

MILITARY VOTING UPDATE: A BLEAK PICTURE IN 2012



A REPORT BY THE MILITARY VOTER PROTECTION PROJECT AND
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The challenges faced by military voters are immense. As America's most mobile population, military voters are constantly on the go moving from one duty station to the next. If they have any hope of voting, military voters are required to navigate a confusing array of state absentee voting laws. In many cases, the request for an absentee ballot never comes or comes too late to vote.

In 2009, Congress attempted to alleviate these challenges by passing the Military and Overseas Voter Empowerment Act (MOVE Act).² Not only did the law promise to modernize absentee voting through the use of technology, it required a more robust voter registration system for military voters—one that would automatically provide military voters with an opportunity to update their voter information during the check-in process at their new duty stations.

Unfortunately, this latter provision has yet to be fully implemented and that failure appears to be having a significant impact on the absentee ballot request rate for military voters in 2012. Without immediate action, military voters once again will have their voices silenced in November.

FAR FROM HOME AND CONSTANTLY ON THE GO

The difficulties associated with military voting are as old as the nation and its Armed Forces. By the nature of their service, military members and their families are required to move frequently and often on a moment's notice. According to Census data, nearly one-third of all military members move on a yearly basis—a rate that is three times higher than the rate for the general population.³

Yet, Census data only tells part of the story. Even if the average military member moves every three years, that same military member is likely to make several temporary moves in the same time period, either for training purposes or deployments. Many military members don't know where they will be next week, let alone three months from now when the rest of America votes.

To make matters worse, at least for voting purposes, state and local election officials have limited access to military members. Unlike other voters, who receive voting assistance at their local driver's license branch or social service office, a vast majority of military members live far from home and must vote by absentee ballot.

A HISTORY OF PROBLEMS

Prior to the MOVE Act, the Department of Defense (DOD) relied upon a unit level program whereby voting assistance was assigned to a junior officer or senior enlisted member as a collateral duty. These unit voting assistance officers (VAOs) were supposed to provide every military member and their spouse with voting assistance, especially when that member checked into a new duty station.

Unfortunately, the VAO program was marred by inconsistent results and poor performance—a fact consistently noted by DOD's Inspector General (IG). In one 2004 report, the IG specifically found that the VAO program failed to provide "the consistent, focused attention" needed to achieve its statutory mission. The IG concluded that "senior leadership can expect significant improvement only if a radically different approach is applied."⁴

That different approach never materialized.



THE MOVE ACT

The MOVE Act attempted to provide military voters with a more systematic way to register, request an absentee ballot and update their addresses—one that would mimic the support provided to civilians at their local driver’s license branches or social services offices and eliminate the inconsistencies of the previous VAO program.

At the core of this new requirement, the MOVE Act required DOD to create voting assistance offices on every military installation. These installation voting assistance offices were supposed to provide military voters with an opportunity to register, update their voting address, and request an absentee ballot “as part of the administrative in-processing...upon arrival at the new duty station.”⁵ In other words, under the new system, military voters would receive voting assistance each time they moved to a new duty station.

Additionally, upon approval by the Secretary of Defense, these offices were to be operated in a manner consistent with the National Voter Registration Act (NVRA, often referred to as Motor Voter).⁶ This latter requirement was important because it guaranteed that military voters would receive the same type and level of assistance routinely provided to civilians at their local driver’s license branches or social service offices.

Under the NVRA, these services include: (1) distributing the voter registration forms to each person who visits the office; (2) providing assistance when completing the form; and (3) sending completed forms to the appropriate election official.⁷ In addition, if an individual declines such assistance, the office must provide the voter with a declination form. Finally, to ensure accountability, these offices must compile data regarding the number of completed registration forms and declinations.

