No. 13-14065-EE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff-Appellee

v.

THE STATE OF GEORGIA; and
BRIAN P. KEMP, SECRETARY OF STATE OF GEORGIA,
in his official capacity,

Defendants-Appellants

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

OPPOSITION TO DEFENDANTS'/APPELLANTS' MOTION TO STAY DISTRICT COURT'S JULY 11, 2013 AND AUGUST 21, 2013 ORDERS

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Case No. 13-14065-EE
United States v. *The State of Georgia, et al.*

CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

In accordance with Federal Rule of Appellate Procedure 26.1 and Eleventh Circuit Rule 26.1-1, Appellee United States states that the Certificate of Interested Persons and Corporate Disclosure Statement that Appellants filed with their Motion to Stay District Court's July 11, 2013 and August 21, 2013 Orders Granting Permanent Injunctive Relief Pending Appeal is complete.

s/ Jodi B. Danis
JODI B. DANIS
Attorney

Date: November 21, 2013

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The Court should deny Defendants'/Appellants' (Georgia) Motion to Stay. As the district court held (Doc. 57)[1] Georgia is unlikely to succeed on the merits of its appeal and fails to demonstrate it will suffer irreparable harm absent a stay.

[1] "Doc. __" refers to the number of the document recorded on the district court docket sheet.

BACKGROUND

This is a dispute over the provisions of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), 42 U.S.C. 1973ff *et seq.*, as amended by the Military and Overseas Voter Empowerment Act (Move Act), Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat 2190, 2318-2335 (2009), applicable to federal runoff elections. The United States contends, and the district court held, that the 45-day deadline for transmitting absentee ballots to UOCAVA voters before "an election for Federal office" in 42 U.S.C. 1973ff-1(a)(8)(A) applies to federal runoff elections. Georgia contends, despite the plain language of that provision, that a subsequent provision imposing an additional requirement that States create a written plan for federal runoff elections, 42 U.S.C. 1973ff-1(a)(9), negates the 45-day deadline.

1. Statement Of Facts

There are no material disputed facts in this case. UOCAVA guarantees military and overseas voters the right "to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office." 42 U.S.C. 1973ff-1(a)(1). In 2009, Congress amended UOCAVA to ensure that States transmit absentee ballots to UOCAVA voters no later than 45 days before "an election for Federal office," if ballots were requested by that deadline, unless the State requests and receives a waiver based on the hardship

exemption set out in § 1973ff-1(g). See Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat 2190, 2318-2335 (2009); 42 U.S.C. 1973ff-1(a)(8) and (g). That amendment, 42 U.S.C. 1973ff-1(a)(8)(A), is at issue here.

Georgia requires a runoff election to be held 21 days after any regular or special federal primary election, or 28 days after any regular or special federal general election, in which a candidate failed to receive a majority of the votes cast. See Ga. Code Ann. § 21-2-501(a) (West 2012). Georgia also requires only that absentee ballots be transmitted to UOCAVA voters "as soon as possible prior to a runoff," Ga. Code Ann. § 21-2-384(a)(2) (West 2012), rather than 45 days in advance.

As required by 42 U.S.C. 1973ff-1(a)(9), Georgia has a written plan for federal runoff elections. Doc. 2-2 at Exh. A. Georgia's plan for UOCAVA voters who elect mail delivery is to send a blank State Write-in Absentee Ballot (SWAB) to the voter along with the official ballot for the initial election. Doc. 2-2 at Exh. A. Georgia's mailing containing the SWAB explains to voters that, if there is a runoff, they can electronically access the Secretary of State's website to find out who the runoff candidates are and to print the official ballot after it has been prepared and made available; the SWABs, of course, do not contain runoff candidate names because the names are not yet available when the SWAB is printed. Doc. 24-4, 24-5, 24-6.

Georgia's Secretary of State must receive certified election results from county election officials by 5:00 p.m. the Monday after the election, Ga. Code Ann. § 21-2-493(k) (West 2011), and "generally" certifies the official results the next day. Doc. 28-1, at 11-12 ¶ 19. The Secretary posts unofficial results on the website a day after an election; certified results might not be posted on the website until eight days after the election. Thus, under current Georgia law, there may be only 14 days between the certification of primary election results and the primary election runoff, or only 21 days between the certification of general election results and a general runoff election.

Georgia accepts the SWAB, a Federal Write-in Absentee Ballot (FWAB),[2] or an official absentee ballot from UOCAVA voters for runoff elections. Voted ballots may be returned only by mail. Runoff absentee ballots from UOCAVA voters must be postmarked by the date of the election and received within the three-day period after the runoff to be counted in the certified election results. Ga. Code Ann. § 21-2-386(a)(1)(G) (West 2012).

2. Course Of Proceedings

a. The United States' June 27, 2012, Complaint alleged that Georgia's absentee voting scheme for runoff elections violates the rights of UOCAVA voters

[2] A FWAB is similar to a SWAB, but does not include some of the information that is included on a SWAB (*e.g.*, the offices and mailing address for ballot return).

set out in 42 U.S.C. 1973ff-1(a)(8); the Complaint sought a declaration that Georgia's inability, under state law, to transmit absentee ballots in future federal runoff elections to qualified voters who requested them at least 45 days in advance of such election violates UOCAVA. On July 5, 2012, the district court granted the United States' Motion for Temporary Restraining Order and Preliminary Injunction, requiring express mail service and ballot receipt deadline extensions in certain districts for the upcoming August 21, 2012, federal primary runoff. Doc. 17, at 25-27.

On April 30, 2013, the court granted summary judgment for the United States. Doc. 33. The court held that the plain language of 42 U.S.C. 1973ff-1(a)(8) explicitly refers to "'an election' for Federal office," thereby encompassing all types of federal elections, including runoffs. Doc. 33, at 14. The court also held that Georgia's transmittal of a SWAB, which the court had earlier equated to a "blank sheet of paper" intended as only a backup measure (Doc. 10, at 12, 16), did not meet UOCAVA's 45-day deadline because it was a partial, deficient ballot that lacked, *inter alia*, certified candidate names. Doc. 33, at 19-21. After Georgia failed to submit a proposed UOCAVA-compliant election schedule, the court issued a permanent injunction establishing a new UOCAVA-compliant federal election calendar for the State. Doc. 38, at 8.

b. On July 31, 2013, Georgia filed a Motion to Stay Permanent Injunction Pending Appeal with the district court (Doc. 41), which the court denied on October 16, 2013. Doc. 57. The court "adhere[d] to [its original] statutory construction analysis" to conclude that Georgia had not demonstrated a substantial likelihood of success on the merits. Doc. 57, at 6. The court reiterated that the plain statutory language and applicable canons of statutory construction compelled its conclusion that the reference to "an election" in § 1973ff-1(a)(8)(A) "collectively refer[s] to all four types of federal elections," and the phrase "an election" was not "intended to exclude runoff elections from the reach" of the 45-day deadline in Subpart (a)(8)(A). Doc. 57, at 7. The district court alternatively held that, "even if the Court were to accept Defendants' argument that *only* § 1973ff-1(a)(9) governs runoff elections," the ballot transit time afforded by Georgia's runoff election procedures was much too short to meet the "sufficient time" to vote language of § 1973ff-1(a)(9). Doc. 57, at 7, 10.

The court rejected Georgia's allegations of irreparable harm, citing: 1) the 11-month window the court already had afforded Georgia to prepare for its next election cycle; 2) the relative rarity of federal general runoff elections that could potentially affect the timely seating of newly elected legislators; 3) Georgia's representations that its General Assembly is likely to amend Georgia law; and 4)

the substantial public interest in not disenfranchising Georgia's UOCAVA voters. Doc. 57, at 13-17.

ARGUMENT

This Court should deny a stay because Georgia has not demonstrated a substantial likelihood of success on the merits and would suffer no irreparable harm absent a stay. A stay would, however, irreparably harm UOCAVA voters and the public interest.

A. Legal Standard

As the party requesting the stay, Georgia bears the burden of proof. *Nken* v. *Holder*, 556 U.S. 418, 433-34, 129 S. Ct. 1749, 1761 (2009). Granting or denying a stay is "an exercise of judicial discretion" that is highly "dependent upon the circumstances of the particular case." *Id.*, at 433, 1760 (citations omitted). This Court's discretion is guided by four factors:

> (1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.

Id. at 434, 1761 (quoting *Hilton* v. *Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 2119 (1987)).

The likelihood of success on the merits, and irreparable harm to the applicant absent a stay, are "the most critical" factors. *Nken*, 556 U.S. at 434, 129

S. Ct. at 1761. Georgia must demonstrate a "strong," rather than just "better than negligible," likelihood of success to receive a stay. See *ibid.* Here, Georgia has not shown that its chance of succeeding on the merits is anything more than a mere "possibility." *Ibid.* (citation omitted).

B. The Plain Language Of § 1973ff-1(a)(8) Makes Georgia's Success Unlikely

In considering the merits of this appeal, this Court reviews the district court's interpretation of § 1973ff-1(a)(8) *de novo*. *United States* v. *McQueen*, 727 F.3d 1144, 1141 (11th Cir. 2013). This Court should "begin the process of legislative interpretation" and "should end it as well" with the text of Subpart (a)(8). *Harris* v. *Garner*, 216 F.3d 970, 972 (11th Cir. 2000) (en banc). The plain language of Subpart (a)(8) confirms that the district court correctly held that the 45-day requirement of Subpart (a)(8) encompasses runoff elections.

The statutory text is straightforward: States must "transmit a validly requested absentee ballot" to a UOCAVA voter "not later than 45 days before the election" if the ballot request was received at least 45 days before "*an election for Federal office*." 42 U.S.C. 1973ff-1(a)(8)(A) (emphasis added). A federal runoff election is indisputably "an election for Federal office," and thus plainly is covered by § 1973ff-a(8)(A). Although other subparts of § 1973ff-1(a) explicitly apply only to particular types of federal elections, see, *e.g.*, 42 U.S.C. 1973ff-1(c) (referring to a "general election"), Subpart (a)(8) neither limits itself to nor

excludes any of the specific types of federal elections enumerated elsewhere in the statute – it applies to *any* federal election. The district court's proper plain language construction of the phrase "an election for federal office" to include all federal elections (except those for which a State has received a hardship exemption) comports with well-established canons of statutory construction. See *Pugliese* v. *Pukka Dev., Inc.*, 550 F.3d 1299, 1303-1304 (11th Cir. 2008) (interpreting the plain statutory language to avoid adding exemption language that Congress did not add); *Allstate Life Ins. Co.* v. *Miller*, 424 F.3d 1113, 1116 n.3 (11th Cir. 2005) (refusing to imply a statutory exemption beyond those the state legislature explicitly provided in an insurance incontestability statute).

The plain meaning of "an election for Federal office" in the text of § 1973ff-(a)(8)(A) comports with other proximate UOCAVA provisions. See *Adoptive Couple* v. *Baby Girl*, 133 S. Ct. 2552, 2563 (2013) (finding placement and meaning of adjacent provision significant in interpreting disputed provision). The meaning of the phrase "an election for Federal offense" is confirmed by examining the interplay between two other provisions of UOCAVA: 42 U.S.C. 1973ff-1(a)(7) and 1973ff–1(f). Subpart (a)(7) requires States to develop mail and electronic transmittal procedures for blank absentee ballots "with respect to general, special, primary *and runoff elections* for Federal office in accordance with subsection (f)" (emphasis added). The transmittal procedures of the cross-

referenced Subsection (f), like Subpart (a)(8), expressly apply to "an election for Federal Office." See Doc. 33, at 15. Thus, § 1973ff-1(a)(7) and its cross-reference to § 1973ff-1(f) confirm the unremarkable fact that when Congress employs the phrase "an election for Federal office" without qualification, it means all federal elections, including federal runoff elections. The "normal rule of statutory construction" is that "identical words used in different parts of the same act are intended to have the same meaning." *Gustafson* v. *Alloyd Co.*, 513 U.S. 561, 570, 115 S. Ct. 1061, 1067 (1995) (citation omitted). Accordingly, Subpart (a)(8)'s plain language encompasses runoffs.

