essentially must choose between potentially risking the privacy and security of their ballots and being unable to complete the process in time.
- 4) *Time to vote.* States with more than five days of extra time in the process—that is, beyond the absolute minimum required for returning a ballot—are classified as giving their military absentee voters enough time to vote.

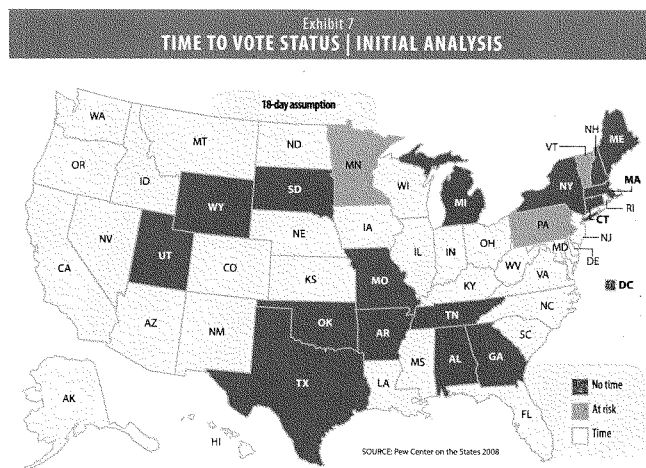
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Three states—Minnesota, Pennsylvania and Vermont—are “at risk” of not providing their overseas military voters enough time to vote because they provide fewer than five days of extra time to accommodate unexpected delays in the process.

Our initial analysis shows that the remaining 31 states allow enough voting time for their military residents stationed overseas—meaning that those voters have more than five business days of extra time in case of delays (Exhibit 7).²⁷

However, in a majority of the 31 “time to vote” states, that assurance comes at a price. Nineteen of the 31 allow blank ballots to be transmitted and completed ballots to be returned by fax or

e-mail (Exhibit 8). Allowing military voters overseas to return their ballots electronically helps ensure they have time to vote—but it also raises questions about the voters’ privacy and the security of the ballots as well as access to the technology.²¹ As the GAO noted in a 2007 report, while alternatives such as electronic and Internet voting “may expedite the absentee voting process, they are more vulnerable to privacy and security compromises than the conventional methods now in use. Electronic and Internet voting require safeguards to limit such vulnerabilities and prevent compromises to votes from intentional actions or inadvertent errors. However, available safeguards may not adequately reduce the risks of compromise.”²⁴

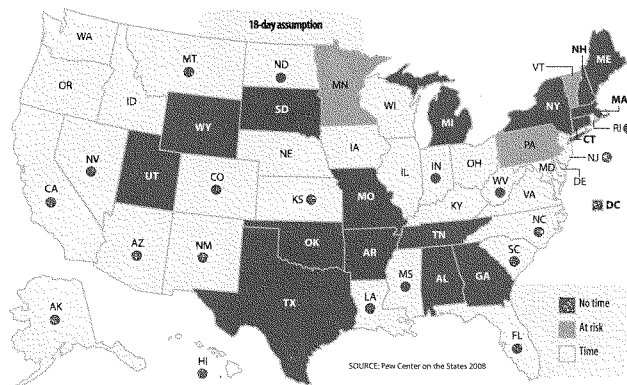


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Exhibit 8
TIME TO VOTE STATUS | STATES WITH ELECTRONIC SUBMISSION

Nineteen states with sufficient time to vote allow for electronic submission of completed ballots, which raises concerns about privacy and security.

● Time to vote states that allow completed ballots to be returned by fax or e-mail



For example, in 11 of the 19 states, military voters returning their completed ballots electronically can only use fax machines.²⁵ This means the military voter's preferences can be exposed to others on at least two occasions—upon transmission and receipt. The remaining eight states allow military voters to return their ballots by either fax or e-mail. Unsecured e-mail can expose voters to identity theft, or their ballots could be tampered with. And states cannot be certain that the ballot they are receiving via e-mail is the ballot sent by the military voter.

Our analysis shows that overseas military voters in 13 of the 19 states can overcome privacy and security concerns by using regular postal mail to

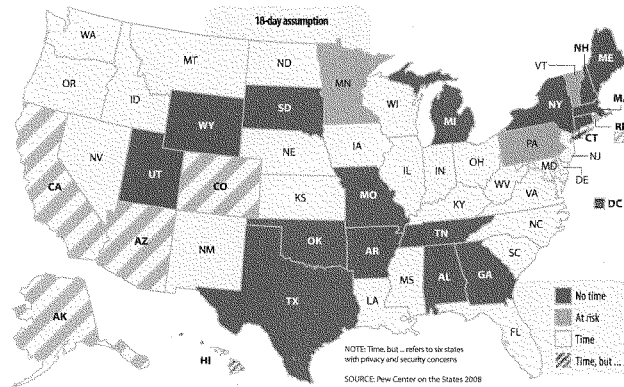
return their completed ballots—and still have time to vote. The same is not true for overseas military from the remaining six states. Without the option of returning their completed ballots electronically, military voters from Rhode Island do not have enough time to vote. And those from Alaska, Arizona, California, Colorado and Hawaii become "at risk" because they are afforded fewer than five days of extra time to accommodate potential delays in the mail (Exhibit 9).

Our findings for military voters overseas are relatively consistent even when we relax our assumptions about postal mail—moving closer to the DoD's estimates about military mail transit

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 Exhibit 9
TIME TO VOTE STATUS

Twenty-five states and the District of Columbia need to improve their absentee voting process for overseas military voters.



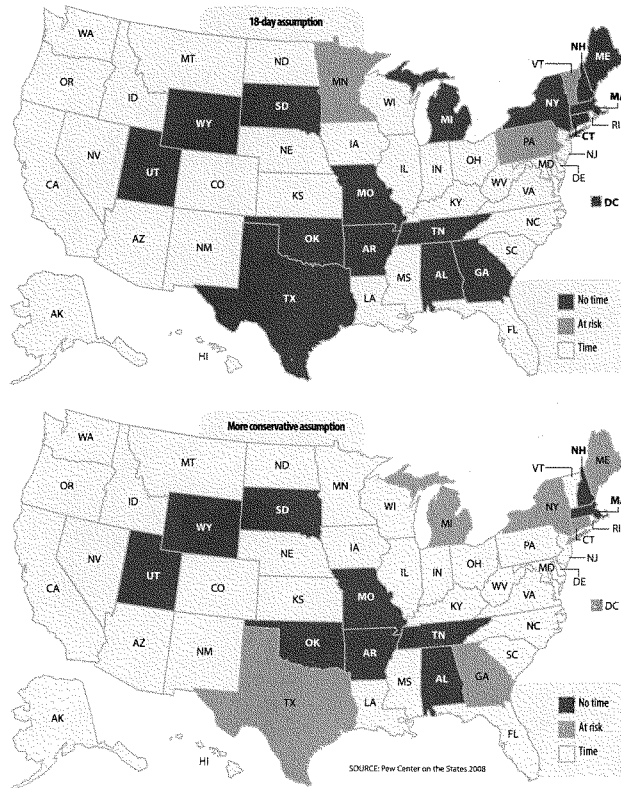
time (see Chapter 3, Our Methodology). Our current assumption stipulates that all mail delivered through the military postal system takes 18 days each way. In addition, we ran the data assuming a faster total transit time of 28 days round trip (15 days outgoing, 13 days incoming)—much closer to DoD's estimates of actual military mail transit time. With more generous mail transit assumptions, seven states originally classified as "no time to vote" move to the more favorable "at risk" category.²⁶ But none of the original 17 "no time to vote" jurisdictions moves to our top category of providing "time to vote." (Exhibit 10.)

2008 election data are not yet available, so we do not know how military voters abroad actually fared in the latest election. We reasonably can assume that some overseas uniformed personnel from the states classified as "no time to vote" managed to complete the absentee ballot process and have their votes counted. But our analysis shows that if voters from these jurisdictions actually succeeded in voting, they managed to do so despite their states' policies and practices, not because of them. National studies help illustrate this point. The Pew Center on the States estimated that in the 2006 election, 86 percent²⁷ of absentee ballots requested by the general population were cast, indicating a strong desire to vote among those who made an effort

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Exhibit 10
TIME TO VOTE STATUS FOR OVERSEAS MILITARY | TWO ASSUMPTIONS

Our results are relatively consistent—20 jurisdictions do not provide time to vote under 18-day military mail assumptions, while 17 states do not allow time to vote under more conservative assumptions.





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to ask for a ballot. However, only approximately 27 percent* of absentee ballots for military voters were actually received and counted in that election. Undoubtedly some military voters requested absentee ballots and then simply did not complete or return them—but surveys indicate that this population historically has been frustrated by obstacles in the process. Among military personnel who said they did not vote in 2004, 30 percent said they were not able to vote because their ballots never arrived or arrived too late to their duty stations, according to the DoD's Federal Voting Assistance Program. Another 28 percent said they did not know how to get an absentee ballot, found the process too complicated or were unable to register.²⁹

Lessons Learned

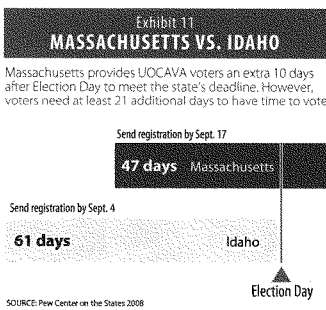
What are the main challenges hindering the absentee voting process for overseas military citizens in half the states and the District of Columbia? States' systems vary widely, but our analysis generated three important lessons:

1. *When a state's process relies entirely or partially on mail delivery, military voters need more time to complete all of the steps required and are less likely to have time to vote. Simply sending blank ballots out via fax or e-mail can give military citizens abroad enough time to complete the process.*

For military voters overseas hailing from the 17 "no time to vote" jurisdictions, the process takes an average of 66 days to complete.³⁰ Our analysis found that these 17 jurisdictions are more likely to use the traditional postal mail system for some or all of their process. Three of the "no time to

vote" states—Alabama, New York and Wyoming—require everything to be done by mail. But the other 14 jurisdictions complete some part of the process electronically. These states have other challenges that, combined, lead them to fall short of allowing sufficient voting time for their overseas military personnel.

However, a shorter process does not guarantee success if other parts of a state's election system get in the way. Compare Idaho and Massachusetts. As Exhibit 11 illustrates, Idaho's voting process for its overseas military voters takes 61 days compared with Massachusetts' 47 days. Idaho's process takes 14 days longer than Massachusetts' process, yet overseas military voters from Idaho have enough time to vote, while voters from Massachusetts do not. In this example, the length of Idaho's voting process is driven by such important dates as deadlines to register and request a ballot. But overseas military voters from Idaho



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have an extra 15 days built into the election process because they can request and receive blank ballots by fax, which speeds up the process. Massachusetts, on the other hand, requires military voters to rely on the USPS and Military Postal Service Agency to deliver and return their ballots. Massachusetts accepts absentee ballots 10 days after Election Day to accommodate potential delays via postal mail, but that allowance still is not enough. The state would need to provide its military citizens abroad an extra 21 days somewhere in the process to ensure they had enough time to vote.

In the 31 states that allow time to vote, it takes an average of 29 days for overseas military citizens to complete the voting process—a number influenced by the extent to which a state's election system is conducted electronically. Nineteen states allow ballots to be sent to and returned from overseas voters via fax or e-mail (16 of these have a fully electronic process, including voter registration) and all of them afford their overseas military personnel time to vote. Using fax or e-mail to return ballots, it takes overseas military voters from these 19 states an average of 23 days to complete the voting process; using postal mail, it takes such voters an average of 36 days. However, as the GAO noted, using fax or e-mail to return completed ballots may compromise the integrity of these votes. As our analysis shows, to ensure they have time to vote, overseas military voters in six states must submit their completed ballots electronically, since they will run out of time using postal mail.

2. *The later a state's absentee ballot is mailed to military voters, the less likely they will have time to vote. States should seek to distribute blank ballots to their overseas military voters as early as possible.*

On average, the 17 "no time to vote" jurisdictions mail out their ballots three days later than do states that provide sufficient time for their overseas military personnel to complete the process. For example, if Texas mailed out its ballot three days earlier, it would give military residents abroad time to vote. States such as Illinois mail out their ballots as early as September 5, compared with Massachusetts, which does so as late as October 14. Similarly, on average, registration deadlines are three days later for states that afford military voters time to vote compared with states that do not give enough time. In Nevada and South Carolina, voters must register as early as October 4. In four states—Maine, Michigan, Virginia and Washington—voters can register as late as Election Day.³¹

The date a ballot is mailed out, however, is not the only factor that determines whether a state affords its military personnel enough time to vote. For instance, even though both Delaware and Connecticut mail out their absentee ballots on September 20, overseas military voters from Delaware have time to vote, according to our analysis, while voters from Connecticut do not. Other features of the voting process—such as how the ballot is delivered to voters—also influence the outcome.



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3. *The earlier the state's deadline for returning a completed ballot—especially if the state mailed its absentee ballots out late—the less likely a military voter will have time to vote. States should provide more time for completed ballots from military voters overseas to reach local election offices.*

Eighteen states and the District of Columbia allow absentee ballots to come in for a certain amount of time after Election Day to account for potential delays in mail service. The majority of these states (63 percent) afford

their military voters time to vote, with an average of 23 days of extra²² time in the process. Yet again, other parts of a state's system affect its overall performance. Of the 19 jurisdictions that allow the absentee ballot to come in after Election Day, Georgia, New York, Texas and four other states do not provide their military voters enough time to vote.²³ These states would need to extend their receipt deadlines anywhere from three days (Texas) to 21 days (Massachusetts) to provide sufficient time.

Potential Reforms

The DoD's Federal Voting Assistance Program (FVAP) is aimed at helping uniformed service members, their families and citizens living outside the United States participate in the electoral process.³⁴ As of October 2008, FVAP recommended 10 legislative changes to the states and U.S. territories to simplify and standardize the absentee voting process for these voters. (See Appendix B for a full list of changes.) Some of these proposals involve shortening the process by allowing electronic transmission of election materials or by making ballots available earlier. Others recommend removing burdensome rules, expanding the franchise to currently ineligible voters—such as U.S. citizens who have never lived in this country—and making the process more user-friendly through other means. A number of states already have some of these reforms in place.

We looked at the four FVAP recommendations most focused on streamlining and shortening the voting process for both voters and election officials:

- 1) Expanding use of the Federal Write-in Absentee Ballot (FWAB)
- 2) Allowing electronic transmission of election materials
- 3) Ensuring a 45-day minimum ballot transit time
- 4) Eliminating the notary requirement

We then assessed how much time the “no time to vote” and “at-risk” jurisdictions could save by adopting these proposals. We developed individual fact sheets for the 20 “no time to vote”

and “at-risk” jurisdictions, and for the six “time to vote but with concerns” states whose overseas military personnel must return their completed ballots via fax or e-mail to ensure enough time to vote. These fact sheets, which can be found on our Web site (www.pewcenteronthestates.org), highlight how process times were calculated and how potential reforms could help states.

Our analysis shows that the potential benefit of each FVAP recommendation for these jurisdictions depends on each individual state's process. We found that:

- Every state would ensure time to vote in federal elections by promoting and expanding the use of the FWAB as a back-up measure.³⁵
- Every state would ensure time to vote by adopting a fully electronic election process. As mentioned earlier, questions have been raised about the privacy and security of returning completed ballots via fax or e-mail, as well as about adequate access to fax and e-mail³⁶—but many states would improve their process simply by sending blank ballots to military voters electronically. If “no time to vote” states used at least an outbound electronic transmission of a blank ballot to military voters abroad, 13 of them would afford time to vote.
- Two states “at risk” of disenfranchising their military citizens abroad would ensure time to vote by adopting a 45-day minimum ballot transit time. Similarly, by adopting this recommendation, all six states now classified as “time to vote but with concerns” could

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ensure time to vote while allowing their overseas military personnel to return their completed ballots via postal mail.

- Solely eliminating the notary requirement would not change the status of the “no time” states or the status of the six states classified as “time to vote but with concerns.” However, several states would streamline their process.

Expanding the Use of the Federal Write-in Absentee Ballot

As noted in Chapter 2, the FWAB is a downloadable form that allows UOCAVA voters who have requested but not received a state ballot to write in their choices for general elections for federal offices—president, vice president, U.S. senator and U.S. representative—and return this alternative ballot postmarked by their state’s deadline. The FWAB requires an affirmation stating that the voter’s application for a regular absentee ballot was mailed in time to be received by the local election official 30 days before the election or the state’s deadline, whichever is later, and that the voter has not received the ballot.

This back-up tool protects an overseas voter’s ability to participate in federal elections if the state’s ballot does not arrive in time. All 17 “no time to vote” jurisdictions and three “at-risk” states would ensure sufficient time to complete the process by promoting and expanding the use of the FWAB for their voters. Use of the FWAB also is an effective back-up ballot for voters in the six states classified as “time to vote but with concerns.”

All states accept the FWAB—and it provides an important safety net—but it is by no means a silver bullet. Military voters must know about this back-up option to use it—yet in 2006 fewer than

one in three were aware of the FWAB, according to a DoD study.³⁷ Also, because the FWAB is a blank write-in ballot, voters must accurately write in the names of their candidates. In addition, the majority of states only allow uniformed voters abroad to use the FWAB for federal elections.³⁸ (Only 22 states allow the use of the FWAB for state and local elections.)

FVAP encourages states and the election field to raise all UOCAVA voters’ awareness of the FWAB option. It also recommends that states expand the use of this tool to include federal, special, primary and run-off elections when citizens abroad cannot receive regular ballots in a timely manner.

In September 2008, Pew’s Make Voting Work initiative took two major steps to improve FWAB’s usefulness. First, we launched a public information campaign to raise awareness of the availability of the FWAB. Second, to eliminate the need for voters to write in the names of their candidates, we partnered with the Overseas Vote Foundation (OVF) to improve the online tool. When an eligible voter downloads the FWAB and indicates the U.S. state of residence, the technology automatically populates the form with all eligible candidates from that state. OVF licensed the software to Alabama, Kentucky, Minnesota, Ohio, Texas, Vermont and West Virginia for use in the 2008 election. In addition, voters were able to access the complete suite of OVF tools, including the FWAB, on the Web sites of both the McCain and Obama campaigns, Rock the Vote, the League of Women Voters and Exxon Mobil.

In sum, the FWAB is a “fail-safe” option that provides military and overseas voters the ability to cast a ballot if some aspect of the regular

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process goes awry. However, the first choice is still the states' own absentee ballots, which offer voters the most comprehensive information on the candidates, and the opportunity to vote on state and local ballot initiatives and referenda.

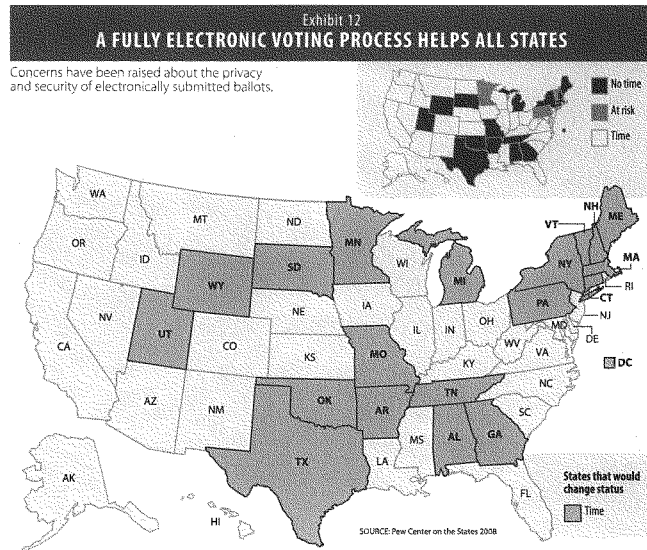
Allowing Electronic Transmission of Election Materials

FVAP encourages all states to move to a fully electronic election process, using fax and e-mail for transmitting election materials between local election officials and absentee voters. Today, UOCAVA voters hailing from 16 states can complete the entire process electronically, from

registering to vote and requesting a ballot to receiving and returning the ballot.

In addition, some states conduct part of the process electronically. As noted earlier, on the front end, 32 states allow their local election offices to send blank ballots to overseas voters by either fax or e-mail. An additional six states allow voters to receive a blank ballot by fax under special circumstances (for example, if they are in a hostile country or war zone).

On the back end, 19 states allow all of their overseas voters to return their completed ballots



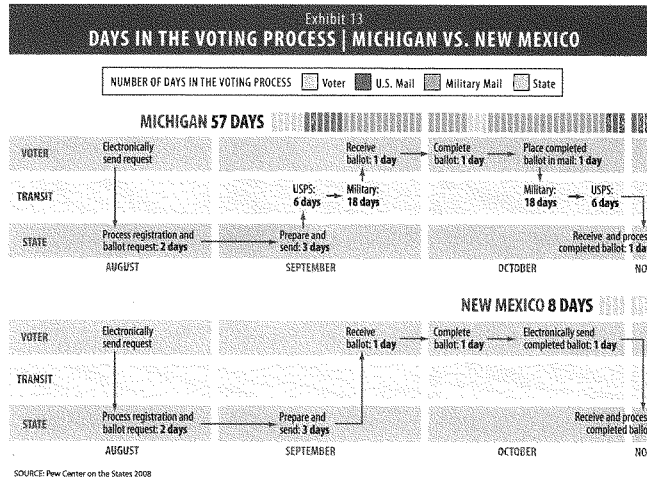
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by fax or e-mail. An additional seven states allow electronic submission of the ballot under particular circumstances (in emergencies or if voters are in a hostile country or war zone).

When it comes to military voters stationed overseas, all 16 "no time to vote" states and the District of Columbia would provide those voters time to vote if they adopted a fully electronic process (Exhibit 12). In fact, they would save voters an average of 40 days.

Comparing New Mexico and Michigan illustrates the benefits of an electronic process (Exhibit 13). The two states' election systems are similar in a number of respects: neither requires overseas voters to get their completed ballots notarized

before returning them, and both give their residents abroad at least 45 days to complete the voting process after sending them blank ballots. New Mexico disseminates its absentee ballots on September 16; Michigan does so four days later, on September 20. The difference is that New Mexico has a fully electronic process, allowing its overseas voters to use fax or e-mail to register to vote, request a ballot, receive a ballot and submit a completed ballot. Michigan allows its residents abroad to register and request an absentee ballot electronically, but requires all other steps—including sending out blank ballots to and receiving completed ballots from voters—to be done by regular mail. The result? Voters from New Mexico have more time to complete the process, with less hassle. They can electronically submit



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their registration and request for an absentee ballot as late as October 27 and get their completed ballots in by Election Day. Military voters from Michigan, meanwhile, must register to vote no later than September 7 to meet deadlines later in the process. This is because they must rely on both military and domestic postal services to both receive a blank and submit a completed ballot.