★ A BLEAK PICTURE FOR MILITARY VOTERS ★

The absentee ballot data for 2012 paints a bleak picture for military voters.⁸ While the MOVE Act should have increased opportunities for military members to register and request an absentee ballot, the 2012 pre-election data shows a remarkable decrease in such requests from military voters, especially when that data is compared to data from 2008.⁹

Take, for example, the low number of absentee ballots that have been requested thus far in Virginia, North Carolina, and Ohio. Of the 126,251 active duty military members and spouses in Virginia, only 1,746 have requested absentee ballots for the November election. Similarly, in North Carolina and Ohio, less than 2,000 absentee military ballots have been requested by military members and their spouses in those states. Overall, in these three states, less than 2 percent of eligible military voters (5,411 out of 288,961) have requested absentee ballots.

Data from other states, while not as extreme, still raises significant concerns. The fact is that an incredibly small percentage of military voters are requesting absentee ballots for the 2012 election, even though a majority of military members (roughly, two-thirds) will need to vote by absentee ballot.

Florida—the state with the highest percentage of absentee ballot requests so far—has received absentee ballot requests from 16% percent of military voters eligible to vote in that state. Other states like Alaska, Colorado, and Illinois have absentee ballot request rates in the 5 to 7 percent range. The chart below contains absentee ballot data from 8 states.

State	Total Military Voters	Total Absentee Ballots Requested	% of Military Requesting Ballot
Florida	241,445	37,953 ¹⁰	15.7%
Virginia	126,251	1,746	1.4%
North Carolina	108,748	1,859	1.7%
Illinois	66,221	3,532 ¹¹	5.3%
Ohio	53,962	1,806	3.3%
Alaska	51,147	3,878 ¹²	7.6%
Colorado	47,867	2,986	6.2%
Nevada	25,581	1,750 ¹³	6.8%

While the number of absentee ballot requests will increase in the coming weeks, especially as the election draws near, the amount needed to meet 2008 levels is staggering. As the chart below indicates, all of the states have witnessed an alarming and significant decrease in absentee ballot requests. It will be difficult to make up the difference in the coming weeks.

State	2008 Ballot Requests	2012 Ballot Requests	Difference
Florida	86,926	37,953	-48,973
Virginia	20,738	1,746	-18,992
North Carolina	13,508	1,859	-11,649
Illinois	9,858	3,532	-6,326
Ohio	13,317	1,806	-11,511
Alaska	11,882	3,878	-8,004
Colorado	5,104	2,986	-2,118
Nevada	4,919	1,750	-3,169

DOD'S RESISTANCE

If the MOVE Act was supposed to create a standardized system of military voter assistance—one that would mimic the system in place for civilians and provide consistent military voter assistance—how could the absentee ballot request rate be so low in 2012?

The answer to this question, in large part, rests with DOD and its resistance to fully implement the voter assistance provisions of the MOVE Act in a timely manner. That resistance, according to Senator John Cornyn, began well before the MOVE Act was passed and continued well after the bill was signed into law.¹⁴

Senator Cornyn expressed his frustration with DOD at a speech in July 2011, “I still cannot comprehend why the Pentagon has been so resistant—because the idea is pretty simple. As part of in-processing at each military installation, every service member would be offered an opportunity to fill out a simple form that would register the service member or family member to vote, or update an existing registration, and request an absentee ballot for the next federal election cycle.”¹⁵

Yet, the Pentagon continued to resist these provisions in both overt and subtle ways. On the overt side, it simply failed to create the installation voting assistance offices by the November 2010 deadline. In fact, many of the offices were not created until late 2011. This was a clear violation of the MOVE Act.

More subtly, the Pentagon appeared to take actions that undermined the intended purpose of these offices. For example, rather than locate the offices in manpower or pay offices (i.e., two places that military members must visit as part of the check-in process), several installations placed their offices in locations unassociated with the check-in process, like the base library, gym, or chapel.

Even if the office was located in a more suitable place, most of the offices were left off the installation's check-in list. In other words, service members were not required to visit these offices as part of their check-in process.

Finally, none of the offices appear to be in compliance with the NVRA—a fact demonstrated by the data being reported by these offices.¹⁶ For example, in the 2nd quarter of 2011, the Air Force reported that it provided assistance at only 7 of its 22 installation voting assistance offices. In its 3rd quarter report, the Air Force indicated that only five service members received assistance from these offices.