Congress's use of inclusive language to refer to covered elections in Subparts (a)(7) and (8), compared to its use of specific language addressing only runoff elections in § 1973ff-1(a)(9), is presumed to be purposeful. See *Russello* v. *United States*, 464 U.S. 16, 23, 104 S. Ct. 296, 300 (1983). It does *not* logically follow that the specific inclusion of only runoff elections in Subpart (a)(9) excludes them from Subpart (a)(8); it rather means that the written plan requirement of Subpart (a)(9) is imposed, explicitly, only on runoff elections.

C. Even If § 1973ff-1(a)(9) Creates Ambiguity, Other Tools Of Statutory Interpretation Support The District Court's Conclusion

1. Because Georgia cannot demonstrate that UOCAVA is "inescapably ambiguous" with respect to the meaning of "an election for Federal office" in Subpart (a)(8), this Court need not consider federal administrative interpretations

or analyze legislative history. See *United States* v. *Veal*, 153 F.3d 1233, 1245 (11th Cir. 1998) (citation omitted); *Pugliese*, 550 F.3d at 1304-1305. Even if this Court were to conclude, however, that Subpart (a)(9) creates an ambiguity about the applicability of Subpart (a)(8) to runoff elections, consulting those sources would confirm that Georgia still is unlikely to succeed on the merits of its defense.

First, the interpretation of the federal agency charged with administering UOCAVA supports the district court's conclusion that Subpart (a)(8) applies to federal runoff elections. The Federal Voting Assistance Program (FVAP) is the federal agency that administers UOCAVA. FVAP's guidance to all Chief State Election Officials specifies that the statutory requirement to transmit absentee ballots 45 days prior to "*any* election for Federal Office" includes runoff elections. See Doc. 25-7, Exh. E at App. A-1. FVAP's guidance specifically informs States that it is permissible for a State to seek a waiver of the 45-day deadline for "a primary run-off election" under the first of the three potentially applicable hardship exemption criterion: § 1973ff-1(g)(2)(B)(i). Doc. 25-7, Exh. E at App. A-3. The district court's analysis is consistent with FVAP's interpretation, which is entitled to deference. See, *e.g.*, *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 65 S. Ct. 161 (1944); *Pugliese*, 550 F.3d at 1304-1305 (deferring to a HUD letter and the United States' *amicus curiae* brief presenting HUD's interpretation of a statutory

exemption); *Durr* v. *Shinseki*, 638 F.3d 1342, 1348-1349 (11th Cir. 2001) (deferring to interpretations in VA's personnel handbook).

Second, legislative history reflecting Congress's intent in passing the MOVE Act supports applying Subpart (a)(8)(A) to all federal elections, including federal runoff elections. As in the statutory text, Congress discussed applying Subpart (a)(8)(A) to "an election for Federal office" or "a Federal election" without excluding any particular types of federal elections. See 156 Cong. Rec. S4514-S4519, S4516 (daily ed. May 27, 2010) (statement of Sen. Schumer) (attached hereto as Exh. 1). Indeed, the MOVE Act's legislative history leaves no doubt that Congress intended the adoption of the 45-day deadline to change an unacceptable status quo. See, *e.g.*, H.R. Rep. No. 288, 111th Cong., 1st Sess. 744 (2009) (stating that the MOVE Act generally would "require States to transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter at least 45 days before an election for [F]ederal office"); see also Exh. 1 at S4518 (describing Congress's adoption of the 45-day requirement because it provides sufficient time for UOCAVA voters to request, receive, and cast their ballots in time to be counted).

2. Subpart (a)(9) provides that if a State "declares or otherwise holds a runoff election for Federal office," it must "establish a written plan that provides that absentee ballots are made available" to UOCAVA voters "in [a] manner that

gives them sufficient time to vote in the runoff election." 42 U.S.C. 1973ff-1(a)(9). Georgia's argument that the language of Subpart (a)(9) excludes runoffs from Subpart (a)(8) strains the language and structure of UOCAVA by implausibly suggesting that merely because the written plan requirement of Subpart (a)(9) applies only to runoffs, Subpart (a)(9) necessarily supersedes the 45-day advance ballot transmittal requirement for "an election for Federal office" in § 1973ff-1(a)(8).

Georgia ignores the canon that when interpreting two statutory provisions, a court should interpret them in tandem by honoring both the plain meaning of broad language and Congressional intent, instead of finding conflict where it need not exist. See, *e.g.*, *United States* v. *Marion*, 562 F.3d 1330 (11th Cir. 2012). Interpreting Subpart (a)(8) to apply to all federal elections, including runoffs, does not create a conflict with Subpart (a)(9) or render any of its language superfluous. The requirement of "a written plan" that Subpart (a)(9) imposes for runoff elections expresses Congress's intent to guarantee UOCAVA compliance planning for the more difficult and unusual circumstances of a runoff. The infrequency of runoff elections for federal office, and the relatively few States with majority voting rules requiring such runoffs, makes it understandable for Congress to require advance planning regarding UOCAVA compliance for runoff elections. A State must establish a written plan to demonstrate *how* it will conduct runoff

elections and ensure compliance with the 45-day deadline imposed in Subpart (a)(8)(A), precisely because such compliance may pose special challenges in the case of runoff elections.

Contrary to Georgia's suggestion, there is no evidence that Congress intended the phrase "sufficient time" in Subpart (a)(9) to supersede the specific 45-day advance transmittal requirement of Subpart (a)(8) for runoff elections. There is no inherent conflict between the 45-day deadline in Subpart (a)(8)(A) and the written plan requirements in Subpart (a)(9). Absent a hardship exemption, the reference to "sufficient time" in Subpart (a)(9) simply refers to the 45-day deadline. A period of less than 45 days can qualify as "sufficient time" only if the State has pursued and received a waiver of the (a)(8)(A) deadline under the exemption provisions in § 1973ff-1(g).[3] This interpretation of Subparts (a)(8), (a)(9) and Subsection (g) promotes a harmonious reading of all of the pertinent provisions without creating conflict or rendering any language superfluous.

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[3] Section 1973ff-1(g)(1) states: "If the chief State election official determines that the State is unable to meet the requirement under subsection (a)(8)(A) with respect to an election for Federal office due to an undue hardship described in paragraph (2)(B), the chief State election official shall request that the Presidential designee grant a waiver to the State of the application of such subsection." To receive a waiver, the Presidential designee must conclude that a State's procedures must allow UOCAVA voters "sufficient time to receive absentee ballots they have requested and submit marked absentee ballots to the appropriate State election official in time to have that ballot counted in the election for Federal office." 42 U.S.C. 1973ff-1(g)(2)(A).

3. Providing insufficient time for UOCAVA voters to meaningfully participate in elections is a problem affecting runoff elections as much as any other type. It thus would have been counterintuitive for Congress to have mandated more lenient deadlines, with fewer assurances of full election participation by UOCAVA voters, for runoff elections than for initial elections. One thing is clear, however: Georgia's current system clearly does not provide anything near "sufficient time" for UOCAVA voters to fully participate in federal runoff elections. See p. 4, *supra*; see also Exh. 1.

4. Applying Subpart (a)(8)(A) to runoff elections effectuates the canon that liberally construes statutes providing benefits to uniformed service members in their favor. See, *e.g.*, *Henderson ex rel. Henderson* v. *Shinseki*, 131 S. Ct. 1197, 1206 (2011); see also, *King* v. *Saint Vincent's Hosp.*, 502 U.S. 215, 220-221 & n.9, 112 S. Ct. 570, 573-574 & n.9 (1991) (liberally construing a statute in favor of military service members to resolve a dispute over the time period for statutory protection). While some UOCAVA voters are not military service members, this canon still applies because a significant number of military service members are among the intended beneficiaries of the MOVE Act. See Exh. 1. Interpreting Subpart (a)(8)(A) to include runoff elections, thus would be consistent with Congress's "solicitude" towards uniformed service members and Congress's

indisputable goal of fully enfranchising them and overseas citizens. See *Henderson*, 131 S. Ct. at 1205.

D. Georgia's SWAB Transmittal Does Not Comply With § 1973ff-1(a)(8)

Neither UOCAVA's text nor legislative history supports Georgia's alternate argument that mailing a blank SWAB to UOCAVA voters when it sends them the initial election absentee ballot satisfies Georgia's § 1973ff-1(a)(8) obligations. See, *e.g.*, Exh. 1 at S4519; Doc. 33, at 20-22. Georgia is essentially using a SWAB – an emergency back-up measure similar to a FWAB – in order to maintain a state law that prevents its compliance with the 45-day rule for absentee runoff ballots. A SWAB that does not list the certified candidates for a runoff election simply does not comply with UOCAVA, particularly when critical candidate information is not available before the election to UOCAVA voters who receive election materials by mail and often may lack internet access. Cf. *Cunningham*, 2009 WL 3350028, at *8 (holding that a FWAB fails to comply with UOCAVA).

E. Georgia's Mere Possibility Of Injury Is Insufficient To Warrant A Stay

The "mere possibility" of irreparable injury to Georgia "fails to satisfy the second factor" this Court must consider. *Nken*, 556 U.S. at 434-435, 129 S. Ct. at 1761. Georgia's alleged irreparable harm is avoidable, unlikely, or of minimal consequence.

This Court should afford no weight to Georgia's contention that it would need additional personnel, and bear increased administrative costs, from potentially holding additional and separate federal and state elections. As the district court held, Georgia has provided no specific evidence to support or quantify those claims. See Doc. 57, at 13. Moreover, any new costs are avoidable, rather than irreparable. Not only are runoff elections for federal office rare, but Georgia could limit its costs by deciding to harmonize its runoff election calendar for state elected offices with a UOCAVA-compliant federal runoff election calendar. Indeed, Georgia represents that it "expect[s]" that its General Assembly shortly will do just that. See Doc. 45, at 7-8. Although Georgia contends that holding separate sets of state and federal runoff elections during the same electoral period would be confusing to the public, it also has indicated that it can and will minimize such alleged harm through a public information campaign. Doc. 57, at 14.

Any alleged injury from a potentially late swearing-in of a newly elected Georgia federal legislator after January 3rd also is avoidable,[4] and such an event also is likely to be very rare. Given Georgia's current election regime, the district court correctly concluded that the potential harm from a slight delay in seating a

[4] Among other possibilities, Georgia could, as its Secretary of State has suggested, adopt a plurality threshold for election victories that would render runoffs unnecessary. See *Final Report and Recommendations of the Georgia Secretary of State's Elections Advisory Council*, at 8, available at http://www.sos.ga.gov/GAEAC/ (last visited Nov. 20, 2013).

newly elected federal legislator was an insufficient reason to stay its UOCAVA-compliant election calendar when those possible harms are balanced against the relative rarity of a federal general election runoff. Doc. 57, at 14-15.[5]

F. The Harm To The United States Merges With The Public Interest

The third and fourth prongs of the stay inquiry – substantial harm to the opposing party and consideration of where the public interest lies – merge when the government is the opposing party. *Nken*, 556 U.S. at 435, 129 S. Ct. at 1762. The fundamental right to vote is the most precious right in a free country. See *Wesberry* v. *Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 535 (1964). Moreover, members of the military who risk their lives for this country certainly should be able to vote for the legislators who may send them into danger. See Exh. 1 at S4516.

