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ONE HUNDRED EIGHTH CONGRESS

# Congress of the United States

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October 19, 2004

The Honorable David M. Walker  
Comptroller General of the United States  
U.S. Government Accountability Office  
Washington, DC 20548

Dear Mr. Walker:

We are writing to request a Government Accountability Office (GAO) investigation into the Department of Defense's fulfillment of its responsibilities in facilitating and supporting absentee voting by members of the United States military and other American civilians living overseas.

We all remember too well the confusion and uncertainty surrounding the 2000 presidential election and in particular the counting of overseas absentee ballots in the state of Florida. In that election, Americans living and working abroad, both military and civilian, were disenfranchised when their ballots were discarded. Unfortunately, a number of incidents in the last year have raised questions regarding whether DOD is putting Americans living abroad at risk once again of being shut out of the electoral process.

Under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), DOD has broad duties to ensure that American civilians and military personnel abroad have the opportunity to vote. DOD's recent efforts in this area have been marked by inconsistency, a lack of transparency, and inadequate communication with the public. Examples of such actions include:

- Attempting to implement an internet registration and voting project that had fundamental computer and network security problems and later abandoning the project without a clear explanation;
- Failing to maintain adequate supplies of absentee ballot request forms, and providing inadequate explanation for this apparent lack of planning;
- Establishing e-mail and fax balloting systems in partnership with a private contractor that has questionable suitability for the task and that has reportedly botched execution of these systems;

- Blocking access to a federal government website on which Americans abroad can request absentee ballots, without clear public explanation for this action; and
- Launching an internet absentee ballot access project just weeks before the 2004 election that is not accessible to all American living overseas, despite DOD's statutory responsibility to facilitate voting for both military and civilian Americans abroad.

In addition, a high ranking DOD official last month made the troubling remark that it may be appropriate to apply different standards regarding absentee voting to Americans abroad because these individuals have chosen to live outside the United States.<sup>1</sup>

In light of these and other DOD actions, we ask that you investigate whether DOD is effectively fulfilling its obligation to ensure that American voters living overseas have a voice in our democratic process.

### **Background on the Uniformed and Overseas Citizens Absentee Voting Act**

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986 established that members of the United States military, their spouses and dependents, and American citizens no longer maintaining a permanent residence in the United States are eligible to participate by absentee ballot in all federal elections. In response to the confusion surrounding the counting of ballots from overseas in the 2000 presidential election, Congress passed the Help America Vote Act of 2002 (HAVA). HAVA was designed to ease and expedite the registration and voting process for Americans living overseas.

UOCAVA as amended provides that Americans living abroad need to submit only one absentee ballot request every three federal election cycles. In addition, states are required to provide voters with a reason for the rejection of any registration application or absentee ballot request, accept any valid registration application received more than 30 days before election day, and, provided that the overseas voter has made a good-faith effort to vote by absentee ballot from his or her local jurisdiction, accept a generic federal write-in absentee ballot.

Under UOCAVA and its amendments, the Secretary of Defense is charged with prescribing procedures for and promoting state compliance with the statutory absentee balloting requirements, and prescribing the federal write-in absentee ballot process for voters abroad who make timely applications for but do not receive state absentee ballots, among

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<sup>1</sup> Charlie Abell, Principal Deputy Under Secretary of Defense for Personnel and Readiness, made this statement in a briefing for House Government Reform Committee and House Armed Services Committee staff on September 17, 2004.

other duties. The Secretary of Defense has delegated these responsibilities to the Director of the Federal Voting Assistance Program (FVAP) within DOD.

### **DOD's Administration of Overseas Absentee Voting Laws Raises Concerns**

In the past year, DOD has developed initiatives with questionable effectiveness in facilitating voting by Americans abroad; DOD has also created an appearance of favoritism towards individuals abroad who are in the military, despite statutory requirements to promote voting by both American civilians and military personnel living abroad; further, DOD has acted with a lack of transparency regarding several major initiatives. Taken together, these events have raised concerns that Americans abroad may once again be denied the right to participate fully in our electoral process.

