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MILITARY AND OVERSEAS ABSENTEE VOTING IN THE 2004 PRESIDENTIAL ELECTION

FINAL REPORT

Election Officials Respond to our Questionnaire

Unacceptable 24% Disenfranchisement Rate Is Indicated

As part of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), Congress has *required*: “Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for Federal office (including procedures related to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.” Title 42, United States Code, section 1973ff-1(b)(1) [42 U.S.C. 1973ff-1(b)(1)].

Moreover, Congress has *recommended*: “Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State’s duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.” 42 U.S.C. 1973ff-1(b)(2).

Unfortunately, only Alaska and the District of Columbia implement this recommendation. Alaska has conducted absentee voting on a statewide basis since before statehood, and the District of Columbia has never had political subdivisions. No states have centralized the processing of absentee ballots and absentee ballot requests since Congress

enacted the above recommendation in 2002. In the other 49 states, the administration of absentee voting is conducted *well below* the state level by 7,838 local election offices, including 1,850 in Wisconsin and 1,516 in Michigan. Most states conduct absentee voting at the county level (parish level in Louisiana), but in the New England states, Michigan, and Wisconsin absentee voting is administered by cities, towns, and townships.

The National Defense Committee (NDC) has developed a fax list for most of the 7,838 local election offices, and each month we expand and refine our fax list. Since September 2003, we have sent more than 40 faxes about military and overseas voting rights to these offices. In November and again in December 2004, we sent faxes to the nation's local election offices, asking them to complete and return our questionnaire. We designed the questionnaire to determine the extent to which military personnel, military family members, and overseas U.S. citizens are able to vote by absentee ballot. This report and its attachment summarize the responses that we received.

We received completed questionnaires from 761 local election jurisdictions (counties, towns, parishes, etc.). That number does not include responses that did not answer the crucial question as to how many absentee ballots were mailed out and how many came back *and were counted*. The number 761 also does not include completed questionnaires (mostly from very small places) reporting the receipt of *no* completed Federal Post Card Applications (FPCAs). We have also excluded from the report some questionnaires that just don't add up, apparently because the election official did not understand our questions.

We received at least one response from 40 states. In one state, Maryland, we heard from all the counties, because the State Board of Elections distributed our questionnaire, collected their responses, and reported back to us. We also heard directly from a few Maryland counties.

We used as the basis for our questionnaire the FPCA, because Federal law requires all election officials to accept that form as a simultaneous voter registration application and absentee ballot request. *See* 42 U.S.C. 1973ff-1(a)(4). The FPCA is available from military and State Department Voting Assistance Officers (VAOs) at home and abroad. The form is also available on the Web site, of the Federal Voting Assistance Program (FVAP), www.fvap.gov. The FVAP has been part of the U.S. Department of Defense at least since 1955, and the FPCA has been in use for at least that long.

Members of the Armed Forces on active duty and their voting-age family members are eligible to use the FPCA, whether they are inside or outside our country. All American citizens outside the United States, temporarily or permanently, are also eligible to use the FPCA. When we devised the questionnaire, we were under the impression that those who are eligible to use the FPCA almost always use that form. Many of the responding election officials informed us that they received absentee ballot applications from military and overseas citizens by means other than the FPCA. When we devise our questionnaire for 2006, we will probably ask about all absentee ballot applications received from persons who are *eligible to use* the FPCA, but for 2004 we will report based on the questionnaire that we used.

The 761 reporting jurisdictions received 131,772 completed FPCAs and mailed ballots to 126,952 of those applications. That means that 4,820 completed FPCAs (4%%) were rejected, either because they were received too late or because of some procedural deficiency (missing required information, not properly witnessed or notarized, sent to wrong county, etc.).

Of the 126,952 ballots mailed to the 131,772 FPCA applicants, only 94,359 of those ballots came back on time *and were counted*. The 37,593 ballots that were not counted include ballots that came back late, ballots that came back on time but were rejected for procedural deficiencies (*e.g.*, signature not properly witnessed on back of ballot return envelope), and ballots that never came back at all, as well as unmarked ballots that were returned by the Postal Service as undeliverable and 4,928 FPCAs that were rejected. The 37,593 uncounted ballots represent a disenfranchisement rate of 30%.

The reporting jurisdictions also reported that they received *and counted* 5,363 Federal Write-in Absentee Ballots (FWABs). (5,482 completed FWABs were received but not counted for various reasons.) For purposes of this report, we are assuming that the 5,363 successful FWAB voters were among the 131,772 persons who submitted FPCAs to these reporting jurisdictions, because Federal law requires the timely submission of a request for a regular absentee ballot as a condition precedent to the submission of the FWAB. These 5,363 successful FWAB voters at least had the opportunity to vote for Federal offices (President and Vice President, U.S. Senate, and U.S. House of Representatives) in the November 2 general election. Including these 5,363 FWAB voters in the computation reduces the disenfranchisement rate to 25%.

In the Attachment, Column A identifies the reporting state and locality. Please note that the states are listed alphabetically by two-letter postal abbreviation, and the localities are listed alphabetically within each state.

