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FOR JUSTICE

REGISTERING MILITARY  
AND OVERSEAS  
CITIZENS TO VOTE

Adam Skaggs

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This is one in a series of white papers on Voter Registration Modernization. The first, *Voter Registration Modernization*, sets forth more detailed policy arguments in favor of modernizing America's voter registration system. Others include *Expanding Democracy: Voter Registration Around the World*, which examines international methods of voter registration; *Permanent Voter Registration*, which analyzes systems of statewide permanent registration; and *When Voters Move*, which examines how states handle voters who move. All the white papers are available on the Brennan Center's website, at [www.brennancenter.org](http://www.brennancenter.org).

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## INTRODUCTION

Members of the United States armed forces and their families face unique challenges to participating in our elections. If their votes are to count and their voices are to be heard, these citizens must overcome hurdles not faced by most Americans. They deserve better: the nation should make it a priority to remove barriers to political participation for those who dedicate themselves to defending our democracy.

Two aspects of the election system create problems for military voters and their families. First, many of these citizens have difficulty with voter registration: earlier this year, the recently appointed Director of the Federal Voting Assistance Program in the Department of Defense, Bob Carey, testified before the United States Senate that the registration rate for military voters is almost 20 percentage points lower than that for all Americans.<sup>1</sup> Carey explained that “[t]he 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.”<sup>2</sup>

Additional problems spring from absentee ballots and the often logistically tricky questions of how to get these to — and collect them from — military personnel and overseas voters who are away from their permanent voting addresses on Election Day. In the 2006 election, the U.S. Election Assistance Commission (“EAC”) reported that of almost 1 million absentee ballots requested by military and overseas voters, only about a third were ever counted; two thirds of the uncounted ballots were returned by the postal service without reaching the voters who requested them; another 10 percent arrived too late to be counted.<sup>3</sup> Many of the problems with absentee ballots themselves trace back to problems with registration records, because when registration information contains out-of-date or inaccurate mailing address data, delivering absentee ballots is difficult or impossible.

### **At a Glance: Military and Overseas Voter Participation**

- In the 2006 election, voter turnout was 39.8% for the general population, but only 20.4% for military voters. (Source: Pew Center on the States)
- The registration rate for military voters is 64.86%, as compared to 83.8% for the general population. (Source: U.S. Election Assistance Commission data)
- Military voters report registration problems at 1.7 times the rate — nearly twice as often — as non-military voters. (Source: 2008 Cooperative Congressional Election Survey)
- In 2008, nearly a quarter — 23.7% — of experienced overseas voters had problems or questions with registration. (Source: Overseas Vote Foundation)
- In 2006, less than 16.5% of eligible military and overseas voters requested absentee ballots, and only about a third of the absentee ballots requested were ever counted. (Source: U.S. Election Assistance Commission)
- In 2006, 85.8% of absentee ballots requested by the general population were cast; only 26.5% of absentee ballots requested by military personnel were cast. (Source: Pew Center on the States)

The results are predictable — and disheartening: military voters are much less likely than other Americans to cast ballots and to have their ballots counted. According to the 2008 Cooperative Congressional Election Survey, servicemen and women who live in the United States vote at a rate 10 percent lower than the general population<sup>4</sup> — and military personnel stationed overseas face additional hurdles to voting. The Pew Center on the States found that overall, in the 2006 federal elections, “voter turnout was only 20.4% for the military population, compared to 39.8% of the general population which voted . . . [because of] a fractured system of voting for our military.”<sup>5</sup> The EAC found that in 2006, less than 16.5% of approximately 6 million eligible military and overseas voters even requested absentee ballots.<sup>6</sup>

Fortunately, there is a way to modernize the voter registration system that will solve these problems. Moreover, the problems facing military voters — and civilian voters living overseas — have been the focus of significant attention since the 2008 election. Federal and state lawmakers introduced a wide range of reforms directed at remedying the absentee balloting problems plaguing these populations.<sup>7</sup> One federal bill in particular — the Military and Overseas Voters Empowerment (“MOVE”) Act<sup>8</sup> — promises to make it easier for military and overseas voters to obtain voter registration applications, ballots and other election materials in a timely manner. This and other legislative efforts would certainly improve electoral access for military and overseas voters, but they would not materially affect the challenges these voters face in ensuring that they are properly registered with up-to-date mailing information. Unless these challenges are addressed, military and overseas voters will continue to face significant hurdles to participating in elections.

This policy paper focuses on the voter registration problems facing military voters — and on solutions to these problems. In particular, it explains how modernization of the voter registration process would significantly decrease the registration problems military voters face — while simultaneously reducing some of the problems associated with absentee balloting. Voter registration modernization would increase the rate and accuracy of registration for military voters and their families. It would also ameliorate problems experienced by veterans and other U.S. citizens.

American citizens have the right to vote no matter where they are stationed or choose to live, and the election system should be reformed to make their right to vote meaningful. Voter registration modernization is a crucial step toward ensuring that all Americans — including those who risk their lives to protect our democracy — can participate meaningfully in that democracy.



## I. THE SCOPE OF THE PROBLEMS FACING MILITARY AND OVERSEAS VOTERS

As noted, the problems facing military and overseas voters arise at two points: registration and balloting.

