FEDERAL VOTING ASSISTANCE PROGRAM
DEPARTMENT OF DEFENSE
WASHINGTON, DC 20301-1155

September 24, 2007

The Honorable William F. Galvin
Secretary of the Commonwealth
State House, Room 337
Boston, MA 02133

Dear Secretary Galvin,

I would like to thank you for the work you and the Commonwealth of Massachusetts have done over the past several years to promote and support the legislative initiatives the Federal Voting Assistance Program (FVAP) has recommended. The 2006 elections pointed out the importance of the states enacting these legislative initiatives. In particular, the provision of 45 or more days for ballot transit; electronic transmission of Federal Post Card Applications, blank ballots, and voted ballots; and, authorization for the state chief election official to implement emergency measures. States with these provisions were able to support a greater number of situations faced by our brave men and women serving in combat areas such as Iraq and Afghanistan, and other U.S. citizens worldwide. I would ask you also to consider alternative methods that these citizens could use to request their absentee ballots such as phone, or email, and utilizing digital signatures with electronically transmitted materials.

After reviewing Massachusetts's existing election code and procedures, I have identified seven initiatives that the Massachusetts legislature might consider during the upcoming legislative session. These initiatives are discussed in detail with suggested wording in the enclosed legislative initiatives document. If these initiatives are enacted and signed into law, they would significantly help to facilitate the absentee voting process for Massachusetts' citizens covered by the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).* Information available to FVAP indicates that there are 11,098 Uniformed Services members, an estimated 8,000 family members and approximately 85,000 overseas citizens that claim Massachusetts as their voting residence.

As you review the enclosed initiatives for possible inclusion in Massachusetts's 2008 legislative agenda, please do not hesitate to contact us for assistance. We can provide legislative wording that other states have enacted to implement similar measures and provide written or in-person testimony, if desired. We have come a long way in simplifying the absentee voting process since the enactment of the *UOCAVA*—let's continue our joint efforts to achieve the simplest possible absentee voting process while maintaining its integrity.

Sincerely,

J. Scott Wiedmann
Deputy Director

Enclosure:
2008 Legislative Initiatives and Suggested Wording

Massachusetts 2008 Legislative Initiatives and Sample Language

The Need for 45-Day Ballot Transit Time

The most persistent problem which continues to face Massachusetts military and overseas voters is the extremely short period of time these voters have to receive, vote, and return their absentee ballots in order to be counted. The fact remains that insufficient ballot transit time through the mail continues to be the primary obstacle to timely delivery of absentee ballots to voters. Our post-election surveys and Postal Service statistics indicate that a **45-day transit time is needed** for absentee ballots sent through international mail or the military APO/ FPO (overseas) post offices. This round trip transit time is especially necessary because of the remote location of many military personnel and overseas citizens such as sailors and marines aboard ship, airmen and sailors at isolated tracking sites around the world, as well as Department of State personnel and citizen employees of American multinational corporations in remote areas. We realize Massachusetts provides 45-day transit time for Primary elections (35 days before election and 10 days extended counting after election). However, expanding this provision to **all elections** would help ensure enfranchisement. **Forty-one** states now allow 45-day ballot transit time for general elections.

Sample Language

For all elections, the official charged with the printing and distribution of ballots and election materials shall print as many absentee ballots as may be necessary as soon as possible after receiving the information concerning candidates and measures to be voted on at an election, and balloting materials shall be mailed not later than the 45th day before the election.

Electronic Transmission of Election Materials

Since the 1990 general election faxing has proven to be a valuable alternative method for facilitating the enfranchisement of military persons and overseas citizens serving their country who may have otherwise been unable to vote. This initiative has helped ensure these citizens were not disenfranchised by allowing them to cast a ballot when they would not otherwise have been able to vote due to time and location constraints.

Throughout an election year cycle, various circumstances exist that require the need for this alternative procedure in order for citizens to vote. The basic concept of electronic transmission of election materials is to secure high-speed delivery of election materials to and from the voter and local election officials. Your support in developing the **acceptance of electronic transmission for all aspects of the process**, with proper controls, would cut the ballot transit time at least in half. This would reduce the major obstacle to voting absentee and allow local election officials more administrative flexibility in preparing election materials.

