

MILITARY MATTERS: PROTECTING THE RIGHTS OF THOSE WHO PROTECT US



Kentucky Secretary of State
Alison Lundergan Grimes

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Thousands of Kentucky voters are active-duty military personnel. Even as they risk their lives to protect the right to vote, men and women who are training and/or deployed face some of the most difficult circumstances for casting their own ballots.

In the 2008 General Election, Kentucky's county clerks sent absentee ballots to more than 4,700 members of the military. Fewer than 3,600, or 76 percent, were returned. In comparison, nearly 90 percent of overseas citizens who were sent absentee ballots returned theirs.

In 2009, the United States Congress expanded the 1986 Uniformed and Overseas Citizens Voting Act (UOCAVA) by enacting the Military and Overseas Voter Empowerment (MOVE) Act to provide greater protection for overseas citizens, uniformed service members, and their eligible family members' right to vote in federal elections.¹ Among other things, the MOVE Act requires states to transmit a validly requested absentee ballot to a uniformed service or overseas voter no later than 45 days before a federal election, if the request was received before that date.² The MOVE Act also mandates that all states make voter registration applications and absentee ballot applications available electronically.³

Most provisions of the MOVE Act went into effect for the November 2, 2010, General Election.⁴ Kentucky saw some improvement in military voting, with almost 78 percent of military ballots and approximately 79 percent of overseas citizens' ballots returned in that election. However, even after implementation of the MOVE Act, military absentee ballots are more likely to be rejected than absentee ballots cast by non-military overseas citizens. In the 2010 General Election, 62 military ballots were not counted, primarily because they were returned undeliverable or arrived after 6:00 p.m. on Election Day. Only 20 ballots cast by overseas voters encountered those problems.

In 2012, Secretary of State Alison Lundergan Grimes undertook increased efforts to educate and communicate with military and overseas voters to ensure they had all the information necessary to have their voices heard in the presidential, congressional, state and local elections. More than 77 percent of military ballots and approximately 80 percent of overseas voters' ballots were returned. However, more than 300 of those ballots were not able to be counted, again with many rejected because they did not arrive until after 6:00 p.m. on Election Day.

FROM THE FRONT LINES

Improving uniformed service members' access to the ballot box is a priority for Secretary Grimes. Secretary Grimes grew up canvassing Kentucky's precincts and counties to make sure all citizens had access to the ballot box on Election Day. She has worked hard to ensure that those who protect our rights on the battlefield have their voices heard at the ballot box.

In addition to meeting with armed service members in Kentucky to educate them about voter registration and the absentee voting process, in 2012 Secretary Grimes filed a lawsuit and obtained a court order that extended the time uniformed service and overseas voters had to cast ballots in special elections that coincided with the November 2012 General Election. As she told the men and women of Task Force LongRifles at the 138th Field Artillery Battalion Departure ceremony, "When I urge the Kentucky General Assembly to improve absentee voting laws in our state, it is your voice that I will demand they protect."

The Office of the U.S. Secretary of Defense selected Secretary Grimes to be one of five



secretaries of state to travel to the Middle East in September 2012 to assess and make improvements to military voting procedures. The mission allowed Secretary Grimes to visit with military members in the field, thank them personally for their selfless service to our nation and evaluate the status of military and overseas voting nearly two years into

implementation of the MOVE Act.

The six-day program started on Saturday, September 8, 2012, when the five secretaries (KY, NV, MI, LA and AR), a representative of the Federal Voting Assistance Program and Navy escorts flew overnight from Washington, D.C., to Kuwait, where they began their review of absentee voting in the Central Command (CENTCOM) area of responsibility (AOR). The CENTCOM AOR spans over 20 countries and four time zones; has a population of over 541

million; consists of 49 ethnic groups, 60 languages and 27 religions; and contains 58 percent of the world's oil and 46 percent of the world's natural gas.

While in Kuwait, the secretaries met with the U.S. Ambassador to Kuwait, Matthew H. Tueller, and embassy officials regarding, among other things, consular service, public affairs and the office of military cooperation. Because U.S. citizens are not required to register with an embassy, officials cannot accurately report the number of U.S. citizens in Kuwait but believe it to be approximately 40,000-55,000, including military personnel. The embassy tries to identify U.S. citizens residing in Kuwait, their locations, and how best to reach them, but security concerns limit the amount of outreach the embassy can safely undertake.

Embassy staff often are left to reach out to U.S. citizens via email, the embassy webpage, and social media to educate them regarding the absentee voting process. Embassy officials reviewed with the secretaries how ballots are processed at the embassy postal facility and discussed the challenges they believe remain for overseas voters. They noted that for non-military citizens living in Kuwait, the voting process can be burdensome because the ability to fax internationally is limited (and in the case of 800 numbers completely precluded), and mail service in Kuwait is not reliable. Indeed, embassy staff never send passports or visas through Kuwait mail, but require them to be picked up at the embassy.