### A. Problems Registering to Vote

According to EAC data, the military has a registration rate of 64.86% of voting age citizens, as compared to 83.8% for the general population.<sup>9</sup> While the EAC concedes that its data overstates registration rates,<sup>10</sup> the relative figures do demonstrate that Americans serving in the military are registered at far lower rates than those not serving in the military. Moreover, military personnel reported having almost twice as many registration problems in 2008 as non-military voters, according to a widely respected national survey.<sup>11</sup>

The substantially lower rate of registration and frequency of registration problems owe in large part to the substantial mobility of members of the military and their families. Active duty military and their families are among the most mobile Americans. They are relocated frequently, and often deployed with little notice.<sup>12</sup> This mobility often results in military voters encountering registration problems — and thus being frozen out of the electoral process. An illustrative account was reported to the Election Protection hotline<sup>13</sup> by a voter named Elizabeth who, together with her husband, was unable to vote in 2008:

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 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.<sup>14</sup>

Frequently, uniformed service members are not registered in the first place before they are transferred. As Patricia Hollarn, former Supervisor of Elections for Okaloosa County, Florida — a community with a huge military constituency — observed, “The problems [with military voting] actually begin with voter registration, particularly when a person is not actually registered prior to leaving his or her legal voting residence.”<sup>15</sup> As a whole, military enlistees are very young — more than 40% are 17 or 18 years old, and three in five are 19 or younger<sup>16</sup> — and many of these young people do not register to vote prior to enlisting.<sup>17</sup> Many young Americans might not think of registering to vote immediately after they enlist and prepare to begin their military service.

When a service member moves or is reassigned from his or her permanent voting address before becoming registered, he or she will face significant challenges when attempting to register. To register successfully, military voters residing away from their permanent voting residence must track down and complete either their home state's voter registration application, the National Mail Voter

Registration Form, or a separate federal form that military and overseas voters are eligible to use, the Federal Post Card Application (“FPCA”). Obtaining these forms from a remote location can be challenging, especially for service members in locations where access to the Internet is sporadic. Moreover, once the voter obtains a blank form and fills it out, he or she must determine where the completed registration form should be sent, and by what date. Because of these problems, registering in their home community becomes difficult for military voters once they are no longer physically located there. Indeed, the voter manual that the Department of Defense publishes to assist military voters with completing their Federal Post Card Applications amounts to fully 460 pages, and “[w]hen a service member or overseas citizen gets a copy of the FPCA, he or she must reference his or her state’s five to ten pages of specific instructions to determine which FPCA blocks to fill out.”<sup>18</sup>

An absent military or overseas voter must ensure not only that his or her registration application is received before the home state’s registration deadline, but also that it is received far enough in advance of the next election that there is sufficient time for an absentee ballot to be mailed to the voter, completed, and returned before the deadline for counting such ballots. If the voter registers using the FPCA, that form can be used to simultaneously request an absentee ballot;<sup>19</sup> if registering using a state or federal mail-in form, a separate absentee ballot request may be required. Whatever form is used, however, the voter will need to provide a mailing address that will be valid at the time absentee ballots will be issued. This may be the most challenging aspect of filling out voter registration materials for highly mobile citizens, and it is a serious challenge for military personnel who may be relocated with little notice. In some states, this problem can be lessened in part by providing election officials with a valid e-mail address; election officials in 32 states can electronically transmit ballots to distant voters (generally by fax or e-mail).<sup>20</sup> But, in 18 states, ballots must be sent to absentee voters by mail, so military voters must provide election officials with a new mailing address every time they relocate if they are to receive their ballots in time to be able to vote.

Predictably, the need to register using old-fashioned paper forms that are sometimes lost in the mail or mishandled by election officials causes some of the problems facing military voters who must register from a distance. One soldier from Texas, stationed overseas, reported typical problems with registration for the 2008 election: “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.”<sup>21</sup> Another active duty serviceman from Mississippi reported a similar problem: he “submitted a registration form just before he left for his tour, comfortably before the registration deadline.” But when he came home, “he found there was no record of his registration” and was unable to vote because the registration deadline had already passed.<sup>22</sup>

Other groups of American citizens face registration problems similar to those experienced by members of the military. Civilian Americans living overseas, for example, encounter many of the difficulties involved in registering from afar, and these problems often hinder or prevent them from casting valid ballots. The Overseas Vote Foundation confirmed these registration problems in a report on the 2008 election,<sup>23</sup> finding that, in 2008, nearly a quarter — 23.7% — of *experienced* overseas voters had problems or questions with registering. Registration problems occur even more frequently with voters attempting to cast a ballot from overseas for the first time.

The logistical difficulties related to registration result in millions of overseas and military voters not being registered to vote, and therefore not being able to participate in elections. As noted above, the voter participation rate for military and overseas voters is shockingly low — about 20% lower than the already-low turnout rates for all Americans.

### **Registration Problems in Focus: Veterans**

Active duty military are poorly served by our current system of voter registration, and unfortunately, the system all too often fails these Americans after they have completed their service to the country. Our existing voter registration system does not adequately serve veterans, and as a result, despite their service in protecting our democracy, millions of veterans are not registered to vote.

According to the U.S. census bureau data, 23.2% of all veterans — 5.3 million veterans — were not registered to vote in 2006.<sup>24</sup> Younger veterans are registered at a significantly lower rate: more than 55% of young veterans aged 18 to 24 were not registered in 2006.<sup>25</sup>

The Department of Veterans Affairs (the “VA”) would be well situated to address registration issues facing veterans. The VA serves millions of veterans every year: 8.5 million veterans received VA benefits and/or services in fiscal year 2008,<sup>26</sup> and the VA estimates that its facilities will serve 6.1 million people in fiscal year 2010.<sup>27</sup> Given the VA’s interaction with these millions of veterans, the agency is uniquely positioned to assist veterans in registering — particularly because the VA’s rule on Patients’ Rights specifically protects the right of every veteran in the VA’s care to register and vote.<sup>28</sup>

Unfortunately, the VA does very little to register veterans. Though VA facilities are required to post voting and registration information on the walls of all facilities, VA employees are not required to offer registration services at the point of intake; there are no requirements to register veterans who are served as out patients; and no rule requires VA employees to inform veterans who move into VA facilities that any existing registration will most likely be invalidated when he or she moves into the facility.<sup>29</sup> And under current VA policy, VA facilities need not allow election officials or civic groups to provide voter registration services to the users of VA services.<sup>30</sup> As a result of these policies, in October 2008, the VA reported that, in the lead up to the 2008 election, its voter registration activities nationwide amounted to providing “voter registration information” to 6,000 veterans.<sup>31</sup>

In an effort to increase the number of veterans who receive registration services from the VA, lawmakers in both houses of Congress introduced a legislative solution in the months before the 2008 election: the Veteran Voting Support Act.<sup>32</sup> The law would have opened the VA to registration drives and required the VA to make voter registration services available at VA facilities in states that request it. While the 2008 election came and went without Congress passing the legislation, federal lawmakers are currently discussing the possibility of re-introducing similar legislation in the 111th Congress.