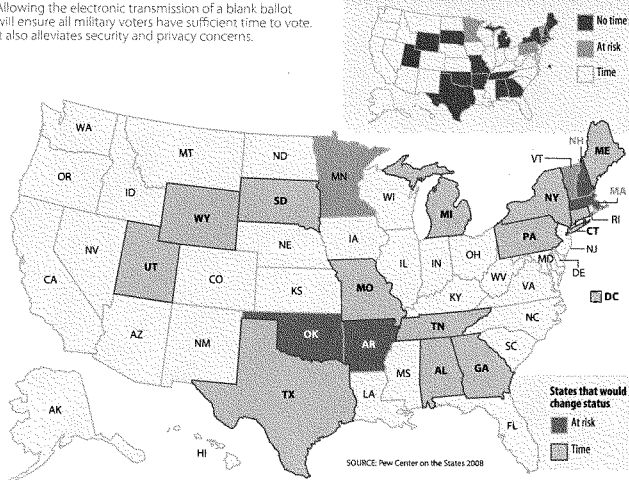
A number of states recently have enacted changes to their laws that allow for more electronic transmission of election materials. For example, in August 2008, New Jersey

Governor Jon Corzine signed legislation that allows the state's military and civilian overseas voters to both receive and return their ballots by fax or e-mail.¹⁹ In other states, such as Alabama, election officials are working with their legislatures to explore whether similar changes could be made to their process.

But as noted earlier, some policy makers, election officials, advocates and experts—including the federal General Accountability Office—have raised questions about the security and privacy of completed ballots transmitted electronically back to their states. Some states are now

Exhibit 14
HOW ELECTRONIC TRANSMISSION WOULD HELP STATES

Allowing the electronic transmission of a blank ballot will ensure all military voters have sufficient time to vote. It also alleviates security and privacy concerns.



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experimenting with methods to mitigate these concerns or inform voters of the risks of voting electronically. In light of these concerns, we evaluated how “no time to vote” and “at-risk” states would fare if they only used an outbound electronic transmission of a blank ballot to military voters abroad and required that completed ballots be returned by traditional mail. Under this model, we found that 13 jurisdictions would afford time to vote (Exhibit 14).

In addition, an electronic voting process raises questions about practicality: while our model assumed that all voters used the fastest voting method available to them, in reality, not all military personnel overseas have access to fax or e-mail. According to a 2007 Defense Manpower Data Center study, between September and November in 2006, 25 percent of active-duty members reported having no access to a fax machine and 17 percent reported having no access to their personal e-mail.⁴⁹

Ensuring a Minimum 45-Day Ballot Transit Time

FVAP recommends a minimum of 45 days for “ballot transit time”—that is, the amount of time between the date a state sends a blank ballot to a voter and the deadline by which the voter must return the completed ballot.

Twenty-eight states and the District of Columbia provide at least a 45-day ballot transit window; 22 states do not. Of those 22 states, nine are “no time to vote” states and two are “at risk” (providing fewer than five days of extra time in the process) for military voters overseas. We found that even if the nine “no time to vote” states gave their overseas military voters at least

45 days to receive a blank and mail back a completed ballot, it still would not ensure these voters had enough time because of other factors in the states’ process.⁵⁰ The additional time would, however, give them valuable breathing room.⁵¹ And this change would move the “at-risk” states of Minnesota and Vermont into the “time to vote” category (Exhibit 15).

To illustrate the difference a minimum 45-day ballot transit time can make, compare Illinois and Massachusetts. Neither state has notary requirements, nor do they allow electronic transmission of either blank ballots to voters or completed ballots from voters.⁵² Both states waive the registration requirement and accept their voters’ ballots after Election Day. As a result, military voters from both states require nearly the same number of days to vote (45 days in Illinois and 47 days in Massachusetts). But there the similarities end.

To compensate for the time it takes for their election materials to travel through both military and civilian mail systems, Illinois and Massachusetts would either have to mail their ballots early or extend their existing deadlines for receiving completed ballots. Illinois does both—thus giving its voters “time to vote.” Illinois sends out its ballots more than a month earlier than Massachusetts—and Illinois gives its military voters overseas four more days than does Massachusetts to have their ballots counted. Although adopting a minimum 45-day ballot transit time would not move Massachusetts into the “time to vote” category, it would help—and mailing out its ballots earlier or pushing its deadline for completed ballots could buy its voters the additional time they need.

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Eliminating the Notary Requirement

Eight states require their UOCAVA voters to have their completed ballots notarized before returning them to their local election offices. The notarization itself typically does not take much time—but finding a notary approved by one’s state can be difficult and time-consuming in some overseas locations.

FVAP recommends that the notary requirement be eliminated, with citizens allowed to “execute a self-administered oath on all voting materials.”⁴² Based on our analysis, adopting this provision

would not change the status of any of the “no time to vote” or “at-risk” states that have a notary requirement for military personnel based abroad. Still, eliminating notarization would help streamline the process for military voters hailing from the eight states that require it (Exhibit 16).

Enacting a Uniform Voting Law

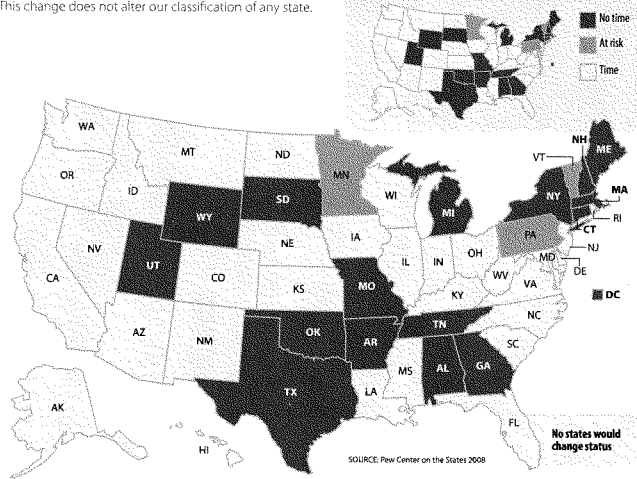
While individual states have adopted a range of improvements, the lack of consistency across their absentee voting processes presents one of the greatest challenges to military and overseas citizens attempting to navigate the system. Earlier



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Exhibit 16
ELIMINATING THE NOTARY REQUIREMENT WOULD SAVE 8 STATES TIME

This change does not alter our classification of any state.



this year, the Uniform Law Commission (ULC) approved a proposal from Pew's Make Voting Work initiative to study whether and how a uniform state law could be developed for military and overseas voters. A study committee established by the ULC will consider the feasibility of drafting and enacting legislation with consistent timelines, requirements and standards for registration, absentee ballot distribution and ballot voting for military and overseas voters covered under UOCAVA.

The ULC, formerly known as the National Conference of Commissioners of Uniform State Laws, is trusted by policy makers across the political spectrum and has a long track record of success. It developed the Uniform Commercial Code, which is widely hailed as an example of states working together, without federal action, to implement uniform laws for the improvement of commerce and civil law.⁴⁵



Conclusion

Half the states and the District of Columbia need to improve their absentee voting systems for overseas military voters. These jurisdictions need to be aware of how deadlines and ballot transit times combine to create challenges for active-duty military voters stationed overseas, and that some technological fixes may compromise the security and privacy of their votes. And because of our conservative assumptions, even states that were categorized as “time to vote” states could better educate their military voters and ensure that those dispersed around the globe have the maximum time possible to cast and return ballots.

Public support for this issue is overwhelming. A bipartisan Tarrance/Lake poll found that 96 percent of Americans believe it is important that military and overseas voters have the opportunity to participate in U.S. elections and have their votes count—and nearly two-thirds of Americans think the system for these voters is not serving them well.

Fortunately, common-sense solutions are available to better serve overseas military voters. As this report illustrates, key interventions such as sending blank ballots out via fax and e-mail, distributing ballots to voters as early as possible, and providing more time for completed ballots from military citizens overseas to reach local election offices make the voting process much more accessible and effective for all voters. States looking for best practices also should turn to the Uniform Law Commission, which is drafting a uniform state law for military and overseas voters. And they should draw from the Overseas Vote Foundation, Federal Voting Assistance Program, Election Assistance Commission (EAC) and National Institute for Standards and Technology, which is working with the EAC to set electronic voting standards for military and overseas voters.

The Pew Center on the States’ Make Voting Work initiative will continue to work alongside these organizations and state and local election officials to ensure that we offer all Americans—including those serving in our armed services and living overseas—the modern election system they deserve.

Methodology

Modeling Methodology

The centerpiece of our analysis is a model of the military absentee voting process, from the time a military voter initiates the process until the time a vote is received at a local jurisdiction. The model incorporates states' legislative and administrative deadlines, information on mail transit times, the estimated time it takes election officials to complete key steps, and the estimated time it takes voters to complete certain steps (such as filling out or notarizing a ballot).

We used our model to estimate, for each of the 50 states and the District of Columbia, the last possible day a military absentee voter could submit a ballot and have it counted and the latest date that a voter could start the electoral process. We then compared the last possible date the voter could submit a ballot to the earliest date a jurisdiction will mail out absentee ballots to arrive at a measure of "time to vote." In essence, "time to vote" represents the amount of time a voter has beyond the absolute minimum required for returning the ballot. This extra time is defined as more than five business days, and provides necessary cushion for delays caused by mail delivery and other unknowns, including military missions that prevent someone in uniform from returning to base frequently.

We also measured convenience, indicating the latest possible time an absentee voter could submit an FCPA registration/ballot request. This date varies widely across jurisdictions, with some states requiring absentee voter registration/ballot requests weeks before candidates for significant offices, such as the vice presidency, are known.

Data We Collected

To determine how much time each jurisdiction's military absentee voting process takes, we used multiple data sources to collect information in two areas:

1. **State process and deadlines.** To estimate time associated with various steps in states' voting process and determine important election deadlines, we used two main sources of data collection.

Federal Voting Assistance Program guide. We used the online Federal Voting Assistance Program (FVAP) guide to identify each state's requirements for when states and voters must complete each step of the process and what they must do, and to identify which states have enacted FVAP's proposed legislation. When the FVAP guide was unclear, researchers consulted states' election Web sites to verify process steps and deadlines. Researchers also confirmed information obtained from FVAP's guide and states' election Web sites directly with state election officials. We continued to monitor and verify this data up until November 4, 2008, to ensure our analysis took into account what states' laws were in effect at the time of the most recent election.

Survey of election officials. We surveyed election officials twice during our research period. First, to estimate process times, we surveyed election officials in one county in each of the 50 states and the District of Columbia (titles of those surveyed include County Clerk, Town Clerk, Registrar of Voters, etc.) to collect data

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on the amount of time election officials estimate it takes them to transmit and process election materials. We decided to use a mixed-mode approach of a Web-based survey and a paper questionnaire, and gave election officials the option of using either mode. This allowed for greater coverage of the targeted survey population and a higher response rate. The final questionnaire contained questions related to the following categories:

- Transmission of Election Materials, which focused on processing and validation times for registration, ballot requests, blank ballots, and completed ballots when received via postal mail as well as electronic means, if applicable.
- Absentee Ballots, which focused on FWABs, witness or notary requirements, and signature and date in lieu of a postmark as evidence of time of completion of the ballot.

On August 18, a Federal Express packet was sent to all election officials selected to participate in the survey. This packet contained the following: (1) a letter describing the purpose of the survey and encouraging participation; (2) a three-page paper questionnaire; and (3) a pre-paid return Federal Express envelope. Each paper questionnaire was pre-coded with an identification number so that we were able to track respondents. This coding was necessary because if identifying fields (e.g., e-mail address) were left blank on a written survey we would be unable to link responses to data from other sources. Election officials also were given a username and password to

complete the Web-based survey. We guaranteed respondents that their responses would be kept confidential and would be published only in the aggregate. In addition, an e-mail was sent to each election official similar to the letter described above, describing the purpose of the survey and encouraging participation. On August 26, all non-respondents received an e-mail reminder or a telephone call to complete the online or paper survey.

As completed surveys were received via the Web, we used the reporting tools in WebSurveyor to flag obvious errors, such as missing data. Similar validation was performed manually for completed paper surveys prior to key-entry. Finally, we formatted the data, as needed, to ensure consistency between data from the Web and mail surveys. We received 27 responses to our survey (a 53 percent response rate).

Survey data was imported into the database tool and used to conduct more rigorous data validation and analysis, including range checks, format checks and contingency checks (to validate skip patterns).

Next, to validate the information we collected from FVAP's guide, we once again surveyed election officials. Through the National Association of State Election Directors, we contacted state election directors in all 50 states and the District of Columbia. Between October 2 and 16, state election directors were asked to confirm or change the information on state election processes and deadlines collected through FVAP. Twenty-eight states responded to our survey (a 55 percent response rate).

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2. **Mail transit times.** Part of the voting process is the transmission of election materials between voters and their jurisdictions. Depending on the state, election materials may be sent via postal mail, fax or e-mail. We made the assumption that it takes approximately one day to send election materials electronically. With postal mail delivery, we needed to determine transit times of the domestic, international and military mail.

We based mail transit time assumptions on three different sources of information. First, to calculate domestic mail delivery times, we used a USPS tool, an independent, external system administered by IBM Business Consulting Services. Second, to calculate military mail transit times, we used estimates from the Military Postal Service Agency. Finally, for international mail estimates, we looked at the best available data from the USPS and private couriers.

USPS Mail

The USPS provides a tool, the Shipping Assistant, based on IBM's Transit Time Measurement System, which allows the user to obtain approximate delivery times between domestic, military and international locations. We used the delivery time estimates from this tool for domestic locations, using a specific address within each jurisdiction, where applicable. Two locations of origin were chosen from each state: (1) the address associated with an election official from the state capitol (e.g., the City Clerk or Registrar of Voters) and (2) the address associated with the election official from each jurisdiction that was invited to participate in our survey of election officials. (In some instances, these two locations were the same. Where the locations differed, mail delivery

times did not vary significantly, if at all.) Individual delivery times were calculated for those locations in each state going to one of two military mail transshipment points for international mail delivery—one in San Francisco and another at JFK Airport. These two locations were chosen based on GAO reports stating that they received most of the mail and packages being delivered to military personnel and their dependents. For Western, Southwestern and a few Midwestern states, we assumed their mail went to the San Francisco military mail location, based on proximity to San Francisco. For all other states we assumed their mail was sent to the JFK Airport military mail location.⁴⁶

Military Mail

All active-duty armed service members use the Military Postal Service Agency to transport mail to and from the individual. According to the agency, military mail takes less than 12 days to be transported to military personnel stationed overseas. However, recent GAO studies cast doubt on that estimate. The studies suspect the true transit time takes between 12 and 18 days one way, sometimes longer, depending on location and size of the package. Recent media reports also state one-way delivery times of between 12 and 18 days.

Our research used two scenarios when calculating military mail times. Based on the GAO studies, we first assumed 18 days each way for mail delivery both to and from military installments overseas. Then we split the difference between the 12 to 18 day range provided by the Military Postal Service Agency and used 15 days as our estimated transit time for military mail going outbound from the United States, and 13 days for such mail to be returned

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from overseas locations (according to both the agency and the GAO, return mail takes two days less time).

International Mail

USPS estimates that one-way, international mail delivery may take anywhere between six to 10 days. DHL and Fed Ex estimate roughly six days one way to most countries and as many as nine days to South American countries (from the point of entry into international mail to delivery).

However, we lacked similar quality data on international delivery estimates for mail returning to the United States. Because international mail service is not one system, analysis of the transit times associated with returning mail is difficult to obtain.

Model Assumptions

To determine how military voters and states navigate the voting process, we made straightforward assumptions about all actors, erring on the side of assuming each can complete their required steps as quickly as possible. We also assumed that voters use the fastest voting method available to them.⁴⁹ Similar assumptions were made about the U.S. and military postal mail systems, on which much of the absentee voting process depends. On average, these assumptions, while necessary for the model, likely underestimate the time it takes each voter and the jurisdiction to act. In reality, the process tends to be longer for voters, thus making our findings conservative.

We also assumed that election officials and the FVAP guide properly and accurately described state election law at the time of our analysis, and

that these laws are implemented uniformly across each state.

Study Caveats

This report involves an analysis of the military voting process only for federal elections. We do not address issues of state elections or state balloting, which are even more varied than federal election processes.

We looked at several recommendations by FVAP to change states' voting process for absentee military and overseas voters, and applied these proposals to our "no time to vote" and "at-risk" states to see what difference they might make. In doing so, we assumed none of those states already had implemented the FVAP recommendations or other, very similar legislative changes.

Regarding the survey of election officials, the median time reported for key steps in the voting process was used as a guide for calibrating our model. There could be variation around these times due to several factors, including the time in the election cycle, the staffing in a particular jurisdiction, or action of other participants in the process, such as the state or political parties, etc. However, as our objective was not to try to measure the exact time taken on these steps but to characterize the potential benefits of changes to the process, we believe this variation does not significantly impact the overall assessment of the prospective impact of the changes.

Our measures of both "time to vote" and "days needed to vote" should be taken as a relative guide to the level of risk within a jurisdiction, not as absolute measures of performance. In addition



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to the various local process differences we discuss above, there is significant variation in postal mail delivery times, both because of local conditions in a foreign country and its geographic proximity to the United States. While we believe our measures provide a good indication of the risk of not having votes counted, even if a registration was submitted after the "time to start," or if insufficient "time to vote" was allowed. As an example, a military voter using express mail is more likely to make the voting process work because of faster mail times, while another uniformed citizen relying on the military mail system might have a more difficult time making the process work if they miss key dates.

Finally, because of a lack of reliable data for international mail times and other information challenges, such as where the U.S. overseas civilian population is located, we could not calculate whether states provide enough time

for citizens living abroad to complete the voting process. It is reasonable to suspect that overseas civilian voters face similar challenges as our military citizens serving abroad, but we lack sufficient information to conduct this analysis. To do a detailed analysis of the absentee voting process for overseas civilians, better data are needed. While it may be difficult to analyze international mail times, a good first step would be recording when ballots were postmarked from overseas and noting when these ballots were received at domestic election offices. At a minimum, this data would enable researchers to calculate average international mail times for each state, and apply them to our model. This would likely understate the challenges that some overseas civilian face when voting by absentee ballot, but it would give states a better understanding of how different steps in the voting process must work together as a whole to ensure their overseas residents have time to vote.

FVAP Recommended State Legislative Initiatives*

Each year the Federal Voting Assistance Program (FVAP) sends legislative initiatives to all the states and territories for consideration. The legislative initiatives the FVAP requests states and territories to consider are as follows:

45-Day Ballot Transit Time

FVAP recommends a minimum of 45 days between the date the ballot is mailed to the voter and the voted ballot return deadline. This is especially beneficial for citizens voting from overseas and APO/FPO addresses.

Elimination of the Notary Requirement

Obtaining notarization of voting materials can be difficult and quite expensive in some foreign countries. This provision allows citizens to execute a self-administered oath on all voting materials.

Late Registration Procedures

A state's registration requirements, and the date of an individual's discharge from the Uniformed Services, or the date a citizen returns from overseas employment may create a barrier to timely voter registration. FVAP encourages the states to allow citizens to register past the regular deadline.

Special State Write-In Absentee Ballot

This legislation allows citizens stationed in remote locations who are unable to receive regular absentee ballots sent in the normal time frame, to use a Special State Write-In Absentee Ballot which provides a full slate of offices.

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

This will help election officials find guidance to applicable Federal law and increase their familiarity with the statute and its application.

Electronic Transmission of Election Materials

FVAP encourages all states to use fax and e-mail for the transmission of balloting materials between local election officials and voters. Fifty-one states and territories use some electronic transmission of election materials.

Expanded Use of the Federal Write-In Absentee Ballot (FWAB)

Currently the FWAB is generally allowed for Federal offices only. This legislation proposes expanding its use to include special, primary and run-off elections when citizens cannot receive regular ballots in a timely manner. In addition, the FWAB can be accepted simultaneously for registration and absentee ballot request.

Emergency Authority for Chief Election Official

Granting emergency authority to the chief election official in the state would allow him or her to designate alternate methods for handling absentee ballots in times of a declared emergency.

*Source: Legislative Initiatives reprinted from FVAP's Web site: <http://www.fvap.gov/reference/news/state-initiatives/index.html>.



APPENDIX B

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

Approximately 50,000 U.S. citizens who have never resided in the U.S. are not entitled to vote under current law. While they are subject to all other requirements of citizenship, they are not eligible to vote. This legislation would allow these citizens to vote where either parent is eligible to vote under *UOCAVA*.

Accept Ballot Date and Signature in Lieu of 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.