A stay would impose harms to the public interest that easily outweigh any combination of the potential, yet avoidable, harm to Georgia. See *United States* v. *Alabama*, 857 F. Supp. 2d 1236, 1242 (M.D. Ala. 2012). Disenfranchising UOCAVA voters and maintaining an election system that precludes their votes from being counted are the very types of irreparable harms that this Court has described as warranting injunctive relief. See *Siegel* v. *Lepore*, 234 F.3d 1163,

[5] Only one general election runoff has occurred in Georgia since 2002 (Senator Chambliss' election in 2008). See *Final Report*, n.4, *supra*.

1177 (11th Cir. 2000) (describing an inability to vote or have one's vote counted as warranting immediate injunctive relief).

CONCLUSION

The Court should deny Georgia's Motion to Stay the district court's injunction pending appeal.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on November 21, 2013, I electronically filed the foregoing OPPOSITION TO DEFENDANTS'/APPELLANTS' MOTION TO STAY DISTRICT COURT'S JULY 11, 2013 AND AUGUST 21, 2013 ORDERS with the Clerk of the Court for the United States Court of Appeals for the Eleventh Circuit by using the appellate CM/ECF system.

I also certify that all counsel of record are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Jodi B. Danis
JODI B. DANIS
Attorney

EXHIBIT 1

doors away and see if there is a sniper on the roof. I basically expect to be shot any day. . . . It's a war zone. . . . It's very frightening and it ruins your life".

Now, I recognize that there is a deep divide on the issue of reproductive freedom. And I recognize that there are many heartfelt feelings on both sides of the aisle and even within my own caucus. But, no matter which side of this debate you are on, we should all be able to agree that violence is never the answer.

So today I urge all my colleagues to join me in condemning the kind of senseless violence that led to the death of Dr. George Tiller.

NATIONAL CANCER RESEARCH MONTH

Mr. DODD. Mr. President, I rise today to recognize May as National Cancer Research Month. This year, nearly 1.5 million Americans will be diagnosed with cancer and more than 500,000 will die from the disease. Of course, when we talk about cancer, we are referring to more than 200 diseases but taken together, cancer remains the leading cause of death for Americans under age 85, and the second leading cause of death overall.

In my capacity as a member of the Senate Committee on Health, Education, Labor, and Pensions, I have spent my career fighting alongside my colleagues to provide increased funding for medical research to ensure that organizations like the National Institutes of Health have the ability to continue their critical lifesaving work. It remains my hope that, as the NIH continues to provide us with new and innovative research and treatments, we will continue to provide them with the resources they need.

As a person directly affected by cancer, I believe we must continue to strengthen our Nation's commitment to this lifesaving research for the health and well-being of all Americans. The nation's investment in cancer research is having a remarkable impact. Discoveries and developments in prevention, early detection, and more effective treatments have helped to find cures for many types of cancers, and have converted others into manageable chronic conditions. The 5-year survival rate for all cancers has improved over the past 30 years to more than 65 per cent, and advances in cancer research have had significant implications for the treatment of other costly diseases such as diabetes, heart disease, Alzheimer's, HIV/AIDS and macular degeneration.

I take this opportunity not only to mention the value and importance of cancer research, but also to remember the people in my life who have been touched by this disease. Last year alone, we lost not only my sister Martha, but my dear friend Ted Kennedy to aggressive forms of cancer. Like many of my constituents whose lives have been touched by cancer, I think of them every day—and their battles strengthen my resolve to fight for better treatment and more cures.

I want to thank every one of my constituents who have come to my office to meet with my staff and me about this disease. It is no secret that cancer touches the lives of more Americans than those who are just diagnosed with it—friends and family also face the difficulty of supporting their loved ones through these hard times. I know how much time, effort and resources they expend on these trips. Many of them are sick or in recovery, or taking care of very ill loved ones, yet they still find the time to come down and share their stories with us, and I thank them for it. Their stories, anecdotes and struggles give a face to the people all across the country whose lives are touched by this important research, and hearing about them help us to do our jobs better. We could not have gotten health care reform passed without their constant efforts and support.

In commemorating May as National Cancer Research Month, we recognize the importance of cancer research and the invaluable contributions made by scientists and clinicians across the U.S. who are working not only to overcome this devastating disease, but also to prevent it. I lend my support as a father of two girls, as a husband, and as a public servant to supporting those who struggle with this deadly disease and I urge my colleagues to join me and do the same.

MILITARY AND OVERSEAS VOTER EMPOWERMENT (MOVE) ACT OF 2009

Mr. SCHUMER. Mr. President, since becoming chairman of the Committee on Rules and Administration with jurisdiction over Federal elections, I have come to have a better appreciation for and deeper understanding of the obstacles and barriers that our military men and women serving abroad and at home and U.S. citizens living in foreign lands encounter when they try to vote.

As I explained at a Rules Committee hearing held in May of 2009, every couple of years around election time, there is a great push to improve military and overseas voting. But as soon as the election is over, Congress all too often forgets the plight of these voters.

But last year, Congress delivered. Our motive was simple—we wanted to break down the barriers to voting for our soldiers, sailors, and citizens living overseas. On a bipartisan basis, we agreed that it was unacceptable that in the age of global communications, many active military, their families, and thousands of other Americans living, working, and volunteering in foreign countries cannot cast a ballot at home while they are serving or living overseas. For our military, what especially moved us to act was the fact that they can fight and put their life on the line for their country, but they can't choose their next commander-in-chief. This shouldn't happen—not in the United States of America where elections are the bedrock of our democracy.

With the 2010 elections less than 7 months away, a new law is on the books. The provisions of the Military and Overseas Voter Empowerment Act, MOVE Act, of 2009 were incorporated in Public Law 111-84, the National Defense Authorization Act of 2010. This law will make it easier for members of our Armed Forces and citizens living abroad to receive accurate, timely election information and the resources and logistical support to register and vote and have that vote count.

Mr. President, a legislative history of the MOVE Act is as follows:

BACKGROUND AND PURPOSE OF THE MOVE ACT

American citizens believe voting is one of the most treasured of our liberties and a right to be defended at any cost. It is therefore unacceptable that our military men and women serving abroad and at home, who put their lives on the line every day to defend this right, often face obstacles in exercising their right to vote.

Empirical evidence confirms that members of the military and citizens living overseas who have attempted to vote through the absentee balloting procedures that has been in place for the last 30 years were often unable to do so. The reasons were many, including insufficient information about military and overseas voting procedures, failure by States to send absentee ballots in time for military and overseas voters to cast them, and endemic bureaucratic obstacles that prevent these voters from having their votes counted. While the Uniformed and Overseas Citizens Absentee Voting Act, UOCAVA, enacted in 1986, created a Federal framework for both military and overseas citizens to vote it was clear that, in order to break down these barriers to voting, UOCAVA was in need of an overhaul.

A history of congressional efforts to aid military and overseas voters highlights the obstacles faced by these voters. In 1942, the first Federal law was enacted to help military members vote in Federal elections. The Soldier Voting Act of 1942 was the first law to guarantee Federal voting rights for servicemembers during wartime. It allowed servicemembers to vote in elections for Federal office without having to register and instituted the first iteration of the Federal Post Card Application for servicemembers to request an absentee ballot. Though this was a commendable first effort by Congress, the 1942 law's provisions only applied during a time of war, and barriers to voting remained. In 1951, President Truman commissioned a study from the American Political Science Association on the problem of military voting. Recognizing the difficulties faced by military members serving overseas during World War II and the Korean War in trying to vote, President Truman wrote a letter to Congress that called on our legislators to fix the problem. In response, Congress passed the Federal Voting Assistance Act, FVAA, in 1955 which recommended—but did not guarantee—absentee registration and voting for military members, Federal employees serving abroad, and members of service organizations affiliated with the military. In 1968, FVAA was amended to cover U.S. citizens temporarily living outside of the United States, thus increasing the number and scope of U.S. citizens that fell within the law's purview. In 1975, the Overseas Citizens

Voting Rights Act at last guaranteed military and overseas voters the right to register and vote by absentee procedures. In 1986, Congress enacted UOCAVA as the primary military and overseas voting law, incorporating the expansion of rights granted under prior Federal legislation and making several significant advances to improve military and overseas voting. UOCAVA has been the operational voting framework provided to military and overseas voters.

UOCAVA's main provisions placed several mandates on States. First, States must allow members of the uniformed services, their families, and citizens residing overseas to register and vote by absentee procedures for all elections for Federal office including all general, primary, special and runoff elections. Second, States are required under UOCAVA to accept and process all valid voter registration applications submitted by military and overseas voters—as long as the application is received no less than 30 days prior to an election. Third, UOCAVA created the Federal write-in absentee ballot, FWAB, a failsafe backup ballot for Federal general elections.

Congress has amended UOCAVA several times over the last 24 years. The 1998 amendments included certain reporting requirements on States to provide information on military and overseas voting participation; and the 2001 amendments required States to accept the Federal Post Card Application, FPCA, as a combined voter registration and absentee ballot request form, and gave voters the opportunity to request that the FPCA be a standing absentee ballot request for each subsequent Federal election in the voter's State that year. In 2002, the Help America Vote Act, HAVA, modified this provision to allow voters to automatically request an absentee ballot through the FPCA for the two subsequent regularly scheduled Federal election cycles after the election for which the FPCA was originally submitted. HAVA also added a number of substantive provisions to UOCAVA, including a provision to give voting assistance officers the time and resources to provide voting guidance and information to active duty military personnel, a mandate that the Secretary of each branch of the Armed Forces provide information to service personnel regarding the last date that an absentee ballot can reasonably be expected to arrive on time, and a requirement that States identify a single office for communication with UOCAVA voters. Finally, Congress amended UOCAVA in 2004 to allow military personnel to use the Federal write-in absentee ballot, or FWAB, from within the territorial United States.

Despite these improvements over the years, evidence revealed that significant barriers to voting continued for military and overseas citizens. Registration among military voters has been shown to be substantially lower than among other voting-eligible U.S. citizens. According to testimony submitted by hearing witnesses, in 2006, the registration rate among military personnel was 64.86 percent compared to a registration rate of 83.8 percent for the general voting age population. According to one survey of military and overseas voters conducted after the 2008 election, of those overseas voters who wanted to vote but were unable to do so, over one-third—34 percent—could not vote because of problems in the registration process. The same survey found that even among experienced overseas voters, nearly one-quarter—23.7 percent—experienced problems during the registration process. Military and overseas voters have had to deal with a lack of information about registration procedures and a slow, cumbersome registration process that often turns into the first roadblock to voting.

Military and overseas voters also have trouble even when they have been able to properly register. The Congressional Research Service, CRS, found that during the 2008 election military personnel and overseas citizens hailing from the seven States with the highest number of deployed soldiers requested 441,000 absentee ballots. Of these, 98,633 were never received by local election officials. Further, survey data shows that two out of every five military and overseas voters, 39 percent—who requested an absentee ballot in 2008 received it from local election officials in the second half of October or later—much too late for a ballot to be voted and mailed back in time to be counted on election day. Sending absentee ballots too late to have the opportunity to actually vote is an unacceptable situation for military and overseas Americans.

Finally, some States reject ballots from military and overseas voters for reasons unrelated to voter eligibility, including unnecessary notarization requirements and criteria such as the paper weight of the ballot or ballot envelope. As many as 13,500 ballots were rejected from military and overseas voters from the seven States with the greatest number of troops deployed overseas.

These numbers are totally unacceptable. These barriers effectuate rampant disenfranchisement among our military and overseas voters. Congress has a compelling interest to protect the voting rights of American citizens, and it is especially incumbent upon Congress to act when those very individuals who are sworn to defend that freedom are unable to exercise their right to vote.

