

Exhibit K

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division

UNITED STATES OF AMERICA,

Plaintiff,

v.

JEAN CUNNINGHAM, et al.,

Defendants.

Case No. 3:08CV709

DECLARATION OF ROBERT H. CAREY, JR

1. My name is Robert H. Carey, Jr. I reside in Washington, D.C. I am Director of the Federal Voting Assistance Program ("FVAP" or "the Program") in the United States Department of Defense ("DoD"), and have served in that capacity since July 6, 2009. Prior to my appointment as FVAP Director, I served as Executive Director of the National Defense Committee, helping to establish the Alliance on Military and Overseas Voting Rights, consulting to the Pew Center on the States' Military and Overseas Voting Reform Initiative, and on the Board of Directors of the Overseas Vote Foundation ("OVF"). Additionally, I have served more than 24 years in the U.S. Navy and U.S. Navy Reserve as a commissioned Officer. During that duty, I have participated in numerous elections as a military voter, and have on more than one occasion been unable to cast my ballot, or unable to secure an absentee ballot to which I would otherwise have been entitled, because of the exigencies of military service. I make this Declaration under 28 U.S.C. § 1746.

2. Acting pursuant to the Uniformed and Overseas Citizens Absentee Voting Act of 1986, 42 U.S.C. § 1973ff et seq. ("UOCAVA" or the "Act"), the President of the United States on June 8, 1988, in Executive Order 12642, designated the Secretary of Defense to coordinate and facilitate all actions required to discharge federal responsibilities under the Act. The Secretary of Defense, in DoD Directive 1000.04, has assigned his authority under Executive Order 12642 to the Director of FVAP.

3. FVAP, through consultations with states and the appropriate departments and agencies of the federal government, and through the dissemination of information to potential absentee voters, assists persons, both military and civilian, protected by UOCAVA and who seek to vote by absentee ballot in federal elections. Pursuant to the Act, the Program obtains information on absentee registration and voting procedures in each state, and every two years publishes that information in a handbook entitled Voting Assistance Guide, which is distributed to American citizens around the world. That information is also updated as changes to state and

local election procedures warrant it. The Program directs the voting assistance actions of military commanders through senior military voting officers of general or flag rank in each military Service, who in turn directs voting assistance programs down to the individual military unit or installation level to assist individual uniformed services voters, their dependents, and those overseas federal employees working for those uniformed services. Similar services are provided to other protected overseas civilian voters through voting assistance programs operated by the Department of State, with which FVAP coordinates efforts and provides assistance. The Program also acts as an ombudsman for individual voters and local election officials when problems arise. Finally, the Program coordinates ballot transmission procedures to and from UOCAVA voters with election officials, the Military Postal System Agency ("MPSA"), the United States Postal Service ("USPS"), and the United States Department of State.

4. One aspect of state procedure with respect to absentee voting that FVAP reviews is whether state election officials mail absentee ballots at a point in time sufficiently preceding election day and ballot delivery due dates to permit absentee voters protected by the Act reasonable time in which to receive, vote, and return their ballots before the deadline for postal mail return and receipt by the election official.

5. With regard to overseas mail transit times, in my capacity as Director of the Program, I am personally aware of information, and aware of information obtained by past Directors of the Program, from the MPSA, the USPS, and the United States Department of State, to assist in determining the round trip mailing time that states should allow overseas absentee voters.

6. In my capacity as Director of the Program, I am familiar with the most recent one-way standard transit time estimates promulgated by the MPSA, including those set forth in the Declaration of Teddie Dyson. It is important to note that in order to calculate a round-trip ballot transmission time, not only is it necessary to double the number of days in the MPSA's one-way standard transit time estimates, but also to add at least two days for time zone changes and administrative requirements and additional time for the individual to vote the ballot and return it to the control of the MPSA. Based on the foregoing, I am aware that the Military Postal Service Agency policy provides, with respect to the mailing of election material through the military postal services, that it is necessary to allow at least 30 days for the round trip from the dispatch center in the United States to the individual located overseas and back to the dispatch center.

7. Although the USPS does not have established service standards for international mail due to differing procedures employed by foreign postal services, I am aware of information from the USPS that also indicates that at least 30 days is a reasonable benchmark for round-trip transit time for international mail

8. I am also aware of information promulgated by the United States Department of State for United States citizens living abroad and under State Department Chief of Mission authority, that receiving and sending an absentee ballot using the diplomatic pouch may take on average 30 days.