Consideration should be given to expand the use of modern technology in the absentee voting process. We realize Massachusetts has enacted legislation allowing citizens to send the Federal Post Card Application (FPCA) via electronic transmission. We recommend expanded use of this alternative to include electronically sending the blank ballot to these voters, and accepting the voted ballot via electronic transmission from these voters where circumstances would otherwise disenfranchise them. **Twenty-three** states have expanded use of electronic transmission to allow sending the blank ballot, and accepting the voted ballot. The sample language below includes these alternatives.

Sample Language

An applicant who is a member of the United States Armed Forces or the United States merchant marine, a family member, or is a qualified elector living outside the United States, may apply for registration and an absentee ballot by electronic transmission if otherwise qualified to apply for and vote by absentee ballot. A local election official may send and receive absentee ballot applications and accept voted ballots from eligible electors via electronic transmission.

Emergency Authority for Chief Election Official

During a period of a declared emergency or other situation where a short time-frame for ballot transmission is created, it is recommended that **Massachusetts' Chief Election Official have the authority to designate alternate methods for handling absentee ballots** to ensure voters have the opportunity to exercise their right to vote. The Chief Election Official and the Federal Voting Assistance Program could establish expeditious methods for handling absentee ballots including electronic transmission. As an example, in light of the surge of Guard and Reserve forces being deployed, the Chief Election Official can temporarily allow electronics transmission of all voting materials for Active Duty Military. **Seventeen** states have passed legislation giving the Chief Election Official authority to designate alternate methods of handling absentee ballots in emergency situation.

Sample Language

If a national or local emergency or other situation arises which makes substantial compliance with the provisions of the Uniformed and Overseas Citizens Absentee Voting Act impossible or unreasonable, such as a natural disaster or an armed conflict involving United States Armed Forces, or mobilization of those forces, including State National Guard and Reserve components of this state, the Chief Election Official may prescribe, by emergency orders or rules, such special procedures or requirements as may be necessary to facilitate absentee voting by those citizens directly affected who otherwise are eligible to vote in the state.

The Chief Election Official shall adopt rules describing the emergency powers and the situations in which the powers will be exercised.

State Special Write-In Absentee Ballot

We also recommend Massachusetts provide a special write-in absentee ballot for all elections. The purpose of the special write-in absentee ballot is to **provide a method for voting by military and other persons overseas who, due to military contingencies or special circumstances such as those faced by submariners, Peace Corps volunteers, missionaries or others in remote areas, will be out of communication for extended periods of time and unable to receive the regular absentee ballot sent in the normal time frame**. A voter could request a special write-in absentee ballot 90 days in advance and write in the names of the candidates or party preferences. The voter knows in advance that he or she will not be able to receive, vote, and return the regular ballot in time to be counted. We realize Massachusetts provides a special write-in absentee ballot if the local election official does not have the regular state ballot available for mailing. However, expanding this provision by making this ballot available upon request by UOCAVA citizens and expanding its use for all elections would help ensure enfranchisement. **Twenty-seven** states now provide special write-in absentee ballots.

This special write-in absentee ballot should not be confused with the Federal Write-In Absentee Ballot (FWAB) that is prepositioned at embassies and consulates, military installations, overseas organizations and corporations. In comparison, the FWAB is generally only available to military members on active duty absent from their voting residence and overseas citizens who have already applied for a regular absentee ballot from the state. They do not know in advance that they need the FWAB. If the regular ballot from the state does not arrive in sufficient time for the voter to return the voted ballot and meet the deadline, these voters may obtain, vote, and return the FWAB to the local election official.

It is also important to note that a state write-in absentee ballot usually provides a "full" slate of offices to be voted upon including Federal, state, and local offices. On the other hand, the FWAB generally allows voting for Federal offices. There are presently **thirteen** states that have expanded the use of the FWAB beyond Federal law. The revised FWAB was designed to accommodate its use beyond the general election and Federal offices only.

Sample Language

If the voter is a U.S. citizen residing outside the United States or a member of the United States Uniformed Services or merchant marine, or their family members, and a qualified elector, he or she may request, not earlier than 180 days before an election, a special write-in absentee ballot. The voter must submit with the request a statement that provides that due to military or other contingencies that preclude normal mail delivery, the elector

cannot vote an absentee ballot during the normal absentee voting period. The state will make the ballot available "90 to 180" days before the election.