The need for sweeping improvement was clear. The Military and Overseas Voter Empowerment Act is a complete renovation of UOCAVA that brings it into the twenty-first century and streamlines the process of absentee voting for military and overseas voters through a series of common sense, straightforward fixes.

First, it allows military and overseas voters to request, and when so requested, requires States to send, registration materials, absentee ballot request forms, and blank absentee ballots electronically. It ensures that military and overseas voters have at least 45 days to receive and complete their absentee ballots and return them to election officials. The legislation also requires that absentee ballots from overseas military personnel be sent through expedited mail procedures, making it faster and easier to send voted ballots back to local election officials. In addition, it prevents election officials from rejecting overseas absentee ballots for reasons not related to voter eligibility, like paper weight and notarization requirements.

Second, the MOVE Act expands accessibility and availability of voting resources for military and overseas voters. It shores up the Federal Voting Assistance Program, or FVAP, an organization within the Department of Defense, DOD. Under the provisions of MOVE, FVAP will make a number of improvements to its voter education efforts for our military and other Americans living and working abroad and serve as the central administrative office for carrying out the Federal responsibilities under UOCAVA and MOVE. It also increases the usability and accessibility of the FWAB. This failsafe ballot allows military and overseas voters to vote even when they face a situation where they don't receive a State-issued ballot in time. In addition to all these improvements, the legislation advances voter registration for our military by directing each of the Secretaries of the military departments to designate offices in military installations where soldiers and their families can register to vote, update their registration information, and request an absentee ballot.

The MOVE Act also aims to secure future voting rights for military and overseas voters. It increases accountability for future elections by directing the Department of Defense to regularly report to Congress on their activities for implementing the programs and requirements under MOVE, including information on ballot delivery success rates. It also authorizes the Defense Department to create a pilot program testing new technologies for the future benefit of military and overseas voters.

The enactment of the provisions of the MOVE Act brings to an end a system that could ever allow a quarter of ballots requested by U.S. troops to go missing. It instead aims to ensure that every single military and overseas vote be counted.

COMMITTEE HEARING AND CONSIDERATION AT MARKUP

The Committee on Rules and Administration held a hearing on May 13, 2009, which I chaired entitled "Hearing on Problems for Military and Overseas Voters: Why Many Soldiers and Their Families Can't Vote." The first panel consisted of one witness, Gail McGinn, Acting Under Secretary for Personnel and Readiness for the Department of Defense. Testifying on the second panel were Patricia Hollarn, board member of the Overseas Vote Foundation and former supervisor of elections in Okaloosa County, FL; Donald Palmer, director of the Division of Elections at the Florida Department of State; LTC Joseph DeCaro, active duty member of the U.S. Air Force, on his own behalf; Eric Eversole, former attorney at the Department of Justice Civil Rights Division, Voting Rights Section, adviser to the McCain-Palin campaign, and former member of the Navy's Judge Advocate General Corps from 1999–2001; and Robert Carey, executive director of the National Defense Committee.

The hearing focused on the reasons why so many military and overseas voters find it difficult or impossible to effectively cast their ballots, with special attention paid to recommendations from the witnesses who possess extensive experience with the military and overseas absentee voting process. The hearing opened with a discussion of the preliminary results from a study of military and overseas voting in 2008 conducted by the Congressional Research Service. The findings showed that in several of the largest military voting States, up to 27 percent of the ballots requested by military and overseas voters were not counted for one reason or another.

Letters from soldiers serving abroad who wanted to cast ballots in 2008 but were unable to do so were shared. One letter from a soldier in Alaska concisely summarized the problem underscored by the hearing: "I hate that because of my military service overseas, I was precluded from voting."

Gail McGinn, Acting Under Secretary for Personnel and Readiness at the Department of Defense, testified in detail about the logistical and administrative challenges facing military and overseas voters. Ms. McGinn identified time, distance, and mobility as the chief logistical barriers to these voters. She said, "Our legislative initiatives for states and territories to improve ballot transit time are, first, provide at least 45 days between the ballot mailing date and the date that ballots are due; give state chief election officials the authority to alter elections procedures in emergency situations; provide a state write-in absentee ballot to be sent out 90 to 180 days before all elections; and expand the use of electronic transmission alternatives for voting material." Ms. McGinn further pointed out that 23 States do not provide the minimum of a 45-day round trip for military and overseas absentee ballots. Patricia Hollarn, board member of the Overseas Vote Foundation and

former supervisor of elections in Okaloosa County, FL, testified about her personal experience with local election officials who, she said, had a lot of confusion about the proper absentee balloting procedures they needed to provide for overseas citizens and military personnel. She echoed Ms. McGinn in recommending that States and local jurisdictions provide a minimum of 45 days for absentee ballots to be delivered to overseas voters, completed, and returned before the state's deadline. She also emphasized the logistical challenge facing the U.S. Postal Service and military mail service with respect to the speedy delivery of overseas ballots.

Donald Palmer, director of the Division of Elections for the Florida Department of State, testified about Florida's experience serving its military and overseas voters. Mr. Palmer said that providing 45 days for ballot transmission and delivery, as Florida does, is "prudent" and "absolutely necessary, when relying solely on the mail service." Mr. Palmer also discussed Florida's experience using technology, including e-mail, fax, and the Internet, to communicate with military and overseas voters and transmit balloting materials to and from Americans abroad. Mr. Palmer testified about an invitation from the Department of Defense for Secretaries of State to travel to the Middle East and see firsthand how soldiers receive their absentee ballots. Florida Secretary of State Kurt Browning relayed to Mr. Palmer that soldiers abroad many times do not have access to fax machines and often use e-mail as a primary source of communication and expressed their desire to be able to use email or the internet to transmit balloting materials to local election officials. Mr. Palmer also detailed pilot programs in Florida which have used new technologies to facilitate ballot transmission from abroad. He also described Florida's efforts to work with the U.S. Postal Service to reduce error rates in ballot delivery and to use intelligent code technology to track absentee ballots while in the Continental United States.

United States Air Force LTC Joseph DeCaro, testifying on his own behalf, described his personal experiences with absentee voting while serving abroad in 2004. His experience illustrates the burdens facing uniformed servicemembers overseas who want to vote:

Every moment I spent researching and coordinating with state-side resources to be able to cast my ballot was against any personal time off. The mission is and always must be the main focus. Being deployed is difficult enough as it is . . . I think every American should do what they can to cast their ballot and make their voice heard. As with many other citizens, I will continue to do this, but there should be a better way in which [service personnel can] cast their ballot while deployed.

Lieutenant Colonel DeCaro also lamented that he had no way of knowing whether the ballot he mailed to his local election office would ever reach its destination.

Eric Eversole, former attorney at the Department of Justice Civil Rights Division, Voting Rights Section, began his testimony by arguing that "when it comes to the military members' right to vote, we seem to forget their sacrifices and we deny them the very voting rights that we ask them to defend." He cited statistics which showed that only 26 percent of Florida's deployed servicemembers were able to successfully request an absentee ballot in 2008. He also echoed prior testimony that States should mail out absentee ballots to military and overseas voters at least 45 days before the local deadline to have the ballot count. Mr. Eversole testified about the need for improvements in the Federal Voting Assistance Program. Mr. Eversole strongly advocated for military personnel to receive appropriate voting information and voter registration materials when they move or deploy to a new installation or port. In response to a question I asked, Mr. Eversole also testified that certain offices at the Department of Defense should be designed as voter registration agencies under the National Voter Registration Act.

Robert Carey, executive director of the National Defense Committee, testified about his own experience taking a leave of absence from his duty as a member of the U.S. Navy Reserves and flying back to New York City at his own expense in order to vote in the 2004 election. He cited research showing that only 26 percent of the ballots requested by overseas soldiers in 2006 were successfully cast. Mr. Carey emphasized that insufficient time was the chief reason for these statistics, arguing that States too often send out ballots too late for military voters to complete and return them in time to be counted. He pointed to a study conducted by the Pew Center on the States, Pew, which found that 23 States do not provide enough time for military and overseas voters to successfully cast their ballots. Mr. Carey also recommended that ballots be sent out at least 60 days before they were due.

Several organizations submitted statements for the hearing record. Pew submitted a copy of its 2009 study of military and overseas voting, No Time to Vote, for the committee record. In its accompanying letter, Pew highlighted several recommendations for reform from the study, including "sending out overseas absentee ballots sooner, eliminating notary and witness requirements and harnessing technology to allow for the electronic transmission of ballots and election materials to voters overseas."

The Overseas Vote Foundation, OVF, submitted a copy of its 2008 post-election survey for the record. The survey included data obtained from over 24,000 overseas voters and over 1,000 local election officials. Among OVF's key findings was that more than half, 52 percent, of those overseas military voters who tried but could not vote were unable to because their ballots were late or did not arrive. OVF also found that despite concerted efforts, less than half of UOCAVA voters were aware of the Federal write-in absentee ballot.

Democrats Abroad submitted a statement for the record emphasizing the difficulties for military and overseas voters stemming from the patchwork of varied State and local regulations, a lack of awareness of the Federal write-in absentee ballot, and general inability to effectively communicate with local election officials from abroad.

Tom Tarantino, legislative associate with Iraq and Afghanistan Veterans of America, submitted a statement for the record including testimony about his own experience as a voting assistance officer, citing the lack of sufficient training about how to effectively educate soldiers about absentee balloting procedures. Mr. Tarantino recommended improving the voting assistance officer program and suggested that the Department of Defense be required to ensure safe and timely passage of military ballots to their home districts.

The Federation of American Women's Clubs Overseas submitted a statement for the record in which it recommended that States send overseas absentee ballots at least 45 days before the deadline and that voter materials, including ballots, not be rejected for reasons unrelated to voter eligibility.

Everyone Counts submitted a "white paper" for the record comparing the effectiveness of various voting technologies for military and overseas voters.

Alex Yasinac, dean of the School of Information and Computer Sciences at the University of South Alabama, submitted a statement for the record analyzing various technological solutions to improve overseas absentee voting. Dr. Yasinac suggested the creation of a technological pilot program for overseas voters, including the use of virtual private networks, cryptographic voting systems, and document delivery upload systems to ensure secure electronic transmission of balloting materials.

INTRODUCTION OF THE BILL

I introduced S. 1415, the MOVE Act of 2009, on July 8, 2009, and was joined by Senators Saxby Chambliss and Ben Nelson as original cosponsors. After the bill's introduction, 56 additional Senators joined as cosponsors. The bill was referred to the Senate Committee on Rules and Administration.

COMMITTEE CONSIDERATION AT MARKUP

S. 1415 was considered by the Senate Rules Committee at a markup held on July 15, 2009. The committee adopted three amendments which I submitted on behalf of Senator John Cornyn, who had introduced separate legislation on improving military voting that was pending at the time in the Rules Committee. Senator Cornyn joined in this endeavor by contributing his knowledge and expertise on military voting to the MOVE Act. Senator Robert Bennett, ranking member of the Rules Committee, introduced an amendment with several provisions intent on improving the effectiveness of the MOVE Act.

The first amendment, which I submitted on behalf of Senator Cornyn, strengthened the bill by ensuring that overseas military personnel can mail their marked absentee ballots to their local election offices with confidence that those ballots will be received and counted by directing the Presidential designee to work with the U.S. Postal Service to provide expedited delivery services for ballots that are collected before a prescribed deadline. The provision provides ample discretion for the Presidential designee to extend that deadline for collection of ballots, allowing the Presidential designee to permit a longer transit time for completed ballots to be delivered to local election officials. To ensure Department of Defense accountability under this section, the amendment directed the Presidential designee to submit reports to the relevant congressional committees to explain the procedures implemented to provide the expedited mail delivery and inform the committees of the number of military overseas ballots successfully and unsuccessfully delivered to local election offices in time. Finally, the amendment included language requiring the Presidential designee to ensure, to the greatest extent allowable, that the privacy of military servicemembers and security of their ballots are protected during the delivery process.

