

MILITARY VOTING PROTECTION ACT OF 2009

OCTOBER 1, 2009.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. BRADY of Pennsylvania, from the Committee on House
Administration, submitted the following

R E P O R T

[To accompany H.R. 2393]

[Including cost estimate of the Congressional Budget Office]

The Committee on House Administration, to whom was referred the bill (H.R. 2393) to amend the Uniformed and Overseas Citizens Absentee Voting Act to improve procedures for the collection and delivery of marked absentee ballots of absent overseas uniformed services voters, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF THE LEGISLATION

As the Committee examines the successes and failures of the voting process, the obstacles facing military personnel serving overseas who seek to vote are disturbingly evident and require prompt attention. Our voting procedures continue to fail thousands of overseas military personnel who are serving their country in defense of the same democratic rights they are too often denied in practice.

H.R. 2393, the Military Voting Protection Act, aims to address the challenge of timely ballot transmission to military personnel serving overseas. Military voters and many citizens living abroad do not have the opportunity to vote because of the time it takes to request, receive, and return absentee ballots. According to Pew Center on the States 2009 report entitled “No Time to Vote, more than one-third of states are either placing citizens living abroad at high risk of not allowing enough time or simply not providing them

with enough time to vote.¹ The purpose of H.R. 2393 is to establish a system of expedited ballot delivery to ensure that overseas service members who submit their completed ballots up to four days before the date of a federal election can be confident the ballot will reach its destination by election day. This expedited delivery should enable thousands of ballots that might otherwise go uncounted today to be tallied.

Last November, millions of Americans participated in an historic election with broad voter participation. Yet our troops fighting overseas, protecting our right to participate in the electoral process, are continually denied their right to vote. Since the enactment of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) in 1986, which provided overseas voters with back-up federal write-in absentee ballots, there have been many reports detailing the disenfranchisement of military personnel due to inadequate ballot delivery methods.

- The Pew Center on the States Military and Overseas Citizen Voting Project found that “by almost every measure, military and overseas voter participation in the 2006 federal elections was substantially lower than the general population.” Voter turnout was only 20.4% for the military population, compared to the 39.8% of the general population which voted.

- According to the Pew Report (citing Table 22 of the U.S. Election Assistance Commission’s 2007 UOCAVA Survey Report) 85.8% of absentee ballots requested by the general population in 2006 were cast. But of the absentee ballots requested by military personnel, only 26.5% were actually cast.

- Other findings from the October 2005 report of the Federal Voting Assistance Program indicate that, of the military personnel who said they did not vote in 2004, 30% did not vote because their ballots never arrived or arrived too late, and 19% did not know how to get an absentee ballot or found the process too complicated.

- According to Pew’s 2009 report entitled “No Time to Vote,” 16 states and the District of Columbia do not allow enough time to vote for military men and women stationed overseas.² These states send out their absentee ballots after the date necessary for military voters to meet all the required deadlines.

The Military Voting Protection Act of 2009 is a first step toward addressing the impediments to full voting participation for our nation’s armed forces. The bill attempts to address the widely chronicled challenges of inconsistent and untimely ballot transmission. Specifically, this legislation will establish procedures for the collection, return transportation, and tracking of marked absentee ballots of our troops serving overseas. However, the U.S. Postal Service and Military Postal Service raised a few comments and concerns about providing a feasible timeline for expedited transmission and tracking. Further, numerous stakeholders and organizations that serve UOCAVA voters emphasize the need to facilitate voting for all citizens living and voting abroad.

¹“No Time To Vote,” *PEW Center on the States*: January 2009.

²The report states that the following jurisdictions do not allow sufficient time for UOCAVA voters to successfully cast their ballot: Alabama, Arkansas, Connecticut, District of Columbia, Georgia, Maine, Massachusetts, Michigan, Missouri, New Hampshire, New York, Oklahoma, South Dakota, Tennessee, Texas, Utah, and Wyoming.