As with active duty military voters, the current system of voter registration is inadequately serving the veterans who have risked their lives in defense of our democracy. As set forth below, voter registration modernization would solve this problem too.

## **B. Problems Resulting from Outdated or Inaccurate Voter Registration Information**

Even when military voters are registered before they leave their permanent voting addresses, election officials often do not have up-to-date information on where these voters are temporarily residing. That is, even when the registration records of military voters accurately record their permanent *voting* addresses, the records often lack up-to-date *mailing* addresses. These incomplete registration records make it difficult or impossible to efficiently deliver absentee ballots and other election materials.

Some military voters who register before leaving their permanent voting addresses neglect to inform election officials of their new mailing addresses after they relocate. Even diligent voters may not always remember to report address changes to election officials back home each time they move.<sup>33</sup> Particularly when a voter relocates frequently — as with soldiers, sailors, airmen and marines subject to redeployments on a regular basis — the need to continually update voting records can be a serious burden.

As a result, election officials often lack current mailing addresses, and the lack of accurate address information makes it impossible to mail election materials, including absentee ballots. Numerous military personnel reported to the Election Protection hotline that, despite being registered in their home state, they did not receive an absentee ballot after being reassigned to another state.<sup>34</sup> Issues relating to international addresses exacerbate these problems when uniformed personnel are transferred overseas.

Compounding the problem further, even in cases where election officials have a correct mailing address on file, delays associated with the postal system mean that overseas military personnel often do not receive their absentee ballots soon enough to mail them back in time to be counted. The Pew Center on the States reported earlier this year that election administrators in 16 states and the District of Columbia do not mail out ballots in time for overseas military voters to receive and submit their ballots before the deadline for counting them.<sup>35</sup> As a result, even when these voters manage to overcome the hurdles to registration, and successfully request ballots, their votes often do not count. The EAC estimates, for example, that in 2006, while almost 1 million military and overseas voters requested absentee ballots, only a third of those were ever counted.<sup>36</sup> Part of the problem is that military and overseas voters frequently do not receive their absentee ballots because of problems with foreign and military addresses: two thirds of the absentee ballots that went uncounted in 2006 were returned by the postal service without ever reaching the citizens who requested them. Thus, it is unsurprising that while 85.8% of absentee ballots requested by the general population were cast in 2006, only 26.5% of such ballots requested by military personnel were actually cast.<sup>37</sup> Another ten percent of ballots requested by military and overseas voters were received, completed and sent back to election officials, but arrived too late to be counted. In all, the EAC concluded that only 5.5% of eligible military and overseas voters cast ballots that were counted in 2006.<sup>38</sup>

The problems persisted in 2008. According to the Overseas Vote Foundation, in 2008, more than one in five military and overseas voters reported never receiving the absentee ballot they requested.<sup>39</sup> The problems were most pronounced with respect to military personnel: more than one in four — 27.5% — never received their ballots.<sup>40</sup> And, as the Pew Center on the States study makes clear, even when military personnel do receive their absentee ballots, they frequently get them too late to be able to submit them in time to be counted.

Finally, even when military and overseas voters meet all these challenges, election workers are not always fully aware of the specific rules governing military and overseas voters, making it further likely that these citizens will not be able to successfully vote. An active duty military voter from Florida, stationed in Iraq, recounted a typical experience to the Election Protection hotline in 2008. This soldier timely registered, and requested an absentee ballot for the general election in August 2008. But the ballot did not arrive until just a week before the election, on October 26, 2008. Despite the tight time frame, the voter should have been able to have his absentee ballot counted: Florida does not require notarization of an absentee ballot, and permits voters to submit electronic ballots electronically. But when the voter contacted election officials, “[h]e was told that a ballot not notarized is not a valid ballot . . . [and] [h]e was not told he could fax his vote in.” The voter was ultimately turned away, and did not cast a ballot that counted.<sup>41</sup>

### **C. Existing Federal Law Protections for Military and Overseas Voters**

As the above statistics make clear, the mobility of military voters and their distance from domestic election officials result in significant problems that keep these citizens from voting. And though these problems have persisted in recent elections, they are far from new issues. Policy makers have urged reforms for military voters for more than a half century.<sup>42</sup> And more than twenty years ago, Congress responded to the problems facing military and overseas Americans who want to vote by passing the Uniformed Overseas Citizens Absentee Voting Act (“UOCAVA”),<sup>43</sup> which President Reagan signed into law in 1986.

UOCAVA requires that the states and territories allow certain voters — the approximately six million American citizens who are active members of the uniformed services, their family members, and all other U.S. citizens living outside the United States — to register and vote absentee in elections for Federal offices.<sup>44</sup>

Specifically, UOCAVA mandates that every state permit military personnel, their families, and overseas voters “to use absentee registration procedures and to vote by absentee ballot” in all Federal elections.<sup>45</sup> It requires that the states permit these voters to use the “federal post card application” (“FPCA”), a special voter registration form, to simultaneously register and request an absentee ballot,<sup>46</sup> as long as the application form is received 30 or more days before the election.<sup>47</sup> When a voter registers and requests an absentee ballot using the federal post card application, the voter is provided an opportunity to request “that the application be considered an application for an absentee ballot” for the next two federal election cycles — or four years; if a voter so indicates, the State is required to “provide an absentee ballot to the voter for each [of the two] such subsequent election[s].”<sup>48</sup>

UOCAVA also created a “back-up” ballot, the Federal Write-In Absence Ballot (“FWAB”). Military and overseas voters who have not timely received an absentee ballot from their state may cast an FWAB in lieu of a traditional absentee ballot.<sup>49</sup> Unfortunately, while several states accept the FWAB for state and local — as well as federal — races, nearly half the states allow voters to use the FWAB only to vote in federal races, making it a decidedly second-rate solution these states.<sup>50</sup> Moreover, “many overseas voters are . . . unaware of the [option to use the] FWAB” and “it is seldom used or promoted by states,” further undermining its value as comprehensive fail-safe.<sup>51</sup>

While UOCAVA established certain minimum requirements for how states treat military and overseas voters, it did not impose procedural obligations regarding how the states process military and overseas voters' applications and absentee ballots. Implementation of UOCAVA varies dramatically from state to state, particularly with respect to questions of how and when voters must request, and return, absentee ballots.

