

# Exhibit W

**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 CARL R. CONTI, II**

1. My name is Carl R. Conti, II. I am a Captain in the United States Navy stationed at Naval Network Warfare Command at Naval Amphibious Base Little Creek, Norfolk, Virginia. From September until December of 2008, I was deployed on board the U.S.S. Theodore Roosevelt off of the coast of Pakistan as the ship's Air Officer. In that capacity I directed launch and recovery of aircraft on the aircraft carrier and oversaw the work of 650+ crew members. I have been with the United States Navy for 24 years.

2. I am a duly registered voter in Virginia Beach, Virginia.

3. Prior to the November 4, 2008 general election, I requested an absentee ballot be sent to me so I could vote in that election. At that time I was in Virginia Beach and was preparing to be deployed to Operation Enduring Freedom. I completed my ballot application onboard USS Theodore Roosevelt in mid August 2008, at a Federal Voting Assistance Program ("FVAP") drive, and mailed my application as soon as it was filled out. The ship was pier side at Naval Station Norfolk, Virginia at the time and remained so until early September. I did not receive my ballot until late October while deployed onboard the ship.

4. I marked my ballot and placed it in the mail within minutes of receiving it, in late October 2008, knowing that the timing would be critical for mailing due to the late arrival of my ballot.

5. On August 18, 2009, I learned that my ballot was not counted because it had been received after the receipt deadline.

6. I was very angry when I found out that the State of Virginia did not intend to count my ballot. I accurately completed each step of the absentee voting process, met all of the


deadlines, and in fact did everything early, while still in the United States, knowing I would be deployed off of the coast of Pakistan on election day. But when all was said and done, I still received my ballot late. I turned it around within minutes of getting it to try and have my voice heard, but then found out that it still wouldn't be counted. I am very frustrated with the State for taking away my right to vote. This is a travesty of the voting process and an extreme disservice to members of the military who swear and oath and put their lives in harm's way to support and defend the Constitution of the United States.

7. As a military member I should be able to follow FVAP and state guidelines, request and receive my ballot, and have a chance to return it in time for it to be counted. I could not be in the State physically on Election Day, so I exercised my civic duty and did everything I had to do to get my vote counted, yet Virginia has denied me my voice. I was truly disenfranchised.

8. I was aware of the Federal Write-In Ballot option, and had begun to consider completing one when my ballot arrived. I hesitated to complete one earlier because I was only aware of which candidates were running for President, and did not want to miss out on voting for candidates for other federal and local offices that would be on my state ballot.

9. Based on these circumstances, it would be meaningful if Virginia would restore my voting rights, and the rights of others like me, by counting my ballot, even if doing so does not change the result of the election. I would like to see some due process, and to know that my ballot meant something.

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

  
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Carl R. Conti, II

Executed on 24 August, 2009