The second amendment, which Senator Cornyn and I worked on together, fortified the bill by expanding voter registration opportunities, services, and information for military and overseas voters. It also required the Department of Defense to provide voting information and an opportunity for servicemembers to register and update voting information during certain points in service and provided the Secretary of Defense flexibility to designate certain pay, personnel, and identification offices as voter registration agencies. In addition to voter registration, the amendment required written information to be provided to servicemembers on absentee ballot procedures. Finally, the amendment contained reporting requirements for the Department of Defense to evaluate its voter support services and send Congress its

recommendations for improving those programs.

The third amendment was technical in nature and altered no substantive provisions of the bill.

Ranking Member Bennett offered a package of amendments modifying several provisions of the bill. First, the amendment clarified that States may delegate the obligations under the MOVE Act to local jurisdictions. Some local and State election administrators contacted the Rules Committee to express concern because they thought that the MOVE Act could be interpreted to require States, instead of localities, to take administrative responsibility for running elections for UOCAVA voters. Though there was no intent to shift routine administrative responsibility of elections to States, for the sake of clarity in the bill, I supported this amendment. While clarifying that the MOVE Act can be administered and implemented at the local level, the amendment did not modify or otherwise alter the ultimate responsibility of MOVE Act compliance, which remains with the State. Accordingly, States retain the responsibility to ensure local jurisdictions' compliance with UOCAVA and MOVE and thus the State will continue to be the focus of any potential enforcement actions that need to be taken by the Attorney General.

Senator Bennett's amendments also modified provisions of the MOVE Act which had originally required States to transmit balloting materials "by mail, electronically, or by facsimile." The text of the amendment instead read to require transmission of balloting materials "by mail and electronically." This change clarified the requirement on State and local election administrators that, in addition to mail, they must provide at least one method of fast and effective electronic means of transmitting balloting materials to U.S. citizens overseas and uniformed servicemembers. It is important to note that Bob Carey during his testimony before the Rules Committee on May 13, 2009, testified that "[R]ecent research by the National Defense Committee indicates that fax transmission is not an effective option for military personnel, especially those suffering the greatest disenfranchisement in this process." However, at the same time, the amendment's language clarified that election administrators may provide multiple means of electronic communication in order to ensure speedy transmission of information, registration and balloting materials.

Senator Bennett's amendments also reinforced the privacy and security provisions of the original legislation by directing States to protect, to the extent practicable, the integrity of the voter registration and absentee ballot process through procedures that shield identity and personal data.

The amendments also simplified the timing provisions of the original legislation by mandating that whenever a State receives an absentee ballot request at least 45 days before a Federal election it must send out an absentee ballot not later than 45 days before the election. With respect to valid ballot applications received after 45 days prior to such an election, States are required to transmit a validly requested absentee ballot in accordance with State law and as expeditiously as possible. However, the amendment did not impact the 30-day requirement under UOCAVA. At the same time, the amendment removed language from the original version of the bill which would have required States to accept and count absentee ballots received up to 55 days after the date on which an absentee ballot was transmitted or the date on which the State certified an election, whichever was later. The negotiated modification placed a 45-day mandate on States to promptly respond to military and overseas absentee ballot requests.

The amendments also strengthened Department of Justice oversight of absentee voting by uniformed services and overseas voters by requiring the Presidential designee to consult with the Attorney General before approving any hardship exemptions from States unable to comply with the bill's timing provisions. This will help ensure a unified governmental response to State compliance with the MOVE Act.

Finally, the amendments repealed subsections (a) through (d) of §104 of the Uniformed and Overseas Absentee Voting Act, which allowed military and overseas absentee ballot applicants to indicate on their Federal Postcard Application form that their application should be considered a continuing application for an absentee ballot through the next two regularly scheduled general elections. Given the highly mobile nature of military and overseas voters, there was a concern among States that this provision of UOCAVA required a large number of ballots to be sent to old and outdated addresses. Election officials reported receiving a large number of these continuing absentee ballots as "returned undeliverable," thus artificially inflating the number of failed ballots, and potentially wasting State resources. Repealing these sections addressed those concerns. This amended section does not prohibit States from providing continuing applications for absentee ballots, or accepting ballots received under such continuing applications. This amended section also does not prohibit States from considering a Federal Postcard Application submitted for a primary election to carry over to the general election in that same election cycle.

The committee agreed to all of the proposed amendments and adopted them by voice vote. The committee then voted to report S. 1415, the Military and Overseas Voter Empowerment Act, as amended. The committee proceeded by voice vote, and all members present became cosponsors of the legislation. S. 1415, as amended, was ordered reported to the Senate.

PASSAGE BY THE SENATE OF THE MOVE ACT PROVISIONS IN THE DOD AUTHORIZATION BILL

On July 22, 2009, I offered Senate amendment No. 1764 to S. 1390, the National Defense Authorization Act for fiscal year 2010, on the Senate Floor.

Senator Cornyn spoke in support of this amendment that day:

Our military servicemembers put their lives on the line to protect our rights and our freedoms. Yet many of them still face substantial roadblocks when it comes to something as simple as casting their ballots and participating in our national elections . . . This important amendment contains many other commonsense reforms suggested by other Senators and will help end the effective disenfranchisement of our troops and their families. Our goal has been to balance responsibilities between elections officials and the Department of Defense, and I believe this amendment accomplishes that goal.

On July 23, 2009, I urged my colleagues to support the MOVE Act amendment to the DOD authorization legislation:

Now, if [our soldiers] can risk their lives for us we can at least allow them to vote. They take orders from the commander-in-chief. They are the first people who ought to be allowed to elect and vote for a commander-in-chief. And if we can deploy tanks and high-tech equipment and food to the front lines, we can figure out a way to deliver ballots to our troops so they can be returned and counted. And that, Mr. President, is what the MOVE Act does.

Senator Bennett spoke in support of the amendment:

Now, then the legislation was introduced in its original form, I raised concerns with Senator Schumer about some of its provisions. He worked with me and my staff to address these concerns and the amendment that we have before us today effectively does so. That's why I'm pleased to now be a cosponsor of the bill. The difficulties our service personnel face in voting and the Senator from New York has described them, and I believe this amendment deals with them in a proper fashion.

Senator Chambliss also spoke in support of the amendment:

[N]ot since the passage of the Uniform and Overseas Voting Act in 1986 have we proposed such significant legislation designed to help the men and women of the military who time and time again are called upon to defend the rights and freedoms that we Americans hold so sacred. Unfortunately, our military's one of the most disenfranchised voting blocs we have and today we have the opportunity to correct this.

Senator Nelson also added comments in support:

We owe it to our men and women in uniform to protect their right to vote. And for military and overseas votes, that right is only as good as their ability to cast a ballot and have it counted. For years, we have known of the obstacles these brave Americans face in exercising their right to vote, often when far from home and in harm's way. I firmly believe this legislation will make a huge impact in empowering our military and overseas voters to have their votes counted no matter where they find themselves on election day.

Senate amendment No. 1764 to S. 1390 was agreed to by voice vote on July 23, 2009. The Senate took up H.R. 2647 on July 23, approved an amendment that substituted the text of S. 1390, then passed the bill by unanimous consent and requested a conference with the House. A Senate-House conference was held, and the House passed the conference report to H.R. 2647, H. Rept. 111–288, on October 8, 2009, and the Senate passed it on October 22, 2009. H.R. 2647 was signed by the President on October 28, 2009, and became Public Law 111–84.

THE MOVE ACT TODAY

The Military and Overseas Voter Empowerment Act of 2009 is a response to an unacceptable situation—the disenfranchisement of Americans serving and living abroad who are unable to vote because of logistical and geographic barriers.

The MOVE Act brings to an end a system that in the past allowed a quarter of the ballots requested by U.S. troops to go unreturned. It does so by insisting that every military and overseas vote be counted. Congress recognized that those who fight to defend America's freedom often face the greatest obstacles in exercising their right to vote. Congress acted to break down the challenges and barriers to voting faced by these citizens with passage of the provisions of the Military and Overseas Voter Empowerment Act.

Most of the MOVE Act provisions will be in place for the November 2010 general elections. States started implementing measures and procedures to comply with the MOVE Act almost immediately after passage of Public Law 111–84. At the Federal level, the Department of Defense has been in consultation with the Attorney General to develop and promulgate regulations to administer the waiver process. As the 2010 Federal election approaches, the States and the Department of Defense are making every effort to

ensure that military and overseas voters have every opportunity to register, vote, and have their vote counted.

Mr. President, I ask unanimous consent that a section-by-section of the MOVE Act provisions in the National Defense Authorization Act for fiscal year 2010 be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

SECTION-BY-SECTION ANALYSIS OF THE MOVE ACT IN THE NDAA

The following is an explanation of each provision of the bill, what it does, and how it improves the ability of military and overseas voters to register, vote, and have their votes count in elections. It should be noted that in conference, there were two major substantive changes in the MOVE Act provisions as passed by the Senate.

One, the section on "Findings" was stricken. The "Findings" section provided an explanatory foundation for MOVE and why it was critical for its provisions to be enacted. It highlighted the fundamental nature of the right to vote; the logistical, geographical, operational, and environmental barriers that create obstacles for military and overseas voters to exercise their right to the franchise; the central role shared by States and the Department of Defense in overseeing and facilitating military and overseas voting; and the need for the relevant State, local, and Federal government entities to work together to ensure the ability of military and overseas voters to have their ballots count.

Two, the responsibilities attributed to the Department of Defense in ensuring military voters can effectively register to vote was changed in conference from the Senate-passed version. The reason for this change is explained in the summary of Section 583.

Section 575. Short title.

Title: "Military and Overseas Voter Empowerment Act".

Section 576. Clarification regarding delegation of State responsibilities to local jurisdictions.

This section clarifies that while the MOVE Act contains a number of mandates on the States with respect to military and overseas absentee voting, States remain free to delegate those responsibilities to local officials as they did under UOCAVA. In effect, this provision puts States on notice that the MOVE Act does not intend to and does not in fact take administrative control of military and overseas voting out of the hands of local officials. Compliance with MOVE's mandates, however, ultimately remains a State responsibility, and States will continue to be the main entity against which the provisions of MOVE and UOCAVA will be enforced should enforcement by the Department of Justice become necessary.

Section 577. Establishment of procedures for absent uniformed services voters and overseas voters to request and for States to send voter registration applications and absentee ballot applications by mail and electronically.

This section amends UOCAVA to require States to allow military and overseas voters the choice of requesting voter registration applications and absentee ballot applications either by mail or electronically. It mandates that the voter's choice of mail versus electronic extends to the mode of delivery of both the voter registration and absentee ballot applications. States must give all UOCAVA voters the option of receiving their applications by mail or electronically. To ensure military and overseas voters have an opportunity to choose their desired delivery method, States must provide a way for voters to designate their preferred method of delivery, and States are required to send these materials in accordance with the voter's designation. If no delivery preference is indicated, States are to transmit these materials according to applicable State law or, in the absence of such law, by mail. The requirements of this section apply to all general, special, primary, and runoff elections for Federal office.

Allowing military and overseas voters to request and receive voter registration and absentee ballot applications electronically requires States to establish at least one means of electronic communication for military and overseas voters to use. States are free to establish multiple means of electronic communication if they wish. In addition to using the electronic format to give voters the option of requesting and receiving voter registration and absentee ballot applications, it is also to be used to provide any other related voting, balloting, and election information requested by or otherwise provided to the voter.