APPENDIX B

Exhibit B-1. State Initiatives for UOCAVA Voters

State	Allow Electronic Submission of Registration	Allow Electronic Submission of Ballot Request	Allow Electronic Transmission of Blank Ballot	No Notary/Witness Requirement	Allow Electronic Submission of Completed Ballot	Provide Minimum 45-day Transit Time
Alabama						
Alaska	●	●	●		●	
Arizona	●	●	●	●	●	
Arkansas	●	●				
California	●	●	●	●	●	
Colorado	●	●	●	●	●	
Connecticut	●	●		●		●
Delaware	●	●	●			●
District of Columbia	●	●		●		
Florida	●	●	●	●	●	●
Georgia	●	●				●
Hawaii	●	●	●	●	●	
Idaho	●	●	●	●		●
Illinois	●	●		●		●
Indiana	●	●	●		●	
Iowa	●	●	●			●
Kansas	●	●	●	●	●	●
Kentucky	●	●	●	●		●
Louisiana	●	●	●		●	●
Maine	●	●		●		●
Maryland	●	●	●	●		●
Massachusetts	●	●		●		
Michigan	●	●		●		●
Minnesota	●	●	●	●		
Mississippi	●	●	●		●	●
Missouri	●	●		●		
Montana	●	●	●	●	●	●
Nebraska	●	●	●	●	●	●
Nevada	●	●	●	●	●	
New Hampshire	●	●		●		
New Jersey	●	●	●	●	●	
New Mexico	●	●	●	●	●	●
New York	●	●		●	●	●
North Carolina	●	●	●		●	●
North Dakota	●	●		●	●	
Ohio	●	●	●	●		●
Oklahoma	●	●		●		
Oregon	●	●	●	●		●
Pennsylvania	●	●	●	●		●
Rhode Island	●	●	●	●	●	
South Carolina	●	●	●		●	●
South Dakota	●	●		●		
Tennessee	●	●		●		●
Texas	●	●		●		●
Utah	●	●		●		
Vermont	●	●	●	●		
Virginia	●	●	●			●
Washington	●	●	●	●		●
West Virginia	●	●	●	●	●	●
Wisconsin	●	●	●			
Wyoming				●		

Source: Pew Center on the States 2008
 Key: ● = implemented

APPENDIX C

Exhibit C-1. The Number of Extra Days Provided by a State's Election Process

State	Extra Time, # of Days
New Mexico	46
North Carolina	43
Kansas	42
Montana	42
Louisiana	39
Mississippi	39
South Carolina	38
West Virginia	38
Nevada	37
New Jersey	37
North Dakota	36
Indiana	35
Hawaii**	32
Arizona**	30
Colorado**	27
Florida	27
California**	26
Washington	23
Kentucky	22
Illinois	20
Rhode Island**	18
Delaware	17
Iowa	17
Ohio	17
Oregon	17
Alaska**	16
Nebraska	16
Idaho	15
Virginia	14
Maryland	12
Wisconsin	9
Vermont	2
Minnesota	1
Pennsylvania	1
Texas	-3
Georgia	-6
Connecticut	-7
District of Columbia	-7
Maine	-7
Michigan	-7
New York	-7
Tennessee	-9
Missouri	-12
Utah	-12
South Dakota	-14
Wyoming	-14
Alabama	-17
Arkansas	-21
Massachusetts	-21
New Hampshire	-22
Oklahoma	-26

Source: Pew Center on the States 2008
 *Note: Number of extra days built into each state's election system beyond the absolute minimum required for returning a ballot.
 **Note: These states allow time to vote but with concerns about the privacy and security of the completed ballot.

Exhibit C-2. The Number of Days Needed to Complete State Election Processes

State	Days Before Election Day
Alabama	88
Missouri	85
Tennessee	85
Wyoming	85
Georgia	82
Utah	74
New York	68
Oklahoma	61
South Dakota	61
Idaho	61
Connecticut	57
Maine	57
Michigan	57
New Hampshire	57
Texas	53
Nevada	53
Ohio	53
Arkansas	51
Pennsylvania	48
District of Columbia	47
Massachusetts	47
Maryland	47
Illinois	45
West Virginia	45
Virginia	36
Minnesota	34
Nebraska	34
Delaware	33
Kentucky	33
Oregon	33
Vermont	33
South Carolina	31
Alaska	30
Iowa	30
New Jersey	30
Colorado	29
Florida	29
Hawaii	29
Indiana	29
Louisiana	29
Montana	29
Wisconsin	26
California	15
Mississippi	14
North Carolina	12
Washington	12
North Dakota	9
Arizona	8
Kansas	8
New Mexico	8
Rhode Island	8

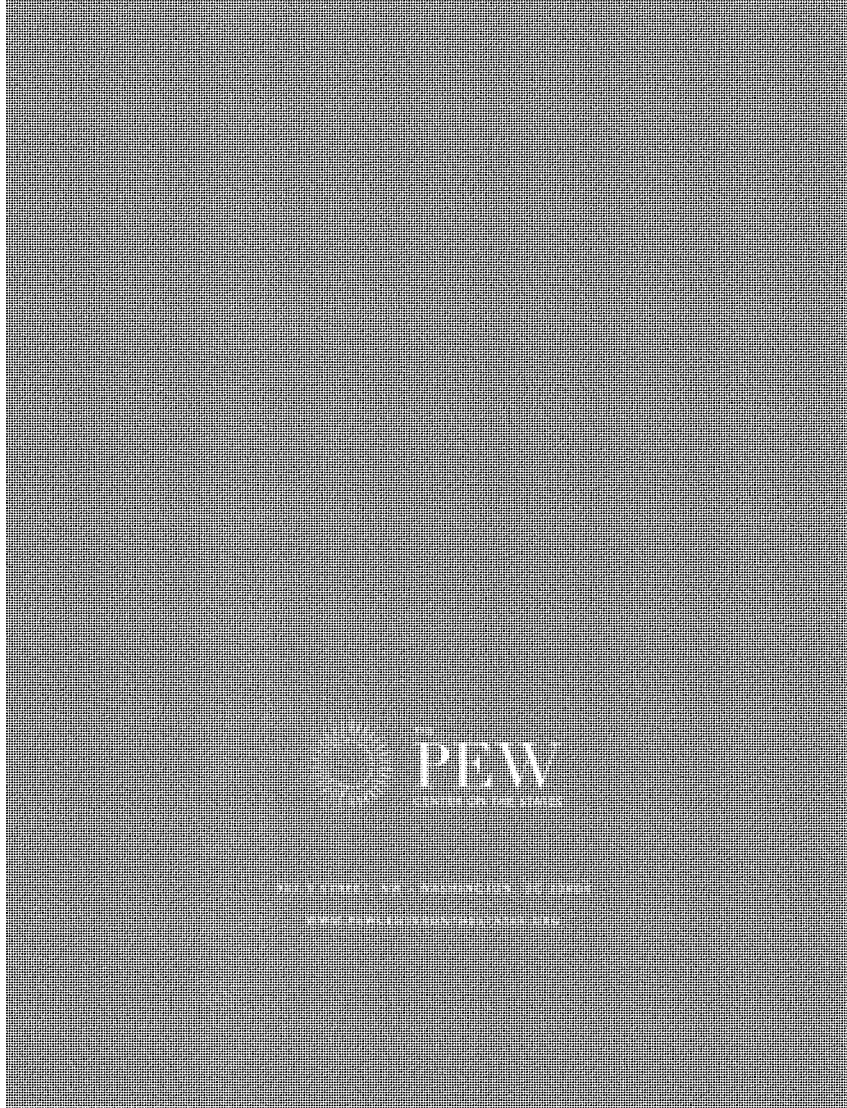
Source: Pew Center on the States 2008

Endnotes

- 1 "At least 992,034 UOCAVA-related absentee ballots were requested for the 2006 general election. . . . States reported[d] slightly more than 330,000 UOCAVA ballots were cast or counted." U.S. Election Assistance Commission (EAC), *UOCAVA Survey Report Findings* (Washington, D.C., September 2007), p. 1.
- 2 Polli Brunelli, *The Federal Voting Assistance Program, 17th Report* (Washington, D.C.: Department of Defense, Federal Voting Assistance Program, October 2005), chart 10, p. 12.
- 3 UOCAVA extends to eligible family members of active-duty military. In our analysis of overseas military personnel, family members who are over 18 years of age and U.S. citizens are also included. These individuals rely on the same systems (i.e., mail, state-provided ballots) as active-duty military personnel and are treated similarly under UOCAVA.
- 4 See, <http://www.fvap.gov/resources/media/uocavalaw.pdf>.
- 5 These 22 states are: Illinois, Indiana, Iowa, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, New Hampshire, North Dakota, Rhode Island, South Carolina, Texas, Utah, Vermont, Virginia, Washington and West Virginia, according to the Federal Voting Assistance Guide (<http://www.fvap.gov>), accessed on November 12, 2008.
- 6 GAO-08-521 "Elections: Absentee Voting Assistance to Military and Overseas Citizens Increased for the 2004 General Election, but Challenges Remain," April 7, 2006.
- 7 Hard copies of the form can be obtained from military installations' voting assistance officers, requested directly from the U.S. DoD's Federal Voting Assistance Program Office, or downloaded and printed from the office's Web site.
- 8 In the state of Illinois, only military and overseas voters from the City of Chicago and suburban Cook County can receive a blank ballot by fax or e-mail.
- 9 This includes the 18 previously mentioned states and Illinois, which allows e-mail transmission of blank ballots under special circumstances.
- 10 As shown in the 50-state assessment of Pew's Data for Democracy compendium, states provided responses to less than half of the items in the UOCAVA portion of the EAC's Election Administration and Election Day Survey. This average disguises significant cross-state variation; Delaware, Georgia, Florida, Idaho, Montana, North Dakota and Wyoming answered more than 90 percent of the survey items, while Alabama, Connecticut, Massachusetts, New Hampshire, New York, Pennsylvania, South Carolina, Tennessee and Vermont responded to less than a quarter of the survey. As the EAC noted in its own report on UOCAVA, "[r]esponse rates from many States and local jurisdictions were low, making the monitoring of compliance with the mandated requirements of UOCAVA difficult." U.S. Election Assistance Commission, *UOCAVA Survey Report Findings* (Washington, D.C.), September 2007, p. 1.
- 11 While our model assumed that all voters used the fastest voting method available to them, in reality, not all military personnel overseas have access to fax or e-mail. According to a 2006 Defense Manpower Data Center study, between the period of September 18 to November 6 overall, 25 percent of active-duty members reported having no access to a fax machine, 6 percent reported having access between 1 and 14 days, 22 percent reported having access between 15 and 49 days, and 47 percent reported having access every day, and overall, 17 percent of active-duty members reported having no access to their personal e-mail, 6 percent reported having access between 1 and 14 days, 25 percent reported having access between 15 and 49 days, and 53 percent reported having access every day. See, Defense Manpower Data Center, 2007, 2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees, *Note No. 2007-010*, pp. 14 and 20.
- 12 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.
- 13 See, 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.
- 14 Neal P. Curtin, OPERATION IRAQI FREEDOM: Long-standing Problems Hampering Mail Delivery Need to Be Resolved, GAO Report 04-484 (Washington, D.C.: Government Accountability Office, Defense Capabilities and Management, April 14, 2004), p. 12.
- 15 Neal P. Curtin, OPERATION IRAQI FREEDOM: Long-standing Problems Hampering Mail Delivery Need to Be Resolved, GAO Report 04-484 (Washington, D.C.: Government Accountability Office, Defense Capabilities and Management, April 14, 2004), pp. 9-14.
- 16 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.
- 17 Defense Manpower Data Center, 2007, 2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees, *Note No. 2007-010*, pp. 14 and 20 (see note 11).
- 18 Voters must also be conscious of three additional deadlines to determine one's start date for the process: 1) when registration must be postmarked, 2) when a state must receive a voter's registration and 3) when a state must receive a ballot request.
- 19 2010 Census: Counting Americans Overseas as Part of the Census Would Not Be Feasible, GAO-04-1077T, September 14, 2004.
- 20 As explained in Chapter 3, we could not reliably assess whether American civilians overseas have sufficient time to vote because of inadequate information about international mail transit times and other data challenges.
- 21 Defense Manpower Data Center, 2007, 2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees, *Note No. 2007-010*, p. 1.
- 22 Three states, Pennsylvania, Minnesota and Vermont, were "at risk" (offering fewer than five business days of extra time) of not

ENDNOTES

- providing their military voters enough time to vote. The remaining 31 states give voters ample time to vote in federal elections.
- 23 There is evidence that some military personnel lack access to e-mail and fax technology. See, Defense Manpower Data Center (DMDC), 2007, 2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees, *Note No. 2007-010*, pp. 14 and 20.
- 24 GAO Report 07-774, "Action Plans Needed to Fully Address Challenges in Electronic Absentee Voting Initiatives for Military and Overseas Citizens," June 2007, p. 30.
- 25 The 11 states are Alaska, Arizona, California, Florida, Hawaii, Indiana, Louisiana, Nevada, North Carolina, Rhode Island and West Virginia.
- 26 Under these various military mail assumptions, Connecticut, District of Columbia, Georgia, Maine, Michigan, New York and Texas move to the "at-risk" category. In addition, Pennsylvania, Minnesota and Vermont move from "at risk" to "time to vote."
- 27 It requires deliberate effort on the part of a voter to request an absentee ballot, and it is not surprising that 85.8% of absentee ballots requested by the general population in 2006 were cast. Calculation: $11,183,486$ (Domestic Citizen Absentee Ballots Cast – Table 26) ÷ $13,039,008$ (Domestic Citizen Absentee Ballots Requested – Table 30b) = 85.8%. See, U.S. Election Assistance Commission, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings* (Washington, D.C.: December 2007), tables 26 and 30b.
- 28 Of the absentee ballots requested by military personnel, only 26.5% were actually cast in 2006. Calculation: $992,034$ total UOCAVA absentee ballots were requested, of which 66.5% of those ballots requested that were categorized were categorized as military. See, U.S. Election Assistance Commission, *UOCAVA Survey Report Findings* (Washington, D.C., September 2007) table 22. Extrapolating that percentage into the uncategorized UOCAVA ballots requested as well comes to 659,703 military absentee ballots requested. A total of 659,703 military absentee ballots requested ÷ 175,091 military absentee ballots cast = 26.54% absentee ballot cast rate.
- 29 See, Poli Bunelli, *The Federal Voting Assistance Program, 17th Report* (Washington, D.C.: DoD, Federal Voting Assistance Program, October 2005), chart 1, p. 1. Note the U.S. Government Accountability Office (GAO) concluded in its report, GAO-06-521, *Absentee Voting Assistance to Military and Overseas Citizens Increased for the 2004 General Election, but Challenges Remain*, that "as result of known weaknesses in FVAP's reporting methodology, its estimates and conclusions should be interpreted with caution."
- 30 The processes in the three states "at risk" of not providing voters sufficient time—Minnesota, Pennsylvania and Vermont—take an average of 39 days.
- 31 Eight states allow for Election Day registration: Idaho, Iowa, Maine, Minnesota, Montana, New Hampshire, Wisconsin and Wyoming. These states allow voters to register on Election Day at their assigned precinct. This option is not available to absentee voters. Iowa used Election Day registration for the first time in 2008 and Montana for the first time in 2006. Maine, Minnesota, and Wisconsin have had it in place since the early 1970s and Idaho, New Hampshire and Wyoming have had it in place since the early to mid 1990s.
- 32 Extra time helps accommodate unexpected delays in the voting process.
- 33 The seven jurisdictions that do not afford military voters sufficient time to vote and also allow for ballots to be returned after Election Day are Arkansas, Georgia, Massachusetts, New York, Texas, Utah and the District of Columbia.
- 34 FVAP is designated by the President as the executive agent responsible for implementing the protections of UOCAVA (www.fvap.gov).
- 35 States could consider expanding the use of FWAB to include primaries, special elections, ballot initiatives and state and local elections. States could also encourage efforts to expand public education about FWAB as a back-up ballot.
- 36 Defense Manpower Data Center, 2007, 2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees, *Note No. 2007-010*, pp. 14 and 20 (see note 11).
- 37 In a study conducted by the DoD Inspector General in 2006, approximately one third of servicemembers surveyed were aware of the FWAB's use and purpose. DoD IG, 2006 Evaluation of the Federal Voting Assistance Program in the Department of Defense, Report No. IE-2007-004 (Washington, D.C., March 31, 2007), table 2 on p. 6.
- 38 Only 22 states allow the use of the FWAB for state and local elections.
- 39 Overseas voters who fax or e-mail their ballot also must send their original ballot materials to the appropriate County Board of Elections to be compared to the faxed or e-mailed materials. See, http://www.state.nj.us/state/elections/vote_overseas.html#1, accessed on November 13, 2008.
- 40 Defense Manpower Data Center, 2007, 2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees, *Note No. 2007-010*, pp. 14 and 20 (see note 11).
- 41 The nine "no time to vote" states that afford military voters fewer than 45 days to receive and mail back their completed ballots are Alabama, Arkansas, Massachusetts, Missouri, New Hampshire, Oklahoma, South Dakota, Utah and Wyoming.
- 42 On average, increasing transit time to 45 days shaves eight days off the voting process for military personnel stationed abroad from the nine "no time to vote" states. And it shaves 10 or more days off the voting process for overseas military voters in four "no time to vote" states—Arkansas, Oklahoma, Massachusetts, and New Hampshire. In two states, Massachusetts and New Hampshire, these voters would need only seven additional days to finish the voting process in time to have their ballots counted.
- 43 Illinois allows this provision in Suburban Cook County and the City of Chicago only.
- 44 See, <http://www.fvap.gov/reference/laws/state-initiatives/index.html>.
- 45 For more details, go to www.nccusl.org.
- 46 This assumption was necessary to calculate domestic mail times. In reality, military mail is not segregated by where the mail comes from in the United States, but by the intended destination. For example, the FPO in San Francisco, California, serves all armed forces in the Pacific and Asia, or based in the Western United States. Therefore, a uniformed citizen stationed in Seoul, Korea from New York will have his/her ballot routed to the FPO in San Francisco.
- 47 While our model assumed that voters used the fastest voting method available to them, there is evidence that some military personnel lack access to e-mail and fax technology. See, Defense Manpower Data Center, 2007, 2006 Survey Results on Voting Assistance Among Military Members and DoD Civilian Employees, *Note No. 2007-010*, pp. 14 and 20.





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May 15, 2009

Lynden Armstrong, Chief Clerk
United States Senate
Committee on Rules and Administration
Russell Office Building
305 Russell Senate Office Building
Washington, DC 20510

Dear Chief Clerk Armstrong,

Attached please find written testimony for the May 13 meeting of the U. S. Senate Committee on Rules and Administration to hear testimony regarding voting problems facing military members and their families. Thank you for this opportunity to present written testimony.

Please do not hesitate to contact me if you have questions.

Sincerely,

Alec Yasinsac, Dean

WRITTEN TESTIMONY OF ALEC YASINSAC, PH.D.
SCHOOL OF COMPUTER AND INFORMATION SCIENCES
THE UNIVERSITY OF SOUTH ALABAMA
PREPARED FOR THE UNITED STATES SENATE COMMITTEE ON
RULES AND ADMINISTRATION MEETING TO HEAR TESTIMONY ON
PROBLEMS FOR MILITARY AND OVERSEAS VOTERS
MAY 13TH, 2009

Thank you for the opportunity to provide testimony to this meeting. My name is Alec Yasinsac. I am Professor and Dean of the School of Computer and Information Sciences at the University of South Alabama. I have significant voting system experience, having conducted numerous government sponsored voting system security reviews and have over thirty years experience in computers and communication systems. I am also a retired Marine that voted absentee for most of my twenty years of service.

The problems that face military voters and their families are vast and have gone on for far too long. Efforts to date to chip away at the corners of the problem typify a modification to an old adage:

A-little-bit-better is the enemy of good-enough.

Military members are disproportionately disenfranchised in alarming numbers and we must commit the resources, and will, to make the necessary changes to eliminate this disparity.

This testimony first identifies four specific voting problems for military members and their families that are stationed overseas:

- (1) The present system does not provide sufficient time for military members and their families to vote.
- (2) Mistakes by military members and their families are markedly unforgiving as compared to other voters.
- (3) Vote by Mail is inherently insecure for military members and their families.
- (4) There are unnecessary barriers to military support for the voting process.

It then provides recommendations that can lead to timely, reliable voting for military members and their families stationed overseas.

The present system does not provide sufficient time for military members and their families to vote.

In the past five months, the Overseas Vote Foundation, National Institute of Standards and Technology, and Pew Charitable Trusts released reports on Military and Overseas Voting. The U. S. Elections Assistance Commission (EAC) commissioned a study on this topic in 2007, as did the U. S. General Accounting Office (GAO).

It is encouraging that the topic is receiving significant attention, as is well demonstrated by this hearing. This attention is long overdue.

Maybe the most telling of all the facts that emerged from these reports is that the *good news* is that:

¹31 of our 50 states provide enough time for their deployed military and overseas residents to vote.

Yes, this is the good news. Taken from the report released by Pew Trusts on January 6 of this year, we know that nineteen of our fifty states do not provide enough time for military/overseas voters to successfully cast their ballot. This illustrates just how pervasive the challenges are to enabling military members and their family to cast their ballots.

It is instructive to examine what it means in the PEW Report for overseas voters to have "enough" time. From the same report:

The average time required for overseas voters to cast their ballots in those states is 29 days

This means that in those states that provide enough time to vote, overseas voters begin the voting process twenty nine days before election day, effectively

¹ Pew Trusts, "No Time to Vote", January 6, 2009, http://www.pewtrusts.org/news_room_detail.aspx?id=47924

imposing a 29-day penalty on overseas and military voters.

A canonical UOCAVA voting process may apply some form of the following serial steps:

- (1) Voter requests an official absentee ballot request form
- (2) The local jurisdiction processes the request and puts the absentee ballot request form in the mail to the voter
- (3) The mail system delivers a blank absentee ballot request form to the voter
- (4) The voter fills out the absentee ballot request and puts it in the mail to their election jurisdiction
- (5) The mail system delivers the completed absentee ballot request to the voter's jurisdiction
- (6) The jurisdiction processes the request, authenticates the voter, resolves any discrepancies in the voter's record, and selects the proper ballot. When the ballot is ready, the jurisdiction puts the ballot in the mail. Note that the ballot cannot be selected until after the jurisdiction finalizes the ballots, which may be fairly close to election day.

- (7) The mail system delivers the blank ballot to the voter
- (8) The voter receives the blank ballot, marks the ballot, and places the marked ballot in the mail to be returned to their jurisdiction
- (9) The mail system delivers the marked ballot to the jurisdiction
- (10) The jurisdiction processes the ballot and incorporates it into the vote tally on election day

Each of these serial steps takes time and is dependent on human processes. An error or delay in any step can cause the cycle to fail resulting in disenfranchisement.

Moreover, while some states allow unregistered voters to combine their registration with their absentee ballot request, some states may prefix the following steps into the process for unregistered UOCAVA voters:

- (0.1) Voter requests an official registration request form
- (0.2) The local jurisdiction processes the request and puts the blank registration form in the mail

- (0.3) The mail system delivers a blank registration form to the voter
- (0.4) The voter fills out the registration form and puts it in the mail to their jurisdiction
- (0.5) The mail system delivers the completed registration form to the jurisdiction
- (0.6) The local jurisdiction processes the request, authenticates the voter, resolves any discrepancies in the voter's record, and enters them into the voter rolls

This prospective sixteen step process, with six mail-dependent steps, does not represent the worst case, which includes additional iterations necessitated by errors. It is certainly possible to reduce the time required for military members and their families to vote by reducing the number of steps in this process, and all states exercise some form of step reduction. Pushing information and materials, rather than waiting for requests, can reduce the time required, but often depends on stable location information, which is not possible with many military voters.