Even with respect to registration, however, UOCAVA sets only a baseline requirement — that states accept the federal post card application. As explained above, individual voters must still take steps to obtain the application, ascertain the date by which they must submit it in their particular state as well as the address to which it must be sent, and take ongoing steps to ensure that their registration information remains current.<sup>52</sup> Obtaining the proper application form and determining where and when it must be submitted may be especially challenging for voters living or stationed far away from state offices or with little or no Internet access. And if a problem arises, it is far more difficult for these voters to contact election officials to remedy it.

UOCAVA's grant of the right to register and vote absentee and creation of the federal back-up ballot are important partial solutions to the problems facing military and overseas voters, but they are only that — partial solutions. Overall, UOCAVA has proven no panacea, and serious challenges persist for so-called UOCAVA voters. Further reform is needed. And while policy makers, fortunately, have been vocal in calling for reforms of the absentee balloting process,<sup>53</sup> additional reform of the voter registration system is needed to protect the right to vote of military and overseas voters.

## II. VOTER REGISTRATION MODERNIZATION WILL ADDRESS MANY OF THE PROBLEMS THAT PLAGUE MILITARY AND OVERSEAS VOTERS AND VETERANS

Modernizing the voter registration system would significantly decrease the problems these voters face and would make it much easier for them to participate in our democracy. Under a system of voter registration modernization, state governments would automatically register all voting-eligible citizens captured in other government lists, including active duty military personnel and their families, veterans, and some voters living overseas.<sup>54</sup> Election officials would track voters' address changes, and update their registration records regularly, based on accurate address change information provided to other government agencies. Election officials would also collect e-mail addresses, which can be used to confirm and update registration information and speed the delivery of ballots and other election materials to military and overseas voters. Overall, a more modernized registration system would leverage existing lists and technology to ensure that all Americans — including those who must travel to defend our democracy — are registered to vote, accurately, and with up-to-date information.

### A. Automatic and Permanent Registration for Military and Overseas Voters

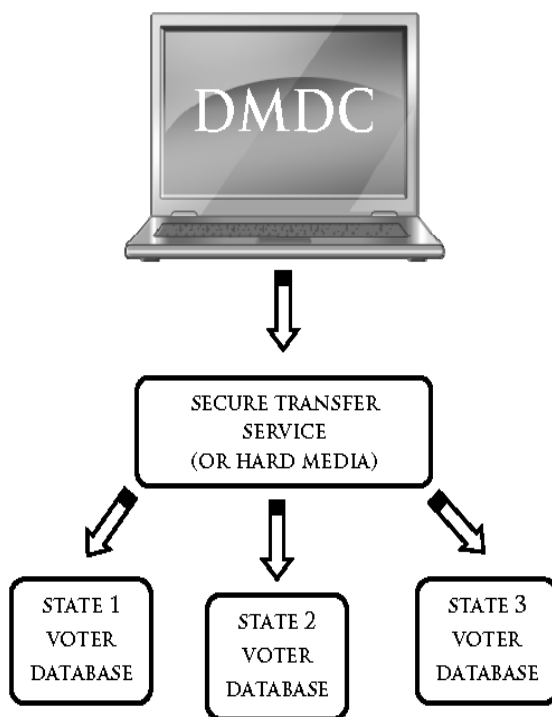
Under the current system of voter registration, the onus is on military voters to take proactive steps to ensure that they are properly registered and that their voter registration data is updated and accurate. Particularly for voters in the military who move frequently, keeping voter registration information updated can require repeatedly, and frequently, notifying election administrators of address changes — not always the first priority for uniformed service members preparing for reassignments.

Fortunately, it is relatively straightforward to modernize the registration system to capture all active duty military personnel and their families, members of the National Guard and Reserves, veterans, and certain military contractors. The Department of Defense's Defense Manpower Data Center already maintains a central database that identifies and tracks these Americans, and which can be used to ensure they are not denied the right to vote because of bureaucratic inefficiencies. A system of automatic voter registration in which the government registers all voting-eligible citizens using information on existing government lists is not a revolutionary concept; for example, the Selective Service System has automatically registered men for the draft for more than a decade, using data received from government agencies like state departments of motor vehicles and the Department of Education.<sup>55</sup> If we can automatically register voting age men for the draft, we can certainly register them to vote.

The Defense Manpower Data Center ("DMDC") operates the central database used to identify and track the uniformed services' members and veterans, their families, and other partners, including military contractors. DMDC's Person Data Repository functions as the central repository of identifying information for the purpose of administering benefits and entitlements for 35 million Americans,<sup>56</sup> and it could easily be used to coordinate voter registration for these citizens. Under a modernized voter registration system, election officials would use DMDC data to automatically

register military personnel and their families. As a result, none of these Americans would be disenfranchised because they were not registered.

Voter registration modernization would also allow election officials to maintain up-to-date address information to ensure receipt of election materials and ballots. Central to a modern voter registration system is a system of permanent registration, in which election officials automatically update voters' addresses, along with safeguards to ensure the accuracy of those changes.<sup>57</sup> Permanent registration is necessary to address issues of mobility: because voter registration modernization would give election officials access to current address information, the registration rolls would accurately reflect voters' current mailing addresses, significantly reducing the possibility that troops would be disenfranchised because election officials did not know where to send absentee ballots.