In addition to email and the Internet, this provision contemplates the use of fax machines as a legitimate means of electronic transmission. This gives States an additional method of electronic communication. However, it is important to note that the Rules Committee received testimony regarding the challenges of solely relying on fax technology for military and overseas voting. Robert Carey, the Executive Director of the National Defense Committee pointed out in his written testimony that ensuring the privacy of a faxed absentee ballot is difficult. He also cited research indicating that only 39% of junior enlisted personnel had daily access to a fax machine. This provision therefore contemplates the use of fax technology as States gradually transition to more accessible forms of transmission for military and overseas voters through internet and email usage.

Information about how to communicate with States electronically, including any official designated email, web addresses, and phone numbers, should be readily accessible and is required to be included with any informational or instructional materials that accompany balloting materials sent to military and overseas voters.

The provisions of this section are a direct response to evidence gathered by the Rules Committee that showed lengthy mail transit times for voting materials, including registration forms and absentee ballot applications. This was a fundamental reason why so many of these voters did not have enough time to vote, and it showed the difficulty military and overseas voters have in communicating efficiently and effectively with State and local election officials. Taking advantage of modern technology is an important part of the solution to the "no time to vote" problem. The testimony of Lieutenant Colonel Joseph DeCaro at the Rules Committee's May 2009 hearing, in which he repeatedly expressed his gratitude for internet connectivity while serving in Air Force and described how he was able to use email to quickly communicate with local election officials, is particularly instructive. Lt. Colonel DeCaro testified that postal mail can sometimes take up to three weeks to reach its destination.

Compliance with this provision of the law may save States a substantial amount of money. Using a multiplier of $12.95 for a 1 oz. United States Postal Service Priority Mail international flat-rate mailing, States can potentially save as much as $1,295,000 for every 100,000 military and overseas voters that utilize electronic transmission methods of sending voter registration and ballot request materials.

This section also directs the Federal Voting Assistance Program of the Department of Defense to maintain and make available an online repository of State contact information with respect to Federal elections for use by military and overseas voters. The repository should include contact information for all the relevant State and local election officials in each State, including any designated email and Internet addresses and phone and fax numbers instituted to comply with the provisions of this law.

Finally, this section contains additional provisions directing States, to the extent practicable, to ensure the integrity of the voter registration and absentee ballot request process, as well as the protection of personal data.

Section 578. Establishment of procedures for States to transmit blank absentee ballots by mail and electronically to absent uniformed services voters and overseas voters.

This section amends UOCAVA to require States to establish procedures for transmitting blank absentee ballots to military and overseas voters both by mail and electronically for all general, special, primary, and runoff elections for Federal office. States are to use the preferred method of transmission identified by the voter and institute a procedure for allowing the voter to designate whether their preferred delivery method is by mail or electronic delivery. As in the previous section, if no delivery method is specified, States should follow applicable State law or, in the absence of such law, should deliver the blank absentee ballot to the voter by mail.

Additionally, this section contains the same language with respect to election integrity and voter privacy as the prior section, and the same rationale for the efficiency and effectiveness of electronic transmission also applies to this section with equal force.

Section 579. Ensuring absent uniformed services voters and overseas voters have time to vote.

This section amends UOCAVA to require States to transmit validly requested absentee ballots to military and overseas voters not later than 45 days before an election for Federal office, if a ballot request form is received by the relevant local election official at least 45 days before the election. In a circumstance when the absentee ballot request is received less than 45 days before the election, States must transmit a validly requested absentee ballot in accordance with State law and in as practicable a manner as possible that expedites the ballot's transmission so that the voter receives the ballot with enough time to cast the ballot and to have it counted. If States receive an absentee request less than 45 days before the election that contains an electronic delivery designation and related contact information, the State can expedite the blank ballot by electronic means. Of course, the UOCAVA voter still may request his or her ballot to be sent by mail. States may not be able to send the ballot electronically if the State lacks the necessary information, for example a correct email address or facsimile number.

The language "validly requested" in the MOVE Act refers to how this provision interacts with the pre-existing UOCAVA statute. Under §102a(2) of UOCAVA, each State is required to "accept and process, with respect to any election for Federal office, any otherwise valid voter registration application and absentee ballot application from an absent uniformed services voter or overseas voter, if the application is received by the appropriate State election official not less than 30 days before the election." The language "validly requested" in MOVE refers to applications that are received by local election

officials in accordance with §102a(2). It should be noted that although UOCAVA requires election officials to accept and process applications up to at least 30 days before an election under §102a(2), States are of course free under UOCAVA to shorten that time period to less than 30 days to give military and overseas voters more time to send in their applications. In such circumstances, the language "validly requested" also refers to ballots that are requested in time under the more permissive State law.

Also relevant here is that UOCAVA, as amended by the MOVE Act, creates a 15-day "gap" in which a State might receive an absentee ballot application from a military or overseas voter less than 45 days in advance of an election, and thus cannot comply with the 45-day rule under MOVE, but is still required to accept and process the application due to the 30-day rule under §102a(2). To ensure that military and overseas voters whose applications are received during this 15-day gap are given enough time to vote, the MOVE Act directs States to transmit such ballots "in accordance with State law," which is a directive for States to deliver ballots in accordance with any procedures that may exist under State law for transmitting ballots to UOCAVA voters, and in as practicable a manner as possible that expedites the ballot's transmission. This shall not supersede the MOVE requirement that UOCAVA voters be able to designate their preferred method of ballot delivery (mail or electronic) and the State's obligation to comply. State law may allow state election officials to fulfill requests that arrive less than 30 days before the election.

The "time to vote" provision was at the top of the list for potential reforms of military and overseas voting at the May 2009 Rules Committee hearing, with witnesses for both the Majority and the Minority endorsing such a measure. The original draft of the MOVE Act contained a 55-day mandate, under which States were required to send out ballots 45 days before an election and accept ballots up to 10 days after the election or by the State's certification date, whichever was later. This original provision was a response to complaints that certain jurisdictions refuse to count ballots from UOCAVA voters when those ballots are sent to States on or before Election Day but do not reach State or local election officials until after the polls have closed. However, there were concerns that this post-election requirement would intrude on States' ability to certify their elections in a manner that complies with their respective State laws or constitutions. Therefore the bill was modified to require that ballots be sent out at least 45 days before Election Day. The consensus recommendation emerged for a 45-day requirement following the hearing because it provides sufficient time for UOCAVA voters to request, receive and cast their ballots in time to be counted in the election for Federal office and better accommodates the laws of a number of states.

However, recognizing that circumstances may arise that prevent States from complying with the mandate to send ballots 45 days before Election Day, the MOVE Act also includes procedures whereby States can apply for a waiver from that provision. Waivers are submitted to the Presidential designee who, after consultation with the Attorney General, will decide whether to approve or deny the waiver request. If approved, the waiver is valid only for the election for which the State requested it. MOVE does not contemplate permanent waivers. Nor does MOVE contemplate "automatic" renewals of waivers—a waiver that is approved for one election is not automatically valid for or applicable to the State's next election. The reason is to protect UOCAVA voters from situations where a State's plan is approved by the Presidential designee, but ultimately proves insufficient to serve as a substitute for the 45-day rule. For example, if a waiver is granted for an election because the Presidential designee determines that the comprehensive State plan will give military and overseas voters enough time to vote, but evidence subsequently shows that, in practice during the election cycle, the State plan did not provide enough time to vote, a future waiver request with a similar State plan may not be granted just because it had been approved for the prior election. However, if a waiver is approved and the State plan is proven effective, a similar State plan resubmitted in a subsequent election cycle may be approved again. The key is that the State plan must provide adequate substitute procedures so that UOCAVA voters are given an opportunity to vote that is at least as sufficient as if the State complied with the 45-day rule. In some cases, the State waiver plan may provide even greater protection for UOCAVA voters, and such plans would serve the interests of the UOCAVA voters and the intent of the law. Thus state plans that offer protection for UOCAVA voters that is better than or equal to the 45-day provision and procedures that go beyond other minimum requirements for state assistance for those voters could merit repeated waivers.

This section mandates that the Presidential designee can only approve or reject a waiver after consulting with the Attorney General, since the Attorney General is the office that enforces UOCAVA and the provisions of the MOVE Act, and there should be coordination between the two entities. Consultation between the Presidential designee and Attorney General will promote consistency so that election officials do not receive mixed messages about the viability of waiver requests.

The Presidential designee may only grant a waiver if a specific standard is met, which is laid out in the MOVE Act. First, the Presidential designee may grant a waiver if one or more of the following circumstances exist to prevent a State from complying with the 45-day rule: (1) the State has a late primary election date, making it impossible to send validly requested ballots to voters 45 days before the election; (2) the State has suffered a delay in generating ballots due to a legal contest, such as a contested primary; or (3) the State's Constitution prohibits the State from complying with the 45-day rule. These are the only three circumstances under which a waiver request may be sought under MOVE.

In addition to a finding that at least one of these circumstances exists, the waiver request itself must include, in writing, the following: a recognition of the need to provide overseas voters with enough time to vote; an explanation of the hardship that prevents the State from transmitting absentee ballots 45 days before the election; the number of days prior to the Federal election that the State will transmit absentee ballots to military and overseas voters; and a comprehensive plan ensuring that military and overseas voters are able to receive and return requested absentee ballots in time to be counted. The plan must include the specific steps the State will take to ensure military and overseas voters have time to receive, mark, and submit their ballots in time to have them counted, an explanation of how the plan serves as an effective substitute for the 45-day rule, and relevant information that clearly explains how the plan is sufficient to substitute for the 45-day rule in a manner that allows enough time to vote. States are free to use innovative methods to ensure their comprehensive plan gives military and overseas voters enough time to vote.

Testimony before the Rules Committee supported the practice of some States that accept and count UOCAVA ballots after Election Day as one way of protecting the voting rights of their UOCAVA voters. This can be an acceptable option for states whose constitution and laws allow it and who want that flexibility. States must be mindful that even when they count UOCAVA ballots after an election, those voters may not be aware of that procedure. Therefore, a state should ensure that voters get ballots with enough time to vote and inform them of the state's procedures for receiving and counting ballots.

To summarize, the Presidential designee can issue a waiver only if one or more of three exigent circumstances exists: a prohibitively late primary date; a legal contest that results in a delay in generating ballots; or a conflict with a State's Constitution. In addition, the Presidential designee makes a determination that the State requesting the waiver has submitted an acceptable plan, containing all necessary information, which provides military and overseas voters with enough time to receive, mark, and submit their absentee ballots in time to have that ballot count in the election. The Presidential designee must consult with the Attorney General before approving a waiver request, since the Attorney General is charged with enforcing and ensuring State compliance with the provisions of UOCAVA and MOVE.

Waiver requests must be submitted by the chief State election official to the Presidential designee not later than 90 days before the Federal election for which it is requested, and the Presidential designee must approve or deny the waiver not later than 65 days before the election. If the hardship at issue is a legal challenge arising in a way that makes compliance with the 90-day deadline impossible, the State must submit the waiver request as soon as possible and the Presidential designee will approve or reject it not later than 5 business days after its receipt. It is certainly possible that DOD in consultation with DOJ, rather than rejecting a waiver request, might request the State to make modifications in the waiver request that would allow the waiver to be granted.

A waiver approved by the Presidential designee is valid only for the Federal election for which the State requested it and cannot be used by a State for any subsequent Federal election. If a State wishes to request a waiver for a subsequent Federal election, it must submit another waiver request.

Section 580. Procedures for collection and delivery of marked absentee ballots of absent overseas uniformed services voters.

This section amends UOCAVA by directing the Presidential designee to develop and implement procedures for collecting marked absentee ballots, including the Federal write-in absentee ballot, from absent overseas uniformed services voters, and facilitating their delivery in a manner that ensures that the ballots are received by the appropriate election officials in time to be counted.