Moreover, chipping away at the number of required steps cannot remove the inherent delays in international mail. Military members deserve to be confident that their ballots will be counted on election day and that

their votes will be included in the first reported count. Election materials transported through international mail cannot offer that assurance.

Mistakes by military members and their families are unforgiving compared to other voters.

An often overlooked aspect of this issue is that the voting experience for military voters is much less rich than for their polling place counterparts. For example, depending on the state from which they hail and other details of the situation, military voters may not be able to:

- Change their mind
- Employ routine voting error checks
- Fix mistakes
- Reliably track their ballot
- Stop in to vote on their way to work
- Register on election day
- Change residence close to election day

Think of the simplest of restrictions: if while marking their ballot a military voter errantly selects a candidate, the only means to make a correction may be to request a replacement ballot² and it is unlikely that a replacement ballot could arrive in time to complete the process in most cases. Additionally, if after they

² Some states offer VBM voters procedures to correct mistakes

mail their ballot they gain additional information about the candidates, e.g. by watching a televised debate, they are unlikely to be able to change their mind because of the inherent delivery delays.

Certainly, any one of the listed issues can be overcome, but when combined, their result is devastating to this voting group. The collective impediments are highlighted by the contrast between the percentage of requested absentee ballots returned among the general voting population (86%) and those from overseas/military voters (27%) (also from the Pew Report).

This is an apples-to-apples comparison. Voters that go to the trouble of requesting an absentee ballot are serious about voting. They are willing to devote the effort necessary to cast their ballot. Military voters are being disenfranchised in large numbers.

Many of these problems are related to the time required to transport materials between military members and their voting jurisdiction. Materials transported through international mail cannot offer the services needed to support voting for military members and their families.

Vote by Mail (VBM) is inherently insecure for military members and their families.

The VBM system that the preponderance of military voters and their families use does not support the fundamental voting system requirements of coercion resistance, vote-sale resistance, verifiable privacy, nor are they auditable. In many cases, if military members residing overseas are able to detect that their VBM ballot was not delivered, they are unable to attain and send a replacement ballot in time to be counted.

There are many ways that VBM ballots offer limited reliability and accountability.

Lost mail. The mail system is designed to deliver a large volume of mail in a short time. It is not generally designed to track each item, so, as many of us have experienced ourselves, mailed items are routinely lost.

Because of its design that does not establish a rigorous chain of custody, any approach that employs regular mail, marked ballot delivery is not auditable. Mail can be lost with no ability to find lost items, or in some cases, even to detect their loss.

Voter errors. VBM procedures are inherently complex and error prone. We found little broadly applicable historical data on this topic, but in the 2008 election

in Minnesota approximately 4.2% of all VBM ballots were rejected (approximately 12,000³ of 288,000⁴) due to procedural errors by voters. Common errors include failure to sign, signing in the wrong place, and improper packaging (e.g. husband and wife bundling two absentee ballots in the same envelope).

This 4.2% vote loss percentage does not include ballot marking errors that may have been prevented or corrected at the polling place, so the overall vote loss/error rate is likely substantially higher than 4.2%, while in-precinct ballot rejection is likely near zero percent.

Election official errors. Inherently complex VBM procedures are also difficult for temporary elections officials, even those who routinely process VBM ballots, to understand and follow. In Minnesota, at least 13% of the rejected absentee ballots were rejected in error⁵. The actual percentage of erroneously rejected ballots may be higher, because there may still be erroneously rejected ballots that have not been detected. In one Minnesota county⁶, after the senate contest was certified and reviewed, another, further review revealed that 20% (30 of 150) of the thrice-

³ Startribune.com, "Senate recount: Pendulum swings to Franken", By MIKE KASZUBA and CURT BROWN, December 3, 2008

⁴ <http://www.sos.state.mn.us/docs/postpercanvassingreport1117250p.pdf>

⁵ http://www.startribune.com/opinion/editorials/36194339.html?elr=KArks7PYDJaK7DUqyESD7UiD3aPc:_Yyc:aUU

⁶ http://www.startribune.com/politics/national/senate/39314392.html?elr=KArks7PYDJaK7DUvDE7aL_V_BD77:DiiUID3aPc:_Yyc:aUU

reviewed rejected ballots had been erroneously rejected by local elections officials "...who misunderstood state law or mishandled ballot applications".

Administering VBM ballots is an inherently complex process and significant errors are certain to occur.

Duplicated ballots. Many jurisdictions require elections officials to duplicate damaged or difficult-to-read VBM ballots. This creates a significant opportunity for mishap, as in the Minnesota senate race where the Wall Street Journal⁷ suggests that duplicates may have been counted twice in several precincts.

But it appears some officials may have failed to mark ballots as duplicates, which are now being counted in addition to the originals. This helps explain why more than 25 precincts now have more ballots than voters who signed in to vote.

Vote Attribution. Voter privacy is commonly seen as the voters' ability to cast their ballot without anyone being able to know their selections. VBM is inherently susceptible to violations of this minimal privacy interpretation since each VBM ballot must be bound to the voter's identity in order to ensure one-person, one-vote. Elections officials institute procedures to protect voter privacy, but the inherent vulnerability

⁷ <http://online.wsj.com/article/SB123111967642552909.html>

still exists for every VBM ballot. VBM does not protect against vote attribution and is susceptible to widespread fraud.

There are unnecessary barriers to military support for the voting process.

There are two specific barriers that limit the ability to resolve problems for military voters. First, there is an unfounded aversion toward directly involving the military establishment in the voting process. Like dental, medical, and postal services, voting services must be provided as an essential service to military members and their families.

Presently, the military's additional duty Voting Assistance Officer provides voting information to military members and their families, but there is little operational voting service provided. The types of voting services that should be provided for military members and their families include, but are not limited to:

- Early voting centers
- Absentee ballot collection centers
- Electronic ballot delivery systems
- Network applications to support voting services

I have heard some express a hesitancy to formally involve the military establishment in any aspect of the

voting process due to the risk of coercion. This concern is unfounded in empirical evidence and Chapter 29, Title 18 of the U. S. Code deals specifically with that concern. Military members and their families will continue to be disproportionately disenfranchised until the military adopts voting as an essential service and commits the correspondingly appropriate resources to provide that service.

Second, there is significant inertia to bind voting advances for military members and their families to similar gains for non-military overseas voters. This binding discounts the many fundamental differences in the two groups, including significant information security capabilities enabled by identity and oversight requirements for military members and their families. The two most obvious enabling distinctions are the military identification card that military members and their families carry and the access to military networks enjoyed on military bases.

While UOCAVA governs both military voters and non-military overseas citizens, it does not preclude leveraging resources that are specific to any subgroup of covered citizens.

In order to correct more than one hundred years of military disenfranchisement, we must leverage every

advantage that military administration provides with no artificial or preconceived limitations.

Recommendations that can lead to timely, reliable voting for military members and their families stationed overseas.

The greatest single opportunity to fix voting for military members stationed overseas is to eliminate the multi-day transmission delay for election materials between the voter and their voting jurisdiction. Virtually all of the problems that overseas military members face become imminently solvable if the transmission time shrinks from days to minutes or hours.

The Overseas Vote Foundation⁸ (OVF) is a champion of using the Internet to provide an electronic conduit between overseas voters and their voting jurisdiction for many election materials. The progress they have made in the past few years is remarkable. Since their efforts and capabilities are well known, the rest of testimony focuses on a critical area that OVF has not pursued: electronic delivery of marked ballots.

⁸ <http://www.overseasvotefoundation.org/>

The frustration of military voters is exemplified by the following note from a military member recorded in the January 2009 report from OVF:

*Registered to vote. Serving in Afghanistan. Never received a ballot. Tried to use the Federal Absentee Write in process - still required me to mail in the ballot and I was out of time... am very angry!*⁹

That Marine, soldier, sailor, etc. should be able to cast their ballot even if [or maybe particularly if] they didn't return to base from two months in the bush until election day itself.

Electronically returning marked ballots can eliminate or mitigate many of the present problems with overseas/military voting; the challenge is to find ways to leverage the power of electronic delivery while also protecting the integrity of the voting system.

Internet Challenges

The Internet is a digitally-dangerous place and it is critical to understand the risks and challenges before discussing specific solutions. Anonymity is fairly easy to attain on the Internet, so deterrence to committed intruders is minimized. Additionally, the opportunity

⁹ https://www.overseasvotefoundation.org/files/OVF_2009_PostElectionSurvey_Report.pdf

for hacking Return-On-Investment is great and there are organizations that openly advertise on the Internet that they are available to contract for cyber-attacks. Botnets, a particularly sinister type of malicious software (or malware), are pervasive on the Internet. While we do not, and cannot, know the number of infected machines, it is not unreasonable to expect that half of all Internet-connected computers contain some malicious software.

Why is this? The Internet was engineered to foster collaboration and passing information so its architecture was not designed to handle fundamental security concerns. As is often the case, security was an afterthought.

These threats to Internet-connected computers are not just theory; they are real. Virus scanners cannot prevent virus infection and firewalls cannot keep hackers out of network-attached computers. Each of these state-of-the-art defenses can be easily overcome by sophisticated intruders.

The SERVE Project

After an early attempt to examine Internet voting in the 2000 project entitled "Voting Over the Internet" the U. S. Department of Defense commissioned a Secure Electronic Registration and Voting Experiment, or

SERVE, in 2003. Four members of SERVE's technical advisory committee that evaluated the SERVE architecture reported significant security challenges for Internet voting schemes. Among those challenges were the risk of malicious software on personally owned personal computers and the pervasive threats on the Internet against any widely implemented Internet application.

These challenges remain in place today as we still are not able to ensure integrity of arbitrary remote network nodes. The SERVE Report¹⁰ is not alone in its skepticism regarding Internet voting. There are many sound research reports that confirm the primary risk that the SERVE Report documents.

A common question revolves around comparisons of voting to financial systems that pass literally billions of dollars a day across the Internet. The argument goes something like this: "If we can pass money around the Internet like this, why can't we vote over the Internet too?"

There are two overriding differences between financial systems and voting applications.

¹⁰ <http://www.servesecurityreport.org/>

First, financial systems require records that bind a person to each transaction. Thus, there is a record of who conducted each transaction along with critical transaction details. Conversely, election integrity (and often, state law) requires that voters be irreversibly separated from their selections once their ballots are cast. This severely limits the ability to investigate irregularities, since the fundamental forensic data of who cast which ballot cannot be maintained.

The second difference between voting and financial systems is that financial systems can absorb a significant level of error and inconsistency during financial transactions, yet still maintain a positive profit margin. Voting systems enjoy no such flexibility, since even a very small error rate can result in an errant contest decision.

The fundamental problem identified in the SERVE Report turns on the proposition that we can neither prevent nor detect malicious software on privately owned computers. To date, there is no counter argument to this point. This strong theoretic result, that is consistently reaffirmed in practice, dictates that electronic marked ballot delivery systems should not employ privately owned computers, particularly not those that are connected to the Internet.

The Threat Picture

A pivotal consideration in estimating the risks of networked applications, particularly a voting application, is the size of the prospectively affected population. It is unlikely that an attacker would risk committing a felony in order to change a few votes with little likelihood of controlling a contest result. Moreover, if they do undertake a low-impact attack, the effect of success in that scenario is, by definition, low.

Conversely, as the stakes rise in terms of the size of the potential population, the cost or risk to the prospective attacker is more easy to justify.

The threat picture for voting applications for military members and their families is of low magnitude. If there are one million prospective military voters spread over more than 3,000 voting jurisdictions (and many more precincts), the opportunity for meaningful mischief is minimal.

The situation is even stronger for pilot projects with controlled, limited participation and exaggerated security procedures. The safest, most effective way to exercise and examine solutions for military voters is through government sponsored pilot projects.

The Path to a Solution

As is noted throughout the description above, the primary limitation to leveling the voting playing field for military members and their families is to reduce the ballot transmission time between voters and their local jurisdictions. The paradigm that is envisioned is a system that employs electronic blank ballot delivery and that allows the voter to attain a physical vote record that corresponds to their marked electronic ballot, with the electronic ballot being returned to their jurisdiction across an electronic network while the physical vote record is transported via courier.

While there are many technological challenges that exist, based on my thirty years of computing experience and my fifteen years experience as an information security researcher, I am convinced that it is possible to mitigate the risk of attacks on pilot projects for electronic marked ballot delivery with the following provisions:

- For a limited sized voting population
- Apply strong information security techniques
- Use a centrally owned and controlled voting station
- Capture, retain, & compare electronic and physical ballot representations for every ballot cast

Under these stipulations, government sponsored pilot projects can exercise prospective solutions that can dramatically improve accessibility and turnout for many categories of military, and overseas, voters.

Pilot projects

There have already been several pilot projects that target electronically delivering marked ballots and much progress has been made. Through these pilots, we know that military members are anxious to vote and they are excited about using computers to overcome the limitations of exclusive reliance on physical ballot delivery.

The first objective of an electronic marked ballot return pilot is to assess the functional effectiveness of the piloted approach. That is, the pilot must determine if the pilot approach works under the limited pilot environment. There must be precise, measurable success criteria and a plan to validate the results.

While functionality is the most visible pilot focus, an essential element is for the pilot to demonstrate, or at least offer evidence, that the approach used in the pilot environment can reasonably be scaled or otherwise transitioned into a reasonable operational environment; that is, the pilot must be designed to determine whether, in addition to working in the pilot

environment, the system has a good chance of succeeding under real world circumstances.

In addition to functionality, pilot projects should examine multiple architectures to optimize cost and complexity to the greatest extent possible. For example, pilots should exercise:

- Virtual private networks
- Cryptographic voting systems
- Document delivery/upload systems

Additionally, the elephant in the room in many discussions on military voting is the capability to leverage military networks in the voting process for military voter. Thus, pilots should be designed to exercise:

- Voting kiosks transmitting across military networks
- Selected military computers as voting terminals, transmitting across military networks

Pilots that exercise multiple architectures are preferable to single architecture pilots.

Finally, a pivotal aspect of any pilot must be to capture cost data sufficient to estimate implementation and maintenance costs of the exercised approach if it were to be adopted.

Summary

The very nature of their service creates tremendous challenges to providing military members and their families the capability to vote. We are a free society largely because of their sacrifices and we owe them much more than a debt of gratitude: We owe military members and their families the capability to reliably cast their ballots.

Technology exists to allow the vast majority of overseas military members and their families to access electronically transmitted elections materials. It is time to break down the barriers to leveraging that capability to its fullest in support of our military members and their families.

RESPONSES FROM PATRICIA HOLLARN, FORMER SUPERVISOR OF ELECTIONS, OKALOOSA COUNTY, FLORIDA, TO QUESTIONS SUBMITTED BY CHAIRMAN CHARLES E. SCHUMER FOR THE U.S. SENATE COMMITTEE ON RULES AND ADMINISTRATION HEARING RECORD ON MILITARY AND OVERSEAS VOTING MAY 13, 2009

1. *DOD Voting Program*

Based on your experience with the Federal Voting Assistance Program (FVAP), please critique the program with regard to limitations of authority for FVAP, problems with implementation, and use of technology.

In working with the DOD's Federal Voting Assistance Program for over 20 years, I believe FVAP has not particularly suffered from limitations of authority, I believe they have not used their full authority as Congress intended. They consult with DOD officials and brief high commanding officers on projects to begin with but never fully follow up if they were not receiving the response that would produce the results that Congress wanted.

If there were problems with implementation, it was because there was a lack of aggressive attention to keep DOD and military officials aware of the importance year-in, year-out for continual registration and voting processes and opportunities. While there are complex registration and voting laws state by state, evidence already exists that there are simpler, clearer and more effective ways to implement these processes as UOCAVA and HAVA require and Congress intended.

After VOI and SERVE did not produce any long-lasting results in improving voting opportunities for far-flung military and overseas citizens, FVAP has not made any progress even with existing technology. Still trying to "push" use of FAX would be a good example. Despite allegations of no sufficient security by naysayers, technology *does exist* that would better serve UOCAVA voters world-wide. However, FVAP has in the recent past relied more on technology vendors than election officials to make this happen.

The Department of Defense has a program that uses service members as volunteer voting assistance officers on bases abroad.

Do you believe that the voting assistance officers have the training necessary to provide enough information to voters?

No, I do not. However, that is mainly because the lower rank personnel who are assigned to be VAO's are often not given the time or resources (again, understandable with the military mission's priority) to do the job properly. This occurs because the higher ranks of command personnel do not receive sufficient information and *emphasis on the program's importance*.

Are there other obstacles that these individuals encounter in carrying out their assignment to assist members of the military to register to vote and vote?

Another obstacle is the lack of clear understanding on the difference between *election administration* (voter registration, issuing and processing absentee ballots etc) and *political campaigning* and its accompanying influence. Even more obstructive is the near-paranoia about the Hatch Act, which restricts political activity, especially influence, of military personnel. While nonpartisan voter registration and requesting ballots results in the partisan activity of making political choices in an election, there should be encouragement *not* restriction on the procedures that lead to successful voting. Commanders need to know these differences and ensure the VAO's know and carry out their duties as such. Frankly, I have not seen or heard of factual influence or coercion by VAO's in my experience.

Some States report having to reject military absentee ballots because they aren't signed by a notary public.

Do you know why some States would require an absentee ballot to be notarized? Is this a practical and effective requirement?

Requiring that military absentee ballots be notarized, whether by a public notary or a commissioned officer, is an archaic practice that has outlived its time, and it's unfortunate that this requirement has not already been eliminated in the few states where it remains. It is not only very difficult but also extremely expensive to find and have a notary validate the ballot in many countries (and even in some areas of the US), it is also paternalistic to have an officer validate an enlisted person's signature. Both have equal status to sign an oath and have it accepted as voters. I believe a federal law eliminating the need for a notary or other officials' signature on a ballot should be considered.

Do you know if the volunteer voting assistance officers are provided with an opportunity to become a notary public?

Even if they were provided with the opportunity to become a notary public while in the US, state laws have made it more complicated in recent years and the temporary status of a VAO, in both position and location, make this an unacceptable

solution. For overseas citizens and military in remote locations even more, this would be virtually impossible.

2. Processing returned ballots

Aside from ballots that arrive too late, some jurisdictions reject military ballots on other legal grounds.

As a former local elections official, please explain the reasons for an absentee ballot being rejected other than arriving late.

Late arrival is still the #1 reason, but the next most common reason is lack of a signature. Federal law requires a specific oath requiring the signature, so heart-breaking as it may be, an unsigned ballot must be rejected. In Florida, there basically are no other significant reasons as the signature and arrival deadline are the hallmarks of our “no fault” absentee voting. A lesser number of ballots are rejected when the signature doesn’t match, in which case the voter is always notified of that reason to (a) obtain a newer signature, and (b) to verify with the voter that another person did not sign. There are other reasons in other states that increase the odds of rejection, such as how the ballot was delivered (US mail *only* in Alabama), missing the deadline to request a ballot, and others. I believe that federal law could also better serve UOCAVA voters by mandating “no fault” absentee ballots by requiring the signature match to validate and arrival by deadline.

Florida allows otherwise eligible overseas ballots to be counted up until the 10th day after a general election (also a presidential primary) because of a 1982 DOJ consent order. Even though our election schedule has changed to allow as much as 50–60 days for mailing ballots, state law will allow this delayed acceptance to stay in law regardless of the consent order. If ballots are still to be solely dependent on the USPS and military postal system, I believe this would be a reasonable requirement in federal law.

In the initial snapshot of numbers released at the hearing, almost 25,000 ballots were either returned as undeliverable or were rejected for some other reason.

Discounting State-specific laws or requirements, what is the minimum information required from overseas voters to ensure that their ballot can be verified and counted?

1. Person must be registered to vote in the jurisdiction
2. Valid signature under the federal oath
3. Arrival in the election office by the deadline

3. Problems with the mail system

Many military and overseas voters complain that their local elections office does not notify them about whether their ballots were received and/or counted.

What are the obstacles and difficulties for local election offices to provide this information to these voters?

NVRA requires all registration applications to have an acknowledgment by the election official, but neither NVRA nor any other federal law requires acknowledgment that a ballot has been received and/or counted. That has become a “nice to do” practice in a number of jurisdictions who have the resources and ability to do so. Recognizing that, regardless of the size of a jurisdiction, absentee ballot processing (includes processing of requests, preparing for the first mass mailing and then daily issuance of ballots by mail as well as walk-in absentee and early voting, receiving and validating absentees, recording and securing, preparing for tabulation and more) comes in the most labor intensive and overtime-dependent part of the conduct of an election, this would be another layer of financial and labor need in any office. BUT, it can be done, especially if it can be done by email. However, not all requestors have email or provide it even if they do, so there would still be a need for a manual process by mail. It could also be done online, but once again, not all election offices have this ability nor can afford it.

Is there a mechanism by which a member of the military can check to ensure that the ballot was received and counted?

Right now, in Florida, the state voter registration database contains the absentee record of every voter, when the ballot was issued and when it was received, so a postcard or letter could be added to the system to produce the ballot receipt to be sent to the voter. As the tabulation system is a stand-alone separate system, counting the ballots is an anonymous process. The only way to do that is to have the unopened rejected ballots and advise those voters whose ballots were rejected. Voters would assume, as in “no news is good news,” that if they didn’t get a reject notice, their ballot definitely was counted. Considering Okaloosa County is a medium-size county, we had 36,000 ballots, of which approximately 250 ballots at most were re-

jected. As this is a manual process, it makes more sense to just advise the rejects, not the counted. You could automate the process of advising those persons whose ballots were never returned, to find out if the voter ever mailed it and it was lost, but there would be no point of sending a notice to a bad address for those ballots Returned Undeliverable because the voter hasn't advised us of his new address. This entire process would be further complicated by people who change their address since sending their ballot back and forgetting to advise us (most common practice) because the NVRA rule then requires the address verification and final confirmation process to begin. This would have to be a carefully crafted law to avoid the "law of unintended consequences." Best thing is to have a place on the web site for a voter to inquire, or just send a short email.

CHARRTS No.: SRA-01-005

HEARING DATE: MAY 13, 2009

COMMITTEE: SRA

MEMBER: SENATOR SCHUMER

WITNESS: MRS. MCGINN

QUESTION: #5

ARMED SERVICES RECRUITMENT OFFICES

Question: On the issue of voter registration at armed forces recruitment centers, please provide an update on the current status of the program and the number of potential recruits who registered to vote at the centers last year. In addition, please provide any materials and information that explain in detail the training military recruitment offices receive to implement the applicable National Voter Registration Act (NVRA) requirements.

