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## An Author's Assessment of the Effectiveness of the MOVE Act

*The Honorable John Cornyn*

**Abstract:** *The Uniformed and Overseas Citizens Absentee Voting Act guarantees overseas members of the military and their families the right to vote. However, the difficulties encountered in obtaining ballots in remote and dangerous areas of the world and returning them in time have led to shockingly high rates of disenfranchisement. The Military and Overseas Voter Empowerment (MOVE) Act of 2009 required that changes be instituted by 2010 to provide military voters greater opportunities to vote. Despite some successes, however, there clearly is room for improvement in the implementation and enforcement of the MOVE Act to ensure that the franchise of America's service members and their families is fully protected.*

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I appreciate The Heritage Foundation hosting us all here today. Once again, Heritage is moving the debate forward on a policy issue that the federal government must get right. I also want to thank the Military Voting Protection Project for collecting the data that all of us are looking at to see how we did in 2010 and what we need to do for 2012 and beyond.

We are gathered here today to address a national disgrace. Our military service members put their lives on the line to protect the rights and freedoms of all Americans, yet many of them still face substantial roadblocks as they attempt to cast their ballots and participate in our national elections.

This is not a new problem. President Harry Truman urged Congress to address obstacles to voting faced by troops serving in Korea. Today, troops deployed to

### Talking Points

- To protect the franchise for America's military voters and their families, the Department of Justice must be fully committed to enforcing the MOVE Act—with litigation where necessary.
- The Department of Defense must ensure that our troops and their families have a meaningful opportunity to receive voter assistance and must accept responsibility for providing it.
- Giving America's troops the right to sue elections officials who fail to comply with federal elections laws, including the MOVE Act, would give them a statutory private right of action if their local or state government lets them down.
- America's military service members and their families should be afforded every possible opportunity both to keep their voter registrations up to date and to cast their ballots as full participants in America's democratic voting process.

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This paper, in its entirety, can be found at:  
<http://report.heritage.org/hl1191>

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Afghanistan and Iraq—or participating in the NATO mission in Libya—face many of the same problems.

During the 2008 presidential election, I heard from many Texans who were experiencing difficulties. I heard from the wife of a Marine who was stationed in Iraq at the time. She wrote:

My husband is registered in Dallas County. He is currently overseas in Iraq. And I have been working with him for months to get his ballot to him. I have called many people and he has filled out and sent all the paperwork to receive a ballot. He is currently stationed at Al Asad in Iraq. And he says only one Marine he is with has received a ballot, even though many of them have requested ballots.

I also heard from a soldier who had served in the Army for 18 years. He wrote:

Dear Senator Cornyn: I wanted to vent an issue about an absentee ballot. I updated my registration in Jones County, Texas back in August [of 2008] and I got a verification that they received my information. They sent the first ballot to my old address in Fort Benning, but my wife received hers here in Alaska. I called and they sent a second one to the right address, but I have not received it and do not know why. Now, it is crunch time and it appears that I won't get to vote. This frustrates me because I did all the right things to prepare for this election. I have all the paperwork. I pay property taxes and my home of record is in Texas. I think it is wrong that I cannot get this fixed and will miss voting when this is a crucial election.

It broke my heart to hear these stories—and it really angered me that Texans who wore the uniform were unable to vote for their commander in chief. I also learned that these problems were certainly not unique to my state.

The Heritage Foundation put out a study in 2009 of 19 states with large military populations. Heritage concluded that as many as three-quarters of

those troops and their family members were “disenfranchised by their inability to request an absentee ballot” and that as many as one-third of ballots that were requested never reached the appropriate election officials to be counted.<sup>1</sup>

I resolved to do something about this national disgrace, and so did a bipartisan group of Senators that included Senator Chuck Schumer of New York (D), Senator Saxby Chambliss of Georgia (R), Senator Ben Nelson of Nebraska (D), and then-Senator Bob Bennett of Utah (R). Together, we put together—and made the case for—the Military and Overseas Voter Empowerment Act, known as the MOVE Act.

We recognized that voting has remained a challenge for troops and their families for many reasons: Our election laws are complex, multiple levels of government are involved, election challenges and other unforeseen events can delay the finalization of ballots, and the high tempo of military operations often requires frequent deployments and moves for our troops and their families.

### Goals of the MOVE Act

The MOVE Act had three clear goals.

*First*, we wanted to provide voter assistance services to every service member—and family member—upon transfer to a new military duty station, as well as during other times of transition such as deployment. These voter assistance services would give our military personnel some of the support that civilians enjoy through the “Motor Voter Law.”

