



State Board of Elections

Elaine Walker
Chairman
Secretary of State

140 Walnut Street
Frankfort, Kentucky 40601-3240
Phone: (502) 573-7100
Fax: (502) 573-4369 or (502) 696-1952
www.elect.ky.gov

Sarah Ball Johnson
Executive Director

Sandy Milburn
Assistant Director

November 8, 2011

The Honorable Ronald Weich
Assistant Attorney General
U.S. Department of Justice
Office of Legislative Affairs
Washington, DC 20530

Dear Mr. Weich:

We, the board members of the Kentucky State Board of Elections, respectfully write in response to your September 20, 2011 letter explaining proposed amendments to the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the Military and Overseas Voter Empowerment Act of 2009 (MOVE), sent to the Senate President and the Speaker of the House.

Kentucky election officials work diligently to aid UOCAVA registrants (military, their dependents and overseas citizens) voting in elections. Our state law requires that absentee ballots be printed at least 50 days prior to an election, and that an absentee ballot be sent to the voter within 3 days of receipt of the request. In the 2010 general election, our 120 county clerks sent out 1,452 UOCAVA absentee ballots. 1,067 of these absentee ballots were returned by the voters and the county boards of election counted 95% of the absentee ballots.

The Board strongly opposes the proposed 55 day reporting requirement for states to certify by county to the Department of Justice (DOJ) that absentee ballots will be available for transmission to UOCAVA voters by 45 days before the election. Neither the State Board of Elections nor the Secretary of State prints absentee ballots. The 120 county clerks print absentee ballots, and pay for all costs associated with the election. A pre-election reporting requirement imposed at the state level is burdensome, inefficient and costly.

The Board also strongly opposes the proposed 43 day reporting requirement for states to certify by county to the Department of Justice (DOJ) that all absentee ballots for UOCAVA voters have been transmitted by 45 days before the election. Neither the State Board of Elections nor the Secretary of State prints absentee ballots. The 120 county clerks are solely responsible for processing absentee ballot applications and sending out absentee ballots. Again, a pre-election reporting requirement imposed at the state level is burdensome, inefficient and costly.



In addition, the Board strongly disagrees with the proposed requirement for the states to pay for express delivery of all UOCAVA ballots not sent out by the 45th day before an election and the proposed requirement for the states to pay for express return of the absentee ballot if the ballot was not sent out by the 40th day before an election. In Kentucky, neither the State Board of Elections nor the Secretary of State sends out absentee ballots. The 120 county clerks are solely responsible for sending out absentee ballots. In this time of extreme budget cuts on the state and local level, this added cost would clearly be an unfunded mandate.

The Board vehemently disagrees against the establishment of civil penalties ranging from \$110,000 for a first violation to an amount not exceeding \$220,000 for additional violations levied against the state. Neither the State Board of Elections nor the Secretary of State sends out absentee ballots. The 120 county clerks are responsible for sending out absentee ballots. Because a violation is not defined in the proposed legislation, it is highly possible a judge in one state could impose a fine for a ballot that is sent out after the 45 day deadline, but is returned by the voter and is counted on election day, even though there is no actual harm; whereas, a judge in a different state would not impose a fine in the same circumstances. Establishment of fines for violations comes at a time of extreme budget cuts on the state and local level. In fact, these fines and costs associated with litigating the issue might very well bankrupt a state or local election office. The time associated with litigating these issues means less time focusing on serving all voters and preparing for the upcoming election.

The Board is strongly opposed to providing a private right of action for violations of UOCAVA and MOVE Acts. Allowing UOCAVA voters to file such suits in addition to or in place of DOJ could result in election officials spending a majority of their time on this litigation, and less time preparing for and conducting elections. The costs associated with these suits would strain budgets already weakened by severe budget cuts due to current economic conditions. Existing enforcement provisions are sufficient to ensure continued compliance.

The Board is also strongly opposed to the proposal to award attorneys' fees for the prevailing party in civil actions for violations of UOCAVA. The Act provides for sufficient incentives for states to comply without the need for imposing on states the additional burden of attorneys' fees for minor violations.

The Board strongly agrees with the proposed removal of the waiver provision, the clarification on moving the deadline to the next preceding day when the 45th day falls on a holiday or a weekend, and the prohibition against refusing UOCAVA absentee ballot applications for being filed too early.

The Kentucky State Board of Elections continues to support efforts to improve methods of voting for our UOCVA voters. However, these efforts should be balanced against the realities of decreasing funds available for conducting elections.

If you have any questions or comments, please contact Sarah B. Johnson, Executive Director of the Kentucky State Board of Elections.

Sincerely,



Elaine Walker
Secretary of State
Chairman

David M. Cross
Board Member



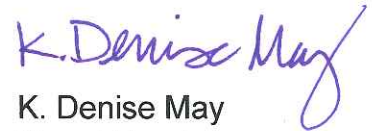
Roy Sizemore
Board Member



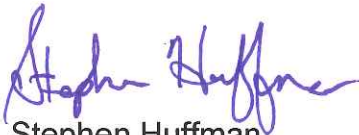
George Russell
Board Member



Robert E. Gable
Board Member



K. Denise May
Board Member



Stephen Huffman
Board Member

Cc: The Honorable Joseph R. Biden, Jr., President of the United States Senate
The Honorable John A. Boehner, Speaker of the United States House of Representatives