Answer: DoD Directive 1344.13, requires each Service to implement voter registration assistance at each recruiting office. Recruiting personnel are required to ask each eligible citizen who enters a recruiting office if he or she wants to register to vote, and provide the individual with the Election Assistance Commission's "National Voter Registration Form" and assistance in completing the form, if desired. Each of the Services has implemented the NVRA requirements through their own regulation.

The Services report that instruction on the requirements to support the NVRA are contained in the indoctrination provided to Service members newly assigned to a recruiting program and to recruiters prior to assignment to a specific recruiting office.

The Services Inspectors General report that the Services are in compliance with DoD Directive 1344.13. Data reported by the Services indicates that during 2008 and the first quarter of 2009 recruiting offices assisted 174,776 persons. Voter registration assistance was given to 87,923 persons, of these, 10,979 requested and were provided voter registration forms. Persons not assisted for voter registration were not of voting age, were not citizens, or were already registered to vote. These numbers are consistent with historical reports since the enactment of the NVRA. Recruits receive voter registration and absentee ballot request assistance upon reporting for recruit training, when reporting for assignment to units, and from their Unit Voting Assistance Officers while assigned to units. There is special emphasis on voter registration and absentee ballot requests in election years.

CHARRTS No.: SRA-01-006

HEARING DATE: MAY 13, 2009

COMMITTEE: SRA

MEMBER: SENATOR SCHUMER

WITNESS: MRS. MCGINN

QUESTION: #6

MOBILITY OF MILITARY MEMBERS

Question: A recommendation of a survey conducted by the Election Assistance Commission (EAC) in 2006 was that the Federal Voting Assistance Program (FVAP) should notify election officials when members of the military have officially moved. During the hearing, you said that you would provide an update on the status of that recommendation. Please provide the current status of the recommendation, including whether it has been considered by the FVAP and it would be implemented and operate at the State and local levels of government. Has the FVAP reviewed or considered any other procedures to ensure that the voter registration information is updated for the use of election officials? Please indicate the current method(s) that the FVAP employs to communicate with State and/or local election officials to assist UOCAVA voters.

Answer: When Local Election Officials (LEO) determine an address on file for a Service member is no longer current, they may request FVAP to check the DoD Employee Interactive Data System (DEIDS) database. If successful, FVAP provides the latest address available to the LEO. However, address information regarding some military members is not releasable outside DoD due to operational considerations, DoD policy, or Federal law. When a military member has separated from the military FVAP will provide information that the voter is not in the database.

In certain circumstances, FVAP has worked with the military services to reach voters directly to contact their local election officials to update their mailing address.

FVAP is investigating the possibility of obtaining email addresses (which are not contained in DEIDS) for Service members from other sources available within DoD. Where possible, the Department proposes to send an email to that Service member directing him or her to contact the LEO directly.

Similar procedures are not available for overseas civilian citizens or military dependents.

QUESTIONS FOR MAY 13TH RULES COMMITTEE WITNESSES—SENATOR BEN NELSON

PANEL 2: LOCAL OFFICIALS/MILITARY VOTER/ADVOCATES

RESPONSES FROM PATRICIA HOLLARN, FORMER SUPERVISOR OF ELECTIONS IN
FLORIDA

1. Two important—and disturbing—statistics cited when discussing overseas voting are the number of ballots returned to local election offices as undeliverable and the number of voted ballots that are not counted because they are not returned in time. So that we might compare apples-to-apples between domestic non-military votes and military and overseas voters, can any of you provide comparable statistics on undeliverable and late absentee ballots for non-UOCAVA voters?

Mr. Palmer at the Florida Department of State may have access to more specific data on undeliverable and late ballots for domestic non-military and overseas military and civilians, as I do not have it in the broader state or national areas, but I don't believe it is actually collected that way. However from experience, I can cite in general terms the experience in a medium-size county such as Okaloosa County, Florida.

When the section of HAVA requiring a UOCAVA voter's absentee request to be valid for two general elections was first implemented (for the 2004 elections), we sent absentee ballots for the September Primary to all the UOCAVA voters who had requested ballots for the 2002 elections. Out of about 9000 ballots, over 5200 were RETURNED UNDELIVERABLE, bad addresses. The situation improved for the general election, as it usually does, but it took the next two years, until the 2006 elections that the situation improved. We were able to provide as much information about this as possible, as widely as possible. Eventually we got the number lowered to the hundreds, but with military voters that is about average for undeliverable mail. The voter's only responsibility is to advise the elections office of his/her current address, but we realize that is not in the forefront of most people's minds. The issue is worsened by last-minute or unexpected deployments or other TDY's, and it is often too late for mail when they remember. This is where secure electronic voting is truly needed.

NOTE: Data collection on UOCAVA voters is extremely difficult because it is not always possible to determine who are military voters. There is no provision for title or rank on a voter registration form, and if a person is residing off base, one cannot know if he/she is military or civilian. Florida now has a question on the state registration form about that status, but it really doesn't appear anywhere else that I have seen. You can't even really make that determination from the Federal Post Card Application (FPCA) either. Until that question is mandated to appear on all registration forms, we'll never really know until there is some other contact that reveals it. It then follows that we never really know when they separate or retire from the military either, without other personal contact.

As for late ballots, the largest number definitely comes from UOCAVA voters.

2. Ms. Hollarn and Mr. Palmer—what would you recommend to other states as “best practices” for interaction with FVAP and Voting Assistance Officers?

I believe that FVAP has to interact to a much greater degree with election officials, who in turn have to take a more proactive stance in understanding and implementing UOCAVA and Title VII of HAVA to better serve these voters. Not everyone is close enough to a military installation to have interaction with VAO's but in my responses to Senator Schumer's questions I discussed how FVAP can help improve the VAO's service to the military voters.

QUESTIONS FOR MAY 13TH RULES COMMITTEE WITNESSES—SENATOR BEN NELSON

PANEL 2: LOCAL OFFICIALS/MILITARY VOTER/ADVOCATES*

1. Two important—and disturbing—statistics cited when discussing overseas voting are the number of ballots returned to local election offices as undeliverable and the number of voted ballots that are not counted because they are not returned in time. So that we might compare apples-to-apples between domestic non-military votes and military and overseas voters, can any of you provide comparable statistics on undeliverable and late absentee ballots for non-UOCAVA voters?

While precise statistics on domestic non-military undeliverable and late absentee ballots were not recorded in this election cycle, the Division of Elections looked at the non-UOCAVA undeliverable and late absentee ballots reasons for rejections from the EAC Survey spreadsheet. The counties provided a list of the reasons why the ballots were considered “rejected” and not counted.

Below are the reasons the ballots were rejected.

- Signature variation
- No voter certificate envelope
- Ballot returned via fax
- Signed spouse’s certificate/unable to pair couples
- Ineligible
- Mechanical signature
- Wrong ballot returned
- Not a U.S. Citizen
- Mailed copies of ballots
- Improperly signed by Guardian
- Signed by Power of Attorney
- ID requirement unmet
- Ballot card differs
- Non-county voter, request not on file
- Third party signature
- Signed wrong envelope
- Signed sample ballot
- Moved registration to another county
- Voter moved away and was deleted
- Voter moved after ballot was mailed
- Address discrepancy
- Voter moved out of state
- Blank certificate
- Returned two absentee ballots
- Undeliverable
- Absentee ballot envelope opened/taped

In looking at returned military and non-military absentee ballots, *if you remove* the ballots returned late or past the deadline from the analysis, there is no significant difference in the rejection rate between the two categories of ballots. Overall, the ballots that are rejected for state law reasons are relatively small. Thus, as long as the ballot is returned in time, the ballot has a very high likelihood of being counted.

The undeliverable ballot issue is a major problem that I have witnessed in Florida and many other states and localities.

The real issue deals with: (1) making sure that service member provides most current and up-to-date address, which has not always been done on a consistent basis in the past; thus, we have a lot of ballots that get sent to stale addresses; and (2) making sure that military voters have ballots delivered to them in a timely and consistent manner—Military postal service has not proved to be reliable in the past.

2. Ms. Hollarn and Mr. Palmer—what would you recommend to other states as “best practices” for interaction with FVAP and Voting Assistance Officers?

I would recommend the following best practices:

1. State officials should request that counties directly send all “undeliverable” ballots or mailings to overseas voters with appropriate identifying information to FVAP for search of updated addresses.

* Responses from Don Palmer, Florida Department of State

2. Local Election Officials should contact installation or major command Voting Assistance Officers (VAO's) to place state registration information in on-base publications and website.
3. State or Local Election Officials should offer to provide voting information and registration briefings to Voting Assistance Officers at installations that regularly deploy units overseas. Local Election Officials should either volunteer to provide a briefing as part of the overall deployment orientation or provide briefing materials to the local VAO or Judge Advocate General to brief service members.
4. State and Local Election Officials should provide email addresses of Florida election officials to Installation or Command VAO's as often the FVAP publication does not appear to provide email contact information.
5. State and Local Election Officials should encourage FVAP to visit state installations and highlight the upcoming election cycle. Such a visit raises the awareness of Base personnel due to increased media coverage visibility to the Base Commander resulting in the voting information being more fully disseminated.

CHARRTS No.: SRA-01-001

HEARING DATE: MAY 13, 2009

COMMITTEE: SRA

MEMBER: SENATOR NELSON

WITNESS: MRS. MCGINN

QUESTION: #1

Question: In your testimony, you summarize the absentee voting for UOCAVA citizens as a three-step process. a. Which of these three steps is the most problematic for voters? b. What are the major barriers to successful completion of each step? c. What are the most promising technologies for addressing problems in each stage of the voting process?

a. Which of these three steps is the most problematic for voters?

Answer: All aspects of the process—registration/ballot request, receiving the ballot, and returning the ballot—present different challenges. A problem with one step can adversely affect subsequent steps. Each is time sensitive with procedures and deadlines that vary between states. We urge states to mail the ballot at least 45 days before the ballot receipt deadline to provide sufficient time for the ballot to arrive and allow the voter to mark and return the ballot before the state imposed deadline. The timely completion of each step in the process determines whether the voter will be registered in time, receive the blank ballot, and be able to return the ballot in time for it to be counted.

b. What are the major barriers to successful completion of each step?

Answer: Time, distance, and mobility are the greatest barriers to the successful completion of each step of the absentee voting process. Traditional mail service remains the primary method of ballot request and transmission.

The time mail service takes and the distance voting material must travel can adversely affect the ability of the voter to successfully vote absentee. Each step can be hampered by availability of local mail service, additional state requirements such as requiring the ballot to be notarized, and remoteness of the voter. The Department has worked closely with the United States Postal Service to provide expedited transmission of APO/FPO balloting materials for the last three general elections. The initiatives undertaken include a tracking mechanism and the use of express mail at no charge for military members. The Department of State also provides free use of the diplomatic pouch service as well as notices to Americans abroad of other available ballot returning alternatives.

Registration and ballot request success can be inhibited by the mobility of a voter. Upon relocation, DoD provides military voters with forms and instruction to register or provide their new mailing address to their local election official. Similar efforts are used to reach out to other *UOCAVA* citizens.

Ballot mailings from the states can be delayed because of late primaries, late candidate filing deadlines, unexpected lawsuits or acts of nature. DoD works with the Department of Justice to ensure a reasonable amount of time is allowed by imposing specific remedies for particular elections, and long term remedies to avoid repeated problems. By law, each state may establish its own deadline, but a minimum transmission period of 30 days has been established as a precedent in federal court cases brought by the Justice Department.

Many states allow for some part of the absentee voting process to take place via fax or email, which reduces the amount of time needed and gives *UOCAVA* voters alternatives to regular mail to meet their situational requirements.

c. What are the most promising technologies for addressing problems in each stage of the voting process?

Answer: DoD continues to support expanding the use of electronic transmission to reduce the time needed to successfully complete the process. While there are risks associated with using electronic means to vote absentee there is a willingness on behalf of voters to accept those risks to ensure their right to vote. Increasingly, voters have access to electronic communication media—even most forward-deployed Service members have access to email and the internet. This makes the use of technology one solution to the delays Service members and other *UOCAVA* voters experience with voting by mail. DoD plans to continue providing improved electronic tools to the states and *UOCAVA* citizens including the capability for automated completion of the Federal Post Card Application, request a ballot and receive a ballot electronically and automated completion of the Federal Write-In Absentee Ballot.

Significant security concerns surround the use of electronic means to return of voted ballots which must be addressed as fully automated processes are explored.

CHARRTS No.: SRA-01-002

HEARING DATE: MAY 13, 2009

COMMITTEE: SRA

MEMBER: SENATOR NELSON

WITNESS: MRS. MCGINN

QUESTION: #2

Question: In your testimony you note the lack of a centralized system that accurately tracks voter participation. What recommendations would you make for improving the data we have available on the successes and failures of military and overseas voting?

Answer: To gauge participation in the voting process, the Department conducts a detailed survey after each Presidential election. For the 2008 election, the Department, in cooperation with the Defense Manpower Data Center, conducted a statistically-sound, random sample survey of *UOCAVA* citizens to analyze voter participation among uniformed services and overseas U.S. citizens, as well as the effectiveness of state-federal cooperation. The Department is analyzing the results of the survey and will provide a written report of those results to the President and Congress by December 2009. We also plan to brief the appropriate oversight committees as soon as the results have been tabulated and analyzed.

Other organizations and agencies collect data regarding the voting experiences of *UOCAVA* citizens. We plan to discuss with those agencies and organizations the data collection processes and methodologies used to determine if they meet the standards accepted by the research community to produce statistically valid results.

CHARRTS No.: SRA-01-003

HEARING DATE: MAY 13, 2009

COMMITTEE: SRA

MEMBER: SENATOR NELSON

WITNESS: MRS. MCGINN

QUESTION: #3

Question: Please elaborate on your efforts to promote legislative initiatives at the state level to facilitate absentee voting for UOCAVA voters. What specific procedures do you use, and how do you monitor and seek to influence state legislative activity?

Answer: The Department contacts every state in advance of each legislative session to recommend adoption of specific legislative initiatives to improve the absentee voting process used by UOCAVA citizens. Our top priorities are for states to provide at least 45 days ballot transit time, and allow electronic transmission of balloting materials by fax, email, or both. We work directly with states to find solutions to problems faced by UOCAVA voters and track the progress of legislative advancements, providing letters of support and testimony when requested. We are also working with the National Conference of Commissioners on Uniform State Laws to develop uniform voting legislation for UOCAVA voters that the states and territories may adopt.

The Federal Voting Assistance Program (FVAP) office partners with a team from the Office of the Deputy Under Secretary of Defense for Military Community and Family Policy to engage state legislators on legislation to benefit Service members and their families.

In September 2008, the Secretary of Defense hosted a bipartisan group of five State Chief Election Officials visiting Kuwait, Iraq, Afghanistan and Germany to observe the challenges Service members face when voting absentee. They were encouraged to take lessons learned to their states to advocate for legislation that removes barriers to voting for this population. As a result, the officials made several recommendations—among them that email be allowed for the transmission of balloting materials both to and from state election offices.

Whenever possible, the Department sends representatives to speak at state and national election official conferences to raise awareness of the problems faced by UOCAVA voters, acknowledge progress made, and recommend action be taken on suggested legislative initiatives.

Additionally, the Department monitors the mailing of absentee ballots from local elections officials to voters. When these ballots are not mailed in a timely manner, DoD works with Department of Justice toward court-ordered, permanent legislative remedies.

CHARRTS No.: SRA-01-004

HEARING DATE: MAY 13, 2009

COMMITTEE: SRA

MEMBER: SENATOR NELSON

WITNESS: MRS. MCGINN

QUESTION: #4

Question In light of experience gained in the last three elections, what if any updates or revisions to DoD policy and procedures (as set forth in DoD Directive Number 1000.04 dated April 14, 2004) would be useful to facilitate successful voting by military personnel? To encourage and develop the use of technology in the voting process?

Answer DoD Directive 1000.04 is being revised and will be reissued as DoD Instruction 1000.04. The change of status from Directive to Instruction will expedite promulgating procedural changes to the Services. Among the changes incorporated into the revised Instruction are:

- Providing flexibility to unit commanders to permit the assignment of a motivated, volunteer as Voting Assistance Officer (VAO) although the volunteer has not yet attained the grade recommended.
- Providing flexibility to unit commanders regarding the ratio of VAOs assigned within a unit to the number of permanently assigned personnel.
- Recommending, for continuity purposes, that Installation VAOs be civilian employees and, whenever possible, all assigned VAOs be in place from October the year prior to the general election through March of the year following the general election.
- Authorizing delivery of the Federal Post Card Application (FPCA) to Service members and their families by verifiable electronic means.

FEDERAL ELECTION COMMISSION NOMINATION HEARING FOR JOHN J. SULLIVAN

WEDNESDAY, JUNE 10, 2009

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The Committee met, pursuant to notice, at 2:45 p.m., in Room SR-301, Russell Senate Office Building, Hon. Charles E. Schumer, Chairman of the Committee, presiding.

Present: Senators Schumer, Bennett, and Chambliss.

Staff present: Jean Bordewich, Staff Director; Jason Abel, Chief Counsel; Veronica Gillespie, Elections Counsel; Adam Ambrogio, Counsel; Carole Blessington, Assistant to the Staff Director; Brenna Allen, Professional Staff; Lynden Armstrong, Chief Clerk; Matthew McGowan, Professional Staff; Mary Suit Jones, Republican Staff Director; Shaun Parkin, Republican Deputy Staff Director; Paul Vinovich, Republican Chief Counsel; and Michael Merrell, Republican Counsel.

OPENING STATEMENT OF CHAIRMAN SCHUMER

Chairman SCHUMER. The hearing will come to order. I want to thank Senator Bennett for being here and apologize for showing up late.

I would like to thank my friend, in addition to apologizing to him for being late, I want to thank him for his extraordinary efforts in being available this afternoon. Our schedules are busy. He has to leave at three, so we will try to make this a very quick hearing, which is in your interest, Mr. Sullivan, I think, and hopefully we will be completed quickly.

We are here to have a confirmation hearing for John J. Sullivan as a member of the Federal Election Commission. Welcome. It is nice to see you, and I know your family is in attendance and I would like to welcome them, if you can just say hello. Wave your hands. Maybe you can introduce them when you speak, Mr. Sullivan. It is always nice to see the families.

On May 4, 2009, Mr. Sullivan was nominated by President Obama to serve on the FEC for a single term expiring April 30, 2013. If confirmed, Mr. Sullivan would replace Commissioner Ellen Weintraub.

The Rules Committee oversees issues related to our democratic process, such as Federal elections and campaign finance. So far this Congress, our hearings have focused on election-related issues, such as our outdated voter registration system and the problems faced by overseas voters. Today, we are going to shift gears and focus on the FEC, an agency this committee had oversight over since its creation in 1975. Holding FEC confirmation hearings is one of our most important tasks and I look forward to hearing from our most recent nominee on how he will support the mission of the FEC and what he sees as his greatest assets and challenges in this role.

I am going to ask that my entire statement be read into the record so that Senator Bennett can get to the meeting he has to go to.

[The prepared statement of Chairman Schumer included in the record:]

Chairman SCHUMER. I welcome Mr. Sullivan and call on Senator Bennett for his statement.

OPENING STATEMENT OF SENATOR BENNETT

Senator BENNETT. Thank you very much, Mr. Chairman.

Mr. Sullivan and I have visited. I find him eminently well qualified for this position. The old line in business, is once you have made the sale, get out of the room, so I shall not go any farther with this or delay this any further.

Welcome, Mr. Sullivan, and congratulations on your nomination.

Chairman SCHUMER. Senator Chambliss, would you like to make any statement?

OPENING STATEMENT OF SENATOR CHAMBLISS

Senator CHAMBLISS. I want to echo what Senator Bennett just said. I was to meet with Mr. Sullivan a couple of weeks ago and it didn't work out and I had to call him up and apologize for canceling the meeting, but I wanted to come look him in the face today to tell him we intend to support his nomination, and thanks for holding the hearing on him, Mr. Chairman.

Chairman SCHUMER. Thank you.

I want to ask the nominee to stand and raise your right hand.

Do you swear that the testimony you are about to provide is the truth, the whole truth, and nothing but the truth, so help you God?

Mr. SULLIVAN. I do.

Chairman SCHUMER. Please be seated.

You may make your opening statement, and if you would like, introduce your family.

TESTIMONY OF JOHN J. SULLIVAN, NOMINEE TO BE COMMISSIONER, FEDERAL ELECTION COMMISSION

Mr. SULLIVAN. Thank you, Chairman Schumer, Ranking Member Bennett, and distinguished members of the Senate Committee on Rules and Administration. I am honored to come before you this afternoon as President Obama's nominee to the Federal Election Commission.

Before I talk about the FEC, let me tell you a little bit about myself. I am the oldest of four children of John and Estelle Sullivan. My parents were born, grew up, and started a family in the tenements of East Harlem in New York City. My father left school at the age of 17 to serve his country in World War II, and when he returned from the Navy, he got a job as an elevator operator and then as a bank guard at the Morgan Guarantee Trust Company, where he spent the rest of his working life.

My mother, after graduating from high school, joined her older sister working at a factory in Manhattan. When the factory closed, she worked at a variety of jobs, including as a toll taker at the Verrazano Narrows Bridge and as a medical transporter at a local hospital.

With my parents' hard work as an example, I worked my way through Catholic high school and then through college. I am fortunate to have been the first member of my family to have had the opportunity to attend college. I earned my degree at the University of Massachusetts in Boston, graduating Summa Cum Laude, while working as a school bus driver in the Boston Public Schools. I then earned my law degree at the Northeast University School of Law in Boston.

There is a commitment to hard work and public service that runs deep in my family. My wife, who is here today, Sandra Levik, is a public defender in the District of Columbia. My son, who is also with me, works as a staff investigator at the Public Defender's Office in New Orleans. My daughter Sarah, who is here, is a college student. My other family members, some of who are also present here today, my sisters, including my sister Diane, her daughter, and my wife's sister, are nurses working in hospitals throughout New York and on a Navajo Reservation in Arizona. My brother Charlie, who is here today, is a retired New York City Police Officer. And my sister Diane's son is currently a New York City Firefighter.

I am presently an Associate General Counsel at SEIU, where I am responsible for advising the union's political programs and its election reform and election protection efforts. I have spent most of my professional life working as an election lawyer. I have served as an advocate, fighting to protect the rights of my fellow Americans to register to vote and to freely cast their ballots in elections throughout this country, making sure that their votes are fairly and accurately counted.