While in Kuwait, the secretaries traveled to Camp Arifjan, where they were briefed about military voting procedures at the Army Central Command (ARCENT) headquarters. ARCENT command leadership, including Col. T.J. Edwards, whose family is at Fort Knox, emphasized that "soldiers today demand connectivity" and spoke of the inefficiency of mail compared with electronic communications. In all cases, though, ballots are treated with the utmost care and receive priority: "Ballots go with beans and bullets in transportation of assets." Every effort is made to locate a soldier before returning as undeliverable mailed election materials.



Secretary Grimes and the other secretaries also toured the Army Post Office and Joint Military Mail Terminal, where they saw firsthand how election materials are handled, marked and recorded in the electronic military postal system. The secretaries then had an opportunity to meet service men and women from their home states to discuss their personal absentee voting experiences.

Throughout the trip, Kentuckians were well-represented, with overwhelming displays of Kentucky pride from our soldiers, sailors, airmen and marines. In fact, the Kentucky Air National Guard 165th Airlift Squadron flew the group in a C-130 from Kuwait to Qatar, where the secretaries were briefed by the U.S. Embassy at Qatar and visited with the Air Force Central Command (AFCENT) at Al Udeid Air Base.



In a postal service program at the Air Base in Qatar, the secretaries learned more about the system used to track incoming and outgoing ballots and additional efforts taken by our military to ensure that proper protocol is followed throughout the process. For instance, when a ballot is received at the post office at Al Udeid Air Base, it is forwarded with a letter that contains instructions on how to return the ballot. If an executed ballot is returned to the post office, the service member is given a tracking number for the return of the ballot to his or her home state.

From Qatar, the delegation traveled to Bahrain, its final destination in the Middle East. Bahrain is home to U.S. Navy Fleet 5 and the U.S. Naval Support Activity (NSA). While at NSA, the secretaries were briefed by the Commander of the Naval Forces Central Command (NAVCENT), Vice Admiral John Miller, and Marine Corps Central Command (MARCENT) leadership. The dignitaries also met with constituents and U.S. Embassy officials in Bahrain and saw firsthand the conditions our sailors face in the Gulf on board the U.S.S. Ponce and Minecounter Measure (“MCM”). Personnel in Bahrain reiterated the message shared by all: the process for overseas military members to register and vote throughout the U.S. remains unnecessarily complicated and cumbersome.



After returning home from the Middle East, Secretary Grimes continued her assessment of military voting procedures, conducting roundtable discussions with Major General Jefforey A. Smith, Commanding General at Fort Knox, Major General James C. McConville, Commanding General at Fort Campbell, and voting assistance officers (VAOs) at

each base. Command leadership and the VAOs echoed the sentiments heard in the CENTCOM AOR and noted that, “The simpler we can make it, the more effective the process will be.”

Since her mission to the Middle East, Secretary Grimes has continued to receive feedback from Kentuckians serving in the military and living abroad. The themes she heard repeatedly in person have been echoed through emails and calls, expressing concerns over the time it takes to mail executed ballots and support for the ability to return ballots via a secure electronic transmission system.

For example, after the November 2012 General Election, Major Nicholas Cipparone recalled how his ability to vote was jeopardized by the obstacles associated with mailing ballots from overseas. Thanks to his and his wife’s diligence and the help of a number of elected officials, his ballot was received months after he placed it in transit. But hundreds of others’ stories did not have a similar ending. Lyne Dickey, McCracken County Deputy Clerk, shared that both her son and brother-in-law have served our country overseas, but neither has ever been able to return an executed ballot in time to be counted.

OVERALL IMPRESSIONS

Our men and women in uniform, whose primary objective is to protect and defend the United States, handle, deliver and return election materials with the utmost care. At each base she toured, including Fort Knox and Fort Campbell in Kentucky, Secretary Grimes spoke with VAOs who, in addition to their fundamental military mission, take on additional responsibility regarding elections. In the military, VAOs are the frontline administrators of the election process, helping to inform our men and women in uniform about the procedure for requesting and returning an absentee ballot.



From her firsthand review, Secretary Grimes believes the VAOs’ goal to “provide expedited processing and tracking of absentee ballots while maintaining the integrity and security of ballot

movement through the military postal system” is met. They likewise make every effort to educate overseas citizens regarding the absentee process and encourage participation. In short, these men and women do a remarkable job, particularly considering the numerous and varied state laws throughout the U.S.

There remains, however, substantial room for improvements, especially in state laws, to further facilitate the ability of our uniformed service members to cast ballots that will actually be counted.



