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Understanding the Sacrifices of Our Men and Women in Uniform and the Importance of Protecting Their Rights at Home

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Abstract: *The past 10 years have represented a new era for America's military, in which they not only are responsible for sustained combat during a time of war, but also are risking their lives while building hospitals, schools, and encouraging stable societies, rule of law, and democratic values. In Iraq and Afghanistan, U.S. service members have stood guard during elections and assisted voters in getting to the polls. It is uncertain, however, that these brave Americans will have the same chance to participate in their own democracy at home. Despite progress in improving some state programs since passage of the MOVE Act, no matter how easy we make the process, no matter how strict the federal law is, if each state does not execute these changes and make them part of its election administration, the military voter may still be effectively deprived of the right to vote.*

Thanks to the Heritage Foundation for continuing to shine a bright light on military absentee voting. What could be more important than ensuring that those individuals who are charged with defending our democracy are able to participate in it?

I'm here today because, although retired from the military, it is difficult to stand on the sidelines when our service members are not being afforded one of their most basic rights as U.S. citizens. These service members are taking the same oath that I took: to support and defend our Constitution.

Now, more than ever, that commitment is not one any individual who volunteers for the armed services

Talking Points

- The MOVE Act requires a 45-day transmission of ballots for all federal elections. Allowing ballots to be returned after the election is not nearly as helpful as sending the ballots out an equal number of days before the election.
- Fax delivery of ballots is not enough. States need to offer both e-mail and online ballot delivery so that voters can either download their ballots electronically from a Web site or receive them by e-mail.
- Military voters are supposed to be able to use the federal write-in absentee ballot for all federal offices. Expanding the use of the FWAB for all state and local elections would give service members a greater opportunity to vote and reduce the confusion about when the FWAB can be used as a backup ballot.

This paper, in its entirety, can be found at:
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takes lightly. In fact, let me read something written a long time ago about this very issue:

No procedure for offering the vote to servicemen can be effectively administered by the War and Navy Departments in times of war unless it is uniform and as simple as possible. An Army engaged in waging war cannot accommodate that primary function to multiple differences in the requirements of the 48 states as to voting procedures.

/Signed/ Franklin D. Roosevelt
January 26, 1944
Message to the 78th Congress

The last 10 years have represented a new era for our military, one in which they aren't only responsible for sustained combat during a time of war. They are also risking their lives while building hospitals, schools, and encouraging stable societies, rule of law, and democratic values. In Iraq and Afghanistan, U.S. service members have stood guard during elections and assisted voters in getting to the polls.

It's a pretty sad state of affairs when it's uncertain whether these brave Americans will have the same chance to participate in their own democracy at home.

We must not rest until all states provide adequate voting opportunity for military voters.

My voting history is not unlike so many of my former shipmates and today's service members. The very first time I actually entered a voting booth to cast a ballot was in November of 2008, just one year after retiring. For my entire adult life and 41 years in a Navy uniform, I had cast each and every one of my ballots as a military absentee voter and New York resident. I remember working this issue as Vice Chairman of the Joint Chiefs and how difficult it was for military personnel to be able to vote, especially against the complexity of every state and territory having different dates, rules, forms, and processes for military voters to be able to vote.

By way of anecdote, I did an unscientific check of two former shipmates of mine, Retired Sergeant Major Mark Ripka, USA, my former Command Ser-

geant Major at U.S. Joint Forces Command, and also the current Vice Chief of Naval Operations and Chief of Naval Operations nominee Admiral Jon Greenert. Like me, neither of these two men has ever voted in a voting booth. They've only cast their ballots via the absentee route. In fact, just the three of us have a grand total of 110 years of casting absentee ballots.

The MOVE Act: A Watershed Event

The MOVE Act looks to me like a watershed event for military voters, and I congratulate everyone here today who I know had a direct impact on getting this important and remarkable legislation passed. We owe each of you and a handful of key Members of Congress from both parties a debt of gratitude for pushing this legislation.

It also looks like real progress is being made in making the process easier for military voters as well, whether it's through automation of forms, enhanced voting assistance, or mandating that ballots be sent in enough time for the voter to be able to successfully vote. *But this is where the rub is.* No matter how easy we make the process, no matter how strict the federal law is, if each and every state does not execute these changes and make them part of their election administration, the military voter is still going to be left out in the cold. This is just what happened too many times last year when states failed to do what was required.