I have also acted as a neutral official and observer in numerous elections both here and abroad. For example, I was part of an international team of observers who monitored the presidential and parliamentary elections in Ukraine in what is now known as the Orange Revolution. I currently serve as Vice President of the bipartisan Montgomery County, Maryland, Board of Elections, which is responsible for ensuring fair elections for over half-a-million registered voters.

The casting of ballots on election day is only the last step in the process in which a free people elect their leaders. The public campaigns by candidates, citizens, independent groups, and parties in the weeks and months before election day is one of the great features of our democracy. It is during this time that candidates and citizens speak out on the important issues of the day and thereby participate in setting the goals and selecting the leaders of our country.

Just as the process of voting must be conducted in a fair, open, and impartial way to ensure the legitimacy of the system, so, too, must the period of campaigning be governed by a set of rules clearly articulated and fairly enforced. It is this latter task, regulation of the raising and spending of money in Federal election campaigns, that falls on the FEC.

As an election lawyer, I work to encourage Americans to participate in the election process. I know only too well the corrosive effect that cynicism can have on the willingness of citizens to take the time out of a day already crowded with the obligations of work

and family to participate in election campaigns and to vote. Nothing can feed that cynicism more than the idea that the system is corrupt, that money counts more than votes, and that the voices of ordinary Americans are being ignored by candidates and elected officials in the debate over important issues.

It is the elimination of corruption, and arguably as important, the elimination of the appearance of corruption which serves as the foundation of our campaign finance laws. In this way, the FEC has an important responsibility of combating that cynicism by fairly enforcing these laws.

By statute, the FEC acts only upon the affirmative vote of four of its six members, no more than three of whom can be from any one political party. This six-member structure gives the agency a great advantage. All of its decisions must be the product of a bipartisan consensus and none can fairly be viewed as the work of one political party taking advantage over another.

Throughout its history, the Commission has been able to work through differences to resolve the bulk of the enforcement cases and difficult legal issues involving the proper application of the campaign finance laws. The goal of our campaign finance laws is the elimination of corruption and of the appearance of corruption in our political process in order to ensure free and fair elections. These are my values and I am confident that they are shared by the members of the FEC.

There may be disagreements among the Commissioners on how best to apply the law. However, as in the past, there remains ample room for the ordinary course of enforcement and for the resolution of difficult issues by the Commission. I would hope that the FEC's Commissioners would build and maintain an effective dialogue and improve their capacity to work out differences constructively. And in all matters that come before the FEC, Commissioners must strive to be clear in their reasoning, impartial in their decisions, and transparent in the process of enforcing the law.

Should I be confirmed, it would be my great honor to serve on the Commission. Thank you for the opportunity to appear before you today and I would now be happy to take any questions.

[The prepared statement of Mr. Sullivan included in the record]
Chairman SCHUMER. Thank you very much, Mr. Sullivan.

First, I am glad to see—and would note that this is not a commentary on you, but I am glad to see that most of your family had the good sense to remain in New York—

[Laughter.]

Chairman SCHUMER. —and serve our city and our State. I also understand your comments and the three-to-three deadlocks are an issue that we will look at, but I agree with you, having a bipartisan vote on anything is important.

Anyway, let me ask you a few questions and then I will turn it over to my colleagues.

First, I want to spend time talking about your career and how you believe that you have been equipped to serve on the SEC. Tell me what experience you think has helped you the most as you prepare to take on this challenge.

Mr. SULLIVAN. Senator Schumer, I think the best experiences that I have had as an election lawyer is working with voters and

members of our union, engaging them in political campaigns and getting them involved in the process. I think having an open process in which people feel free to participate and in which people feel that their voices are being heard in the process has been one of the most rewarding experiences that I have had. It is this value of both openness of the process and the willingness and desire of people to participate in the election of their leaders which I find the most important experience I have had and the value that I hold.

Chairman SCHUMER. Very good. Over the last four cycles, you have been involved in election protection programs, ensuring a smooth election day. Can you tell us a little about this experience and how it might affect you as Commissioner on the FEC?

Mr. SULLIVAN. First and foremost, I think it has left me with a tremendous respect for the role of elections in our democratic process. Elections and the campaigns that lead up to them are the mechanism by which not only do we choose our leaders, but we set our agenda.

The work I have done to ensure that each eligible voter has the right to participate, to cast a ballot, to ensure that those ballots are fairly and accurately counted, has been a large part of my work over the last two cycles. I have worked as a poll watcher in polling places. I have been nominated by the Governor of Maryland to serve as a county election official. I have served on a transition committee established by the Governor seeking input on appropriate reforms for the election process in our State of Maryland, and I have worked with advocacy groups around the country on common goals of making sure that the voter registration process is an effective and meaningful process and not a trap or a barrier that would keep eligible voters away from the polls or deny them the opportunity to vote. And then make sure that the election process itself is open, transparent, and free for those to participate.

Chairman SCHUMER. Thank you. My time has expired. I have a second round, but I want to turn to Ranking Member Bennett because I know that he has to get going before that.

I just want to thank our other Commissioners for coming, Commissioners McGahn, Bauerly, Hunter, Petersen, and Walther. Thank you for all being here. Commissioner Weintraub is out of the country or I know she would have been here, as well.

Ranking Member Bennett?

Senator BENNETT. Thank you very much, Mr. Chairman.

Mr. Sullivan, there has been a good deal of newspaper comment both about you and your union, and I am going to give you the opportunity to use this platform to address some of that comment. First, there were a couple of articles in Roll Call last year about SEIU and the amount of money raised and spent. If I can quote one of them, it says, "SEIU plans to spend a significant chunk of its nearly \$100 million political budget to help Harry Reid get a filibuster-proof Senate." The second article says, "SEIU has vowed to spend about \$75 million to influence Congressional races and has opened the spigot with a \$600,000 TV ad buy targeting John Sununu and a \$500,000 ad buy going after Senator Gordon Smith." Congratulations. You succeeded in both of those.

Now, \$100 million, is that number about right? And can you tell us how the union spent that money in a way that was consistent with the current law?

Mr. SULLIVAN. You are right, Senator. SEIU is very active politically. Its members are very active politically. The overwhelming majority of that money comes from the voluntary contributions of SEIU members, working people who make—

Senator BENNETT. Excuse me. By voluntary contributions, you mean something over and above dues?

Mr. SULLIVAN. Yes, sir. Yes. People who agree to contribute a portion of their pay every week to fund that political program, and that money is used for political purposes. It is fully reported. It is fully disclosed on FEC reports that are filed.

In addition, the union engages in public education campaigns on issues of importance, for instance, health care. Very much of that budget has gone to advocating and educating the public on the issue of health care. These expenses are incurred in election years and non-election years and—

Senator BENNETT. Let me interrupt you now. Is there a difference between soft money and hard money here?

Mr. SULLIVAN. Yes. In terms of the issue advocacy, that is what would be characterized as soft money for the most part—

Senator BENNETT. And some of the soft money comes out of the dues?

Mr. SULLIVAN. Yes. Yes. The source of soft money is dues. The source of hard money is the voluntary check-off contributions that members make from their paycheck.

Senator BENNETT. Okay.

Mr. SULLIVAN. With regard—sorry.

Senator BENNETT. Thank you. I would like to get that clarification out for people who are suggesting that what you did may have been somewhat subversive and improper. I may not like it as a Republican, but that is the way the laws are structured now and you acted entirely in accordance with the law. I am assuming that was your responsibility, to make sure that you acted in accordance with the law?

Mr. SULLIVAN. That is one of my responsibilities, both to educate and train staff people and officers about what kinds of funds can be used for what kinds of activities, what kinds of reports or disclosures have to be filed, and to make sure that that actually takes place, is part of my responsibility.

Senator BENNETT. If we didn't have the current laws, would the money be donated to political parties rather than used in that fashion?

Mr. SULLIVAN. Well, the union does contribute a lot to political parties, but it sees the value of having an independent political voice on issues of concern that may transcend particular candidates or even particular parties. We are often critical of Democrats as well as Republicans on specific issues, and our members expect that the union will have that independent political voice to argue for issues in their interest.

Senator BENNETT. I see. The only reason I raise that last question, there is a Harvard study that says one of the reasons voter turnout has gone down is because of the dwindling influence of po-

litical parties. I think our present campaign laws are to the disadvantage of political parties. I am not criticizing you in any way for what you are doing, but I would like to see more of the money channeled through the parties rather than in the other fashion.

Now, I would like to give you an opportunity to respond to those who have criticized you in print or letter directly. Gerald Hebert, Executive Director of the Campaign Legal Center, a group that favors regulation of political speech, has said that your nomination is a cause for concern and he writes, "The gusto with which Mr. Sullivan has bashed important elements of McCain-Feingold and repeatedly taken radical deregulatory positions does not inspire confidence that he will have different views if confirmed to the Commission." Do you consider yourself radical?

Mr. SULLIVAN. No, I don't, sir.

Senator BENNETT. Do you wish to respond generally?

Mr. SULLIVAN. Yes. Thank you for the opportunity to respond. Most of that criticism focused on comments that I participated in that were filed with the FEC in the wake of the Supreme Court's decision in *Wisconsin Right to Life*. The issue before the Court was the application of the FEC's electioneering communications rules to a particular communication.

I think any fair observer reading Chief Justice Roberts' opinion in that case would recognize it was written in very broad terms, using very broad language. And when the FEC was confronted with having to write new rules to conform with that decision, it was confronted with two options. One was, should we simply do it narrowly to find an exception to the funding prohibition for electioneering communications, or should we essentially redefine electioneering communications and exempt all of these electioneering communications that fall outside of the scope that we can regulate from reporting and disclosure requirements?

The unions filed comments with the FEC, which I joined, arguing for the second alternative. In that capacity, I was acting in the best interest of my client and in my client's historic concern that electioneering communications had the potential for interfering with its legitimate grassroots lobbying activities.

My personal views, with respect to the issue of whether or not it is appropriate to have reporting and disclosure of who pays for these ads is that I believe that is appropriate. I believe that there is no constitutional prohibition against it, and that is how the FEC ultimately ruled in that case. They said, well, the unions can fund these kinds of ads, along with corporations, for that matter, but they are still required to file a report with us and tell us how it was paid for. And I recognize that is what the FEC did.

As a legal matter, I believe that was an appropriate response to the Supreme Court's decision, and if confirmed by the Senate, I will enforce that rule as articulated by the FEC. However, I have to give the additional disclaimer that it is that precise issue which is currently pending before the Supreme Court in the *Citizens United* case.

Now, after the union's position was rejected by the FEC, we didn't seek to challenge it. The union did not challenge that. In fact, the union did not join the parties in the *Citizens United* case to try to challenge that, as well. SEIU, my client, determined, fine,

this is the FEC's interpretation, we can live with that. We will file our reports. We will put our disclaimers on the ads. And that is the current state of the law, and if confirmed, that is the law I will enforce.

Senator BENNETT. Thank you. I appreciate that, Mr. Chairman.

Chairman SCHUMER. Well, thank you, and I had a few other questions, but I will submit them in writing, if you don't mind.

And now our hearing is adjourned. I thank the witness for being here.

[Whereupon, at 3:04 p.m., the committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

Statement of Chairman Charles E. Schumer
U.S. Senate Committee on Rules and Administration
Confirmation Hearing – June 10, 2009
John J. Sullivan to be a Member of the Federal Election Commission

The Rules Committee shall come to order. Good Afternoon.

I'd like to thank my friend, Ranking Member Bennett for his extraordinary efforts to be available this afternoon. I know both our schedules are busy this week, but I am hopeful this hearing will be completed within the hour.

Today we're here to have a confirmation hearing for John J. Sullivan to be a Member of the Federal Election Commission. Welcome, Mr. Sullivan, it's nice to see you. I know your family is in attendance this afternoon, and I would like to welcome them as well.

On May 4, 2009, Mr. Sullivan was nominated by President Obama to serve on the FEC for a single term expiring on April 30, 2013. If confirmed, Mr. Sullivan would replace Commissioner Ellen Weintraub.

The Rules Committee oversees issues related to our democratic process, such as Federal elections and campaign finance. So far this Congress, our hearings have focused primarily on election- related issues, such as our outdated registration system and problems faced by overseas voters.

Today, we will shift gears and focus on the Federal Election Commission, an agency this Committee has had oversight over since its creation in 1975.

Holding FEC confirmation hearings is one of our most important tasks. I look forward to hearing from our most recent nominee, Mr. Sullivan, on how he will support the mission of the FEC, and what he sees as his greatest assets and challenges in this role.

Since the FEC's creation, the administration of our elections has dramatically evolved. Though the FEC's primary mission remains the same – to administer and enforce campaign finance law – doing so has become complicated by the multitude of ways campaigns and outside organizations fund election

activities. As more and more money is spent on political campaigns, the FEC's role in monitoring the use of funds in campaigns becomes increasingly important.

Recently, there has been much attention paid to the 3-3 split on votes by the FEC Commissioners on many key issues. Consistent deadlocks on important decisions, including advisory opinions and enforcement matters and regulations, leave these matters unresolved.

The seamless functioning and well-being of the FEC is of utmost importance. And there will come a time for this Committee to look into these issues. Yet today, we focus solely on Mr. Sullivan's qualifications and how he envisions his role at the FEC.

Mr. Sullivan has had a long and distinguished legal career. And his background is also very special, and not just because of his New York heritage. He comes to us as the son of two hard-working parents.

He was the first person in his family to attend college, and received his bachelor's degree at the University of Massachusetts. Mr. Sullivan then attended Northeastern University, where he received his law degree in 1981. Since then, he has worked as a legal counsel for several unions, including the International Brotherhood of Teamsters and, most recently, the Service Employees International Union, where he handled election-related and campaign finance matters.

Mr. Sullivan also has extensive experience in election administration, and since 2007, has served as a member and vice president of the Montgomery County Board of Elections in Maryland.

Mr. Sullivan, you have quite a record dealing with elections, and we all look forward to hearing your testimony today.

Summary of Opening Statement of John J. Sullivan
Nominee for Commissioner
Federal Election Commission

Before the Senate Committee on Rules and Administration
June 10, 2009

Thank you for the opportunity to appear before you this afternoon as President Obama's nominee to the Federal Election Commission (FEC). I have spent most of my professional life working as an election lawyer fighting to protect the rights of my fellow Americans to register to vote and to freely cast their ballots, and I have also acted as a neutral official or observer in numerous elections, both here and abroad. I know only too well the corrosive effect that cynicism can have on the willingness of citizens to take time out of a day already crowded with the obligations of work and family, to participate in election campaigns and to vote. Nothing can feed that cynicism more than the idea that the system is corrupt, that money counts more than votes, and that the voices of ordinary Americans are being ignored by candidates and elected officials in the debate over important issues. It is the elimination of corruption, and arguably as important, the elimination of the appearance of corruption, which serves as the foundation of our campaign finance laws. In this way, the FEC has the important responsibility of combating that cynicism by fairly enforcing our campaign finance laws.

I believe that the clear articulation of the requirements and protections of the law, and its open and fair enforcement, is vital to the working of our democracy, and should I be confirmed, it would be a great honor to serve as a Commissioner of the FEC.

Opening Statement of John J. Sullivan
Nominee for Commissioner
Federal Election Commission

Before the Senate Committee on Rules and Administration
June 10, 2009

Thank you Chairman Schumer, Ranking Member Bennett and the distinguished members of the Senate Committee on Rules and Administration. I am honored to come before you this afternoon as President Obama's nominee to the Federal Election Commission (FEC). Before I talk about the FEC let me tell you a little about myself.

I am the oldest of four children of John and Estelle Sullivan. My parents were born, grew up and started a family in the tenements of East Harlem in New York City. My father left school at the age of 17 to serve his country in World War II. When he returned from the Navy, he got a job as an elevator operator and then as a bank guard at the Morgan Guarantee Trust Company, where he spent the rest of his working life.

My mother, after graduating high school, joined her older sister working in a factory in Manhattan. When the factory closed, she worked at a variety of jobs, including as a toll taker at the Verrazano Narrows Bridge and as a medical transporter at a local hospital.

With my parents' hard work as an example, I worked my way through Catholic high school. I am fortunate to have been the first member of my family to have had the opportunity to attend college. I earned my degree from the University of Massachusetts in Boston, graduating summa cum laude, while working as a school bus driver in the Boston public schools. I then earned my law degree from Northeastern University in Boston.

There is a commitment to hard work and to public service that runs deep in my family. My wife, Sandra Levick, is a public defender in the District of Columbia. My son Ben works as a staff investigator at the public defender's office in New Orleans. My daughter Sarah is a college student. My other family members, some of whom are also present today, include my sisters, niece and sister-in-law who are nurses working in hospitals in New York and on a Navajo reservation in Arizona, my brother, who is a retired New York City police officer, and my nephew, who is a New York City firefighter.

I am presently an Associate General Counsel at SEIU where I am responsible for advising the union's political programs and its election reform and election protection efforts. I have spent most of my professional life working as an election lawyer. I have served as an advocate fighting to protect the rights of my fellow Americans to register to vote and to freely cast their ballots in elections throughout this country, making sure that their votes are fairly and accurately counted. I have also acted as a neutral official or observer in numerous elections, both here and abroad. I was part of an international team of observers that monitored the presidential and parliamentary elections in Ukraine in what is now known as the "Orange Revolution." I

currently serve as the Vice President of the bipartisan Montgomery County Maryland Board of Elections, which is responsible for ensuring fair elections for over half a million registered voters.

The casting of ballots on Election Day is only the last step in the process in which a free people elect their leaders. The public campaigns by candidates, citizens, independent groups and parties in the weeks and months before Election Day is one of the great features of our democracy. It is during this time that candidates and citizens speak out on the important issues of the day and thereby participate in setting the goals and selecting the leaders of our county. Just as the process of voting must be conducted in a fair, open and impartial way to ensure the legitimacy of the system, so too must the period of campaigning be governed by a set of rules, clearly articulated and fairly enforced. It is this latter task, the regulation of the raising and spending of money in federal election campaigns, that falls upon the FEC.

As an election lawyer I work to encourage Americans to participate in the electoral process. I know only too well the corrosive effect that cynicism can have on the willingness of citizens to take time out of a day already crowded with the obligations of work and family, to participate in election campaigns and to vote. Nothing can feed that cynicism more than the idea that the system is corrupt, that money counts more than votes, and that the voices of ordinary Americans are being ignored by candidates and elected officials in the debate over important issues. It is the elimination of corruption, and arguably as important, the elimination of the appearance of corruption, which serves as the foundation of our campaign finance laws. In this way, the FEC has the important responsibility of combating that cynicism by fairly enforcing our campaign finance laws.

By statute, the FEC acts upon the affirmative vote of four of its six members, no more than three of whom can be from any one political party. This six-member structure gives the agency a great advantage: all of its decisions are the product of a bipartisan consensus and none can be fairly viewed as the work of one political party taking advantage of another. Throughout its history the Commissioners have been able to work through differences to resolve the bulk of the enforcement cases and difficult legal issues involving the proper application of the campaign finance laws.

The goal of our campaign finance laws is the elimination of corruption and of the appearance of corruption in our political process in order to ensure free and fair elections. These are my values and I am confident that they are shared by the members of the FEC. There may be disagreements among the Commissioners regarding how best to apply the law. However, as in the past, there remains ample room for the ordinary course of enforcement and for the resolution of difficult issues by the Commission. I would hope that the FEC's Commissioners would build and maintain an effective dialogue and improve their capacity to work out differences constructively. And in all matters that come before the FEC, Commissioners must strive to be clear in their reasoning, impartial in their decisions, and transparent in the process of enforcing the law.

Should I be confirmed, it would be a great honor to serve on the Commission. Thank you for the opportunity to appear before you today. I would be happy to answer any questions.

JOHN J. SULLIVAN**EDUCATION****Northeastern University School of Law, Boston, MA**

J.D. (1981)

University of Massachusetts, Boston, MAB.A., *summa cum laude*, in history (1978)**LEGAL EXPERIENCE****Service Employees International Union (SEIU), Washington, D.C.**

(July 1997 to present)

Associate General Counsel. Responsibilities include advising SEIU's officers and political program staff and federal and state political action committees on campaign finance and election-related issues and coordinating the union's election reform/election protection programs.

International Brotherhood of Teamsters (IBT), Washington, D.C.

(April 1994 to June 1997)

Associate General Counsel. Responsibilities included internal union election and governance issues and the administration of the election provisions of the 1989 consent decree between the United States and the IBT.

Guerrieri, Edmond & James, Washington, D.C.

(June 1989 to August 1990; March 1992 to March 1994)

Associate and partner. Involved in the firm's representation of railway and airline unions in federal court litigation, bankruptcy proceedings and in proceedings before federal administrative agencies.

Office of the Election Officer, International Brotherhood of Teamsters, Washington, D.C.

(September 1990 to February 1992)

Election Protest Coordinator and Counsel to the Election Officer. Responsible for supervising investigation and adjudication of protests regarding the election of local union delegates to the 1991 Teamster International Convention and the first direct election of international officers of the 1.1 million member Teamsters union.

Kirschner, Weinberg & Dempsey, Washington, D.C.

(June 1984 to June 1989)

Associate in firm which served as the general counsel to American Federation of State, County and Municipal Employees (AFSCME). Responsible for representing AFSCME in litigation and administrative proceedings growing out of state-wide union organizing campaigns in Ohio and Alaska.

Highsaw & Mahoney, Washington, D.C.

(October 1981 to May 1984)

Associate in law firm representing railway and airline unions in federal court litigation and administrative agency proceedings.

JOHN J. SULLIVAN**OTHER ELECTION LAW EXPERIENCE**

- 2008 Minnesota senatorial election recount: legal observer for Al Franken campaign.
- 2008 presidential primaries: volunteer attorney for Obama for America “Promote the Vote” election protection efforts in Ohio, Pennsylvania and Indiana.
- Member, Town of Somerset, Maryland, Board of Elections. 2008 to present.
- Member and vice president, Montgomery County, Maryland, Board of Elections. 2007 to present.
- 2007 Ukrainian parliamentary election and 2004 Ukrainian presidential election (the “Orange Revolution”): member of National Democratic Institute observer delegations.
- Member, Maryland Governor-elect Martin O’Malley’s transition team workgroup on election reform. 2006 to 2007.
- 2004 Washington gubernatorial election recount: volunteer attorney for Christine Gregoire campaign.
- 2004 presidential election: coordinator of the national SEIU election protection effort.
- 2000 presidential election Florida recount: volunteer attorney for Gore/Lieberman campaign.