Although the military mail system takes great care to ensure speedy and dependable delivery of ballots, Secretary Grimes observed and heard repeatedly from personnel in the Middle East that reliance on mail simply is not sufficient to ensure the right to vote. Military voters are constantly on the move, and they may find it impossible to timely receive, fill out, and return ballots under current laws. And as depicted in the

appendix, the resources required to send a ballot to or return a ballot from theater render mail inefficient. Thus, the preference for and superiority of electronic ballot submission to meet the demands of our men and women in uniform was echoed across the services.

Greater uniformity among the states’ election laws would also be beneficial. VAOs provide guidance to troops from across the United States as they navigate the varied absentee registration and voting procedures. The logical consensus is that uniform procedures, timelines, and deadlines would alleviate much of the confusion that can jeopardize military voters’ ability to cast a ballot that will be counted.

RECOMMENDATIONS

Those who fight for our freedoms deserve to have those of us at home fighting for theirs. Indeed, we owe men and women in uniform our best efforts to ensure that their rights are not compromised while they risk their lives to protect ours. With that in mind and based on what she learned from military voters both in Kentucky and abroad, Secretary Grimes recommended that

the 2013 General Assembly adopt the following measures to ensure that military voters' voices are heard in every election.

1. Implement Online Voter Registration for Uniformed Service and Overseas Voters

Our service members necessarily move from location to location, and maintaining their voter registration information via U.S. mail is overly cumbersome. As of September 2012, 15 states offered or had plans to offer online voter registration.⁵ Arizona was the first state to allow online voter registration in 2002, and 70 percent of all voter registrations in Arizona are now done online.⁶

The time and cost of implementing online voter registration varies, but changes Secretary Grimes and the State Board of Elections are in the process of making to Kentucky's statewide voter registration database would facilitate the transition here. One group that interviewed several states found it took approximately one year to put in place paperless voter registration systems, and the cost ranged from \$60,000 to \$600,000.⁷ However, the costs are offset by substantial savings in printing expenses and processing time.⁸ In addition, online voter registration may result in more accurate voter rolls.⁹



As Secretary Grimes learned on her trip, members of the armed services use a secure, soldier-initiated, internet-based system that enables them to encrypt and cryptographically sign emails. The State Department, Department of Homeland Security, and Internal Revenue Service all permit military personnel to use the system to electronically sign documents.

Based on Secretary Grimes' recommendation, the General Assembly adopted Senate Bill 1, creating an online voter registration system for uniformed service and overseas citizens that will cross-reference the Kentucky driver's license database maintained by the Department of Transportation.

2. Permit Sufficient Time for Uniformed Service and Overseas Voters to Participate in All Elections

The right to vote is meaningless if there is not sufficient time for ballots to be returned and counted. It can take 45 days for a uniformed service voter to receive, fill out, and return an absentee ballot. Federal law requires states to transmit ballots for federal elections sufficiently in advance, and Kentucky law provides for ballots to be sent at least 50 days before a regular election. But under the version of KRS 118.770 in effect as of 2012, the earliest a ballot for a special election for United States Congress, Kentucky General Assembly, or Governor could be transmitted was 27 days before the election.



In August 2012, Secretary Grimes obtained an order from the Franklin Circuit Court addressing this deficiency in Kentucky law with respect to three special elections scheduled for November 6, 2012.¹⁰ To prevent impairment of the right to vote, the Court required candidates for the special elections to file their petitions and certificates of nomination by no later than 57 days before the elections, enabling the county clerks to print and transmit ballots to uniformed service and overseas voters at least 45 days in advance of the receipt deadline.

Under Senate Bill 1, a permanent solution was accomplished, requiring candidates in special elections to file their petitions and certificates of nomination at least 49 days prior to the election and mandating that ballots in special elections be printed no later than 45 days before the election, thus providing sufficient time for military and overseas voters to meaningfully participate.

3. Permit Uniformed Service and Overseas Voters to Return Executed Ballots Via a Secure Electronic Transmission System

According to the Federal Voting Assistance Program, 24 states permit, at least under some circumstances, uniformed service and/or overseas voters to return voted ballots via email or the internet. Kentucky law current permits blank absentee ballots to be transmitted to voters via mail, email or fax. But they may be returned only via mail.

By all accounts, the Internet is the most reliable method by which to contact an overseas voter. Mail is complicated by soldiers' necessary mobility and time requirements, and fax machines are not always available or useable overseas.

Through Senate Bill 1, the 2013 General Assembly established a task force to study the feasibility of using a secure electronic transmission system to return executed ballots. Secretary Grimes will continue to advocate on behalf of Kentucky's military and overseas voters to ensure they have the tools necessary to cast ballots that will be counted.



4. Ensure All Uniformed Service and Overseas Voters' Absentee Ballots are Counted

Soldiers, sailors, airmen and guardsmen repeatedly asked Secretary Grimes, "Does my vote actually count?" Many recalled the results of the 2000 election, in which thousands of military absentee votes in Florida were not counted.

