

NATIONAL DEFENSE COMMITTEE

Rear Admiral (Ret.) James J. Carey—Chairman
Samuel F. Wright—Director, Military Voting Rights Project
1201 S. Court House Rd., Suite 735
Arlington, VA 22204
(703) 486-4247 samwright50@yahoo.com
www.nationaldefensecommittee.org (Web site)

September 21, 2006

United States Election Assistance Commission

Testimony of Robert H. Carey, Jr.

Senior Fellow, National Defense Committee

Good day. I am Bob Carey, a Senior Fellow with the National Defense Committee. On behalf of the Committee, please accept my thanks for the opportunity to testify here today.

As way of introduction, I believe I am well experienced on the issue of military voter disenfranchisement. Due to my joining the US Navy immediately after graduating college, and then working for a US Senator from my home State after I left the Navy, the first time I ever voted in an actual polling booth was in the 2000 general election. Unfortunately, I've not had much of an opportunity to pull a lever since then having been recalled from the Reserves three times to active duty since 9/11, in support of Operations NOBLE EAGLE, ENDURING FREEDOM, and IRAQI FREEDOM. Finally, in my civilian occupation, I recently completed a term as Deputy Campaign Manager for the KT McFarland for Senate campaign in New York.

Over the last 26 years of elections in which I've participated both personally and professionally, my experience has been one of difficulties and barriers, especially while on military duty.

I should not be surprised by my experience; voter disenfranchisement has been a persistent and common occurrence rather than the exception for as long as military personnel were given the right to vote during World War II. A substantial minority, and in some cases a majority, of these brave military personnel have regularly suffered disenfranchisement through no fault of their own.

And it's not like this is something we just recently discovered. As early as 1952, the House Administration Subcommittee on Elections, concluded many of the brave young men and women fighting the Korean War were likely to be disenfranchised in that year's Presidential election. The Honorable C.G. Hall, then Secretary of State of Arkansas and President of the National Association of Secretaries of State, testified that

because of late primaries, ballot access lawsuits, and other problems, election officials did not have ballots printed and ready to mail until a few days before the election.ⁱ

Not much has changed in the intervening 54 years. Today, most states still conduct absentee voting the old-fashioned way, by shipping pieces of paper around the world through the United States Postal Service and its Defense Department equivalent. Despite the strong mandates and recommendations of the Help America Vote Act and Uniformed and Overseas Citizen Absentee Voter Act (UOCAVA), little has been done to take advantage of the promise the internet holds to provide our deployed service members the same voting rights their fellow citizens back home enjoy.

The reality is, military personnel don't get their ballots in time for elections, they can't send them back in time to meet ballot deadlines, and as a result, they are unable to participate in the electoral process. In 2004, the National Defense Committee found at least a 24% disenfranchisement rate for military absentee voters. In fact, that is probably an underestimation of the problem as it relied upon the voluntary reporting of local election officials, and at least 10 states worth of those officials did not participate, in addition to scores of local election offices.

The reason is that many local election offices refuse to take advantage of the Internet, and instead mandate the continued use of paper ballots, the US Postal Service, and manual signatures. Meanwhile, the military is nearing completion on the universal transition to PKI certificates and digital signatures for all military information technology networks, providing near absolute irrefutability of individual Internet and information technology acts and keystrokes.

For reasons beyond my comprehension, but as you already know, there are three time-consuming steps in absentee voting. First, the absentee ballot *request* must travel from the voter to the election official. Second, the *unmarked ballot* must travel from the election official to the voter. Finally, the *marked ballot* must travel from the voter back to the election official in the voter's hometown. Each of these steps can take weeks if the mail must be used, but only seconds if secure electronic means were authorized.

For the military voter, especially, the most difficult and problematic step is the second step, the transmission of the unmarked ballot from the election official to the voter, for two reasons. First, the election official cannot *print*, much less mail, absentee ballots until all uncertainties about who and what go on the ballot have been resolved. For example, in 2004, in Arkansas, a dispute about whether Ralph Nader had qualified for the ballot was not resolved until several days into October. In the meantime, the Arkansas Supreme Court enjoined local election officials from mailing out ballots, until the state's high court could hear and decide the matter.

