Washington
Secretary of State
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July 2, 2010

Dr. Clifford L. Stanley
Under Secretary of Defense for Personnel and Readiness
Personnel and Readiness
U.S. Department of Defense
4000 Defense Pentagon
Washington, DC 20301-4000

RE: Request for a MOVE Act Undue Hardship Waiver for the 2010 General Election

Dear Dr. Stanley,

Washington State is seeking an undue hardship waiver to the MOVE Act requirement of mailing ballots to UOCAVA voters at least 45 days before the November 2, 2010 General Election. This request is based on the date that Washington certifies the Primary Election.

The MOVE Act

The Military and Overseas Voter Empowerment (MOVE) Act requires states to transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter not later than 45 days before an election for Federal office if the request is received at least 45 days before the election.

If a Chief State Election Official determines that his or her State is unable to meet the 45 day requirement due to an undue hardship, the Chief State Election Official shall request that the Presidential designee grant a waiver of the requirement to the State.

Washington State is requesting a waiver from the 45 day mail out date required by the MOVE Act because certification of the Primary Election prohibits the state from complying with this requirement.

Background on Washington State

UOCAVA Population:

Washington State has 5 major military installations:

1. Fairchild Air Force Base
2. Naval Base Kitsap
3. Naval Air Station Whidbey Island
4. Naval Station Everett
5. Joint Base Lewis-McChord.

In the 2008 General Election, over 67,400 ballots were mailed to UOCAVA voters. Because of Washington's vote by mail election system, most of those voters were automatically sent a ballot, without proactively *requesting* a ballot. 73% were returned, and 99% of those returned were counted. Overall, Washington has approximately 3.4 million registered voters.

Voter Registration:

Washington State law exempts UOCAVA voters from the standard voter registration deadlines. A UOCAVA voter need not be registered in order to request an absentee ballot.

Identifying which Washington Voters are UOCAVA Voters:

In addition, Washington tracks UOCAVA voters as part of the voter registration system. We have a specific question on the state voter registration application that asks the voter if he or she is in the Armed Forces (including National Guard or Reserves) or a U.S. citizen living outside the U.S. Voters who check either of these boxes are specifically flagged in the voter registration system as UOCAVA voters. In addition, any voter who provides an APO, FPO, or foreign mailing address is also flagged as a UOCAVA voter. UOCAVA voters remain in this status in the voter registration system until they notify the state or county elections office that they are no longer a UOCAVA voter.

UOCAVA voters are relieved of the hassle of specifically requesting an absentee ballot each election. Instead, our UOCAVA voters are automatically sent a ballot early for each election, regardless of whether the voter has expressed an interest in voting in that election. This practice minimizes the responsibility on the part of the UOCAVA voter to *request* an absentee ballot.

Vote by Mail:

Washington State has extensive experience with absentee voting. Elections are conducted entirely by mail in 38 of our 39 counties, and absentee voting is the predominant voting method in the one remaining county that offers polls. Generally, 99% of the ballots cast in any election in Washington are cast through the mail. This broad experience with voting by mail allows us to serve our UOCAVA voters well.

FPCA as a Standing Ballot Request:

The change in Section 104 regarding the Federal Post Card Application as a standing application to receive an absentee ballot does not impact Washington. Washington election officials automatically send an absentee ballot to each registered UOCAVA voter every election; a UOCAVA voter does not have to proactively request a ballot for each election. If a UOCAVA voter is not already registered in Washington and submits an FPCA, the voter will immediately be registered and then automatically mailed an absentee ballot for every subsequent election.

FWAB:

Washington accepts the Federal Write-in Absentee Ballot for *all* elections, not just federal elections. Washington also accepts the FWAB for purposes of voter registration if the person is not already registered to vote.

Experience Transmitting Blank Ballots Electronically:

Many counties in Washington have been emailing blank ballots to UOCAVA voters for over ten years. The six County Auditor's Offices that serve the five military bases in Washington have extensive experience and practices emailing ballots to military and overseas voters. For example, in the 2008 General Election, the county that includes Joint Base Lewis-McChord, Pierce County, transmitted over 1,700 ballots by email.

Transmission of Ballots 45 days before Election Day

Washington State recognizes that the purpose of the MOVE Act is to allow UOCAVA voters enough time to vote in federal elections.

Why Washington is Unable to Transmit Ballots 45 days before Election Day:

Washington State is unable to transmit UOCAVA ballots at least 45 days before the 2010 General Election because nine business days between final certification of the Primary and the 45 day deadline is insufficient time to prepare 55,000 – 65,000 accurate ballot packets.

The 2010 election dates are:

Saturday, Sept. 18	MOVE Act's 45 day deadline for sending unvoted ballots
Tuesday, Sept. 7	State certification of the Primary
Tuesday, August 17	Primary Election

For many years, FVAP recommended 45 days of total transit time for UOCAVA ballots. Based on the FVAP position, state and county election officials lobbied the Washington State Legislature for 10 years to pass legislation that would provide 45 days of total transit time by moving the date of the Primary and other election-related dates. These efforts were finally successful in legislation that passed in 2006, and took effect in 2007, requiring 45 days of transit time for Primary and Special Elections and 51 days of transit time in General Elections, and moving the date of the Primary to the third Tuesday in August.