The Air Force was not alone. All of the branches (Army, Navy, and Marine Corps) provided very little voter registration assistance at these offices—a direct result of where they were located and the lack of a requirement to visit these offices as part of the check-in process.

THE TIME IS NOW

This data should sound an immediate warning bell for military voters. With less than 90 days before the election—and less than 45 days before ballots will be sent to the troops—there is no time to wait. All hands must undertake significant efforts to provide military voters with the necessary opportunity to register and request an absentee ballot.

Central to this effort, the Pentagon must make military voting a priority over the next 30 days. It must ensure that all military members and their families receive an opportunity to register and request an absentee ballot and assistance when completing the necessary forms.

Moreover, that assistance must be consistent with the NVRA. It is not sufficient to place a stack of federal registration forms in the galley or the Sergeant Major's office. Nor is it sufficient to send out a blast email. Voting assistance must include both a personal offer of assistance, as well as a declination form if the service member declines such assistance. That will ensure that military voters receive the same level of assistance being provided to civilians at driver's license branches.

For too long, our men and women in uniform have been silenced in the electoral process. The time to act is now. We must deliver the promise of the MOVE Act and provide them the voting assistance required by law. This is the only way to ensure that their voices will be heard on Election Day.



SOURCES

1. Special thanks to Professor Kynndra Rotunda and the AMVETS Legal Clinic at Chapman University for their assistance and longstanding support.

2. Pub. L. No. 111-84 §§ 577 to 582, 583(a), 584 to 587, 123 Stat. 2190 (2009).

3. In 2010, 34.3% of military members moved as compared to 11.0% of the general population over the age of 16. See U.S. Census Bureau, General Mobility of Persons 16 Years and Overs, By Sex, Age, Race and Hispanic Origin, Region, and Labor Force Status: 2010 to 2011, available at <http://www.census.gov/hhes/migration/data/cps/cps2011.html>.

4. See Evaluation of the Voting Assistance Program, Inspector General, Department of Defense, Report No. IE-2005-001 (2005), pg. 26, available at http://www.dodig.mil/Inspections/IE/Reports/Final_VoterAssistanceProgram.pdf.

5. 10 U.S.C. § 1566a(c).

6. 42 U.S.C. § 1973gg et seq.

7. The Voting Section of the Department of Justice has published detailed guidelines regarding the requirements for voter registration agencies under the NVRA. See http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php.

8. The state data was collected in phone calls and emails from state and local election officials in Florida, Virginia, North Carolina, Illinois, Pennsylvania, Ohio, Alaska, Colorado, and Louisiana over the last 30 days.

9. Data from the 2008 election was collected and published by the Election Assistance Commission. See U.S. Election Assistance Commission, Uniformed and Overseas Citizens Absentee Voting Act Survey Report Findings, Table 8, pgs. 20-21 (2009), available at <http://www.eac.gov/assets/1/Page/2008%20Uniformed%20and%20Overseas%20Citizens%20Absentee%20Voting%20Act%20Survey.pdf>

10. Given the recent primary in Florida, this data is not yet official and is subject to change. However, any variation will not be statistically significant.

11. Data from 2012 Presidential primary

12. This report was updated to reflect Alaska's current total ballot requests as of August 22, 2012

13. Nevada's data has not yet been finalized and, thus, this figure represents an estimate. Any variation in data will not be statistically significant.

14. Senator Cornyn was one of the primary authors of the MOVE Act and, in particular, was the driving force behind the MOVE Act's changes to DOD's voter assistance program. Prior to the MOVE Act, Senator Cornyn introduced legislation (the Military Voters' Equal Access to Registration Act) that was the predecessor to the MOVE Act's voting assistance provisions.

15. Senator Cornyn's comments were made on July 19, 2011, at the Heritage Foundation's Military Voting Rights Conference. His remarks are available at: <http://www.texasinsider.org/?p=49645>.

16. <http://www.fvap.gov/reference/measure.html>.