This provision was a response to evidence gathered by the Rules Committee about the unpredictable nature of serving overseas. At the Rules Committee hearing in May 2009, Eric Eversole, formerly an attorney with the Department of Justice Civil Rights Division's Voting Rights Section, testified that an expedited mail delivery system would reduce the ballot delivery time. In circumstances, such as unforeseen military action, where overseas military personnel might be prevented from sending in time to be counted, an expedited mail delivery system would compensate for those numerous,

unforeseen factors. This requirement also is supported by the statement from Tom Tarantino, Legislative Associate with Iraq and Afghanistan Veterans of America, that the Department of Defense should be responsible for collecting overseas servicemembers' absentee ballots to ensure their delivery, and to make certain that military voters serving overseas are able to return their ballots in a timely and predictable fashion because to do so is "the most immediate step that Congress can take in protecting the voting rights of service men and women." This provision also incorporates language similar to a legislative initiative introduced by Senator Cornyn, who has advocated for DOD to take a direct role in providing expedited ballot delivery.

This section directs the Presidential designee to establish procedures for collecting absentee ballots from overseas military voters, and to facilitate their delivery so they are received by local election officials in time to be counted. The Presidential designee must work in conjunction with the U.S. Postal Service to provide expedited mail delivery for all absentee ballots from overseas military members. These ballots will be collected up until noon on the seventh day preceding the date of the upcoming election for expedited transmittal. This section also gives the Presidential designee flexibility to change that deadline if remoteness or other factors associated with military service, such as being located in a combat zone, warrant collecting and transmitting ballots prior to the regular deadline to ensure the ballots can be counted in time.

Finally, this section mandates that all ballots sent by military members overseas have to be postmarked by the Military Postal Service with the date the ballot was mailed. In accordance with existing law, it must be carried free of postage. Without a postmark, election officials have been unable to tell when a ballot was mailed, increasing the likelihood of uncounted votes from military personnel. This provision addresses the postmark problem and eliminates the risk of a ballot not being counted for this reason.

In carrying out this provision, the Presidential designee is charged with the responsibility of making certain that overseas military voters are aware of the expedited mail procedures and deadlines involved. The Presidential designee shall do this in a number of ways within his discretion, such as making information available via the Global Military Network, through easily accessible websites frequently used by military members, and in the informational forms made available to military members during critical points in service, such as the administrative in-processing at a new installation or base. A later section of MOVE requires the Presidential Designee to create online information portals and use the Global Military Network to inform military voters of voter registration information and absentee ballot rights.

In drafting this legislation, the Rules Committee considered a direct mandate on the Department of Defense which would have required that absentee ballots be transmitted to the appropriate election officials by a date certain. In consultation with the Department of Defense, however, personnel of that agency responsible for overseeing absentee voting for overseas military personnel expressed concern that complying with such a provision would be beyond its control. Absentee ballots mailed from abroad enter the domestic mail system once those ballots reach the United States and are no longer under DOD control. This section recognizes that reality, while at the same time solidifying the DOD's role in expediting transit times for these ballots so they can reach local election officials in time to be counted.

This section includes three supplemental provisions. First, it directs the chief State election official in each State, working alongside local officials, to develop a free access system whereby all military and overseas voters can track whether or not their absentee ballots have been received by the appropriate election official. This language was suggested by Lt. Col. Joseph DeCaro and others, to ensure that UOCAVA voters know their ballots are similarly situated to domestic absentee voters. Receipt of the UOCAVA ballot by the local election official marks the most important hurdle for overseas voters: getting the completed ballot back to the election office.

Second, it mandates that those soldiers who cast ballots at locations under the jurisdiction of the Presidential designee, such as military installations, are able to cast their ballots as privately and independently as possible. Ensuring the privacy of all voters is important, and military voters should be able to vote in a private and independent manner.

Third, it directs the Presidential designee to ensure, to the extent practicable, that absentee ballots in the possession or control of the Presidential designee remain private. Again, absentee ballot procedures should protect the privacy of the voters, to the extent practicable.

This section only requires expedited mail procedures for overseas service personnel and not all UOCAVA voters. In crafting the legislation, the Rules Committee staff was concerned about the challenges facing non-military overseas voters seeking timely return of their ballots to State election officials. Unfortunately, the problems inherent in engaging every foreign, nonmilitary post office to provide such assistance made this expansion of the expedited mail requirement impractical at the present time. Additionally, several of the challenges justifying the provisions of this section, such as the sporadic lack of postmarks on military mail and unpredictable conditions associated with service, are pervasive problems faced by overseas military personnel. However, under this section State officials are required to develop the tracking system for absentee ballots from both military and overseas voters. Lieutenant Colonel Joseph DeCaro of the United States Air Force testified at the Rules Committee's May 2009 hearing about his frustration at not knowing whether his ballot had been received by State officials. The tracking provision addresses this concern. The Help America Vote Act already requires a free access system to notify voters about whether or not their provisional ballots have been counted. The MOVE Act absentee ballots are not provisional ballots. However, it should not be too difficult for State election officials to develop a system that military and overseas voters can use to get information about the status of their ballots that is similar to the system mandated under HAVA for provision ballots. This will allow those voters to complete FWAB ballots if it becomes clear their ballot was not received in a timely fashion.

Section 581. Federal write-in absentee ballot.

This section amends UOCAVA to expand the availability and accessibility of the Federal write-in absentee ballot and to promote its use among military and overseas absentee voters.

The FWAB functions as a failsafe ballot for military and overseas voters. It allows them to submit this ballot to local election officials in every State in circumstances where they have not received a requested ballot in time from their respective election officials. However, information gathered during Congressional hearings clarified the fact that awareness of the FWAB among military and overseas voters is very low, and therefore an underutilized resource. At the May 2009 hearing on military voting problems held by the Elections Subcommittee of the House Committee on Administration, Gunnery Sergeant Jessie Jane Duff (Ret.) testified that she had never heard of the FWAB despite a twenty-year career as a marine.

Under this section, the Presidential designee is required to adopt procedures to promote and expand the use of the FWAB as a back-up measure. As part of this effort and required by other sections of MOVE, the Presidential designee shall take steps to make servicemembers aware of its existence and function, by promoting it through the Global Military Network and at critical points of service (example: such as the administrative check-in of soldiers at a new base or installation).

This section also expands the availability and utilization of the FWAB in two significant ways. First, it expands the mandatory availability of the FWAB as a failsafe ballot from use only in general elections, under the original UOCAVA statute, to also include special, primary, and runoff elections for Federal office. This is an important expansion of its use, because special, primary and runoff elections generally have shorter time periods between the time when ballots are made available to voters and Election Day.

Second, this section directs the Presidential designee to expand and promote the use of the FWAB as a back-up ballot. As part of this effort, the law directs the Presidential designee to use technology to develop a system under which a military or overseas voter can enter his or her address or other appropriate information, and the system will generate a list of all candidates for Federal office in the voter's jurisdiction. The voter will now have the information needed to fill out the FWAB and submit it to his or her election official. Such technology has already been developed through a partnership between the Pew Center on the States and the Overseas Vote Foundation, as noted in Pew's No Time to Vote: Challenges Facing America's Overseas Military Voters report submitted for the record for the Rules Committee's May 2009 hearing.

Section 582. Prohibiting refusal to accept voter registration and absentee ballot applications, marked absentee ballots, and Federal write-in absentee ballots for failure to meet certain requirements.

This section amends UOCAVA by prohibiting States from rejecting registration applications, ballot request applications and ballots for reasons unrelated to voter eligibility. The section is a response to evidence gathered by the Rules Committee highlighting the unfortunate practice, in certain jurisdictions, of rejecting absentee ballots and other election materials for immaterial reasons. In his testimony at the May 2009 Rules Committee hearing, Robert Carey of the National Defense Committee recommended eliminating notarization requirements for UOCAVA voters. That recommendation was echoed by representatives of the Pew Center on the States and the Overseas Vote Foundation. While the original draft of MOVE in S. 1415 also eliminated witness requirements in UOCAVA ballots, that provision was removed through committee negotiations. Any witness requirements that may be imposed by States should allow flexibility to ensure a voter can easily complete an absentee ballot. Any complex witness requirements make it more difficult for military and overseas voters to complete and cast an absentee ballot.

The first provision of this section prohibits States from rejecting otherwise valid voter

registration applications, absentee ballot applications (including the official post card form prescribed under UOCAVA), and marked absentee ballots submitted by military and overseas voters solely on the basis of notarization requirements, restrictions on paper type, and restrictions on envelope type. In some cases, the need to photocopy a ballot may result in a completed absentee ballot on different paper. No jurisdiction should reject a properly completed form simply because of the paper used.

The second provision contains similar prohibitions on rejecting the FWAB. It prohibits States from rejecting marked FWAB ballots solely because of notarization requirements, restrictions on paper type, and restrictions on envelope type.

Section 583. Federal Voting Assistance Program ("FVAP").

This section amends UOCAVA to improve the Federal Voting Assistance Program for military voters. These provisions increase the availability of materials containing information on absentee voting procedures for military voters, as well as expand the overall awareness of such procedures.

The section directs the Presidential designee to take two major steps to meet this end—first, to create an online portal of information where our military can access information about registration and balloting procedures in their respective States; and second, to establish a program using the Global Military Network, an email network that reaches out to virtually every member of our military, to notify servicemembers 90, 60, and 30 days prior to each election for Federal office of voter registration information and resources, the availability of the Federal postcard application, and the availability of the FWAB as a fail-safe ballot.

It should be noted that the sponsors of the MOVE Act acknowledged that the Department of Defense already had a number of regulations in place to try to assist servicemembers in exercising their right to vote. Therefore, a provision was included to clarify that the provisions of MOVE were not meant to eliminate any other duties or obligations promulgated by the DOD that are not inconsistent or contradictory with the MOVE Act.

The section mandates that not later than 180 days after passage of the MOVE Act, the Secretary of each military department of the Armed Forces must designate offices on military installations under their jurisdiction to provide comprehensive voter registration services for troops and their families. The office will serve as a clearinghouse for providing servicemembers the opportunity to receive information on the following: voter registration and absentee ballot procedures, information and assistance with registering to vote in their States, information and assistance with updating the individual's voter registration information, including instructions on how to use and submit the Federal postcard application as a change of address form, and information and assistance with requesting an absentee ballot from the voter's local election official.

The section gives priority to individuals transitioning through critical points in their service, such as individuals who are undergoing a permanent change of duty station, deploying overseas for at least six months, returning from an overseas deployment of at least six months, or who otherwise request assistance related to voter registration. These resources are required by this section to be provided at least during the administrative processing associated with these points in service. By detailing exactly which points in time servicemembers are to receive such information, this section ensures that these voter resources can be most easily and efficiently provided to our troops. As a result, their ability to participate in Federal elections will be dramatically increased.

The Secretary of each military department (or the Presidential designee) is required to take steps to make the availability of these resources known to military voters through outreach efforts that include the availability of the designated voter registration offices and the time, location, and manner in which military voters may access such assistance. The Presidential designee and Secretaries of military departments are free to undertake a variety of methods to satisfy this provision, including the requirements in other sections of MOVE to inform servicemembers of the ballot collection and expedited delivery procedures.

Finally, this section allows the Secretary of Defense to authorize the Secretaries of the military departments of the Armed Forces to designate offices on military installations as voter registration agencies under §7(a)(2) of the National Voter Registration Act of 1993 (NVRA).

Under the provisions of the MOVE Act as passed by the Senate, the offices designated to provide voter registration assistance were required to be uniformly deemed voter registration agencies under the NVRA. In the conference committee for the NDAA, this requirement was changed from mandatory NVRA designation to giving the Secretaries the option of designating the voter registration offices as NVRA agencies.

