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

September 24, 2008

The Honorable Brad Johnson
Secretary of State
State Capitol, Room 260
PO Box 202801
Helena, MT 59620-2801

Dear Secretary Johnson,

I would like to thank you for the work you and the state of Montana 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 by proxy, and utilizing digital signatures with electronically transmitted materials.

After reviewing Montana's existing election code and procedures, I have identified four initiatives that the Montana 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 Montana's citizens covered by the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*. Information available to FVAP indicates that there are 9,097 Uniformed Services members, an estimated 6,000 family members and approximately 8,000 overseas citizens that claim Montana as their voting residence.

As you review the enclosed initiatives for possible inclusion in Montana'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

Montana 2009 Legislative Initiatives and Sample Language

The Need for 45-Day Ballot Transit Time

The most persistent problem which continues to face Montana 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. While electronic transmission of election materials offers an alternative to inadequate ballot transit time in emergency situations, 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 Montana mails absentee ballots approximately 30 days before primary elections for Federal office and approximately 45 days before general elections for Federal office. However, we recommend Montana mail absentee ballots at least 45 days before all elections. Twenty-six states now allow 45-day ballot transit time for all 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.

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 **Montana's 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 voting materials for Active Duty Military. Twenty-one 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.

Enfranchise Citizens Who Have Never Resided in the U.S.

There are many U.S. citizens who have never resided in the U.S. and under current law are not entitled to vote. These are usually first or second-generation citizens who are subject to U.S. income tax and all other requirements of citizens. Except for the fact that they have never resided in a state, they would be eligible to vote in elections for Federal office. Sixteen states have passed legislation allowing these citizens to claim the legal residence of a parent. **We recommend these citizens be allowed to vote in elections for Federal offices where either parent is eligible to vote under *UOCAVA*.**

Sample Language

If a U.S. citizen outside the United States who has never lived in the United States has a parent who is a qualified elector, then that citizen is eligible to register and vote where his or her parent is a qualified elector.

State Special Write-in Absentee Ballot

We also recommend that Montana provide 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, Federal employees and contractors, 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 ballot in the normal time frame**. A voter could request a special write-in absentee ballot 90 days in advance when they know that they will be unable to receive, vote, and return the regular ballot in time to be counted. Twenty-nine states now provide special write-in absentee ballots.

This 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 U.S. 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. If the regular ballot does not arrive in sufficient time for the voter to return the voted ballot on time, he may obtain, vote, and return the FWAB to the local election official in its place.

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. The FWAB was designed to accommodate its use beyond the general election for Federal offices.

Sample Language

If the voter is a U.S. citizen residing outside the United States or a member or family member of the United States Uniformed Services or merchant marine, 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 ballot will be available "90 to 180" days before the election.