

Testimony of

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Testimony Before the Senate Judiciary Committee

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Mr. Chairman, distinguished members of the Committee thank you for inviting me to testify today.

In 1952 President Harry Truman wrote to Congress regarding military absentee voting. He said, "At a time when these young people are defending our country...the least we at home can do is to make sure that they are able to enjoy the rights they are being asked to fight to preserve."

Over fifty years later military voting remains a burdensome bureaucratic process that in 2006 resulted in only 22% of service members successfully voting. War fighters are often on-the-move. More often than not ballots are sent to a previous address and are never received by the men and women in the field. A significant percentage are sent out without enough time to be completed, returned and counted before the state deadline. Even when ballots reach members of the Armed Services at their correct address and the ballots make it back to the local election official on time military votes still must overcome legalistic challenges by lawyers dispatched by both political parties and candidates. In short, our military men and women and their families overseas are being systematically disenfranchised by a broken system.

Military Voter Participation

?2006 military voter participation was roughly half that of the general population, 22% (24% domestic military and only 17% overseas military personnel) for military voters as compared to 39% to 40% for the general population.

992,000 Uniformed and Overseas citizens ballots were requested for the 2006 general election, but only one-third of that number (330,000) were cast, and even less were counted.

330,000 uniformed and overseas votes cast or counted out of a population of roughly 6 million citizens of voting age (1.3 million military, 1.1 million dependents, an estimated 3.6 million overseas citizens), for an estimated turnout of only 5.5%.

48,628 uniformed and overseas ballots were rejected in 2006.

In summary, the current military voting system has failed our military men and women and their families.

During my service in the Marines I was assigned as the voting officer for a 200 man squadron. I was given the DoD 400 page "Voting Assistance Guide" that detailed the different rules, regulations and deadlines for voting in each state, along with a stack of posters, Federal Postcard Applications (FPCA's) and Federal Write in Absentee Ballots (FWAB's). My instructions were to provide information for Marines who approached me wanting to register to vote and to get the squadron through our upcoming Commanding General's Inspection successfully.

Success on the inspection, however, was not measured by ensuring that a certain percentage of Marines registered to vote, or that the local election officials had the correct addresses of Marines in the unit. Instead the only metrics involved displaying the required number of voting posters, having on hand enough post card applications, and letting the Marines know that if they were interested in voting they should see an officer.

Like thousands of other junior officers, I didn't understand the confusing multi-step process and could barely vote myself, let alone help my Marines. I was focused first on my warfighting mission, not on this additional administrative duty. It should not be surprising that our warriors' top priority is keeping their soldiers, sailors, airmen, and Marines alive, not navigating a mess of federal, state, and local laws and regulations.

The Voting Assistance program is executed in a haphazard and inconsistent way and seems most effective when the military unit is not deployed. In 2001 the GAO reported, "voting assistance by the DoD and DoS varied due to incomplete service guidance, lack of oversight, and insufficient command support." In 2004 GAO reported that, "Absentee voting assistance continued to vary because of the collateral nature of the VAO role." Further, in 2004 the DoD Inspector General concluded that 58% of

personnel did not even know who their voting assistance officer was let alone know how to register to vote.

## Recommendations

1. With less than sixty days left before election day, members of the military and their families should get on-line today or seek out their voting assistance officer (if they can find them) to register and/or request their absentee balloting materials, even if they believe they are already registered (<http://www.overseasvotefoundation.org/> has the most user friendly web application). In all likelihood, their registration will indicate an old address and if not updated their ballot will be returned undeliverable after going to that address. Given the delays involved, even though the election is 2 months away, for our military men and women, today is your election day.
2. Congress should rapidly fund and execute expedited ballot delivery from overseas locations using express delivery with full tracking capability.
3. The Justice Department should aggressively investigate the DoD Federal Voting Assistance Program and States that do not allow for adequate time to send, complete, and receive ballots from remote overseas locations. 45 days is the absolute minimum.
4. Congress should establish for all future elections a means for electronic transmission of a blank ballot to service members and other government employees overseas and their families.
5. The Secretary of Defense should place responsibility for military voting under a single Senate confirmed Presidential nominee, an Assistant Secretary of Defense for Voting.

## Background

This is not a new problem. It has been clear for a number of years that the military and overseas voting process has been broken. Instead of fixing the problem, there has been a tendency to shift the blame. The DoD claims that the problem lies with each State and local jurisdiction, the States claim that is the DoD's problem, and the Department of Justice has allowed the DoD to take the blame.