Now, don't get me wrong. Some states have made real progress in improving their programs since the MOVE Act was passed, or have always been absolute leaders for military and overseas voting. Delaware, North Dakota, Montana, Iowa, and South Carolina have long been ranked by groups such as the Overseas Vote Foundation and the Pew Center on the States as long-time leaders in supporting military voting rights. These states deserve all the accolades we can give them.

And other states, which prior to the MOVE Act had real challenges in providing military voters adequate voting opportunity, saw what needed to be done and made real and significant improvements for their military voters. States like Arkansas, Wyoming, Mississippi, Nevada, Pennsylvania, and Minnesota have moved from the perpetual lists

of problem states to leaders in providing greater opportunity.

Other states, while maybe not having all of their legislative house in order, have still made real efforts to provide military voters additional opportunities by exploring online ballot delivery systems, pilot programs, or even direct voter outreach by election officials, the type of personal service that pays phenomenal dividends in terms of voter success. States like Montana, Kentucky, and South Carolina are participating in every special military pilot project offered. States like West Virginia and Florida are testing out Internet voting. Maybe some of these experiments won't work, but these states are trying everything they can to improve, and for that, I salute them.

But we must not rest until *all* states provide adequate voting opportunity for military voters. So let's look further at the MOVE Act, and what the states have done, and how that looks for the military voter. When Congress passed the MOVE Act in October 2009, three facts were clear, which, if fully implemented by states, would increase the voting success for military and overseas voters.

Implementing the MOVE Act: Mailing Ballots Early

First, ballots have to be mailed out early—and the earlier the better. Allowing for ballots to be returned after the election, while helpful, is not nearly as helpful as sending the ballots out an equal number of days before the election. Look at what the Military Postal System recommended in 2008: Service members were recommended to send ballots back to election officials from Iraq or Afghanistan at least 28 days before they were due. That's one way, which then would equal a 56-day round-trip!

Then, in 2010, the Department of Defense began using express mail to return all the envelopes, which may have reduced the time for the ballot to be sent back from the military voter, but it doesn't speed up the ballot *getting* to them. So the Military Postal Service Agency ballots take up to 50 days for the round-trip from the U.S. to Iraq and Afghanistan and back.

The MOVE Act requires a 45-day transmission of ballots for *all* federal elections. Yet, almost two

years after the enactment of the MOVE Act, there are 10 states that have not changed their laws to fully implement this federal requirement. These states are Rhode Island, Louisiana, Alaska, New York, Wisconsin, Georgia, Massachusetts, Mississippi, Maryland, Nebraska, and the District of Columbia. New York is still under a federal court consent decree, because even after they received a waiver from the Department of Defense, they still failed to get the ballots out by even the later date permitted by the department.

I see that this issue is back in federal court, and the State of New York is saying they want another waiver. They missed the deadline for the last waiver by more than a week, send out their ballots three weeks after all the other states send out their ballots, and then say they want another waiver. I hope the Department of Defense tells New York, in no uncertain terms, that their waiver application is denied.

The MOVE Act requires a 45-day transmission of ballots for all federal elections. Yet, almost two years after its enactment, there are 10 states that have not changed their laws to fully implement this federal requirement.

Comparing New York to other states is not only more than fair; it's absolutely necessary. Many states have made the difficult choices, taken the hard path, and made the decision to support military voters over politics as usual. Washington and North Carolina changed their laws to give military voters more than 45 days for ballots to be transmitted to the voter and received by the election official to be counted. Minnesota, Vermont, Hawaii, and Washington, D.C., all have changed their primaries so that military voters can have their ballots sent out to them at least 45 days before the election.

I would be remiss if I didn't mention Virginia. I think we see in Virginia what can happen when a state's election system is well led, supported by good legislation, and willing to be imaginative in getting the word out to military and overseas voters.

It was just about two years ago, during the 2008 election, when the Commonwealth had to be sued in federal court to get their ballots out even 30 days

before the election. Virginia certified the ballots were sent out on time, only to discover after the fact that thousands of military and overseas ballots were not sent out on time.

State and local election officials who have provided high-speed delivery of election materials have experienced improved, rapid, cost-efficient, and effective line of communication between them and voters.