Reference to the Uniformed and Overseas Citizens Absentee Voting Act (*UOCAVA*) in the State Election Code

In 1986, Congress updated and consolidated the provisions of Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975 into the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*. **Reference to *UOCAVA* in the state election code** will help election officials and interested citizens find guidance to applicable Federal law and increase their familiarity with the statute and its application. We recommend that UOCAVA be referenced in appropriate sections of the state election code. **Thirty-seven** states now reference the UOCAVA in their election code.

Sample Language

This language is usually found under the chapter in the State Election Code that makes reference to federal elections:

It is the intent and purpose of this Legislature that the provisions set forth in this chapter are designed to facilitate the federal mandate of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA, 42 U.S.C. 1973 ff et. seq.).

Expand Use of Federal Write-In Absentee Ballot

Currently the Federal Write-In Absentee Ballot (FWAB) may be used only in general elections for Federal offices only. This ballot is prepositioned worldwide at Embassies and Consulates, military installations and overseas organizations and corporations with American membership. By **expanding its use to include special, primary and runoff elections for local, state and Federal offices**, citizens would not be disenfranchised because regular ballots are not received in a timely manner. Frequently, there is insufficient time between the call for a special election and the actual election and between primary and runoff elections. Allowing use of the FWAB in these elections would reduce the possible need for legal action when insufficient time exists for the ballot to be received, voted and returned to be counted. During past primaries, on an *ad hoc* basis, several states and jurisdictions allowed the FWAB to be used for offices other than Federal offices. **Thirteen** states have legislatively expanded the use of the FWAB for other than Federal offices beyond the Federal law.

In addition, for those citizens that desire to vote in elections for Federal office only, the acceptance of the FWAB transmission envelope as **a request for registration simultaneously with the submission of the FWAB** would further simplify the process, improve on transit time and help ensure enfranchisement. It should be noted that the information requested on the voter declaration is basically the same as the information

requested from the voter on the Federal Post Card Application (FPCA). We recommend the FWAB be accepted simultaneously as a registration form and ballot by the state for general election and Federal offices if:

(1) the information submitted complies with the state's registration requirements;

(2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted; and

(3) the request is received by the appropriate state election official not less than 30 days before the election, or by the registration deadline established by the state, whichever is later.

The adoption of this initiative would save Massachusetts money, and alleviate administrative responsibilities on the part of the chief election officer.

Sample Language

- Expanded use of the FWAB:

If the voter is residing outside the United States or is a member of the United States Uniformed Services or merchant marine, or their family members, and a qualified elector, he or she may use the Federal Write-In Absentee Ballot in general, special, primary, and run-off elections for local, state and Federal offices.

- Use of FWAB as a Combined Request for Registration and Ballot Submission:

If the voter is residing outside the United States, or is a member of the United States Uniformed Services or merchant marine, or their family members, and a qualified elector, he or she may use the Federal Write-In Absentee Ballot (FWAB) transmission envelope as a request for registration simultaneously with the submission of the FWAB if:

(1) the information submitted complies with the registration requirements of the state;

(2) the voter is otherwise eligible to vote absentee in the jurisdiction where the request is submitted; and

(3) the request is received by the appropriate state election official not less than 30 days before the election, or by the registration deadline established by the state, whichever is later.

Acceptance of a Signature and Date on Ballot as Evidence of Time of Completion

Massachusetts requires that voted ballots from Military members and U.S. citizens overseas be postmarked. We recommend that **Massachusetts accept the signature and date on a ballot envelope as evidence of the time the ballot was completed by a uniformed service or overseas voter in lieu of a postmark**. Although *UOCAVA* voters may have voted and mailed their ballot in a timely manner, the ballot envelope may not have been postmarked on that date. By signing and dating the ballot the voter, under penalty of perjury, is certifying that their ballot was voted prior to the close of polls on election day.

Sample Language

If the voter is residing outside the United States, or is a member of the United States Uniformed Services, merchant marine, or a family member, and a qualified elector, the ballot shall be counted if it is signed and dated by the voter prior to the close of polls on election day and received by the absentee ballot deadline.