SECTION-BY-SECTION SUMMARY OF LEGISLATION

Section 1.—Short Title: the “Military Voting Protection Act of 2009”

Section 2.—Findings

Section 3.—Collection and delivery of marked absentee ballots of overseas uniformed services voters

- The Presidential designee (FVAP) shall establish procedures for collecting marked absentee ballots.
- Requires that marked ballots collected before the deadline established in this legislation be distributed to the proper election officials prior to the closing of polls on the date of the election.
- Requires the use of United States Postal Service express mail services to deliver ballots.
- Establishes noon on the fourth day preceding the date of the election as the deadline for receiving ballots to be returned using the program.
- Allows the Presidential designee to pick an alternate deadline to ensure timely delivery of ballots if it is deemed that the deadline is insufficient for a locale.
- A tracking system will be set up to let individuals track their ballots by Internet, phone, or other methods.
- Requires that, not later than 180 days after the election, FVAP must submit a report to the appropriate committees on the utilization of the procedures during the previous election.
- Authorizes such sums as may be necessary to carry out the section.
- The provisions of this bill shall apply to the November 2010 general election and each succeeding election for Federal office.

Section 4.—Protecting voter privacy and secrecy of absentee ballots

- FVAP will take precautions to protect the privacy and contents of absentee ballots.

COMMITTEE CONSIDERATION OF THE LEGISLATION

INTRODUCTION AND REFERRAL

On March 19, 2009, Mr. McCarthy of California, along with four Members of the House, introduced H.R. 2393, which was referred to the Committee on House Administration. As of the date of the markup, forty members were cosponsors of the bill.

HEARINGS

On March 26, 2009, the Committee on House Administration Subcommittee on Elections held a hearing entitled “The 2008 Election: A Look Back on What Went Right and Wrong.” The following Members were present at the hearing: Subcommittee on Elections Chair Zoe Lofgren, Representative Charles A. Gonzalez, Representative Artur Davis, Representative Kevin McCarthy, and Representative Gregg Harper.

Panel One Witnesses:

1. The Honorable Gineen Beach—Chairwoman, U.S. Election Assistance Commission

2. The Honorable Gracia Hillman—Vice-Chairwoman, U.S. Election Assistance Commission

3. Mr. George Gilbert—Director, Guilford County Board of Elections, North Carolina

4. Mr. Keith Cunningham—Director, Allen County Board of Elections, Ohio

Panel Two Witnesses:

1. Ms. Melanie Campbell—Executive Director, National Coalition on Black Civic Participation

2. Ms. Patty Ferguson Bohnee—Native Vote Election Protection Coordinator, National Congress of American Indians

3. Mr. Arturo Vargas—Executive Director, National Association of Latino Elected and Appointed Officials

4. Mr. Eric Eversole—Former Attorney, Civil Rights Division, U.S. Department of Justice

5. Mr. Doug Chapin—Director, Election Initiatives, Pew Center on the States

On May 21, 2009, the Committee on House Administration Subcommittee on Elections held a hearing entitled “Military and Overseas Voting: Obstacles and Potential Solutions.” The following Members were present at the hearing: Subcommittee on Elections Chair Zoe Lofgren, Representative Susan Davis, Representative Kevin McCarthy, and Representative Gregg Harper.

Panel Witnesses:

1. The Honorable Gail McGinn—Acting Undersecretary for Personnel and Readiness, Department of Defense

2. Captain Patricia Garcia—Voting Assistance Officer, United States Air Force

3. Mr. Rokey Suleman—General Registrar, Fairfax County, Virginia

4. Ms. Jessie Jane Duff—Gunnery Sergeant, U.S. Marine Corps (Ret)

MARKUP

On June 10, 2009, the Committee met to mark up H.R. 2393. The Committee ordered H.R. 2393 reported favorably, by voice vote. A quorum was present.

MATTERS REQUIRED UNDER THE RULES OF THE HOUSE

COMMITTEE RECORD VOTES

Clause 3(b) of House rule XIII requires the results of each record vote on an amendment or motion to report, together with the names of those voting for and against, to be printed in the committee report. There were no recorded votes taken on H.R. 2393.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee states that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Rep-

representatives, are incorporated in the descriptive portions of this report.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

The Committee states, with respect to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, that the goal and objective of H.R. 2393 is to improve and expedite the absentee voting process for military voters.

CONSTITUTIONAL AUTHORITY

In compliance with clause 3(d)(1) of rule XIII, the Committee states that Article 1 of the U.S. Constitution grants Congress the authority to make laws governing the time, place and manner of holding Federal elections.