The other problem is that the military voter is a moving target. Let me take my example – for the 2004 general election, I received my mobilization orders on October 22nd, 2004. I reported to my reserve center in Norfolk, Virginia on that date, and then reported to military processing site in Washington, DC a week later. I was scheduled to

depart for the Middle East on November 1st, but because of a service requirement, was fortunately able to stay in the United State and go to New York on election day to vote. If not for that, I would not have been able to vote. I would have submitted my absentee ballot application on October 22nd, but where would the ballot have gone? All I had was my ultimate duty station in Bahrain, to where I did not report until after the election. New York law requires the ballot to be postmarked by midnight the day before the election. Because I answered my nation's call to service, I would not have been able to vote if not for a quirk in my processing.

The same thing happened upon my return. New York City was having its Mayoral election in November 2005. I departed Bahrain on November 4th, 2005, reported to my outprocessing site on November 6th. The election was November 8th. The New York ballots are not available until 32 days before the election.

Mail regularly took two weeks to get to Bahrain and two weeks to get back. Please remember that there is a bifurcated system for delivering mail to service members and others. The United States Postal Service (USPS) delivers mail to all addresses within the United States, including military installations and hospitals. The Military Postal Service Agency (MPSA), which is part of the Department of Defense (DoD), is responsible for delivering mail to APO (Army Post Office) and FPO (Fleet Post Office) addresses outside the United States. So, even if the ballot was mailed exactly 32 days prior to the election, it likely wouldn't arrive in Bahrain until October 23rd. Under New York law, the ballot must arrive at the election bureau no more than seven days after the election. So, assuming everything goes perfectly, I had to mail the ballot by November 1st. That gave me a week to analyze my vote for all the city candidates for a city of 8.1 million people. Frankly, this is ludicrous.

Every day, *billions* of dollars are transmitted by secure, but unclassified electronic means over the Internet. In the military, we routinely transmit *classified* information electronically, by means of the military's Secure Intranet Protocol Routing Network (SIPRNET). Additionally, all unclassified military IT communications are being stamped with digital signatures and PKI certificates tied to the member's military identification card, providing a much higher degree of user identification than is used at any polling place. If electronic means are sufficiently secure for huge sums of money and for our nation's most sensitive secrets, it certainly should be possible to enable deployed and wounded service members to vote by electronic means—and to vote with confidence that their ballots will be counted.

At a minimum, we need a means to transmit the *unmarked ballot* to servicemembers like me, no matter where the service of our country has taken us—and to enable us to mark and return the ballot by mail, in sufficient time for the ballot to be counted. Is that too much to ask in exchange defense of our country?

I'd also like to lay out a preemptive argument. The National Defense Committee does not buy the argument that providing such electronic voting assistance to military personnel would unduly grant them unequal ballot access. Remember that for most

absentee voters, except the sick and infirm, absentee voting is essentially a voluntary act. Sure, voting at a polling station may require them to quit their job if they have a business trip, but in the end, that individual has that right. The military service member does not. The military service member is ordered by federal action to leave their locality on election day and cannot quit the military before their enlistment expires. In my opinion, that fully justifies specific relief for this special class of individuals.

The 1952 congressional hearing report includes a letter to Congress from President Harry S. Truman. I invite your attention particularly to the most eloquent opening paragraph of President Truman's letter:

About 2,500,000 men and women in the Armed Forces are of voting age at the present time. Many of those in uniform are serving overseas, or in parts of the country distant from their homes. They are unable to return to their States either to register or to vote. Yet these men and women, who are serving their country and in many cases risking their lives, deserve above all others to exercise the right to vote in this election year. At a time when these young people are defending our country and its free institutions, the least we at home can do is to make sure that they are able to enjoy the rights they are being asked to fight to preserve.

What President Truman wrote of those fighting the Korean War in 1952 is equally true of their grandsons and granddaughters, and great-grandsons and great-granddaughters, fighting the Global War on Terrorism today. President Truman's words should be redirected to today's Federal and State legislators and election officials. With the help of these officials, the brave young men and women serving in our Armed Forces will not have to wait another 54 years to exercise a basic civil right that the rest of the United States takes for granted.

ⁱ The Committee Report's complete text is available on the National Defense Committee (NDC) website, www.nationaldefensecommittee.org.