

United States Senate

WASHINGTON, DC 20510-4305

October 19, 2012

The Honorable Leon E. Panetta
Secretary of Defense
1000 Defense Pentagon
Washington, DC 20301-1000

Dear Secretary Panetta:

I write to express concern over whether the Department of Defense (DoD) is prepared to fulfill its statutory obligations this election season as to the collection and delivery of the completed absentee ballots of our overseas military service members.

As you know, Congress enacted the 2009 Military and Overseas Voter Empowerment Act (“MOVE Act”) to end the longstanding disenfranchisement of our military service members, particularly those overseas. Prior to the MOVE Act, the absentee voting process for overseas service members had been hamstrung by slow, antiquated, and often dysfunctional delivery methods, which for many resulted in their votes not being counted. As an author of the MOVE Act, I sought to guarantee that the votes of our overseas service members would be counted, and also to force DoD to play a more hands-on role in the absentee voting process.

In order to simplify the voting process for overseas service members, I wrote a provision into the MOVE Act (codified at 42 USC § 1973ff-2a) that requires DoD to collect their completed absentee ballots seven days prior to Election Day and then deliver them via express-mail back to local election officials in the U.S. in time to be counted. However, with Election Day 2012 rapidly approaching, it has come to my attention that DoD is not fully complying with either part of this provision.

First, DoD has clear obligations regarding the express-mail delivery of completed ballots, yet it failed to meet them in the last election. For nearly one in 10 overseas service members who tried to vote in 2010 using this system, their completed ballots did not make it home in time to be counted, as required by federal law. There can be little doubt that those service members were disenfranchised. I am sure you find that prospect just as troubling as I do, and I have major concerns that this failure may well be repeated this year.

After the 2010 election, DoD’s Military Postal Service Agency (MPSA) documented widespread problems with the delivery of absentee military ballots from overseas. The MPSA specifically reviewed ballot handling procedures and MOVE Act compliance, and its report revealed that:

- The completed ballots of eight percent (2,075 total) of overseas service members who express-mailed them were not delivered to election officials on time, and the delivery of 118 forward-deployed service members’ ballots took at least 20 days (13 days longer than permitted).
- Nearly 4,000 overseas service members who tried to express-mail their completed ballots were unable to track them to confirm their successful delivery to election officials.
- In a survey of military post office users, 11 percent said their postal locations had not been given all the supplies and equipment necessary to support the 2010 election.

- The Army Inspector General, in an assessment of the military postal system conducted prior to the 2010 elections, found clear deficiencies with DoD's handling of voting materials. It concluded that mail clerks had not been properly trained to conduct mailroom operations, and that in some cases absentee ballots had been treated as low-priority bulk mail instead of official election mail.

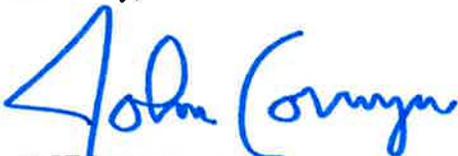
Unfortunately, I have no indication that these problems have been solved since the 2010 election, especially given the significant problems reported at DoD's Federal Voting Assistance Program (FVAP) over the last few months.

Second, I am disappointed that DoD is shirking its ballot collection obligations under the MOVE Act. Many overseas service members are forward-deployed in units with high operational tempos and in austere environments, both of which make it harder for them to hand-carry their completed ballots to a post office or postal clerk by the deadline. Therefore, Congress intended for DoD to play a more active role in the absentee voting process by collecting these completed ballots from these service members. However, an email sent by FVAP to military service members on October 4 shows that DoD is not doing its duty. It reads: "Go to your overseas military post office or postal clerk and use the Label 11-DOD on your absentee ballot and mail it." A similar instruction appears on widely used MPSA posters, instructing service members to carry out the express-mail process on their own, including obtaining and affixing the express-mail tracking sticker. To be clear, that is not what the MOVE Act required. The law assigned these responsibilities to DoD. Under no circumstances should DoD be shifting its obligations onto the shoulders of overseas service members, many of which are serving in harm's way.

We have a duty to our men and women in uniform to ensure they have a voice in choosing their elected leaders. The right to vote is one of the most basic and fundamental rights enjoyed by American citizens, and one which our military service members bravely defend, sometimes at great personal cost. We must do whatever it takes to ensure their votes count.

I have greatly appreciated your recent personal efforts to help safeguard the voting rights of our service members and their families, as well as your leadership in encouraging our military service members to exercise their right to vote. I ask that you take a similar interest in ensuring these additional problems are addressed. Thank you for your faithful service to our nation and your strong support of our men and women in uniform and their families.

Sincerely,



JOHN CORNYN
United States Senator