FEDERAL MANDATES

Section 423 of the Congressional Budget Act requires a committee report on any public bill or joint resolution that includes a federal mandate to include specific information about such mandates. The Committee states that H.R. 2393 does not include federal mandates.

PREEMPTION CLARIFICATION

Section 423 of the Congressional Budget Act requires a committee report on any public bill or joint resolution to include a statement on the extent to which the measure is intended to preempt state or local law. The Committee states that H.R. 2392 is not intended to preempt any state or local law.

EARMARK IDENTIFICATION

In response to the requirements of clause 9 of rule XXI, the Committee reports that H.R. 2393 does not include any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9(e), 9(f), or 9(g) of rule XXI.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee sets forth, with respect to the bill, the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, September 14, 2009.

Hon. ROBERT A. BRADY,
*Chairman, Committee on House Administration,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2393, the Military Voting Protection Act of 2009.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Jason Wheelock.

Sincerely,

DOUGLAS W. ELMENDORF,
Director.

Enclosure.

H.R. 2393—Military Voting Protection Act of 2009

H.R. 2393 would amend the Uniformed Overseas Citizens Absentee Voting Act to require the Department of Defense (DoD) to collect and deliver absentee ballots of personnel of the uniformed services deployed or stationed overseas. The bill would affect ballots cast in regularly scheduled general elections for federal office and would require DoD to use the express mail service of the U.S. Postal Service to deliver such ballots.

The Postal Service estimates it would charge DoD about \$13.50 per ballot to ship the ballots back to the United States. Based upon data from the Defense Manpower Data Center on the number of military personnel deployed or stationed overseas as of March 2009—the last report currently available—and data from the U.S. Census Bureau on voting participation of the U.S. population, CBO estimates that approximately 165,000 and 275,000 ballots would be shipped by express mail in the 2010 and 2012 elections, respectively. Based upon those factors, and accounting for inflation, CBO estimates that implementing the bill would cost approximately \$2 million in fiscal year 2011 and \$4 million in fiscal year 2013, assuming the appropriation of the necessary amounts.

Section 4 of the Unfunded Mandates Reform Act excludes from the application of that act any legislative provisions that enforce the constitutional rights of individuals. CBO has determined that H.R. 2393 would fall within that exclusion because it would protect individuals' voting rights. Therefore, we have not reviewed the bill for mandates.

The CBO staff contact for this estimate is Jason Wheelock. The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

**UNIFORMED AND OVERSEAS CITIZENS ABSENTEE
VOTING ACT**

* * * * *

TITLE I—REGISTRATION AND VOTING BY ABSENT UNIFORMED SERVICES VOTERS AND OVERSEAS VOTERS IN ELECTIONS FOR FEDERAL OFFICE

SEC. 101. FEDERAL RESPONSIBILITIES.

(a) * * *

(b) DUTIES OF PRESIDENTIAL DESIGNEE.—The Presidential designee shall—

(1) * * *

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(6) not later than the end of each year after a Presidential election year, transmit to the President and the Congress a report on the effectiveness of assistance under this title, including a statistical analysis of uniformed services voter participation, a separate statistical analysis of overseas nonmilitary participation, and a description of State-Federal cooperation; **[and]**

(7) prescribe a standard oath for use with any document under this title affirming that a material misstatement of fact in the completion of such a document may constitute grounds for a conviction for perjury**[.]**;

(8) carry out section 103A with respect to the collection and delivery of marked absentee ballots of absent overseas uniformed services voters in elections for Federal office; and

(9) to the greatest extent practicable, take such actions as may be required to ensure that absent uniformed services voters who cast absentee ballots at locations or facilities under the Presidential designee’s jurisdiction are able to do so in a private and independent manner, and take such actions as may be required to protect the privacy of the contents of absentee ballots cast by absent uniformed services voters and overseas voters while such ballots are in the Presidential designee’s possession or control.

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SEC. 102. STATE RESPONSIBILITIES.

(a) IN GENERAL.—Each State shall—

(1) * * *

* * * * *

(4) use the official post card form (prescribed under section 101) for simultaneous voter registration application and absentee ballot application; **[and]**

(5) if the State requires an oath or affirmation to accompany any document under this title, use the standard oath prescribed by the Presidential designee under section 101(b)(7)**[.]**; and

(6) carry out section 103A(b)(2) with respect to the processing and acceptance of marked absentee ballots of absent overseas uniformed services voters.