There are good reasons for designating these voting assistance offices as voter registration agencies under the NVRA. Designation provides a minimum, uniform standard by which these offices must provide voter registration assistance and ensures such assistance is effective. First, pursuant to §7(a)(4)(A) of the National Voter Registration Act, such offices must provide mail voter registration forms, assistance in completing voter registration application forms, and acceptance of such forms for transmittal to State officials. The Federal postcard application can be used for this purpose because it is an acceptable voter registration form under the NVRA. Second, under §7(d), accepted registration forms have to be transmitted to State officials within 10 days of acceptance, or if accepted, within 5 days before the last day for registration to vote in an election, not later than 5 days after the date of acceptance. Furthermore, any individuals providing registration assistance in such an office are prohibited from doing the following: seeking to influence an applicant's political preference or party allegiance; displaying any political preference or party allegiance; making any statement to the applicant that would discourage registration; or making any statements with the purpose or effect of leading the applicant to believe that a decision to register has any bearing on other services provided at that office. The NVRA sets a uniform standard by which these offices must provide voter registration by ensuring an expansive provision of voter registration assistance and protecting against inadequate assistance and deficiencies in registration services. Without the opportunity or ability to register in an effective way, our military cannot vote.

While some have expressed concern with requiring DOD to run an NVRA voter registration agency, this is not a new role for the Department of Defense. The Department is already responsible, and has been for well over a decade, for administering the NVRA at designated offices. More than 6,000 military recruitment offices are currently required to provide information, registration assistance, and opportunities to register to vote in conformance with the NVRA. Further, these offices would only be required to provide the necessary voting assistance to individuals who are seeking other appropriate services at the military recruitment offices and not to any person who may happen to walk in and request it.

Nor are these offices required to operate as stand-alone voter registration agencies. Similar to other State government agencies operating NVRA-designated voter registration agencies, such as State social service offices, Departments of Motor Vehicles, and the like, DOD can provide voter registration services in offices that have a different primary function such as pay, personnel, and identification offices.

Following the passage of the MOVE Act, it is notable that Chairman Schumer and Senator Cornyn sent a letter on December 4, 2009 to Secretary Gates requesting that he make the determination, which he authorized to do under the NVRA, that the Department of Defense would be designated as a "voter registration agency" under the Act. In a letter back to Senators Schumer and Cornyn, dated December 16, 2009, the Deputy Secretary of Defense William J. Lynn, III, agreed to "designate all military installation voting assistance offices as NVRA agencies."

Finally, the Secretary of Defense is required to prescribe regulations relating to the administration of this section, which must be prescribed and implemented by the November 2010 Federal elections.

Section 584. Development of standards for reporting and storing certain data.

This section amends the UOCAVA statute to direct the Presidential designee to work with the Election Assistance Commission and the chief State election official of each State to develop standards for reporting data on the number of absentee ballots transmitted to and received from overseas voters, as well as other data the Presidential designee determines to be appropriate. States are required to report this data as the Presidential designee, in accordance with the standards developed by the Presidential designee under this section. The Presidential designee is directed to store such data, and should make that data publically available as appropriate under the law.

Section 585. Repeal of provisions relating to use of single application for all subsequent elections.

This section repeals §104(a)—§104(d) of the UOCAVA statute. These provisions required States, once they processed an official post card form received by military and overseas voters, to send an absentee ballot to that voter for each Federal election held in the State through the next two regularly scheduled general elections for Federal office, provided the voter indicated he/she wished the State to do so. It has been reported by State and local officials that this section of UOCAVA has led to inefficiency as blank absentee ballots are sent to voters who have moved or are no longer registered in the same location where they originally registered. Because some military and overseas voters in particular tend to be highly mobile, it is reported that this provision was difficult to implement effectively. The Committee responded by eliminating this federal mandate. States, however, are free to continue absentee programs that they find effective and convenient for voters, whether they be domestic or overseas voters.

Section 586. Reporting requirements.

This section amends UOCAVA to include additional requirements for reporting information to the Congressional committees of jurisdiction, including the Senate Committee on Appropriations, the Senate Committee on Armed Services, and the Senate

Committee on Rules and Administration, and the House Committee on Appropriations, the House Committee on Armed Services, and the House Administration Committees.

The first provision is a requirement for the Presidential designee to submit a report to these committees not later than 180 days after the enactment of the MOVE Act. The report is to include (a) the status of the implementation of the procedures on collection and delivery of absentee ballots from overseas military personnel, including specific steps taken in preparation for the November 2010 general election; and (b) an assessment of the Voting Assistance Officer (VAO) Program of the Department of Defense, including an evaluation of effectiveness, an inventory and full explanation of any programmatic failures, and a description of any new programs to replace or supplement existing efforts.

The Voting Assistance Officer (VAO) program is administered by the Department of Defense to provide military personnel with person-to-person guidance in understanding absentee voting procedures and helping overseas military personnel with the absentee voting process. However, the Rules Committee gathered evidence during the drafting of this legislation indicating the need for improvements in the VAO program. Tom Tarantino, Legislative Associate with Iraq and Afghanistan Veterans of America, submitted written testimony that he had been poorly trained when he served as a VAO. A report from the Department of Defense Inspector General revealed that in 2004, voting assistance officers made contact with only 40%–50% of military voters. Also, it was made known to the Rules Committee that serving as a VAO is often seen as a low-level military assignment, so it is not given much priority in practice. The reporting requirements established under this section will provide the new FVAP chief with the time to assess existing programs and suggest improvements, all with the goal of providing more overseas and military voters with the information and support necessary for them to exercise their right to vote.

The second reporting requirement is an annual report to Congress, due no later than March 31 of each year. In this report, the Presidential designee must include the following: (a) an assessment of the effectiveness of the FVAP program, including an examination on the effectiveness of the new responsibilities established by the MOVE Act; (b) an assessment of voter registration and participation by overseas military voters; (c) an assessment of registration and participation by non-military overseas absentee voters; and (d) a description of cooperative efforts between State and Federal officials. The report should also include a description of the voter registration assistance provided by offices designated on military installations utilized by servicemembers and a description of the specific programs implemented by each military department of the Armed Forces to designate offices and provide assistance. Finally, the report should include the number of uniformed services members utilizing voter registration assistance at the designated offices.

When the annual report is issued in years following a general election for Federal office, it should include a description of the procedures utilized for collecting and delivering marked absentee ballots, noting how many such ballots were collected and delivered, how many were not delivered in time before the closing of polls on Election Day, and the reasons for non-delivery.

These reporting requirements are a direct consequence of the interest of Congress in initial compliance with the MOVE Act and with its routine implementation over time. These reports will provide a key indicator of how effective absentee voting procedures are for overseas Americans in case additional reform is needed in the future.

Section 587. Annual report on enforcement.

This section amends the UOCAVA statute to require the Attorney General to send a report to Congress no later than December 31 of each year regarding what actions the Department of Justice has taken to enforce UOCAVA and the MOVE Act amendments to UOCAVA.

Since UOCAVA's passage in 1987, the Justice Department has filed 35 compliance suits against the States. Congress should be updated on a regular basis on efforts made to comply with federal military and overseas voting statutes. These reports will provide the Rules Committee and other Congressional committees with a key tool for oversight, in anticipation of the Justice Department playing a key role in overseeing the implementation and enforcement of the MOVE Act.

Section 588. Requirements payments.

This section amends the Help America Vote Act (HAVA) of 2002 to establish a new funding authorization, in addition to the funding authorizations already in place under HAVA, intended to be used only to meet the new requirements under UOCAVA imposed as a result of the provisions of and amendments made by MOVE. The language of the MOVE Act indicates that separate from a HAVA requirements payment; Congress has authorized, and can specifically appropriate funds for requirements payments "appropriated pursuant to the authorization under section 257(a)(4) only to meet the requirements under the Uniformed and Overseas Citizens Absentee Voting Act imposed as a result of the provisions of and amendments made by the Military and Overseas Voter Empowerment Act." The appropriation would specifically reference a MOVE requirements payment. That MOVE requirements payment can be used only to meet the requirements of the MOVE Act. Nothing in this section impacts the ability of States to receive and spend funds on the traditional HAVA requirements payment program.

States must describe in their State plan how they will comply with the provisions and requirements of and amendments made by MOVE. Under amendments made in conference committee, chief State election officials may access MOVE requirements payments without providing the 5% match upfront. This section was amended in contemplation of providing funding for those States whose legislatures do not meet on an annual basis.

Further, States may choose to use the original funding authorizations under HAVA, those adopted as part of the original HAVA statute, to fund MOVE related compliance efforts so long as the State meets all of its other obligations under HAVA. The provisions of the MOVE Act can certainly be considered an activity "to improve the administration of elections for Federal office" under the HAVA requirements payments language.

Section 589. Technology pilot program.

This section gives the Presidential designee the authority to establish one or more pilot programs under which new election technologies can be tested for the benefit of military and overseas voters under the UOCAVA statute. The conduct of the program will be at the discretion of the Presidential designee and shall not conflict with any existing laws, regulations, or procedures.

Mindful of security concerns, the Rules Committee included several items for the Presidential designee to consider in crafting this pilot program. These include transmitting electronic information across military networks, cryptographic voting systems, the transmission of ballot representations and scanned pictures of ballots in a secure manner, the utilization of voting stations at military bases, and document delivery and upload systems. There may be many positive developments made by DOD pilot programs that can assist in expedited voting procedures for military and overseas voters. Security and privacy, of course, are essential components to any pilot program.

Under this section, the Presidential designee is required to submit to Congress reports on the progress of any such pilot programs, including recommendations for additional programs and any legislative or administrative action deemed appropriate.

This section directs the Election Assistance Commission (EAC) and the National Institute of Standards and Technology (NIST) at the Department of Commerce to work with the Presidential designee in the creation and support of such pilot programs. The bill requires the EAC and NIST to provide the Presidential designee with "best practices or standards" regarding electronic absentee voting guidelines. In particular, the MOVE Act directs the EAC and the NIST to work to develop best practices which conform with the electronic absentee voting guidelines established under the first sentence of section 1604(a)(2) of the National Defense Authorization Act for Fiscal Year 2002 (P.L. 107–107), as amended by §507 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (P.L. 108–375). The Committee staff contemplates that NIST will be helpful in addressing the election integrity and security concerns involved in developing electronic voting systems, as illustrated by NIST report entitled "Threat Analysis on UOCAVA Voting Systems" of December 2008 (NISTIR 7551).

This section also directs that, if the EAC has not established electronic absentee voting guidelines by not later than 180 days after enactment of the MOVE Act, then the EAC is to submit to Congress a report detailing why it has not done so, a timeline for the establishment of such guidelines, and a detailed accounting of its actions in developing such guidelines. This should provide to Congress and the public a roadmap on progress made, as well as the next steps the EAC plans to take.

RECOGNIZING THE ARKANSAS AIR NATIONAL GUARD

Mrs. LINCOLN. Mr. President, today I pay tribute to our Arkansas Air National Guard and their efforts to keep our Nation safe. In particular, I recognize the members of the 188th Fighter Wing, who are returning home throughout May after a 2 month deployment overseas.

The airmen spent 2 months at Kandahar Airfield in southern Afghanistan, flying 12 to 16 flights a day. Their day-and-night operations supported the ground troops who were fighting enemy insurgents. The work in Afghanistan was the unit's first combat deployment using A–10s. The unit flew F–16s until April 2007, including during their 4 month deployment in 2005 to Balad Air Base in Iraq.

Along with all Arkansans, I honor these servicemen and women for their bravery, and I am grateful for their service and sacrifice.