EXECUTIVE SESSION

WEDNESDAY, JUNE 10, 2009 AND THURSDAY, JUNE 11, 2009

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The Committee met, pursuant to notice, at 3:04 p.m., in Room SR-301, Russell Senate Office Building, Hon. Charles E. Schumer, Chairman of the Committee, presiding.

Present: Senators Schumer and Bennett.

Staff present: Jean Bordewich, Staff Director; Jason Abel, Chief Counsel; Veronica Gillespie, Elections Counsel; Adam Ambrogi, Counsel; Brenna Allen, Professional Staff; Lynden Armstrong, Chief Clerk; Mary Suit Jones, Republican Staff Director; Paul Vinovich, Republican Chief Counsel; Michael Merrell, Republican Counsel; and Abbie Platt, Republican Professional Staff.

OPENING STATEMENT OF CHAIRMAN SCHUMER

Chairman SCHUMER. The committee is called to order for an executive business meeting. We are meeting this afternoon to consider the nomination of John J. Sullivan to be a member of the Federal Election Commission.

The Committee on Rules' rules and procedures specify that seven members need to be present to discuss the nominations and ten members present to vote.

Since a quorum is not present to discuss or vote on the nomination, the committee is recessed and will convene following the next vote on the Senate floor, which now is expected to be tomorrow morning. Members will be notified of the exact time and place of the meeting.

So again, I want to thank you, Mr. Sullivan, your whole family, and everyone else for attending.

The committee is recessed subject to the call of the Chair.

[Whereupon, at 3:05 p.m., the committee recessed, subject to the call of the Chair.]

THURSDAY, JUNE 11, 2009

[The committee proceeded in Executive Session at 2:50 p.m., Thursday, June 11, 2009, in Room S-216, The Capitol, Hon. Charles E. Schumer, Chairman of the committee, presiding.]

Present: Senators Schumer, Dodd, Nelson, Murray, Pryor, Udall, Warner, Bennett, Cochran, and Chambliss.

Staff present: Jean Bordewich, Staff Director; Jason Abel, Chief Counsel; Veronica Gillespie, Elections Counsel; Adam Ambrogi, Counsel; Brenna Allen, Professional Staff; Lynden Armstrong, Chief Clerk; Mary Suit Jones, Republican Staff Director; Paul Vinovich, Republican Chief Counsel; Michael Merrell, Republican Counsel; and Abbie Platt, Republican Professional Staff.

Chairman SCHUMER. The hearing will come to order. We are meeting this afternoon to consider executive business, the nomination of John J. Sullivan to be a Federal Election Commissioner. We held a confirmation hearing yesterday afternoon.

Also, pursuant to our rules, all votes are by voice unless a member requests a roll call vote. A quorum is now present. I will entertain a motion for a voice vote that the nomination be reported with a recommendation the nomination be confirmed.

Senator BENNETT. So moved.

Senator CHAMBLISS. Second.

Chairman SCHUMER. A motion has been made and seconded the nomination be reported with a recommendation the nominee be confirmed. All in favor, say aye.

[Chorus of ayes.]

Chairman SCHUMER. Opposed, nay.

[No response.]

Chairman SCHUMER. The ayes have it. The motion is agreed to. And we have a proxy from Senator Feinstein, yes, and Senator Inouye, yes. Thank you.

Thank you, everybody. Have a nice weekend. The meeting is now adjourned.

[Whereupon, at 2:51 p.m., the committee was adjourned.]

S.1415, the “Military and Overseas Voter Empowerment Act”

WEDNESDAY, JULY 15, 2009

UNITED STATES SENATE,
COMMITTEE ON RULES AND ADMINISTRATION,
Washington, D.C.

The Committee met, pursuant to notice, at 9:36 a.m., in Room SR-301, Russell Senate Office Building, Hon. Charles E. Schumer, Chairman of the Committee, presiding.

Present: Senators Nelson, Pryor, Udall, Bennett, Cochran, Chambliss, and Roberts.

Staff present: Jean Bordewich, Staff Director; Jason Abel, Chief Counsel; Veronica Gillespie, Elections Counsel; Adam Ambrogio, Counsel; Carole Blessington, Assistant to the Staff Director; Sonia Gill, Counsel; Lauryn Bruck, Professional Staff; Lynden Armstrong, Chief Clerk; Justin Perkins, Staff Assistant; Mary Suit Jones, Republican Staff Director; Shaun Parkin, Republican Deputy Staff Director; Paul Vinovich, Republican Chief Counsel; Michael Merrell, Republican Counsel; Abbie Platt, Republican Professional Staff; and Rachel Creviston, Republican Professional Staff.

OPENING STATEMENT OF CHAIRMAN SCHUMER

Chairman SCHUMER. The hearing will come to order. As you know we need seven to actually vote on amendments. We have six; we have at least two more members on their way so we will begin the opening statements. Hopefully they will be here, and we will do that. Maybe we can get the 10 to vote. If not, we will do it off of the floor.

First I want to thank all of my colleagues for coming. Particularly my friend, our Ranking Member Bob Bennett, and he has really worked hard. He had some problems with the bill and our staffs worked together and we have worked it all out. And I want to thank him for his dedication to helping men and women who serve overseas in our Armed Forces exercise their franchise.

The two real guiding forces behind this are here today. Saxby Chambliss, an original co-sponsor of this bill, member of the Armed Services Committee who has shared our commitment to ensuring that Americans serve overseas can participate fully in the electoral process and he worked hard with everybody and I thank Saxby and his staff.

And the other person who was really instrumental in this is Ben Nelson, who is Chairman of the Armed Services Subcommittee on Personnel and Readiness. He has helped craft this legislation into shape. And he and Saxby should we pass it out of this committee, we might be able to add it to the DoD Authorization Bill given their leadership on that committee.

I also want to thank John Cornyn. He is not on this committee but he has been a strong and committed advocate for military voters. He has previously introduced legislation to help military voters and we appreciate his interest in the bill we are considering today.

On May 13 of this year the Rules Committee held a hearing on the obstacles faced by military and overseas voters. We released a survey commissioned from the Congressional Research Service, which had very troubling news and that was that one in four ballots requested by troops deployed overseas went uncounted in the 2008 election.

Studies from previous elections show that military and overseas voters have one of the lowest levels of turnout of all groups. But not because they do not want to vote. Our soldiers want to vote. But it is because it is hard for them to vote. It is hard for them to register. Only 65 percent of U.S. military personnel are registered compared to up to 84 percent of the population as a whole.

And then the voting process is rather cumbersome, because you need an absentee ballot which is cumbersome in itself and you need two mail systems to get them there; military mail and then U.S. Postal Service. And so, that is why the numbers are so much lower—not for lack of desire.

We have found that potential military and overseas voters often do not know where to register, or the ways they can request an absentee ballot. The states mail out the paper ballots without enough time for them to be received and returned by mail. Sometimes the ballot gets there after the election is over and certainly after the expiration date of when you can send in the absentee ballot.

And then far too many returned ballots are thrown out for technicalities that are not election related; being on the wrong paper, not being notarized. Now how does somebody in Fallujah go find a notary for his or her absentee ballot? So it is unacceptable and we are trying to change that.

In an age of instantaneous global communications there is no reason not to use the technology to help members of the military, their families, and other Americans living, working and volunteering in foreign countries from exercising their right to vote. And that is what we would say here.

What we are marrying is the desire to vote with new technology. That is all. We are not changing any of the rules, we are just making it quicker and easier. If you have e-mail and if you have fax machines, why not use them?

If the Department of Defense can get tanks, high tech equipment, and food to the front lines of combat we can figure out a way to deliver an election ballot as well. And we believe that this cannot wait. Senators Chambliss and Nelson and I have introduced this legislation to overturn the barriers military and overseas voters encounter as they fight for our freedom and serve our nation away from home. We have received input from a number of groups and senators and worked to incorporate their comments and concerns, so I think this is a strong bipartisan bill.

And I hope it will pass out of this committee without opposition.

So S.1415 will amend the 1986 Uniformed and Overseas Citizen Absentee voting Act and bring it into the 21st Century. Will use the internet and other methods to speed up the process for voters outside the U.S., make sure their votes count. It is an urgent priority and I hope we can move it quickly. And with that let me turn it over to our Ranking Member Bennett.

OPENING STATEMENT OF SENATOR BENNETT

Senator BENNETT. Thank you very much Mr. Chairman not only for your opening remarks, but for the way in which you and your staff have approached this.

As is the case with every piece of legislation there is always some tension among people who focus on the details and to perhaps oversimplify, but I think to put it in context we have has a little tension between what I would call the activist community that want to make sure that everybody gets to vote and then the election administrator community, the people who actually do the work who say, "Well, that is a good idea but it will not work for these following reasons".

And I want to thank you for the way in which you and Senator Cornyn have worked together, as he has put forward his efforts. I worked with your staff and with Senator Chambliss and we put together an amendment the summary of which I would like to submit for the record.

Chairman SCHUMER. Without objection.

[The information of Senator Bennett follows:]

Senator BENNETT. And it goes through all of the details, in every case it is an attempt to reconcile the tension that I described.

We want to get all of the folks in the military to vote, but at the same time we do not want to put undue burdens on the people who actually run the machinery. And it is my understanding that we have pretty well resolved all of the issues and all of the tensions and I want to thank you for offering the amendment that will take care of Senator Cornyn's concerns and for your willingness to accept the amendment I will offer that will take care of the other concerns that were worked out with Senator Chambliss and I believe with those two amendments it can indeed come out of the committee with unanimous support and I will be happy to serve as a co-sponsor when it goes the floor under those conditions.

So without going into any more details about the items in my amendment, I simply repeat my gratitude to you and your staff and the others who have worked so hard on it and congratulate you and Senator Nelson and Senator Chambliss for your leadership in calling this to our attention and moving this forward.

[The prepared statement of Senator Bennett follows:]

Chairman SCHUMER. Thank you Senator Bennett. Senator Nelson.

OPENING STATEMENT OF SENATOR NELSON

Senator NELSON. Thank you Mr. Chairman. It is truly, as the Ranking Member has indicated and you have as well, that is has been a pleasure to work as collaboratively as we have on this legislation. It is consistent with how Senator Chambliss and I have worked on personnel issues under the Armed Services Committee to try to help our men and women in uniform and their families. But in this particular case, assuring the right to vote is followed by the capability of achieving that right.

It is hard to register, hard to vote, hard to count votes. All the difficulties are clear and navigating through these difficult areas is not always that easy, but what this process has proven is that

when we work together we can get things done and we can overcome those obstacles.

So for the men and women in uniform we are all please that their right to vote will be further honored by this legislation and I am very anxious to see it come to the floor. Very anxious to see it get the kind of commitment and support that I know it will get.

And thank you for your particular leadership Mr. Chairman and so graciously sharing the gratitude and the accolades, because I know where a lot of the work was done that was with your staff and our staffs. So thank you.

Chairman SCHUMER. Well, thank you Senator Nelson and without you and Senator Chambliss this would not have happened. So thank you.

Senator Cochran, do you want to make a statement?

Senator COCHRAN. Mr. Chairman, I have a statement, and I would ask unanimous consent that it be made a part of the record.

Chairman SCHUMER. Without objection.

[The prepared statement of Senator Cochran follows:]

Chairman SCHUMER. Senator Pryor, do you wish to say anything, opening?

OPENING STATEMENT OF SENATOR PRYOR

Senator PRYOR. I don't, but I do want to thank all of the people who have worked so hard on this. I'd like to be added as a co-sponsor if I am not already. But—

Chairman SCHUMER. You are already.

Senator PRYOR. Unfortunately, Mr. Chairman I have got to leave in about 10 minutes to hear a Commerce—

Chairman SCHUMER. Okay. We are going to move quickly to do the amendments. Just let me call on Senator Chambliss, Senator Udall for brief statements and I think we can get this done before 10 o'clock.

OPENING STATEMENT OF SENATOR CHAMBLISS

Senator CHAMBLISS. Thank you Mr. Chairman and let me just echo the sentiments that you have stated, and Senator Bennett and Senator Nelson have stated with reference to the work on this. I mean, this is the way this body is supposed to work in my mind. We have an issue we needed a solution to and we found a common solution through conversation, negotiation, and being common sense senators and trying to make sure the men and women that are out there giving us the right to vote in free and open elections also have the right to vote and I just can-not say enough about the cooperative attitude of the Chairman and the Ranking Member.

As we have been through this, I understand now why Senator Schumer gets so many things done because when he and I would talk about an issue he would come up to me three times during the day to make sure that I had done what I was supposed to do. And I am very appreciative of that.

Chairman SCHUMER. There's a word for it in New York. We call it "nudge."

Senator CHAMBLISS. Senator Nelson has been my good friend since I came to this body and I was Chairman of the Personnel Committee. I worked very closely with him. Now that he is Chair-

man, we continue to work very closely together and your commitment to this has just been unbelievable and I appreciate it as always.

Senator Cornyn who is not a member has had a bill on this issue for a couple of years and Senator Cornyn has just been a great colleague to work with on this. Again, we all had a common goal. I want to also just put in a good word for my Secretary of State Karen Handel who we stayed in touch with on this issue because we are putting some things in here that I frankly thought some of the states might not like.

We have a large military presence in Georgia, as do a number of you in your states, and Karen has been very supportive of what we are doing and as a result I think we are going to get some widespread national support on this from outside groups. We already have, but it is going to continue to grow. So Mr. Chairman, thank you. I look forward to bringing these amendments up, getting it concluded, and bringing it to the floor.

Chairman SCHUMER. Thank you Senator Chambliss. Senator Udall.

OPENING STATEMENT OF SENATOR UDALL

Senator UDALL. Thank you Senator Schumer and I really appreciate all of the work of all the senators on this bill. I cannot think of anything more important than having the military have the right to vote when they are serving overseas and I would like to be added as a co-sponsor.

Chairman SCHUMER. Without objection.

Senator UDALL. Thank you.

Chairman SCHUMER. Okay, thank you. Let us move to the amendments. As was mentioned, Senator Cornyn has been a champion on this issue and has some amendments that we have all worked out. Senator Chambliss, Senator Nelson, Senator Bennett and I have all agreed to his suggestions and I am going to offer these amendments for consideration.

They are Schumer Amendments 1 through 3, but they are Senator Cornyn's amendments and as I said he has been a leader on the issue.

Amendment 1 expands on the procedures that DoD should use in consultation with the U.S. Postal Service to ensure ballots get delivered through expedited mail. Amendment 2 expands voter registration services on DoD installation and enhances the VAO Program and FVAP Office. Amendment 3 is simply a terminology change.

All of these amendments I think have both Senator Bennett and my support so do I have a motion that these three amendments suggested by Senator Cornyn in which I now offer be adopted?

Senator UDALL. So moved

Chairman SCHUMER. Is there a second?

Senator PRYOR. Second

Chairman SCHUMER. Okay. Those in favor say aye.

[Chorus of ayes.]

Chairman SCHUMER. Opposed, nay.

[No response.]

Chairman SCHUMER. The ayes have it and the amendments are adopted. Now we have some amendments that Senator Bennett will offer as well.

Senator BENNETT. Thank you.

Chairman SCHUMER. This is the last bunch of amendments and then we will wait for final passage to get 10 off the floor.

Senator BENNETT. Thank you, Mr. Chairman. My amendment is a summary of revisions. I have it here, a summary of the revisions made by the Bennett Amendment. There are 10 particular items here. Given the amount of time, well I can get through these 10 in a hurry.

Clarification regarding the delegation of state responsibility is number one. Number two, amendment to remove specific technologies from the bill. Number three, an amendment to clarify that the states are not required to place contact information directly on the ballots. That's a privacy issue.

Number four, an amendment to clarify that the states are not limited to only one point of contact. Number five, an amendment to improve privacy protections and number six amendment to add security protections. Number seven, an amendment to improve the requirement for time to vote. Number eight, amendment to the waiver provision with respect to the ballot transmission deadline. Number nine, amendment to repeal the UOCAVA Requirement that a single ballot application be valid for subsequent elections. And number ten, and amendment to clarify the HAVA requirement that payments remain available.

Now all have been cleared by the various senators and I offer the amendment in the hope that it can be adopted.

Chairman SCHUMER. All right. Is there a second?

Senator CHAMBLISS. Second

Chairman SCHUMER. All in favor say aye.

[Chorus of ayes.]

Chairman SCHUMER. Opposed, nay.

[No response.]

Chairman SCHUMER. The ayes have it and the amendments are adopted and I would ask unanimous consent that Senator Bennett be added as a co-sponsor as well.

I think that is it. I do not think we are close to 10. Senator Pryor has a previous commitment, we all do. Sorry. Since a quorum is not present we cannot vote on final passage. In order to have a motion to vote when we reconvene, is there a motion to report the bill as amended?

Senator BENNETT. So moved

Chairman SCHUMER. Is there a second?

Senator NELSON. Second

Chairman SCHUMER. Great. Okay, since we do not have 10 we will convene off of the floor and the committee is in recess subject to call of the Chair. Thank you all for coming. And more importantly, for everyone's good work on this amendment.

[Recess.]

Senators Present: Schumer, Inouye, Feinstein, Durbin, Nelson, Murray, Udall, Warner, Bennett, Hutchison, Chambliss, and Alexander.

Chairman SCHUMER. The Committee will come to order. There is a pending motion to report S. 1415 as amended. Unless there is a request for a recorded vote, the vote will be by voice.

Senator ALEXANDER. Mr. Chairman, I ask unanimous consent that I be added as a co-sponsor.

Chairman SCHUMER. Without objection. Does everyone present here want to be a co-sponsor?

[Chorus of "yes"]

Chairman SCHUMER. Ok, without objection, you all are added. Now, on to the motion. Those in favor, say aye.

[Chorus of ayes.]

Chairman SCHUMER. Those opposed, say nay.

[No response.]

Chairman SCHUMER. The ayes have it, and S. 1415 as amended is ordered reported.

To conclude, I'd like to first thank my friend, Ranking Member Bennett, for his leadership and steadfast support of our military.

I would also like to thank Senators Saxby Chambliss and Ben Nelson, who were original co-sponsors with me of this bipartisan bill. Their continued dedication to finding a solution to the problems facing our military and overseas voters is invaluable and appreciated.

I'd like to thank the Senators who are here for this meeting for their participation and attendance, which made this mark up possible.

Finally, I want to acknowledge some of those who have already sent letters of support for S. 1415, including Operation Bravo Foundation, the Overseas Vote Foundation, Federation of Women's Clubs Overseas, and Eric Eversole, a witness at an earlier Rules Committee hearing who served as an attorney in the voting section of the Justice Department. I also want to thank the Pew Center on the States for their research in the "No Time to Vote Study," and their support on this issue.

I appreciate all of your efforts to take action on this urgent issue—we will keep working together until we get this done.

We'll keep the record open for five days if any member has a statement for the record.

The Committee is adjourned subject to the call of the Chair.

[Whereupon, at 12:55 p.m., the committee was adjourned.]

APPENDIX MATERIAL SUBMITTED

PREPARED STATEMENT OF SENATOR ROBERT BENNETT

Thank you, Mr. Chairman for holding this meeting and for your work on this important issue. You are to be commended for making this a priority. Our military personnel make tremendous sacrifices for their country. As they defend our rights, we need to make sure they are able to exercise theirs. This bill will help them exercise their right to vote.

I want to also thank our committee colleagues Senator Saxby Chambliss and Senator Ben Nelson who joined you as original cosponsors of this legislation. They care deeply about our service members and they have worked hard on their behalf—on this bill and many others.

I also have to thank another senator who is not a member of this committee but has nonetheless been a tremendous leader on this issue—Senator John Cornyn. Senator Cornyn has been out front on this issue for a long time and I know he is pleased to see this committee acting on it. I understand you will be offering some amendments Mr. Chairman that contain language proposed by Senator Cornyn and I thank you for doing so.

This bill will implement many of the recommendations we heard at our hearing on this subject in May. Testimony at that hearing revealed that many service members are unable to exercise their right to vote because of ballot delivery problems. Ballots are frequently mailed out too late for them to be received, voted and returned in time to be counted. This bill will rectify that problem by requiring that ballots be mailed out with sufficient time to be received and returned.

Another common problem is some jurisdiction's failure to utilize electronic transmission methods that could cut down on delivery times. This legislation will require utilization of electronic transmission methods and thereby make it easier for military and overseas personnel to obtain, and vote, their ballots in time.

Other provisions to require use of expedited mail services and expand use of the Federal Write-In Absentee Ballot should also help this population cast their votes.

I do appreciate the goals of this legislation and I will be offering an amendment that I believe will help meet those goals. We have been getting some feedback from election administrators since the bill was introduced last week and some important points have been raised about its provisions. I very much appreciate your willingness, Mr. Chairman to work with us to address these concerns and I want to thank Senator Chambliss as well. Our staffs have worked well together to make what I believe to be some necessary improvements to the bill and I thank the Chairman and Senator Chambliss for agreeing to accept them.

I have a complete outline of the changes that I will submit for the record but I wanted to address just a few of them in detail.

The amendment I will offer clarifies that the obligations we impose on states may be delegated to local jurisdictions. We recognize that election administration functions are carried out on the local level and we do not intend to transfer those responsibilities to the State in this legislation.

The amendment also changes the ballot delivery requirement from 55 to 45 days. 45 days was the consensus recommendation of the witnesses who appeared at our hearing and many states would be unable to comply with the 55 day requirement. More states will be able to comply with the 45 day requirement and more military and overseas voters will be able to obtain their ballots in time with this requirement in place.

The privacy language in the bill raised concerns because some voting related information is, by necessity, a matter of public record—the voter's name, for example, and whether or not they have voted. These disclosures are important transparency measures and we do not wish to change them in this bill. The amendment requires privacy protections “to the extent practicable” so that voter's personal information does not get exposed unnecessarily, while recognizing that some information can and must be disclosed.

Similarly, language is added to ensure that security protections are also put in place to protect ballot integrity, to the extent practicable.

Finally the amendment eliminates a requirement in the existing law that requires election officials to send ballots to military and overseas voters for 2 subsequent elections after they receive an application. This population moves very frequently, so this requirement obligates election officials to send ballots to addresses where the applicant no longer lives. This provides no benefit to the voter but does impose unnecessary costs on the jurisdiction. Elimination of this provision will conserve resources, reduce the opportunities for fraud and lower the rate of unreturned ballots.