Using DMDC data would also give election officials up-to-date e-mail address for members of the uniformed services, their families, and veterans. This would provide election officials with an effective tool for quickly transmitting absentee ballots and other information to voters in far-flung locations — if states authorized election officials to send ballots and other election officials by e-mail, rather than traditional mail. (Currently, more than 30 states allow for the electronic transmission of absentee ballots, and bills to adopt such programs are pending in numerous additional states.<sup>58</sup>) It would also enable election officials to reliably contact registrants to verify the accuracy and currency of their registration information. By giving election officials access to updated e-mail addresses for military personnel and their families, voter registration modernization provides officials with a tool that could greatly reduce problems associated with distance and time.

Under a voter registration modernization system that relied on DMDC data, certain procedures would be necessary to ensure that accurate information is provided to election officials. Procedures would be necessary to allow service members to designate their permanent voting address, as distinguished from their current mailing address. In addition, a modernized voter registration system would have to give members of the military the choice to opt out of the voter registration system if they preferred not to be registered. Also crucial to an efficient system of modern voter registration would be a requirement that states provide a secure automated Internet and telephone portal for voters to check their registration information and submit corrections to their registration information. Such portals would allow any military or overseas voter to ensure that his or her registration information was accurate — and to correct any errors easily, from a distance. Though some errors would likely be found in DMDC's records — as they are in any database — compiling



initial registration lists based on DMDC data would give election officials a baseline starting point that would accurately capture a much larger percentage of voting eligible citizens that are currently included in the voter registration rolls.

Despite the obvious sensitivity of military information, the Department of Defense could supply election officials with the information necessary to maintain accurate voter rolls without creating any appreciable security risks. The DMDC already shares information with other government agencies for the purpose of administering benefits and entitlements, and it does so without compromising the security of its records. The same could be done for the purpose of ensuring that military enlistees and others can vote. Election officials need only be supplied information like service members' names, dates of birth, addresses and, where appropriate, citizenship status; other more sensitive data would not be required for voting purposes. Moreover, because service members would be registered to vote at their U.S. (home) addresses, no information on any deployments overseas would be put at risk. Mailing addresses can and should be kept confidential; already, even in states where registered voters' registration addresses are made publicly available, the addresses to which absentee ballots are sent are generally not made public. And data could be sent on hard media or through a secure third party to add an extra layer of protection for individuals on the DMDC's lists.<sup>59</sup>

Unlike with current and former members of the military, there is no single list containing data on non-military overseas voters, creating significant challenges to voter list generation and maintenance with respect to these voters. Assuming that civilian overseas citizens reside in the United States before relocating overseas, they could be captured for initial inclusion on the voter rolls if election officials imported data from other government sources like motor vehicle authorities<sup>60</sup> — just as with all other voters.<sup>61</sup>

Capturing address information of non-military voters once they move overseas, however, is more challenging. Though information on some of these voters is maintained by private employers and some may register with the American embassies in the countries where they reside, such data is far from complete. Simply put, there is no list that captures address (and other) information on non-military overseas voters. As a result, there will always be some need for these voters to take the initiative to keep election officials informed as to where they reside. The challenge for any efficient and effective voter registration system is to ensure that doing so is as convenient and easy as possible.

The use of telecommunications technologies could significantly ease the burdens on voters, like overseas voters, who must take the initiative to ensure their registration information is up to date. E-mail and other technologies could easily be used to verify and update address information, without any threat to the integrity of elections. As the National Institute for Standards and Technology has explained: “Voter registration and requests for a blank ballot by the UOCAVA voter can be reliably facilitated and expedited by the use of [either phone, fax, e-mail, or web-based technologies]. 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.”<sup>62</sup>

## **B. Fail-Safe Voting and Address Updates for Military and Overseas Voters**

Even if election officials were vigilant about updating the registration records of military and overseas voters, it is inevitable that the records of at least some of these voters would not be current as Election Day approaches. Therefore, an effective voter registration system should permit military and overseas voters to update their address information at the same time they submit absentee ballots. Fortunately, the tools necessary to realize such a system are already in place.

The Federal Write-In Absentee Ballot (“FWAB”) is an alternative ballot that can be used by military and overseas voters who do not receive an absentee ballot from their state election officials early enough to be able to submit their completed ballot in time for it to be counted.<sup>63</sup> Military and overseas voters who have not timely received an absentee ballot can download and complete the FWAB, thus ensuring that they can vote in federal elections.<sup>64</sup> As the Overseas Vote Foundation has noted, because “the ‘cover page’ of the FWAB is nearly identical to the official [National Mail Voter Registration Form] . . . [the] critical information required for . . . voter registration . . . is duplicated on the FWAB cover page.”<sup>65</sup> Therefore, there is no reason why states cannot use the FWAB as both an absentee ballot and a voter registration form that can be used to update voters’ addresses.

In fact, several states — Arizona, Iowa, Montana, Nebraska, Oregon, South Carolina, and Washington — already allow military and overseas voters to use the completed FWAB to simultaneously register and vote.<sup>66</sup> There is no practical reason why this procedure cannot be extended to other states, and every reason to do so. Expanded use of the federal fail-safe ballot would provide a safety net for military and overseas voters whose registrations are not updated on Election Day, and would ensure that they are not prevented from voting a ballot that counts because of avoidable registration problems.

