



U.S. Department of Justice

Civil Rights Division

*Voting Section - NWB
950 Pennsylvania Ave, NW
Washington, DC 20530*

October 8, 2010

VIA EMAIL AND FACSIMILE

The Honorable Alvin A. Jaeger
Secretary of State
State of North Dakota
600 E Boulevard Ave.
Dept. 108, 1st Floor
Bismarck, ND 58505-0500

Dear Secretary Jaeger:

This letter confirms the steps your office (“the Secretary” or “the Secretary’s Office”) has indicated it will take to remedy the State of North Dakota’s violation of Section 102(a)(8) of the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. §§ 1973ff to 1973ff-7. UOCAVA provides that absent uniformed services voters and overseas voters (“UOCAVA voters”) shall be permitted “to use absentee registration procedures and to vote by absentee ballot in general, special, primary, and runoff elections for Federal office.” 42 U.S.C. § 1973ff-1. Pursuant to amendments by the Military and Overseas Voter Empowerment Act, Pub. L. No. 111-84, Subtitle H, §§ 575-589, 123 Stat. 2190, 2318-2335 (2009) (“MOVE Act”), UOCAVA also provides that UOCAVA voters who request an absentee ballot at least 45 days prior to a federal election are to be sent ballots (by mail or electronically) no later than 45 days before the election. 42 U.S.C. § 1973ff-1(a)(8). For the November 2, 2010 Federal general election the 45 day deadline for sending UOCAVA ballots fell on September 18, 2010.

Following inquiries from the Department of Justice (“the Department”) regarding North Dakota’s compliance with Section 102(a)(8) of UOCAVA, the Secretary’s office reported that the ballots of 52 UOCAVA voters from 13 North Dakota counties who had requested ballots on or before September 18, 2010 were not sent out at least 45 days before the November 2, 2010 election. After discovering the failure of these 13 counties to timely send absentee ballots to UOCAVA voters, the Secretary urged the counties to mail the ballots, and ensured that all UOCAVA ballots were transmitted to the voters by September 24, 2010.

North Dakota canvassing boards are required to meet to canvass the election results “not earlier than the third day following each election, but not later than six days after each election.” N.D. Cent. Code Ann. § 16.1-15-17 (West 2009). Accordingly, the state’s UOCAVA voters, whose absentee ballot envelopes are postmarked before the election date, have a three to six day window to return their ballots after election day. The Secretary has confirmed that 12 counties that failed to meet the UOCAVA ballot mailing deadline have set November 8, 2010 as the

meeting date for their canvassing boards, thus guaranteeing that the ballots of the affected UOCAVA voters will have a minimum 45 day ballot transit time. The thirteenth county, Cavalier County, has affirmed that it will hold the canvassing meeting on November 8, 2010 only if its one UOCAVA voter has not returned his or her ballot before election day.

The Secretary's Office has contacted the affected UOCAVA voters by e-mail or mail to advise them that their ballots will be accepted until November 8, 2010, if they are postmarked before election day. The Secretary's Office has also provided these voters with the appropriate contact information for election officials who can assist them with any voting-related questions or concerns they may have.

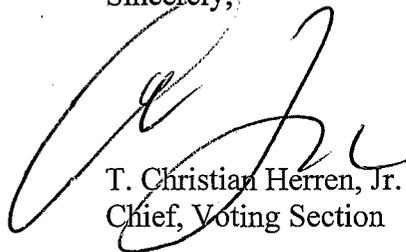
In addition, the Secretary has agreed to keep the Department apprised of its efforts to remedy the aforementioned UOCAVA violations by informing the Department, no later than December 1, 2010, of the number of the affected UOCAVA ballots returned, the date each ballot was received, and whether the ballots were counted.

Finally, the Secretary will take all necessary actions to assure that UOCAVA voters shall have a fair and reasonable opportunity to participate in future Federal elections, including determining the cause of the late mailed ballots and taking any administrative or other actions to eliminate the potential for future UOCAVA violations arising from North Dakota's or the individual counties' election practices. The Secretary also has agreed submit a report identifying the causes of the late mailed ballots to UOCAVA voters and detailing the progress of the State's remedial efforts to the Department by May 15, 2011.

These measures have been undertaken by the State to remedy the late transmission of the ballots of UOCAVA voters who submitted absentee ballot requests by September 18, 2010. If each of these measures is fully implemented, they will provide an appropriate remedy for the UOCAVA violation associated with the late transmission of the UOCAVA ballots for the November 2, 2010 general election.

We appreciate your cooperation in our efforts to enforce UOCAVA and the MOVE Act.

Sincerely,



T. Christian Herren, Jr.
Chief, Voting Section

cc: Jim Silrum, Deputy Secretary of State
John Fox, Assistant Attorney General