Final certification of the Primary will occur on September 7, 2010. The ballot packets that are printed and assembled in an automated system will not be ready until the end of September. There is not enough time between certification of the Primary and the September 18 deadline to process high volumes of ballot packets manually. For example, King County (Seattle) and Pierce County (Tacoma) each have over 10,000 UOCAVA voters. Neither jurisdiction can manually process such a high number of individual ballot packets in such a short period of time.

Existing Transmission Requirements:

In Washington, UOCAVA ballots must be mailed 30 days before Election Day. However, ballots are not required to be *received* by Election Day, an underlying assumption in the MOVE Act. Rather, UOCAVA ballots must be *voted* no later than Election Day. Regular absentee ballots must be *postmarked* no later than Election Day. All absentee ballots must be received prior to county certification of the General Election, which is 21 days after Election Day.

30 days *prior* to Election Day
21 days *after* Election Day
51 days of total transit time

Washington's arrangement of allowing voters to return the ballot *after* Election Day gives each voter greater time to learn about the candidates and study the issues. This system grants UOCAVA voters the same access to information and time provided to regular voters; UOCAVA voters are not forced to return their ballots weeks before other voters simply because they are located far away. A Washington UOCAVA voter can vote on Election Day and still have that ballot returned in time to be counted.

Washington's Plan for Receipt and Return of UOCAVA Ballots:

Washington's UOCAVA plan actually provides voters *more* time, 51 days, than that required by the MOVE Act, 45 days. Washington's plan gives UOCAVA voters sufficient time to receive their absentee ballots and return their absentee ballots. In the 2008 General Election, 99% of all UOCAVA ballots returned were counted.

The Washington plan is very similar to the MOVE Act plan; the time frame is simply adjusted by two weeks. The MOVE Act assumes that voted ballots must be *received* by the close of polls on Election Day. Consequently, the 45 day transit time historically recommended by FVAP is placed on the front end of the election. In Washington, voted ballots are not required to be received by the close of Election Day. Voters may hang on to their ballots and actually vote on Election Day. Voted ballots must only be

received before the election is certified, which is 21 days after a General Election and 15 days after a Primary or Special Election. Washington provides the same amount of transit time, but shifts the time period back by two weeks.

Requesting an Absentee Ballot:

Washington UOCAVA voters do not have to proactively *request* an absentee ballot, the practice in other states. If the voter is registered to vote, the person is automatically sent a ballot. The voter can easily update a mailing address by phone, by email, or online.

If the person is not registered to vote but would like to become registered, the person can register online, download a paper voter registration application, or submit an FPCA or FWAB. In Washington, UOCAVA voters are exempt from the voter registration deadlines.

If the person is not registered to vote but would like to request an absentee ballot anyway, the person can submit a request by phone or email, or can submit a FWAB. UOCAVA voters do not need to be registered in order to request or return an absentee ballot.

Receiving an Absentee Ballot:

Washington mails UOCAVA ballots 30 days prior to Election Day.

My office is surveying all UOCAVA voters in the state to ask whether they would like to receive their ballots by email or postal mail. Many counties in Washington have extensive experience emailing and faxing blank ballots. Now, *all* counties in Washington will be emailing blank ballots to those UOCAVA voters who prefer that delivery method. The emails will either have a ballot attached, or have a link to a website where the ballot will be available online. Washington is also participating in FVAP's "Voting Support Wizard Pilot Project." Washington election officials will be making every effort to email the electronic ballots as early as possible.

Blank ballots, election information, confirmation of voter registration, voters' pamphlets, and lists of elected officials are available in Washington's personalized online system called MyVote.

Returning an Absentee Ballot:

Washington provides return envelopes that can be mailed postage-free. Washington UOCAVA voters can vote on Election Day and the ballot will be considered timely as long as it is received before the election is certified, which is 21 days after a General Election or 15 days after a Primary or Special Election. UOCAVA voters can return a ballot by fax or email, but the original must be received before the election is certified. Washington does not require that an absentee ballot be witnessed or notarized. The voter must sign the oath on the envelope, and the signature on the oath is later compared to the signature in the voter registration record to confirm that it was the registered voter who actually voted and returned the ballot.

During the 2007, 2008, 2009 and 2010 legislative sessions, my office submitted legislation to the Washington State Legislature to authorize UOCAVA voters to return ballots electronically. The 2007, 2008 and 2010 bills would have allowed UOCAVA voters to return ballots as an email attachment. The 2009 legislation would have allowed UOCAVA voters to vote over the internet. FVAP has been very supportive of these legislative efforts with letters and phone calls, and we appreciate this strong advocacy. Despite these joint efforts, these bills have not passed the Washington State Legislature.

Conclusion

Washington is proud of its service to military and overseas voters. State and county election officials are eager to serve this population in the 2010 elections. However, due to the timeframes for certification of the 2010 Primary Election, we are not confident that we can meet the MOVE Act's requirement to mail

ballots 45 days before the 2010 General Election. Our state does provide 45 days of transit time for UOCAVA ballots, consistent with FVAP's long standing recommendation. We respectfully request a waiver from the MOVE Act requirement.

If you have any questions, please do not hesitate to contact my Assistant Director of Elections, Katie Blinn, at (360) 902-4168 or katie.blinn@sos.wa.gov.

Sincerely,

Sam Reed
Secretary of State
State of Washington

cc Bob Carey, Director, Federal Voting Assistance Program
Paddy McGuire, Federal Voting Assistance Program
United States Election Assistance Commission
Washington State Association of County Auditors