## CONCLUSION

Most of the problems that impede military and overseas citizens from voting stem from the voter registration system and, in particular, the inability of the current system to handle a highly mobile population located far from home. The flaws in our current registration system mean that these voters are registered at significantly lower levels than other Americans — and that their ballots count much less frequently. This is simply unacceptable. Fortunately, despite the logistical challenges facing military and overseas voters, a solution is close at hand. Modernizing the voter registration system by automatically registering voters based on the data maintained by the Department of Defense’s Defense Manpower Data Center will guarantee that American citizens fighting to defend our democracy will not be disenfranchised because of bureaucratic inefficiencies. This can be done securely, without compromising private or sensitive information; indeed, this data is already shared with other government agencies for the purpose of administering benefits and entitlements. Technical solutions to the problems that keep military voters from participating in our political system are readily accessible and should be adopted quickly. We must reform the voter registration system so that our men and women in uniform are guaranteed the right to participate in our elections. We owe them no less.

## ENDNOTES

- <sup>1</sup> See Bob Carey, Executive Director, National Defense Committee, Testimony before the U.S. Senate Rules Committee 7, May 13, 2009 (“Carey Testimony”) (citing U.S. Election Assistance Commission, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings* 12 (2007)), available at <http://tinyurl.com/mcmmsv>.
- <sup>2</sup> *Id.*
- <sup>3</sup> See U.S. Election Assistance Commission, *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) Survey Report Findings* 1 (2007) (“2006 EAC UOCAVA Survey”), available at <http://tinyurl.com/ldj5c3>.
- <sup>4</sup> See Professor Nathaniel Persily, Testimony before the U.S. Senate Rules Committee 2, May 11, 2009 (“Persily Testimony”), available at <http://tinyurl.com/pwcrqe>.
- <sup>5</sup> The Pew Center on the States, Military and Overseas Citizen Voting Project 1, Sept. 15, 2008 (“Pew Military and Overseas Citizen Voting Project”) (footnotes omitted), available at [http://www.pewcenteronthestates.org/uploadedFiles/Military\\_Overseas\\_Voting\\_Project.pdf](http://www.pewcenteronthestates.org/uploadedFiles/Military_Overseas_Voting_Project.pdf).
- <sup>6</sup> See 2006 EAC UOCAVA Survey at 1.
- <sup>7</sup> For example, Representatives Carolyn Maloney and Michael Honda introduced H.R. 1739 in the U.S. House of Representatives in order to streamline the registration and voting process and increase the likelihood that overseas and military votes will count. See Overseas Voting Practical Amendments Act of 2009, H.R. 1739, 111th Cong. (as introduced in House, Mar. 26, 2009). Additional federal proposals include H.R. 2393, the Military Voting Protection Act of 2009, and H.R. 2510, the Absentee Ballot Track, Receive, and Confirm Act, which would expand the use of express mail in absentee balloting and support states in developing tracking mechanisms for absentee ballots. See Military Voting Protection Act, H.R. 2393, 111th Cong. (as introduced in House, May 13, 2009); Absentee Ballot Track, Receive, and Confirm Act, H.R. 2510, 111th Cong. (as reported by H. Comm. on H. Admin., June 19, 2009). Similarly, the National Conference of State Legislatures notes that, at the state level, there is a “noticeable trend this year in efforts to facilitate voting for military and other overseas voters,” with at least 28 bills introduced in 15 states. See National Conference of State Legislatures, *The Canvass: States and Election Reform*; at <http://www.ncsl.org/programs/legismgt/elect/2009ElectionsLegislation.htm>. Several of these state reforms have been signed into law. See, e.g., H.B. 1205, 67th Gen. Assem., Reg. Sess. (Colo. 2009); H.B. 2511, 75th Leg. Assem., Reg. Sess. (Or. 2009); S.B. 367, 61st Leg., Reg. Sess., 2009 Mont. Laws, Chap. 278.
- <sup>8</sup> See Military and Overseas Voter Empowerment Act, S. 1415, 111th Cong. (as introduced in Senate, July 8, 2009). The Senate unanimously passed the MOVE Act on July 23, 2009, as an amendment to the National Defense Authorization Act, and the House is expected to retain the MOVE Act provisions after an August conference.
- <sup>9</sup> See Carey Testimony at 7 (citing U.S. Election Assistance Commission, *The 2006 Election Administration and Voting Survey: A Summary of Key Findings* 12 (2007)).
- <sup>10</sup> See U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2007-2008* 1 (June 30, 2009) (noting inflation of registration rate estimates because “inflated voter rolls due to invalid records means the actual percentage [of eligible citizens registered] is somewhat lower” than EAC’s estimates).

