

Congress of the United States
Washington, DC 20515

October 15, 2010

Thomas E. Perez
Assistant Attorney General for Civil Rights
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

Dear Assistant Attorney General Perez:

In recent days public records of the Department of Justice and the Federal Voting Assistance Program, along with media reports, have painted a picture of widespread noncompliance with federal law aided and abetted by an enforcement authority that is entirely ineffective. Last year Congress adopted a requirement with broad bipartisan support that state and local elections jurisdictions transmit ballots to voters covered under the Uniformed and Overseas Civilian Absentee Voting Act (UOCAVA) no later than 45 days before a general election. For the November 2010 general election that day was September 18. Several states have not complied with that date, and in at least one case (New York) a state was granted a waiver under a process authorized by Congress to send the ballots by a later date, and failed to meet even that deadline.

What we find most troubling about this situation is that the Department of Justice, which has the sole and exclusive authority to bring actions to enforce UOCAVA, not only failed to ensure compliance but apparently was not even aware when widespread noncompliance occurred. The only way Members of Congress, the public, and indeed the UOCAVA voters themselves learned that ballots Congress required to be in transit nearly four weeks ago apparently are still waiting to be sent was that private organizations took it upon themselves to inquire.

The Department appears to have accepted vague and misleading assertions of compliance. For example, under its waiver agreement the State of New York was required to provide a certification that all ballots were sent by October 1. The email message that apparently purports to satisfy this requirement is dated October 5 and says only, "County Boards of Elections have reported to our office that UOCAVA ballots have been transmitted to voters within their respective jurisdictions." That "certification" includes no assurance that the reports it refers to are true, and it does not even purport to state that the ballots were mailed by the October 1 deadline rather than by the October 5 date of the email.

Further, the Illinois State Board of Elections asserted in a September 20 email to the Department of Justice that "Illinois military and overseas ballots went out between September 3rd (Illinois law) and September 18th (Federal law)." Yet the same official who wrote that email told the media on October 13 that not all jurisdictions had mailed ballots by the deadline, and other media reports state that at least 34 out of Illinois' 110 jurisdictions failed to comply with the federal law imposing a September 18 deadline to mail UOCAVA ballots.

If the Department of Justice has routinely accepted “certifications” like the one provided by New York – or apparently false assertions like the one provided by Illinois – then it is no surprise that compliance with UOCAVA’s 45-day requirement has been inconsistent at best. In light of published reports that attorneys in the Civil Rights Division are selective in deciding which sections of the National Voter Registration Act to enforce and which classes of defendants to enforce the Voting Rights Act against, we can only wonder whether the failure to effectively ensure compliance with UOCAVA is a result of deciding which laws passed by Congress are worthy of enforcement, or failing to create processes and procedures that can function effectively.

At this moment in time, with an election less than three weeks away and voters expecting their ballots, the most important thing is that UOCAVA ballots be sent as quickly as possible. So far the Department’s consent agreements with noncompliant jurisdictions appear to rely on extending the date by which ballots may be returned after the election. Studies have shown that even with the extended dates a ballot mailed the day before an election may or may not arrive in time to be counted. Because many UOCAVA voters will receive their ballots late, they may not be able to take advantage of a provision of the MOVE Act’s amendments to UOCAVA providing that any ballot submitted for mailing seven days before election day would be returned via express delivery by election day. We encourage the Department to consider including in its resolution of cases of late ballot delivery a means to allow voters in the affected jurisdictions to use similar expedited delivery after the seven-day cutoff in order to ensure their ballots are delivered in time to be counted.

Congress has worked hard over the last several years to ensure that the men and women overseas on behalf of our country do not lose their ability to vote as a result of their service. Congress relies on the Department of Justice to ensure the laws are followed. The Department’s failure to give meaning to our efforts on behalf of overseas voters is deeply disappointing.

Sincerely,



Howard P. “Buck” McKeon
Ranking Member
House Armed Services Committee



Kevin McCarthy
Ranking Member
Subcommittee on Elections
Committee on House Administration



Lamar Smith
Ranking Member
House Judiciary Committee