*Second*, we wanted to reduce the reliance on “snail mail” for correspondence between troops and their elections officials.

*Third*, we wanted to expedite the return of the completed ballot to elections officials. This was a part of the MOVE Act that we worked very hard to get right and get enacted.

Under what was then current law, each overseas service member was responsible for making sure that his or her ballot was postmarked and returned

1. Hans A. von Spakovsky and M. Eric Eversole, “America’s Military Voters: Re-enfranchising the Disenfranchised,” Heritage Foundation Legal Memorandum No. 45, July 28, 2009, revised and updated March 9, 2010, at [http://s3.amazonaws.com/thf\\_media/2009/pdf/lm0045.pdf](http://s3.amazonaws.com/thf_media/2009/pdf/lm0045.pdf).

on time, but the MOVE Act requires the Department of Defense to take possession of the completed ballots of overseas service members—and ensure that they get to election officials on time—by using express mail when necessary. The MOVE Act also required elections officials to give our troops more time to vote by sending out their blank absentee ballots at least 45 days before Election Day.

I am very proud of what the MOVE Act achieved, but, as with any legislation, the MOVE Act is not worth the paper it's written on unless it is actually implemented and enforced and we take a look at the results and figure out what we need to do better. That's our purpose here today, and we have a great tool in the new report that's been put out by the Military Voter Protection Project.<sup>2</sup>

Eric Eversole and his team gathered some of the data that have been provided to the Election Assistance Commission, which will be part of their official report in September. So this new report is like a “sneak peek” into the 2010 data for military voters, and it's shedding some light on where we are.

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There's good news in this report. For example, fewer military ballots are being rejected by elections officials. In the last mid-term election in 2006, 7.5 percent of military and overseas ballots were rejected. In 2010, for those states studied, the rejection rate was down to 5.9 percent, and it would have been even lower if New York hadn't rejected more than 31 percent of its military ballots.

But other news in the report is very troubling. For example, only 15.8 percent of military voters successfully requested an absentee ballot, which was actually down from 2006, and only 4.6 percent of eligible military voters wound up casting an absentee ballot that counted, and that's down from 2006 as well. What's more, 14 states failed to comply with the 45-day requirement for sending absen-

tee ballots. Those failures affected 65,000 military and overseas voters.

So it's clear that there is room for improvement in the implementation and enforcement of the MOVE Act. I'd like to mention what needs to be done at two federal agencies in particular: the Department of Justice (DOJ) and the Department of Defense (DOD).

### **The Department of Justice: Too Little, Too Late**

The role of the Department of Justice is to let states know what the rules are and to hold them accountable when they don't comply. Leading up to the 2010 mid-terms, we could see that DOJ enforcement was not what Congress intended—and not what our troops deserved.

Last July, we learned of comments by DOJ officials who thought the very specific requirements for waiver of the 45-day requirement were unclear. So I wrote Attorney General Eric Holder and asked him to clear up the confusion by issuing guidance to states immediately and giving Congress a 50-state breakdown of compliance with the MOVE Act.

I wrote him again last September, expressing my concerns that DOJ was still not enforcing the MOVE Act.

Later that month, I wrote him again. This time, I was joined by other Senators on the Judiciary Committee. Together, we asked that DOJ immediately bring lawsuits against states that had failed to send out military ballots by the 45-day deadline. To make our case, we cited information on Connecticut and New Mexico provided by the Military Voter Protection Project.

Eventually, I felt I had no other alternative than to block Senate confirmation of the President's nominee for Deputy Attorney General. That seemed to get their attention, but overall, I believe that DOJ's enforcement efforts were too little, too late. I also believe that if DOJ spent as much time and effort enforcing the MOVE Act as they did trying to get convicted felons back on the voter rolls, thousands

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2. Eric Eversole, “Military Voting in 2010: A Step Forward, But a Long Way to Go,” Military Voter Protection Project, at [http://www.mvppproject.org/MVPPProject\\_study\\_download.pdf](http://www.mvppproject.org/MVPPProject_study_download.pdf) (July 29, 2011).

of military voters might have gotten their ballots on time.

### **The Department of Defense: A Long Way to Go**

At the Department of Defense, the results were significantly better. In particular, I think the Pentagon deserves credit for creating an array of Web-based tools to help our military voters take advantage of modern technology, including electronic delivery mechanisms for blank absentee ballots. The Pentagon's efforts have helped reduce the overreliance on snail mail, and I think that's a big reason why we saw fewer military ballots being rejected by elections officials in 2010.

