

August 1, 2008

The Honorable Michael B. Mukasey
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Dear Attorney General Mukasey:

We write to express serious concerns regarding the potential disenfranchisement of America's military service members during the coming November 2008 elections, and we ask for your help in protecting for them the very rights they fight to safeguard for their fellow Americans.

For far too long in this country we have failed to adequately protect the right of our troops to participate in our democratic process. Our men and women in uniform make tremendous sacrifices in the defense of freedom and the American way of life, and they deserve the U.S. Government's very best efforts to promote and protect their voting rights. As such, we respectfully request that the Department of Justice (DoJ) direct the necessary attention and resources to correct the unacceptable and well documented deficiencies in the military voting system.

Specifically, we ask that the DoJ investigate and determine whether the Federal Voting Assistance Program (FVAP) is fulfilling its legal obligations to provide overseas U.S. military service members and their dependents with the necessary information and assistance to register to vote, request and receive absentee ballots, and vote. The FVAP, pursuant to Executive Order 12642 and a subsequent delegation of authority from the Secretary of Defense, is responsible for the administration of federal laws pertaining to military voting. We believe that the efforts of the FVAP to ensure that America's military service members and their dependents are given reasonable opportunity to vote in federal elections have been wholly inadequate.

As you know, Congress enacted the Help America Vote Act (HAVA) in part to ensure that our troops and their dependents are afforded every reasonable opportunity to participate in federal elections. To that end, section 701 of HAVA requires that our military service members and their family members be given "ready access to information regarding voter registration requirements and deadlines (including voter registration), absentee ballot application requirements and deadlines, and the availability of voting assistance officers to assist members and dependents to understand and comply with these requirements." 10 U.S.C. § 1566(i)(1). Section 701 further mandates that military voting assistance officers "be given the time and resources needed to perform the member's duties as a voting assistance officer during the period" prior to a general election. *Id.* § 1566(f)(2).

Several disturbing facts indicate that the FVAP is failing to fulfill these statutory obligations. One key indicator is the excessively low participation rates by military and overseas voters in the November 2006 election. The Election Assistance Commission's (EAC) "UOCAVA Survey Report Findings" (Sept. 2007) indicated that only 16.5 percent of the six million eligible military and overseas voters requested an absentee ballot for the November 2006 election. Moreover, only one-third of the requested ballots were cast and counted. In other words, only 5.5 percent of the total eligible military and overseas citizen voters cast a ballot in the November 2006 election. These low participation rates raise serious questions regarding the FVAP's commitment to fulfilling the statutory obligations to assist these voters.

We further question the FVAP's decision to rely on Voting Assistance Officers (VAOs) as the primary means of conducting military voter education and outreach. In fact, the DoD Inspector General's "2006 Evaluation of the Federal Voting Assistance Program in the Department of Defense" (2006 IG Report) raised grave questions regarding the effectiveness of the VAO system. The report noted that only 59 percent of surveyed military service members knew where to obtain voting information on base – and only 40 percent had received voting information or assistance from a VAO. The 2006 IG Report further noted that only 33 percent of surveyed military service members were familiar with the Federal Post Card Application (FPCA), and only 31 percent were aware of the Federal Write-in Absentee Ballot.

Making matters worse, VAOs have failed – year after year – to comply with DoD Instruction 1000.4, which requires VAOs to hand deliver FPCAs to all military service members and their dependents by January 15 of each year. This fact was noted in both the 2006 and 2007 IG Reports. These deficiencies were conceded in recent testimony by Mr. Michael Dominguez, the Principal Deputy Undersecretary of Defense for Personnel and Readiness, before the U.S. House Administration Committee on April 15, 2008. Mr. Dominguez testified that the DoD has distributed only "tens of thousands" of FPCAs since September 1, 2007, even though there are 2.6 million military service members and dependents.

In addition, the FVAP has failed to take even the most obvious steps to correct these problems (e.g., initiate a simple DoD-wide email campaign to reach out to military voters). Rather than sending out monthly reminders to all active duty service members via DoD's communications network, the FVAP sent only one email to all 1.4 million military service members between September 1, 2007 and April 15, 2008. This lack of DoD-wide communication is puzzling, given the ease and cost-effectiveness of sending emails to military voters.

Based on these facts, we request that the DoJ investigate and determine whether the FVAP is, "to the maximum extent practicable," providing military voters and their dependents with sufficient voting information and ensuring that VAOs have sufficient time and resources to conduct voter outreach, as required under section 701 of HAVA. We ask that the DoJ undertake this investigation with the utmost urgency so that we can avert what would be an absolutely unacceptable outcome – the disenfranchisement of our military service members and their dependents in the November 2008 election.

The right to participate in democratic elections is fundamental to the American experience. Our men and women in uniform have stepped forward to defend that right, often at great personal cost to them and their loved ones. We have a duty to ensure these Americans have a voice in choosing their elected leaders, and we urge you to help us protect their rights.

Thank you for your leadership of the Department of Justice, your service to our nation, and your prompt attention to this important matter.

Sincerely,

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CC:
Secretary of Defense
Director, Federal Voting Assistance Program
Chief, Voting Section, Civil Rights Division, Department of Justice