#### *Internet-Based Registration and Voting*

DOD attempted to implement an internet-based registration and voting project known as the Secure Electronic Registration and Voting Experiment (SERVE). This effort was intended to ensure enfranchisement for members of the military serving abroad who are unable to submit an absentee ballot through the military mail system. In January 2004, members of an advisory group for the Department's Federal Voting Assistance Program released a detailed analysis finding that SERVE had fundamental computer and network security problems.<sup>2</sup> DOD initially dismissed this criticism in strong terms, stating, "we think the thing will be secure, and security will continue to be enhanced. We're not going to stop it."<sup>3</sup> Then, less than two weeks later, the Department reversed course and halted implementation of SERVE, with little public explanation.<sup>4</sup>

#### *Applications for Absentee Ballots*

DOD also has not been accountable with respect to reports that Americans abroad have been unable to obtain generic absentee ballot request forms from their local jurisdictions and embassies overseas. In April 2004, Reps. Carolyn B. Maloney, John B. Larson, and Steny H. Hoyer wrote Secretary of Defense Donald Rumsfeld expressing concerns about

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<sup>2</sup> Dr. David Jefferson, Dr. Aviel D. Rubin, Dr. Barbara Simons, and Dr. David Wagner, *A Security Analysis of the Secure Electronic Registration and Voting Experiment* (Jan. 21, 2004).

<sup>3</sup> *Pentagon's Online Voting Program Deemed Too Risky*, Washington Post (Jan. 22, 2004).

<sup>4</sup> *The Race to the White House; Web Voting Program Scrapped*, Los Angeles Times (Feb. 6, 2004).

these reports of ballot application form shortages and asking for an explanation of the situation.<sup>5</sup> The response in no way addressed the concerns detailed in the letter. P.K. Brunelli, Director of FVAP, simply wrote, "Although the demand for FPCAs [the ballot request forms] for this Presidential election year is very great, the FVAP makes every effort to ensure voting materials are available so that requests are fulfilled expeditiously."<sup>6</sup>

### *E-mail and Fax Voting*

DOD also recently launched several e-mail and fax voting initiatives in partnership with a private company with questionable suitability to carry out these efforts. In August 2004, the Department arranged with the states of Missouri and North Dakota to allow members of the military claiming either state as their residence to submit their completed ballots by e-mail. The Department has also arranged with 20 U.S. states to allow both military and civilians living overseas to submit their completed ballots by fax. For both these programs, DOD hired Omega Technologies, an Alexandria, Virginia-based firm, to electronically process the ballots submitted by fax and e-mail and transmit them to local election officials.

Significant questions have been raised about Omega. According to recent press reports, Omega has been sued by Adams National Bank for failing to pay off a loan of more than \$500,000. Adams contends that Omega improperly gained access to DOD computers to reroute payments intended for the bank to the company's new lender. Omega has settled another case in which the company was accused of fabricating a shipping record. Pentagon officials have stated that they knew nothing about either case before hiring Omega to act as an intermediary between Americans living overseas and their local election officials.<sup>7</sup> It has also been reported that Omega's chief executive, Patricia Williams, has partisan political connections, as she has donated \$6,000 to the National Republican Congressional Committee (NRCC) and serves on the NRCC's business advisory council.<sup>8</sup>

Press reports also indicate that the company may not be prepared to handle its responsibilities under its contracts with DOD to promote absentee voting. Americans living abroad have reported receiving only busy signals when attempting to fax absentee ballot

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<sup>5</sup> Letter from Reps. Carolyn B. Maloney, John B. Larson, and Steny H. Hoyer to Secretary of Defense Donald Rumsfeld (Apr. 28, 2004).

<sup>6</sup> Letter from P.K. Brunelli, Director of the Federal Voting Assistance Program, Department of Defense, to Rep. Carolyn B. Maloney (May 12, 2004).

<sup>7</sup> *Hurdles Remain for American Voters Who Live Overseas*, New York Times (Sept. 29, 2004).

<sup>8</sup> *Bush and Kerry See Openings in Military Vote*, Los Angeles Times (Sept. 17, 2004).

requests to the company. Pentagon officials attributed the problem to the large numbers of ballot request forms being submitted by military installations overseas.<sup>9</sup>

In addition, while e-mail and fax voting may increase the opportunities for Americans abroad to vote, it is not clear that DOD has carefully considered privacy issues relating to such systems. Voters participating in these programs must sacrifice the secrecy of their ballots, a right guaranteed by many jurisdictions under state law. For example, as one Army Sergeant has noted, the fax voting system can involve having to “hand it [a completed ballot] off to get faxed because the machine is behind the counter, at the finance office or personnel support battalion.”<sup>10</sup> In implementing or facilitating e-mail or fax balloting programs, DOD needs to assure the public that DOD as well as any private contractor with responsibilities under the programs have accounted for privacy concerns.