Under current Kentucky law, in order to be counted, absentee ballots must be received by the county clerk by no later than 6 p.m., local time, on election day.¹¹ Recognizing the obstacles military voters face to receiving, casting, and returning ballots, several states permit absentee ballots to be counted under some circumstances even if they are received after the polls close.

Specifically, the national Uniform Law Commission's Uniform Military and Overseas Voters Act (UMOVA) proposes that absentee ballots be deemed timely cast if either (a) received by the election official before the polls close on election day, or (b) submitted for mailing or transmission no later than 12:01 a.m. at the place where the voter completes the ballot on the date of the election. The absentee ballot must be counted if delivered by close of business the day before the election results are finalized.



The 2013 General Assembly declined to adopt a similar provision that would have permitted ballots to be counted if they were transmitted via mail prior to the day of the election and received by close of business the day before vote totals were certified – a receipt extension of fewer than 48 hours. Secretary Grimes will continue to work to give Kentucky's military and overseas voters the time necessary to have their voices heard.

5. Adopt the Uniform Military and Overseas Voters Act

Secretary Grimes consistently heard from military and civilian personnel stationed in the Middle East that uniformity and simplification with respect to the procedures and time frames for requesting and submitting absentee ballots would bolster efforts to assist military and overseas voters.



Since its adoption in 2010, eight states have adopted UMOVA, and the legislatures in four other states introduced the act in 2012. UMOVA accomplishes recommendations 2 and 4 set forth above by extending UOCAVA to state elections and allowing ballots to be counted in some circumstances even though they are received after the polls close.

UMOVA also extends the guarantees contained in UOCAVA to members of the National Guard. With more than 8,000 soldiers in the Kentucky National Guard, the Commonwealth cannot continue to overlook protection of National Guard members' right to vote.

The 2013 General Assembly largely adopted Secretary Grimes' recommendation with respect to UMOVA, except as noted above with respect to the brief receipt deadline for mailed, executed ballots. This increase in uniformity and applicability will help make sure all eligible Kentuckians have the information and protections necessary to exercise their right to vote.

CONCLUSION

Kentucky has a rich history of selfless individuals stepping up to serve this country in uniform. Indeed, over 350,000 veterans reside in Kentucky.¹² From Master Sergeant Willie B. Oden, who is serving in Kuwait and whose wife, Veronica, lives in Radcliff, to Tech Sergeant Travis Greenwell, who is serving in Qatar and whose family lives in Loretto, Kentuckians are doing great things for the country in the CENTCOM region. We must show our appreciation for these heroes in the Commonwealth by strengthening their right to vote.



Senate Bill 1 is one step forward in ensuring those who risk their lives on the battlefield have their voices heard at the ballot box. Having seen firsthand in the Middle East their commitment to the Commonwealth and our nation, Secretary Grimes holds a deep respect for our military. As Chief Election Official, she will continue to work on their behalf to ensure no military or overseas voter ever has to question whether his or her vote counts.

¹ See 42 U.S.C. § 1973ff-1(a)(1).

² 42 U.S.C. § 1973ff-1(a)(8)(A).

³ 42 U.S.C. § 1973ff-1(a)(6); see also KRS 117.085(1); 31 KAR 4:130; 31 KAR 4:140; 31 KAR 5:010.

⁴ Pub. L. 111-84, div. A, title V, §§ 580(f), 583(a)(3), 584(c).

⁵ *Voter Registration Modernization/VRM in the States*, Brennan Center for Justice, available at http://www.brennancenter.org/content/pages/voter_registration_modernization_states, last accessed Sept. 17, 2012.

⁶ *Electronic (or Online) Voter Registration*, National Conference of State Legislatures, available at <http://www.ncsl.org/legislatures-elections/elections/electronic-or-online-voter-registration.aspx>, last accessed Sept. 17, 2012.

⁷ Christopher Ponoroff, *Voter Registration in a Digital Age*, Brennan Center for Justice 2010, available at http://brennan.3cdn.net/806ab5ea23fde7c261_n1m6b1s4z.pdf, last accessed Sept. 17, 2012.

⁸ *Id.*

⁹ *Id.*; see also *Voter Registration Modernization*, *supra* n.5.

¹⁰ *Holsclaw v. Grimes*, Franklin Circuit Court, Civil Action No. 12-CI-1042, Aug. 28, 2012 Order.

¹¹ KRS 117.086(1); KRS 118.035(1).

¹² Kentucky Department of Veterans' Affairs, at http://www.lrc.ky.gov/statcomm/CPAB/Proposed%20Proj_1218/GS_VetAffairs.pdf, last accessed Sept. 18, 2012.