But in the intervening two and a half years, the Virginia legislature has substantially reformed its military voting laws, has participated in the Department of Defense's 2010 election online ballot delivery pilot program (with more than 700 military and overseas ballots downloaded), and is now actively reaching out to military voters for the upcoming August 23 state primary. I even saw the recent Federal Voting Assistance Program (FVAP) press release and RSS feed to all the Voting Assistance Officers about the August 23 primary. This level of performance improvement should be the norm and not the exception.

Implementing the MOVE Act: E-mail and Online Ballot Delivery

Second, the MOVE Act requires that military voters must be able to get their ballots sent electronically, not just by snail mail. Again, we know that in the age of increasing technology, e-mail and online capabilities are widely available to military members and overseas citizens, more so than fax machines. Some voters cannot get e-mail easily but can get to Web sites; other voters cannot get to Web sites easily but can check e-mail.

That's why I agree how important it is for states to offer both e-mail and online ballot delivery so voters can either download their ballots electronically from a Web site or receive them by e-mail. State and local election officials who have provided high-speed delivery of election materials have experienced improved, rapid, cost-efficient, and effective line of communication between them and voters.

Yet some states have yet to offer more than the ability to request a ballot by fax. For example, the

Military Voter Protection Project just reported last week that Alaska and Rhode Island offer only fax delivery of ballots, but the Federal Voting Assistance Program reported in 2006 that 44 percent of overseas military voters had absolutely no access to fax machines. For 18–24-year-olds, who FVAP has said have the highest disenfranchisement among military voters, a full 34 percent, whether in the United States or overseas, have no access to a fax machine. We have to do better for these voters.

Implementing the MOVE Act: The Federal Write-in Absentee Ballot

Third, under the MOVE Act, military voters are supposed to be able to use the federal write-in absentee ballot (FWAB) for all federal offices. However, I don't think any of us think military personnel who don't receive their regular absentee ballots because of mail delays should be excluded from voting in state and local elections. Just because the federal law only applies to federal elections doesn't mean the states can't do better. Therefore, as FVAP has argued in its legislative recommendations to states, expanding the use of the FWAB for all state and local elections not only provides service members a greater opportunity to vote in key state and local elections they care about, but also reduces the confusion about when a FWAB can and cannot be used as a backup ballot.

Also, states should allow the federal write-in absentee ballot to be accepted simultaneously as a voter registration application, absentee ballot request, *and* absentee ballot. Doing so would allow this highly mobile population—and particularly those on active duty, such as submariners, special operations forces, and others who are not allowed to be in contact with the regular world for weeks or months at a time—to successfully participate in an election more often.

Think about it: It is weeks before the election. An Army Ranger comes off a long patrol, has a day to get his voter registration in for the election, and finds out the forward operating base ran out of paper copies of the federal post card application but has plenty of copies of the FWAB. But his state doesn't allow the FWAB to be used as a registration form,

even though they contain exactly the same information, so he doesn't get to vote. That is ludicrous. The states can do better.

Many states get this and allow the use of the FWAB for all elections. Thoughtful states like Washington, North Carolina, North Dakota, Maine, Delaware, Utah, Nevada, Iowa, Oklahoma, New Mexico, and Montana. However, despite the federal law requiring that states accept the law for all federal elections, many states have still failed to make those necessary changes in their state laws. Louisiana, Alabama, Hawaii, Michigan, and Ohio do not offer the FWAB to be used for all federal elections.

Keeping Faith with Those in Harm's Way

We few, we happy few, we band of brothers and sisters, we have the ability to change this now for our brothers and sisters in arms. The Pew Center on the States, the Uniform Law Commission, and the Federal Voting Assistance Program all have active state-level legislative activities under way. We need to support those initiatives, *demand* better from the states, and remind them that they have an obliga-

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tion to keep the faith with our men and women going in harm's way. With your help and passion, and the work of federal and state authorities, I hope we can prove these statements are incorrect. And let's hope this young democracy won't take another 200-plus years to get it right.

We must give our men and women in uniform a real chance to receive their ballot, to return it, and to have that ballot counted, like all the other Americans they pledged to support and defend. They deserve nothing less.

—Admiral Edmund P. Giambastiani, Jr., was the seventh Vice Chairman of the Joint Chiefs of Staff. His remarks were delivered at a conference on military voting rights held by The Heritage Foundation.