But the Defense Department has a very long way to go to implement the will of Congress regarding voter assistance programs. This is a part of the MOVE Act that the department actively opposed when it was moving through Congress. In the Senate–House conference, they lobbied to get it watered down to an optional program, and they've made pretty clear that they do not want the responsibility of providing this voter assistance to every service member and family member.

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I still cannot comprehend why the Pentagon has been so resistant, because the idea is pretty simple. As part of in-processing at each military installation, every service member would be offered an opportunity to fill out a simple form that would register the service member or family member to vote, or update an existing registration, and request an absentee ballot for the next federal election cycle. The Department of Defense would then forward the completed forms to the appropriate election officials.

If this kind of voting assistance sounds familiar, it should. This is the “motor voter” program as created under the National Voter Registration Act.

The logic here is that military installations can and should offer the same level of voting assistance that their local Department of Motor Vehicles would offer these military voters if they still lived in their home states.

Despite the Pentagon's resistance to these provisions in the MOVE Act, they eventually came around, and Deputy Secretary of Defense Bill Lynn informed us in December 2009 in writing that the Pentagon would designate every military installation as a federal voter registration agency under federal law. And so they have, but there's a big difference between checking the box and making this the priority that Congress intended.

We all know what the Pentagon can do when it puts its mind to it. After “Don't Ask, Don't Tell” was repealed, Secretary Gates asked for progress reports every two weeks on how training was progressing for troops on the new law, and for the Combined Federal Campaign, which is a government-wide effort to persuade military service members and other federal employees to donate some of each paycheck to private charities of their choice, the Pentagon's goal for several years has been “100 percent accountability.” This means that whether or not a service member chooses to donate, 100 percent of DOD employees must be recorded as given the opportunity to donate—and this happens every year.

So my question is: If every military service member has to be asked every year whether he or she wants to make charitable donations, and the DOD has to keep a record of that, why can't we ask them every time they transfer to a new duty station if they want to update their voter registration? And why can't the Pentagon ensure “100% accountability” that this is done? And if every military service member has to sit for hours of sensitivity training on “Don't Ask, Don't Tell,” why can't everyone be offered the opportunity to take five minutes to fill out a request for an absentee ballot?

### **Much Remains to Be Done**

I hope we are all encouraged at the progress we've made to help military voters and their family members cast their ballots. We really have accomplished a lot in a short amount of time. But it's clear we also have a lot of work to do.



On my end, I can tell you that I will keep the pressure on both DOJ and the Pentagon to implement and enforce the MOVE Act. I have already begun my letter-writing campaign to the Attorney General for the 2012 cycle. I have reminded him that the first presidential primary elections will be in mid-February, which means the 45-day deadline is less than six months away for some of them. So I have asked him to make sure every state knows its responsibilities under the MOVE Act and to confirm that DOJ intends to enforce the law—with litigation where necessary.

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The Department of Defense should also know that I will continue to monitor their implementation of the law. I simply will not give up on ensuring that our troops and their family members have a meaningful opportunity to receive voter assistance and that DOD accepts responsibility for providing it.

I also want to give our troops additional tools to protect their right to vote in the courts. Earlier this year, Senator John Barrasso (R-WY) and I introduced legislation that would give our troops the right to sue elections officials who failed to comply with federal elections laws, including the MOVE Act.<sup>3</sup> This would give our troops a statutory private right of action if their local or state government lets them down.

What else can we do? Perhaps the biggest thing we can do is get the word out. Our military service members and family members need to know their rights under the MOVE Act. They should be afforded every possible opportunity to keep their voter registrations up to date, cast their ballots, and participate in our great democracy—which they have sacrificed so much to defend.

—*The Honorable John Cornyn (R-TX) serves on the Finance, Judiciary, Armed Services, and Budget Committees of the United States Senate and is ranking Republican on the Judiciary Committee's Immigration, Refugees, and Border Security Subcommittee. He served previously as Texas Attorney General, Texas Supreme Court Justice, and Bexar County District Judge. His remarks were delivered at a conference on military voting rights sponsored by The Heritage Foundation.*

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3. See the Military and Overseas Voters' Relief (MOVR) Act, S. 331, 112th Cong., 1st Sess., February 14, 2011, at <http://thomas.loc.gov/cgi-bin/query/z?c112:S.331>: (August 1, 2011).