As a Senate staff member I was briefed by the DoD in 2005 on this issue, and I was shocked that nothing had changed since I was a Captain in the Marines. A number of Senate offices vigorously investigated the program and found that the FVAP was living in complete denial that there even was a problem. Even

today the Federal Voting Assistance Program office clings to their false claims of increased voter participation in the 2004 election. By their accounts an astounding 79% of military voters participated, they claim a significant improvement over the 2000 election, and a voting rate 15% higher than the general public. They continue to make this claim long after the GAO questioned their survey methodology as being unreliable, "The low survey response rates raise concerns about FVAP's ability to project increased voter participation rates." The GAO goes on to criticize the overall methodology, overseas citizens sampled, the sample size, lack of sampling error, and lack of any analysis of respondents vs. non-respondents. In short, the Federal Voting Assistance Program claims are unscientifically arrived at and are questionable at best.

In contrast, the Election Assistance Commission, Defense Manpower Data Center, National Defense Committee, Overseas Vote Foundation, and Pew Military Voting Project have provided significant data that counters their claim and provides ample data to demonstrate that only about one in every five military voters cast a vote that is counted.

In 2006 Congress directed the DoD to execute an electronic ballot delivery pilot program. A step short of "electronic voting" this system simply set up a secure connection between the military voter and the local election official which allowed them to receive a blank ballot over the internet, which they would then print, sign and mail back. This system eliminated the problem of ballots being sent to the wrong address. The Pentagon failed to execute the program until the last minute, and didn't tell the local election officials of its existence. It is interesting to note, that this solution that relied on hardened banking system encryption took three weeks and less than a million dollars to execute. In contrast the Voting Program office in the DoD claims that it would take them between 1,000 and 1,700 days to execute a voting over the internet program. If past performance is any measure, I would suggest that no amount of money or time could generate success out of the existing office.

As the "Presidential Designee" for military and overseas voters the Secretary of Defense should shoulder the majority of blame for the failure of his Voting Assistance Program. However, the Department of Justice, Civil Rights Division, has the legal authority to ensure that military and overseas voters have the right to vote. The DoJ has used this authority to initiate legal action with states that have not allowed enough time to ensure that military and overseas votes could be sent and returned from overseas and counted before the deadline. Recently most of the legal actions have revolved around special and run-off elections that have a compressed time table.

While the DoJ Civil Rights Division should be applauded for attempting to hold the states accountable, they could do much more. For years it has been made plain to every state that a minimum of 45 days is required to ensure that ballots can make it overseas, have time to reach the voter and be filled out and returned prior to the election. According to Brenda Farrell of the GAO it takes on average 18 days for a ballot to travel one way to a deployed service member. That's at best 36 days for the round trip, plus

nine days on the ground (it can be assumed that in a remote location a ballot would be dropped off, completed, and then sent out in the following week's mail).

Given the fact that our Armed Forces are deployed around the world in combat zones, and given the difficulty of getting mail to remote locations in Iraq, Afghanistan, and the Horn of Africa it stands to reason that the DoJ should expand their legal effort to ensure that every state provides the minimum recommended 45 day window to ensure that our soldiers have enough time to allow their votes to be returned on time. Further, if there is a close election - and a single vote may make the difference, for these ballots already cast, due to circumstances outside the control of the war fighter, these "in transit" ballots should be given the opportunity to be counted should they arrive before an election certification. This is certainly within the purview of the Judicial system to offer this short term remedy.

## Conclusion

Our military men and women serve around the world and risk their lives in defense of freedom, and yet their own ability to exercise their fundamental right to vote is being obstructed.

This problem could have and should have been solved years ago, yet our industrial age government has failed to embrace the information age. Technology is available today to securely encrypt and electronically transmit blank ballots to military men and women around the world.

If there is a silver lining it is that private non-profit groups like the Pew Military Voting Project, the Overseas Vote Foundation, Operation Bravo, Everyone Counts, and the National Defense Committee have all stepped up to provide innovative solutions that could be rapidly executed within the existing budget.

For this coming election in November it is critical that the Department of Justice press the Department of Defense and State election officials to ensure that our service men and women are given the time required to receive their ballots and return them on time. These military men and women are citizens first, and as citizens they deserve the full attention of the Department of Justice to protect their right to vote.

Thank you for allowing me to testify today, I look forward to your questions from the members of the Committee.

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