Column B shows the date that the election office had general election absentee ballots available to be mailed. Of course, the local election office cannot *print* general election ballots (much less mail them out) until all questions about the candidates and propositions to be listed on the ballot have been resolved. The worst problem is in states with late primaries. For example, Washington State holds its primary on the third Tuesday in September. In 2004, in several states, the mailing of absentee ballots was delayed by litigation about whether Ralph Nader would be listed on the ballot as an independent candidate for President.

Column C shows the due date for the receipt (not just postmark) of an absentee ballot mailed in from outside the United States. In most states, the deadline is Election Day (November 2, 2004), but in several states the deadline has been extended, either by state law or by court order.

Column D shows the number of days of ballot transmission time that the locality provided. For example, if ballots were available to be mailed on 30 September, and if the deadline for the receipt of the ballot was 2 November (Election Day), that would represent 33 days of transit time. The Department of Defense (DOD) and the Department of Justice (DOJ) have taken the position that UOCAVA requires a *minimum* of 35 days of ballot transmission

time for voters outside the United States. Column E identifies those localities that fell short of this minimum standard. Column F shows the state average number of days of ballot transmission time.

Column G shows the number of completed FPCAs that the local election office received, and Column H shows the number of absentee ballots mailed *to the FPCA applicants*.

Column I shows the number of ballots, *among the FPCA applicants*, that came back on time and were counted. Column J shows the number of FWABs received, and Column K the number of FWABs counted.

Column L shows the total number of ballots counted—FWABs counted plus regular ballots counted. Column M shows the percentage of ballots not counted. This is the total number of FPCAs received (Column G) minus the total number of ballots received and counted (Column L) divided by the total number of FPCAs received (Column G). For purposes of this computation, we are assuming that persons who submitted completed FPCAs cast the counted FWABs.

Column M shows the percentage of not counted votes that have been adjusted for small numbers from LEO's that may have skewed the percentages.

Column N shows the raw percentages that have not been adjusted.

The Attachment also shows the disenfranchisement rate for each state, computed two ways. The first figure (Column N) is the weighted average for the whole state computed together. The second figure (Column O) is the *unweighted average*—percentage of disenfranchisement for each local jurisdiction added up and then divided by the number of reporting jurisdictions in the state.

The disenfranchisement rate we show is bad enough, but we think that our report probably *understates* the problem, because we are relying on *voluntary* responses from election officials. Those officials who receive our fax communications certainly understand that the NDC is not a government entity, and that they are under no legal obligation to complete and return our questionnaire. Those officials with good news to report (ballots available early and all ballots came back on time and were counted) are more likely to return the questionnaire than those officials who have bad news to report. It should also be noted that 1.2 million of the 1.5 million active duty service members were serving within the United States on Election Day. The disenfranchisement rate for *overseas* military personnel would be much higher.

The underlying problem is that we, as a nation, are still conducting absentee voting essentially as we did during World War II, by shipping pieces of paper around the world by snail mail. A system that depends upon finding the individual service member, delivering a piece of paper, and then delivering that same piece of paper back to the member's hometown is doomed to failure a substantial percentage of the time, especially during the Global War on Terrorism.

The individual military voter is a *moving target*. Let us assume that Specialist Jones was in Baghdad in July 2004, when he completed the FPCA and mailed it to the election official in his hometown. In October 2004, when the Military Postal Service Agency (MPSA) is trying to find Jones to deliver his unmarked ballot, he could be in any number of places—Tikrit, Mosul, Fallujah, Kuwait, Afghanistan, Fort Bragg (North Carolina), Walter Reed Army Medical Center (DC), etc. The MPSA lacks automated equipment necessary to keep up with the daily movements of military personnel, and if the service member has returned to the United States, the MPSA must turn the ballot over to the USPS to deliver—a process that can take many weeks.

Another problem is the bifurcated system for the handling of military mail. The United States Postal Service (USPS) is responsible for delivering mail to military personnel and family members within the United States. The MPSA is responsible for delivering mail to *overseas* military personnel and family members. During the Cold War, when hundreds of thousands of service personnel served multi-year tours of duty at U.S. military installations in Germany and elsewhere, it perhaps made sense to make this distinction, but not today. The Army Sergeant at Fort Bragg, North Carolina or the Marine Corps Corporal at Camp Pendleton, California may find himself in a place like Iraq or Afghanistan only hours later, and sometimes on short notice. And the service member who is outside the U.S. may be redeployed back to our country very quickly, especially if he or she is wounded and is brought back to our country for treatment.

Mobilized National Guard and Reserve personnel (more than 500,000 have been mobilized since September 11, 2001) have the greatest problems in voting. These people are civilians until they are called to the colors. They do not know exactly when they will be called or exactly where they will be going. The reservist who is about to be mobilized and deployed does not have a specific address to provide as the “mail my ballot to” address. The Department of Defense and the nation’s election officials need to find a way to enable mobilized National Guard and Reserve personnel to vote *as part of the mobilization process*. At the time of the 2004 election, more than 40% of the U.S. military personnel in Iraq were mobilized National Guard and Reserve personnel.