- <sup>11</sup> See Persily Testimony at 2 (military personnel reported registration problems at 1.7 times the rate as non-military voters) (citing data from 2008 Cooperative Congressional Election Survey).
- <sup>12</sup> Members of the United States armed forces are about three times as mobile as their civilian counterparts. In 2007, 32.6% of all service members moved as opposed to 11.5% of civilians over the age of 16. See U.S. Census Bureau, General Mobility Of Persons 16 Years And Over, By Sex, Age, Race And Hispanic Origin, Region, And Labor Force Status: 2007 To 2008, *available at* <http://www.census.gov/population/www/socdemo/migrate/cps2008.html>; see also Lynn K. Hall, *Counseling Military Families: What Mental Health Professionals Need to Know* (2008) (“the average military move occurs every 3 years”); Meredith Leyva, *Married To The Military: A Survival Guide For Military Wives, Girlfriends, And Women In Uniform* 20-21 (Fireside 2003) (noting that “[t]he average military family relocates every three years”).
- <sup>13</sup> Election Protection is the nation’s largest nonpartisan voter protection coalition, made up of more than 100 partners at the national, state and local level. It operates a hotline, at 1-866-OUR-VOTE, through which a team of experts and volunteers offers live assistance to voters across the country who encounter difficulties or have questions about registering and voting. See [www.866ourvote.org](http://www.866ourvote.org).
- <sup>14</sup> Jonah H. Goldman, Director, National Campaign for Fair Elections, Lawyers’ Committee for Civil Rights Under Law, Testimony Before the Senate Committee on Rules and Administration, *Voter Registration: Assessing Current Problems* 4, Mar. 11, 2009 (“Goldman Testimony”), *available at* <http://tinyurl.com/l43dez>.
- <sup>15</sup> Patricia M. Hollarn, Okaloosa County, Florida, Supervisor of Elections, Testimony before the U.S. Senate Rules Committee 1, May 13, 2009, *available at* <http://tinyurl.com/mm78ug>.
- <sup>16</sup> See Defenselink, *Age of Active Component Accensions*, *available at* <http://www.defenselink.mil/prhome/poprep98/html/2-age.html>. Nearly 9 in 10 — 87 percent — of new recruits are 18- to 24-year-olds, compared to about 35 percent of the comparable civilian population. *Id.*
- <sup>17</sup> Young Americans, whether enlisted in the military or not, are registered to vote at proportionally lower levels than other Americans as a whole. See, e.g., Karlos Barrios Marcelo, The Center for Information & Research on Civic Learning & Engagement (CIRCLE), *Fact Sheet: Voter Registration Among Young People 2* (June 2008), *available at* [http://www.civicyouth.org/PopUps/FactSheets/FS07\\_Registration.pdf](http://www.civicyouth.org/PopUps/FactSheets/FS07_Registration.pdf). (“Despite legislative progress, registration rates among young people have been lower than those of their adult counterparts. This is partly because young people face unique barriers to voter registration.”).
- <sup>18</sup> Pew Military and Overseas Citizen Voting Project at 2; see also Pew Center on the States, *No Time to Vote: Challenges Facing America’s Overseas Military Voters* 6 (2009) (“*No Time to Vote*”), *available at* <http://tinyurl.com/lfwy3y>.
- <sup>19</sup> See *infra* Part I.C.
- <sup>20</sup> See *No Time to Vote* at 8-9 & ex. 5.
- <sup>21</sup> Statement of Senator Charles E. Schumer to the U.S. Senate Rules Committee, May 13, 2009, *available at* <http://tinyurl.com/l7jmfl>.
- <sup>22</sup> Goldman Testimony at 4.
- <sup>23</sup> See Overseas Vote Foundation, *2008 OVF Post Election UOCAVA Survey Report and Analysis* (2009) (“2008 OVF Survey”), *available at* <http://tinyurl.com/ooyfnc>.

- <sup>24</sup> See U.S. Census Bureau, Current Population Survey, Voting and Registration Data (November 2006), available at <http://www.census.gov/population/www/socdemo/voting.html>.
- <sup>25</sup> See *id.*
- <sup>26</sup> Office of Policy & Planning, U.S. Department of Veteran Affairs, *Analysis of Unique Veterans Utilization of VA Benefits & Services*, at 3 (Apr. 29, 2009), available at <http://www1.va.gov/vetdata/docs/uniqueveteransMay.pdf>.
- <sup>27</sup> See U.S. Department of Veterans Affairs, *Volume II: Medical Programs & Information Technology Programs, Congressional Submission, FY 2010* at 1A-2, available at [http://www.va.gov/budget/summary/2010/Volume\\_2-Medical\\_Programs\\_and\\_Information\\_Technology.pdf](http://www.va.gov/budget/summary/2010/Volume_2-Medical_Programs_and_Information_Technology.pdf) at 1A-2.
- <sup>28</sup> See 38 C.F.R. § 17.33(a)(4)(iv).
- <sup>29</sup> See Department of Veterans Affairs, VHA Directive 2008-053: Voting Assistance for VA Patients (Sept. 8, 2008), available at [http://www1.va.gov/VHAPUBLICATIONS/ViewPublication.asp?pub\\_ID=1756](http://www1.va.gov/VHAPUBLICATIONS/ViewPublication.asp?pub_ID=1756).
- <sup>30</sup> While VA policies require facility directors to develop a plan for coordinating offers of assistance from outside voter registration groups, directors are not explicitly required to accept such offers or to grant these groups admittance to the facility. See *id.*
- <sup>31</sup> See U.S. Department of Veterans Affairs, News Release: VA Facility Brings Voter Registration to Veterans; More Than 6,000 Helped Nationwide (Oct. 15, 2008), available at [http://www.coatesville.va.gov/news/PressReleases/Oct15\\_PressRelease\\_Voter\\_Registration.pdf](http://www.coatesville.va.gov/news/PressReleases/Oct15_PressRelease_Voter_Registration.pdf). See also Ian Urbina, *V.A. Ban on Voter Drives Is Criticized*, N.Y. Times, June 13, 2008.
- <sup>32</sup> See Veteran Voting Support Act, S. 3308, 110th Cong. (as introduced in Senate, July 22, 2008).
- <sup>33</sup> For a detailed description of the problems resulting from voters who move — including a 50-state guide on the rules affecting those voters — see Myrna Pérez, *When Voters Move* (2009), available at [http://www.brennancenter.org/content/resource/when\\_voters\\_move/](http://www.brennancenter.org/content/resource/when_voters_move/).
- <sup>34</sup> See, e.g., Our Vote Live, Viewing Report #47470, Nov. 4, 2008, available at <http://2008.ourvoteline.org/responses.php?op=show&id=47470> (voter registered in South Carolina but stationed in Missouri never received South Carolina absentee ballot); Our Vote Live, Viewing Report #62153, Nov. 4, 2008, available at <http://2008.ourvoteline.org/responses.php?op=show&id=62153> (voter registered in Ohio but stationed in Florida never received Ohio absentee ballot).
- <sup>35</sup> See No Time to Vote at 3..
- <sup>36</sup> See 2006 EAC UOCAVA Survey at 1.
- <sup>37</sup> See Pew Military and Overseas Citizen Voting Project at 1.
- <sup>38</sup> See 2006 EAC UOCAVA Survey at 1.
- <sup>39</sup> See 2008 OVF Survey at 5.
- <sup>40</sup> See *id.* at 25.
- <sup>41</sup> See Our Vote Live, Viewing Report #62633, Nov. 4, 2008, available at <http://2008.ourvoteline.org/responses.php?op=show&id=62633>.