Again I very much appreciate your willingness to accept these changes Mr. Chairman. I think they improve the bill greatly and with these changes I will be pleased to support it.

SUMMARY OF REVISIONS TO S. 1415 MADE BY THE BENNETT AMENDMENT

1. Clarification regarding delegation of state responsibilities.
 - a. This is a new section that responds to concerns raised by election officials that states would be required to assume election administration responsibilities that they have delegated to the local level.
2. Amendments to remove specific technologies from the bill. S. 1415, Section 3.
 - a. S. 1415 includes references to specific technologies and that states will be required to use in the transmission of registration and balloting materials to UOCAVA voters. (Fax machines for example). The amended language will require the use of mail or electronic means of transmission without mandating technologies that may become obsolete.
3. Amendment to clarify that states are not required to place contact information directly on their ballots. S. 1415, Section 3.
 - a. The bill requires states to dedicate an electronic means of communication for use with UOCAVA voters. It also requires that the email, phone number, fax, website, etc. . . . be printed on materials sent to the voters with registration and balloting materials. There is a concern that this requirement would obligate the states to print the contact information directly on the ballot. The amendment clarifies that the information is to be printed on materials accompanying the ballot and not the ballot itself.
4. Amendment to clarify that states are not limited to only one point of contact for UOCAVA voters. S. 1415, Section 3.
 - a. Election officials are concerned that the original language would overwhelm state election offices and add an unnecessary and time-consuming step in the UOCAVA voting process. The amendment clarifies that states may refer UOCAVA voters to the appropriate jurisdiction within the state for assistance.
5. Amendment to improve privacy protections. S. 1415, Sections 3 and 4.
 - a. The bill's privacy provisions in Sections 3 and 4 are a point of concern because states cannot quantify the obligation it would place on them. To alleviate this concern, the amendment modifies the privacy requirement by inserting the phrase "To the extent practicable."
6. Amendment to add security protections. S. 1415, Sections 3 and 4.
 - a. The expanded use of electronic transmission for delivering registration and balloting materials necessarily raises security concerns. The amendment includes a provision that requires states to ensure that procedures established pursuant to the bill protect the security and integrity of the registration and balloting processes to the extent practicable.
7. Amendment to improve requirement for "time to vote." S. 1415, Section 5.
 - a. S. 1415 would require states to provide 55 days for the transmission of ballots to and from UOCAVA voters. This is a major point of concern for states and local election officials. The amendment follows the consensus recommendation made at the Rules Committee hearing that the period of time for sending and receiving ballots be 45 days.
8. Amendment to the waiver provision of ballot transmission deadline. S. 1415, Section 5.
 - a. While the Department of Justice is responsible for enforcing the requirements of UOCAVA, S. 1415 gives them no role in waiving what will be UOCAVA's new mandates. This amendment requires the Presidential designee to consult with the Attorney General prior to approving or denying a requested waiver.
9. Amendment to repeal UOCAVA requirement that a single ballot application be valid for subsequent elections.
 - a. The Help America Vote Act amended UOCAVA to require election officials to treat an absentee ballot request from a UOCAVA voter to be a valid request for the following two general elections. This requires states to send absentee ballots to UOCAVA voters for three general elections based on a single request. Because the military population is extremely mobile, few of these voters remain at the same address for this length of time. Election officials are put in the difficult position of having to mail live ballots to addresses they know to be inaccurate. These ballots greatly increase the administrative burden on election officials and heighten the potential for fraud. The amendment would strike this requirement from the underlying law.
10. Amendment to clarify that HAVA requirement payments remain available. S.1415, Section 12.
 - a. State election officials are concerned that this section of the bill would bar them from receiving any future HAVA requirement payments unless they updated their state plans to incorporate the requirements of this legislation. The amendment clarifies that only money authorized and appropriated pursuant to this bill will be con-

tingent upon states amending their state plans. Existing HAVA requirement funds will not.

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ALLIANCE FOR
MILITARY AND OVERSEAS
VOTING RIGHTS

The Honorable Charles E. Schumer, Chairman
The Honorable Robert F. Bennett, Ranking Member
Committee on Rules and Administration
United States Senate
305 Russell Senate Office Building
Washington, DC 20510

Dear Chairman Schumer and Ranking Member Bennett:

As representatives of the Alliance for Military and Overseas Voting Rights (AMOVR), please allow us to take this opportunity to praise the Senate for addressing the important issue of overseas voting in the Military and Overseas Voter Empowerment (MOVE) Act (S. 1415). You and the cosponsors of the legislation should be commended for your efforts on behalf of the men and women who protect and represent our country abroad. The Alliance strongly supports passage of this legislation and its addition to the National Defense Authorization Act.

AMOVR is a coalition of over 30 military associations, non-profit organizations, elected officials and student groups dedicated to ensuring that Americans abroad have an equal right and opportunity to vote. From inception, the Alliance has worked to advance the following principles:

- Military and overseas voters must be provided adequate time to receive, complete and return their absentee ballots;
- States should adopt standardized procedures for registering Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) voters, delivering blank ballots to them and receiving the cast ballots from them;
- Congress and the states should expand and accelerate research and pilot projects to find technological solutions that provide a secure, efficient and convenient means for military and overseas voters to cast their ballots; and
- The election system should serve both military and overseas civilians.

Although no piece of legislation is perfect, we firmly believe that the MOVE Act takes great strides towards addressing all of these core values, and we encourage that it be passed for on-time implementation in the 2010 elections. Thank you again for your commitment to serving this important voting community; AMOVR stands ready to assist in any stage of the legislative

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ALLIANCE FOR
MILITARY AND OVERSEAS
VOTING RIGHTS

process. If you have any questions or require additional information, please contact Kate Viar at the Pew Charitable Trusts, a member of AMOVR, at (202) 540-6324 or kviar@pewtrusts.org.

Sincerely,

Rick Jones
Co-Chair
Alliance for Military and Overseas Voting Rights
Legislative Director
National Association for Uniformed Services

Chip Levengood
Co-Chair
Alliance for Military and Overseas Voting Rights
Chairman of the Board
Overseas Vote Foundation

Lucy Laederich
Vice-Chair
Alliance for Military and Overseas Voting Rights
U.S. Liaison
Federation of American Women's Clubs Overseas

Bryan O'Leary
Vice-Chair
Alliance for Military and Overseas Voting Rights
Senior Fellow
National Defense Committee

* * *

ALLIANCE FOR
MILITARY AND OVERSEAS
VOTING RIGHTS

Members of the Alliance for Military and Overseas Voting Rights

American Citizens Abroad	Fleet Reserve Association
American Foreign Service Association	Florida Voters Foundation
American Military Retirees Association	International Peace Operations Association
American Military Society	Iraq and Afghanistan Veterans of America
American Retirees Association	The Hon. Jeremy Kalin, Minnesota House of Representatives
American WWII Orphans Network	Korea War Veterans Foundation
Association of Americans Resident Overseas	Military Officers Association of America
Association of the United States Navy	National Association for Uniformed Services
Bexar County Elections, Texas	National Defense Committee
BIPAC	National Guard Association of the United States
Brennan Center for Justice	National Military Family Association
The Hon. Jennifer Brunner, Ohio Secretary of State	Operation BRAVO Foundation
The Hon. Beth Chapman, Alabama Secretary of State	Overseas Vote Foundation
Count Us In, Inc.	Pew Charitable Trusts
Empire Capitol Strategies	Reserve Officers Association
Enlisted Association of the National Guard of the United States	Rock the Vote
Federation of American Women's Clubs Overseas	The Retired Enlisted Association
	Verified Voting Foundation

M. ERIC EVERSOLE

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TELEPHONE 202-487-8146
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July 14, 2009

The Honorable Charles Schumer
Chairman, Committee on Rules and Administration
United States Senate
305 Russell Senate Office Building
Washington, D.C. 20510

The Honorable Robert Bennett
Ranking Member, Committee on Rules and Administration
United States Senate
305 Russell Senate Office Building
Washington, D.C. 20510

Dear Chairman Schumer and Ranking Member Bennett:

I write to offer my strong support for the Military and Overseas Voter Empowerment Act (MOVE Act). As I emphasized during the Committee's May 13, 2009 hearing, the Federal government has a special obligation to ensure that our men and women in uniform have an opportunity to vote and must take immediate action to protect their rights. The MOVE Act goes a long way toward accomplishing these goals and will greatly improve the ability of military members to vote in Federal elections.

At the outset, the drafters of the MOVE Act should be applauded for: (1) designating certain military offices as voter registration agencies under the National Voter Registration Act; (2) requiring express delivery for absentee ballots for overseas military voters; (3) requiring States to send registration and absentee ballot materials via electronic mail and facsimile; and (4) providing a date certain by which States have to send blank absentee ballots to military and overseas voters. Not only will military voters have greater opportunities to register and request absentee ballots under the MOVE Act, they will have confidence that their ballots will be received and counted by local election officials. The MOVE Act is a comprehensive solution to a problem that has long been ignored.

While I believe that the MOVE Act as drafted can be improved in several key areas, including the provisions regarding the state deadline for sending absentee ballots (section 5), the express mail delivery requirements (section 6), and the designation of military voter registration agencies (section 9), it is my understanding that Committee members are working in a bipartisan manner to achieve that result. Thank you in advance for your hard work on this important issue.

Respectfully,



M. Eric Eversole



THE FEDERATION OF AMERICAN WOMEN'S CLUBS OVERSEAS, INC.
Founded 1931

July 14, 2009

The Honorable Charles Schumer, Chair
Senate Committee on Rules and Administration
305 Russell Senate Office Building
Washington D.C. 20510

Re: S.1415, the "Military and Overseas Voter Empowerment Act"

Dear Mr. Chairman,

On behalf of my federation, with over 75 independent member organizations in 38 countries around the world and a membership of more than 15,000, I commend you and your colleagues for the important piece of legislation you have introduced in S.1415.

Since the founding of FAWCO, the voting rights of overseas citizens have been a major priority, and we are delighted to see a clear interest in both House and Senate in facilitating and harmonizing procedures for UOCAVA voters, the military and overseas citizens fighting for and representing their country abroad.

Non-partisan FAWCO volunteers have been registering voters in each of the cities where we are represented since overseas Americans first gained the right to vote in 1975 (due, in part, to the efforts of FAWCO). We have extensive experience and years of feedback on the procedures that you and your colleagues wish to improve. Globally, we applaud your efforts, though there are some aspects with respect to which we would like to propose slight but, for the voters, meaningful changes.

In particular, we appreciate the designation (**Section 3**) of **email addresses and fax numbers** dedicated to sending registration, ballot request and voting information documents to voters. We especially endorse the use of the internet for these purposes, knowing that many today – military voters in isolated areas but also civilians, even in major cities - have no access to faxes. Similarly, we strongly endorse **electronic transmission of blank ballots (Section 4)** to voters, halving the time needed between ballot transmission and return. As we all know, this is one of the prime reasons why overseas and military voters are unable to cast votes with the assurance they will actually be counted.

All measures that can allow military and overseas voters **sufficient time to receive and cast their ballots** are not only welcome but urgently needed: we therefore strongly endorse your **Section 5**.

We support your **Section 6** (similar in intent to bills already introduced by Congressman McCarthy and Senator Cornyn) even though much does not apply to overseas civilian voters. We are, however, pleased to see that it does (like H.2510) call for **ballot tracking** procedures for both UOCAVA populations.

Similarly, in line with our support for H.1739, we wholeheartedly endorse all efforts to eliminate **non-essential requirements** that often prevent overseas voters from exercising their right to vote (**Section 8** with respect to notarization, paper and envelope size and weight, etc.). We strongly urge you, however, to include **ballot delivery and postmark requirements** in your list, as without that, you preclude the possibility for overseas civilians to expedite delivery of their voter registration and ballot documents (as you have done for the military in Section 6) by courier service or even hand delivery.

FAWCO U.S. Liaison: 21 Boulevard Lefebvre, F-75015 Paris, France – **Email:** USLiaison@fawco.org
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THE FEDERATION OF AMERICAN WOMEN'S CLUBS OVERSEAS, INC.
Founded 1931

Finally, we can only salute **Section 9**, which represents a laudable effort to expand voter assistance and information abroad, but must note that for our population, it might even represent a step backward in that it expands efforts for the military but leaves the **much larger civilian population** – also served up to now by the FVAP – unmentioned. While we are keenly aware of the importance of assisting the military population serving America in often dangerous and hard-to-reach areas, we also understand the needs of the more than 5 million (recent State Department estimate) civilians who are “unofficial ambassadors” for America around the world.

Thank you again for your thoughtful and most comprehensive efforts to improve voting procedures for America's military and overseas population. My FAWCO colleagues and I would be honored to be able to assist you in any way possible.

Very sincerely,

Lucy Stensland Laederich



Your Mission • Your Voice

www.fra.org

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July 14, 2009

The Honorable Charles E. Schumer
Chairman
Senate Committee on Rules and Administration
305 Russell Office Building
Washington, DC 20510

Fax: 202-224-1912

Dear Senator Schumer:

The Fleet Reserve Association (FRA) strongly supports "The Military and Overseas Voters Empowerment Act, (S. 1415) that requires states to provide ballots via the internet or facsimile. The legislation also addresses problems that military and overseas voters face in registering to vote from outside the U.S., bars states from rejecting military ballots for lack of a "notary" signature, and requires that all states provide military voters with ballots no later than 45 days prior to the election, to ensure adequate time to complete and return them. The bill would in most cases also provide for a 10-day grace period for ballots to be received after election day if post-marked on time.

The Association strongly supports improved military overseas voter participation and improved military mail processing in Federal elections of overseas ballots, and FRA stands ready to provide assistance in advancing this legislation.

The FRA point of contact is John Davis, FRA's Director of Legislative Programs, at the above numbers or (john@fra.org).

Sincerely,

JOSEPH L. BARNES
National Executive Director

JLB:jrd:aal



July 12, 2009

The Honorable Charles Schumer
 Chairman, Committee on Rules & Administration
 United States Senate
 305 Russell Senate Office Building
 Washington DC 20510

Re: Senate Hearing on S.1415, the "Military and Overseas Voter Empowerment Act"
 Wednesday, July 15, 2009 9:30 a.m.

Dear Chairman Schumer:

Operation BRAVO Foundation is pleased to register its support for the Military and Overseas Voter Empowerment Act. You and the co-sponsors, Senators Chambliss and Nelson (NE), have clearly listened to the concerns of UOCAVA voters. Your bill proposes new solutions for a wide range of systemic problems that have prevented large numbers of these citizens from voting.

Operation BRAVO Foundation (OBF) is a nonprofit, nonpartisan 501(c)(3) organization. OBF was established for the purpose of helping overseas and military citizens effectively exercise their right to vote. To this end, we foster the exploration of promising electronic voting alternatives through pilot projects. Our board of directors has extensive firsthand experience with overseas voting issues from our work as elections officials and managers of electronic voting projects, as well as being UOCAVA voters ourselves.

OBF's first project was the 2008 Okaloosa Distance Balloting Pilot which we managed on behalf of the Okaloosa Supervisor of Elections and in accordance with the procedural and security requirements specified by the State of Florida. This project placed supervised voting kiosks in three overseas locations. These sites operated much like early voting centers in the U.S. Voters came to the kiosk and were checked in by a kiosk worker. They used a touch screen to make their ballot selections and could review a paper record of their choices before casting their ballot electronically. Ninety-three military and civilian voters participated.

Here are some typical comments from these voters about their experience:

'This is a great way to make military families feel part of the election process!'

'Easier than the absentee ballot.'

'This establishes my confidence that my vote will be received in time for the election.'

'I trust the Internet more than the postal service.'

'For the first time in my entire voting life, I have the opportunity to cast my ballot in person. Many thanks!'

This pilot was small scale and designed as a technical and security proof of concept. Several e-voting critics have acknowledged that we achieved our goal of successfully implementing a

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remote electronic voting system with acceptable security and auditability. So the groundwork has been done to take the kiosk concept to the next level.

For the 2010 election OBF proposes a follow-on project with a larger number of states and counties. This project will place kiosks in the challenging environments of combat zone locations, such as the Green Zone in Baghdad. The Okaloosa Pilot showed that the entire kiosk system can be shipped in, set up, and operated by personnel with less than 8 hours of training. It requires only a nominal size room, electricity, and an Internet connection. Instead of sending kiosk workers from the U.S., we would utilize Voting Assistance Officers or other personnel already on site. The Combat Zone Kiosk project will be the proof of concept for determining the scalability and cost effectiveness of this voting method as well as the practical feasibility of deployment and operation in areas where it is most needed. This project includes all the elements of Section 13 (c) (2): Virtual private networks, cryptographic voting systems, centrally controlled voting stations, and other information security techniques. Several States and counties have indicated they would like to participate in this project. The only impediment to moving ahead is funding.

Consequently, OBF has two recommendations regarding S.1415. We propose that the regularly scheduled general election for Federal office in 2010 be made the effective date for the Section 13 Technology Pilot Program. This is consistent with the effective date provisions for other sections of the bill. Similarly, we propose that (e) Authorization of Appropriations be revised to read: 'For fiscal year 2010 and subsequent fiscal years, there are authorized to be appropriated such sums as are necessary to carry out this section.'

Operation BRAVO Foundation offers our sincere appreciation to you and other members of the Rules Committee for all your work in improving our elections.

Respectfully,
Operation BRAVO Foundation
Board of Directors

Pat Hollarn
Chip Levengood
Carol A. Paquette
Gary Smith



Senator Charles Schumer
 Chairman, Senate Rules Committee
 305 Russell Senate Office Building
 Washington, D.C. 20510

Subject: Support for S.1415, "Military and Overseas Voter Empowerment Act"

Dear Chairman Schumer,

July 13, 2009

The purpose of this letter is to voice our wholehearted support for the S.1415, the "Military and Overseas Voter Empowerment Act". We congratulate you and your colleagues, Senators Chambliss and Nelson, on the excellent crafting of this bold and comprehensive bill. We believe that S.1415 clears the way for much needed modernization of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and that it will infuse new momentum into the program.

Overseas Vote Foundation (OVF) is a nonprofit, nonpartisan organization that focuses on the facilitation and increased participation of overseas and military voters. We do this through the development of online UOCAVA voter services for voters and states. Your proposed legislation is of primary interest to our organization, our work and our mission. We are encouraged by the forward-thinking approach you have taken to many of the long-term persistent problems that have hampered the improvement and increased enfranchisement of overseas and military voters.

OVF applauds your efforts to amend UOCAVA. We will work with your staff to suggest a few minor changes, which, we believe will further strengthen the legislation, and expect that other experts, states, and organizations will also provide feedback for consideration. As we know from our own post-election UOCAVA research and that of other organizations and agencies focused on the challenge of UOCAVA voting, the program will benefit from the reforms outlined in S.1415.

OVF looks forward to working with you as needed to assure the successful passing of S.1415. Please let us know how we can be of further assistance in your honorable efforts to improve the effectiveness of this important voting program.

With kind regards,

Susan Dzieduszycka-Suinat
 President and CEO, Overseas Vote Foundation



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July 14, 2009

The Honorable Charles E. Schumer, Chairman
 The Honorable Robert F. Bennett, Ranking Member
 Committee on Rules and Administration
 United States Senate
 305 Russell Senate Office Building
 Washington, DC 20510

Dear Senators Schumer and Bennett:

On behalf of the Pew Center on the States, I would like to applaud the Committee, as well as the sponsors of the Military and Overseas Voter Empowerment (MOVE) Act (S.1415)—Chairman Schumer, Senators Cantwell, Chambliss, Isakson, Nelson and Shaheen—for your work on this important bill. The MOVE Act takes substantive steps toward repairing a system that has failed military and overseas civilian voters for far too long. We enthusiastically support its passage.

As you know, in January 2009, the Pew Center on the States issued a report titled *No Time to Vote: Challenges Facing America's Overseas Military Voters*, a detailed public analysis of states' voting systems for military personnel stationed overseas. The report found that 25 states and the District of Columbia provide insufficient time for overseas military voters to vote and have their votes counted. Pew identified major obstacles for overseas military voters in various state absentee ballot laws and procedures and recommended several common-sense reforms to remove the impediments to voting.

The MOVE Act would implement many of the reforms recommended and supported by Pew, including:

- Expediting the voting process for military and overseas voters by requiring electronic transmission of voter registration applications, absentee ballot applications and blank ballots to all UOCAVA voters;
- Ensuring UOCAVA voters have adequate time to vote by requiring at least 55 days between when ballots are sent out and when they must be received to be counted;
- Eliminating any notary requirements for completed ballots; and
- Expanding the opportunity for voters overseas to use the Federal Write-In Absentee Ballot (FWAB) by explicitly extending the availability of the FWAB to all federal elections (including special, primary and run-off) and using available technology to allow voters to access critical voting information electronically.

Americans overwhelmingly want the system to work well for overseas military and civilian voters. A bipartisan Tarrance Group/Lake Research Partners poll conducted for Pew in the fall of 2008 found 96 percent of Americans believe it is important that these voters have the opportunity to vote in U.S. elections. The MOVE Act represents the best hope yet to make our election system work for Americans who, every day, defend our country and represent its ideals around the world.

Pew has been working on a full complement of repairs to the voting system for these voters. Since January, Pew has worked with the Uniform Law Commission (ULC) to draft a model law for states, which would extend

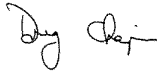
The Honorable Charles E. Schumer
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these recommended federal protections to state elections. The ULC is meeting this week to discuss the draft model act, and we anticipate a model act for consideration by the states by 2011.

In addition, Pew's Voting Information Project (VIP), developed in partnership with state and local election officials and Google, Inc., creates standardized electronic feeds of crucial voting information. Through the VIP, election officials can provide military and overseas voters online ballot creation tools such as the FWAB, Write-In Absentee Ballots for state and local elections and other applications to assist overseas military and civilian voters. It is this technology that will allow states and localities to easily implement the MOVE Act's requirement that the FWAB use technology to automatically create a ballot based on the voter's information.

The MOVE Act represents an important opportunity for Congress and the states to fulfill the promise of democracy for our men and women living, working and serving around the world. My colleagues and I at the Pew Center on the States stand ready to work with you, your co-sponsors, the Committee and the Senate to ensure that MOVE can indeed guarantee Americans abroad a chance to participate in democracy at a distance.

Sincerely,



Doug Chapin
Director, Election Initiatives
Pew Center on the States