9. Accordingly, based on empirical evidence derived from federal postal authorities, 30 days is the bare minimum states must allow for the round-trip, overseas transport of absentee ballots to permit those ballots to be received, marked, and returned in time to be counted. States that fail to send overseas voters absentee ballots at least 30 days prior to applicable receipt deadlines do not afford overseas voters a reasonable opportunity to cast their ballots.

10. On the basis of the information set forth above, FVAP has recommended that states allow, as an ideal, 45 days for round trip mailing time when sending absentee ballots to overseas voters.

11. I am familiar with an Audit Report published by the Office of the Inspector General, Department of Defense, entitled "Overseas Absentee Ballot Handling in DOD" (Report No. 0-2001-145, June 22, 2001), and its contents. I am aware that this report confirms a fact on which the Program has long relied: that 30 days is a minimum benchmark for round-trip transmission of ballot materials from a Mid-Atlantic state to an overseas destination, and that mailing ballots 45 days before an election would help ensure that all absentee voters would have sufficient time to process their ballots even if the mail system does not work as designated.

12. Section 103 of UOCAVA, 42 U.S.C. § 1973ff-2, provides for a standard federal write-in absentee ballot ("FWAB") to be available to military and overseas voters in the event that regular absentee ballots from those voters' home jurisdictions are not available by the time the voters must return them. Although the ability to submit the FWAB as an "emergency" or "back-up" ballot can assist some voters, it is by no means an adequate substitute for full state compliance with UOCAVA requirements.

(a). First, UOCAVA puts the responsibility on states to provide absentee ballots to qualified overseas voters sufficiently in advance of the election deadline to permit the voter to receive, mark, and return the ballot in time to be counted. When local election officials fail to meet that obligation, the burden for transmitting a ballot that UOCAVA properly places on states, instead falls upon uniformed services and overseas voters to obtain a ballot on their own. In those circumstances, such voters must not only be aware of the election schedule and the possibility of casting a FWAB, they must also physically obtain the FWAB, determine the panoply of candidates and offices to be voted, familiarize themselves with appropriate requirements and deadlines, and arrange for the FWAB's timely return. This would be a challenge for any absentee voter from the local and general voting population, let alone for service members in combat zones or other citizens in remote overseas locales with limited access to the Internet and other information and resources.

(b). Second, while FVAP regularly communicates with military and overseas voters to alert them to sources of information on the identity of candidates for federal office in situations where voters may find it necessary to use the FWAB in lieu of official absentee ballots from their home jurisdictions, empirical research conducted by FVAP and other entities indicates that many uniformed services and overseas voters nonetheless remain unaware of the option of using a FWAB. FVAP is charged predominantly with helping voters comply with state and local voting requirements. To expect military and State Department Voting Assistance Officers to essentially perform the functions of a local election official, because that local election official

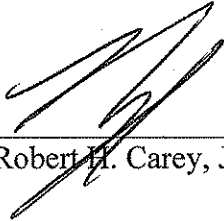
has failed to provide a timely ballot, is unreasonable. To expect the untrained voter to do so invites widespread disenfranchisement. Such inherent difficulties are seen in analyses of FWAB utilization. According to a report generated by the Department of Defense Inspector General, in the 2006 general federal election only 31% of service members surveyed were even aware of the FWAB's existence, despite more than 91,000 blank FWABs being distributed throughout the uniformed services to every command.

13. I have reviewed the information set forth in Joint Stipulation signed by the parties to this case. Based upon the facts therein, the Commonwealth of Virginia's failure to afford some UOCAVA voters even the bare 30-day minimum necessary for round trip transit overseas deprived those voters of a reasonable opportunity to receive, mark, and return their ballots in time for them to be counted in the Commonwealth's November 4, 2008 general election.

14. In numerous discussions with uniformed service members and overseas voters, the vast majority of these voters have indicated to me that they fear their absentee ballots will not be counted. These concerns are especially acute among those who worry their ballots will not be received in their home jurisdiction in time for them to be counted. Additionally, many uniformed and overseas voters have expressed their concern to me that their ballots will not be counted when the margin of victory in an election contest is less than the number of absentee ballots. To them, this is serious disenfranchisement and serves as a significant disincentive to voter participation.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on August 27, 2009.



Robert H. Carey, Jr.