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SEC. 103A. PROCEDURES FOR COLLECTION AND DELIVERY OF MARKED ABSENTEE BALLOTS OF ABSENT OVERSEAS UNIFORMED SERVICES VOTERS.

(a) **COLLECTION.**—*The Presidential designee shall establish procedures for collecting marked absentee ballots of absent overseas uniformed services voters in regularly scheduled general elections for Federal office, including absentee ballots prepared by States and the Federal write-in absentee ballot prescribed under section 103, and for delivering the ballots to the appropriate election officials.*

(b) **ENSURING DELIVERY PRIOR TO CLOSING OF POLLS.**—

(1) **IN GENERAL.**—*Under the procedures established under this section, the Presidential designee shall ensure that any marked absentee ballot for a regularly scheduled general election for Federal office which is collected prior to the deadline described in paragraph (3) is delivered to the appropriate election official in a State prior to the time established by the State for the closing of the polls on the date of the election.*

(2) **UTILIZATION OF EXPRESS MAIL DELIVERY SERVICES.**—*The Presidential designee shall carry out this section by utilizing the express mail delivery services of the United States Postal Service.*

(3) **DEADLINE DESCRIBED.**—

(A) **IN GENERAL.**—*Except as provided in subparagraph (B), the deadline described in this paragraph is noon (in the location in which the ballot is collected) on the fourth day preceding the date of the election.*

(B) **AUTHORITY TO ESTABLISH ALTERNATIVE DEADLINE FOR CERTAIN LOCATIONS.**—*If the Presidential designee determines that the deadline described in subparagraph (A) is not sufficient to ensure timely delivery of the ballot under paragraph (1) with respect to a particular location because of remoteness or other factors, the Presidential designee may establish as an alternative deadline for that location the latest date occurring prior to the deadline described in subparagraph (A) which is sufficient to ensure timely delivery of the ballot under paragraph (1).*

(c) **TRACKING MECHANISM.**—*Under the procedures established under this section, the Presidential designee, working in conjunction with the United States Postal Service, shall implement procedures to enable any individual whose marked absentee ballot for a regularly scheduled general election for Federal office is collected by the Presidential designee to determine whether the ballot has been delivered to the appropriate election official, using the Internet, an automated telephone system, or such other methods as the Presidential designee may provide.*

(d) **OUTREACH FOR ABSENT OVERSEAS UNIFORMED SERVICES VOTERS ON PROCEDURES.**—*The Presidential designee shall take appropriate actions to inform individuals who are anticipated to be absent overseas uniformed services voters in a regularly scheduled general election for Federal office to which this section applies of the procedures for the collection and delivery of marked absentee ballots established pursuant to this section, including the manner in which such voters may utilize such procedures for the submittal of marked absentee ballots in the election.*

(e) **REPORTS ON UTILIZATION OF PROCEDURES.**—

(1) *REPORTS REQUIRED.*—Not later than 180 days after each regularly scheduled general election for Federal office to which this section applies, the Presidential designee shall submit to the relevant committees of Congress a report on the utilization of the procedures for the collection and delivery of marked absentee ballots established pursuant to this section during such general election.

(2) *ELEMENTS.*—Each report under paragraph (1) shall include, for the general election covered by such report, a description of the utilization of the procedures described in that paragraph during such general election, including the number of marked absentee ballots collected and delivered under such procedures and the number of such ballots which were not delivered by the time of the closing of the polls on the date of the election (and the reasons therefor).

(3) *RELEVANT COMMITTEES OF CONGRESS DEFINED.*—In this subsection, the term “relevant committees of Congress” means—

(A) the Committees on Appropriations, Armed Services, and Rules and Administration of the Senate; and

(B) the Committees on Appropriations, Armed Services, and House Administration of the House of Representatives.

(f) *ABSENT OVERSEAS UNIFORMED SERVICES VOTER DEFINED.*—In this section, the term “absent overseas uniformed services voter” means an overseas voter described in section 107(5)(A).

(g) *AUTHORIZATION OF APPROPRIATIONS.*—There are authorized to be appropriated to the Presidential designee such sums as may be necessary to carry out this section.

(h) *EFFECTIVE DATE.*—This section shall apply with respect to the regularly scheduled general election for Federal office held in November 2010 and each succeeding election for Federal office.

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