- <sup>42</sup> See, e.g., Letter from President Harry Truman in Congressional Hearings on H.R. 7571 and S.3061, “Bills to permit and assist Federal Personnel, including members of the Armed Forces, and their families, to exercise their voting franchise,” 82d Cong., 2d Sess. (June 26 & July 1, 1952) at 35-37.
- <sup>43</sup> See 42 U.S.C. § 1973ff *et seq.*
- <sup>44</sup> See generally U.S. Department of Justice, Civil Rights Division, *The Uniformed and Overseas Citizens Absentee Voting Act*, at [http://www.usdoj.gov/crt/voting/misc/activ\\_uoc.php](http://www.usdoj.gov/crt/voting/misc/activ_uoc.php).
- <sup>45</sup> 42 U.S.C.A. § 1973ff-1(a)(1).
- <sup>46</sup> See *id.* § 1973ff-1(a)(4).
- <sup>47</sup> See *id.* § 1973ff-1(a)(2).
- <sup>48</sup> *Id.* § 1973ff-3(a).
- <sup>49</sup> See generally *id.* § 1973ff-2.
- <sup>50</sup> According to a Pew Center on the States survey of state election officials, “28 states accept the FWAB for all state and *local* elections, including those not occurring during a federal election. Additionally, 33 states accept the FWAB for all state and local elections occurring during a federal election.” Pew Center On the States, *Making the Election System Work for Military and Overseas Voters* 2 n.1 (July 2009), available at [http://www.pewcenteronthestates.org/uploadedFiles/MilitaryAndOverseasVoting%20brief\\_Final\\_webonly.pdf](http://www.pewcenteronthestates.org/uploadedFiles/MilitaryAndOverseasVoting%20brief_Final_webonly.pdf). The survey notes, however, that the data is not comprehensive because two states failed to respond to the survey.
- <sup>51</sup> See *id.* at 2.
- <sup>52</sup> See *supra* at 3-4
- <sup>53</sup> See *supra* note 7 & accompanying text.
- <sup>54</sup> The Brennan Center has issued a detailed policy proposal for voter registration modernization, which includes provisions for automatic and permanent registration of *all* voting eligible citizens, including but not limited to military and overseas voters. Under the proposal, election officials would compile — and regularly update — comprehensive voter rolls through data sharing with other government agencies. For further information on the proposal, see Wendy R. Weiser, Michael Waldman and Renée Paradis, *Voter Registration Modernization* (2009), available at [http://www.brennancenter.org/content/resource/voter\\_registration\\_modernization/](http://www.brennancenter.org/content/resource/voter_registration_modernization/).
- <sup>55</sup> See generally Laura Seago, *Automatic Registration in the United States: The Selective Service Example* (2009), available at [http://www.brennancenter.org/content/resource/automatic\\_registration\\_in\\_the\\_united\\_states\\_the\\_selective\\_service\\_example](http://www.brennancenter.org/content/resource/automatic_registration_in_the_united_states_the_selective_service_example).
- <sup>56</sup> DMDC’s Person Data Repository is sometimes referred to by reference to one of its component elements, the Defense Enrollment Eligibility Reporting System, or “DEERS,” the computerized database used by service members, veterans, military dependents, and military contractors for administration of benefits and other services.
- <sup>57</sup> Several states have already developed effective systems of permanent registration; other states have all the tools in place to do so; and while these systems are not currently tailored to serve military and overseas voters, targeting these voters is readily achievable given existing technologies. For a detailed analysis of existing systems of permanent registration, see Adam Skaggs & Jonathan Blitzer, *Permanent Voter*

*Registration* (2009), available at [http://www.brennancenter.org/content/resource/permanent\\_voter\\_registration/](http://www.brennancenter.org/content/resource/permanent_voter_registration/).

- <sup>58</sup> See No Time to Vote at 9.
- <sup>59</sup> The agencies that provide data to the Selective Service System have a considerable amount of flexibility with respect to the technology they use to transfer information, and employ the methods most effective at ensuring the security of the data they share. For example, United States Citizenship and Immigration Services sends information on the registration-age men in its database to the Selective Service on a CD-ROM so as to maintain the privacy of its database and to avoid any security risks involved in transferring information electronically. See Laura Seago, Automatic Registration in the United States: The Selective Service Example 7 (2009), *supra* note 55.
- <sup>60</sup> See Wendy R. Weiser, Michael Waldman and Renée Paradis, *Voter Registration Modernization* (2009), available at [http://www.brennancenter.org/content/resource/voter\\_registration\\_modernization/](http://www.brennancenter.org/content/resource/voter_registration_modernization/).
- <sup>61</sup> Not all overseas voters would be registered through relying on state data like that maintained by motor vehicle agencies. Many American citizens who are born abroad to citizen parents, but never reside in the United States, are currently unable to vote — despite being required to file U.S. taxes, and possessing U.S. passports and social security numbers. Currently, only 16 states permit these citizens to vote using their parents' U.S. voting address; in the remaining states, U.S. citizens born overseas cannot register to vote if they have not themselves resided in the state. See 2008 OVF Survey at 12.
- <sup>62</sup> National Institute of Standards and Technology, A Threat Analysis on UOCAVA Voting Systems 2 (Dec. 2008), available at <http://vote.nist.gov/uocava-threatanalysis-final.pdf>.
- <sup>63</sup> See *supra* at 7; see also Overseas Vote Foundation, Federal Write-In Absentee Ballot, at <https://www.overseasvotefoundation.org/overseas/FwabStart.htm>.
- <sup>64</sup> The FWAB permits voting in federal elections *only*, however; because voters using it cannot vote in state or local elections, it is plainly a second-choice solution.
- <sup>65</sup> 2008 OVF Survey at 9.
- <sup>66</sup> See Overseas Vote Foundation, Federal Write-In Absentee Ballot, at <https://www.overseasvotefoundation.org/overseas/FwabStart.htm>.



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