#### *Federal Website for Requesting Absentee Ballots*

DOD blocked access to a federal government website that was designed to allow Americans living abroad to request absentee ballots and access other voting information. This action prevented access to the site for American overseas voters using certain internet service providers in as many as 25 countries, including Great Britain, Spain, France, and Japan.<sup>11</sup> Overseas Americans contacting the State Department about the block were told to visit the website of the League of Women Voters instead to access absentee ballot request forms and other voting information, according to complaints received by Rep. Maloney’s office.

The DOD’s conduct with respect to blocking access to this website is puzzling. DOD first attributed the block to an attempt to prevent attacks against the Federal Voting Assistance Program website. Yet DOD rescinded the block immediately after Rep. Waxman and Rep. Maloney requested that DOD find some other means by which to protect the security of the website that would allow access for Americans living overseas. In reversing its block, DOD stated only that “access to the Federal Voting Assistance Program (FVAP) website at <http://www.fvap.gov> has been modified to further increase the number of internet service providers able to access the site.”<sup>12</sup> It remains unclear why, if DOD’s initial concerns were so

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<sup>9</sup> *Hurdles Remain for American Voters Who Live Overseas*, *supra* note 7.

<sup>10</sup> *Id.*

<sup>11</sup> See, e.g., *Pentagon Restricts Overseas Access to U.S. Voter Registration Site*, Associated Press (Sept. 21, 2004); *Pentagon Blocks Site for Voters outside U.S.*, International Herald Tribune (Sept. 20, 2004); *French Internet Provider Confirms US Block on Government Sites*, Agence France Presse (Sept. 20, 2004).

<sup>12</sup> Department of Defense, *DoD Announces Broader Access to FVAP Web Site* (Sept. 22, 2004) (online at <http://www.defenselink.mil/releases/2004/nr20040922-1313.html>).

readily remediable, DOD didn't address them at the outset and avoid blocking access altogether.

In addition, while access to the FVAP site has been broadened, the site remains exceptionally confusing. American citizens living abroad who are seeking to determine whether they may submit a completed ballot by fax must navigate through four screens of information and then search through the appropriate state's documentation on voting procedures for the provisions relating to electronic submission of ballots. Indeed, a recent *New York Times* article recently reported that Timothy Mason, an American telecommunications analyst living in Britain, tried in vain to use the site to find and submit an absentee ballot application. Mr. Mason reportedly concluded, "I come from Florida, and it's like, here we go again."<sup>13</sup> It is troubling to consider that Americans living abroad may find the process so confusing that they will give up on using it to vote.

#### *Internet Absentee Ballot Requests for the Military*

Most recently, in September 2004, the Department launched MyBallot.mil, a program through which members of the military, their families, and certain government contractors working overseas can instantly access an absentee ballot from their local jurisdiction. This program is open only to members of the military community, despite the DOD's statutory charge to facilitate voting for all Americans living abroad, whether military or civilian. We do not understand why the Department chose to launch a program accessible to only military voters just one week before the deadline for requesting an absentee ballot in many states. Moreover, this effort has even failed to pass muster in states eager to find a way to facilitate participation in the electoral process. Twenty-three states have refused to participate in the MyBallot.mil program, citing security and other concerns.

#### **Request for Investigation**

We recognize that it is challenging to establish a system that takes into account local election requirements and procedures. Nonetheless, the Department's recent actions leave us greatly concerned that it may not be living up to its obligations concerning overseas voting. Just weeks before our next presidential election, members of the military and civilians living overseas still find themselves in a situation in which it is difficult to be fully confident that their vote will indeed be counted.

We therefore ask that GAO investigate how DOD has handled its duties to facilitate voting by Americans abroad. While selected incidents of DOD conduct are detailed in this

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<sup>13</sup> *Hurdles Remain for American Voters Who Live Overseas*, *supra* note 7.

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letter, we request that GAO address the full scope of the Department's actions in this area. We ask for this investigation to help ensure that all Americans living abroad, both military and civilian, can participate in our democratic process with a degree of confidence that their vote will indeed be counted.

Sincerely,



Henry A. Waxman  
Ranking Minority Member  
Committee on Government Reform



Carolyn B. Maloney  
Member of Congress