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Committee on House Administration
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“Military and Overseas Voting: Effectiveness of the MOVE Act in the 2010 Elections”

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Thank you, Mister Chairman and members of the Committee. My name is Brad King. I serve as Co-Director of the Indiana Election Division, the state agency which helps voters, poll workers, and local officials conduct elections throughout Indiana.

I would like to take a few moments to discuss Indiana’s success (and its difficulties) in implementing the Military and Overseas Voter Empowerment Act (MOVE) for the November 2010 general election.

Indiana has approximately 4.2 million registered voters. Of that number, 8087 applied for absentee ballots as military and overseas voters during the general election of November 2010. 2219 of these voted ballots were received by the county election offices.

Historically, Indiana's elected officials and election administrators have always sought to find creative, practical ways for military voters to cast their ballots. During the critical presidential election of 1864, Governor Oliver P. Morton urged President Lincoln to send Hoosier soldiers home from the front lines of the Civil War to cast their ballots at the polls on Election Day. Following that experience, Indiana enacted its first laws to provide a mechanism for military voters to vote by absentee. In the modern era, the state has sought to provide more opportunities for both military and civilian overseas voters to participate in our elections.

The voter registration period was extended to permit military and overseas voters to register as late as 10 days before election day (in contrast to the standard 29 day registration deadline). In cases where military voters were discharged or transferred to Indiana shortly before the election, these voters and their family members were allowed to register on election day itself and cast their ballots. As early as 1994, absent uniformed services voters (and members of the Indiana national guard) were provided with the opportunity to receive and return their ballots by fax, a procedure which permitted national guard members activated following a tragic airplane crash in Roselawn, Indiana (just outside of Chicago) a few days before the general election, to cast their ballots from the field.

The state kept pace with developing technology in 2005 by authorizing county election officials to transmit absentee ballots to military and overseas voters by electronic mail under any program authorized and administered by the Federal Voting Assistance Program (FVAP). Indiana was also one of 19 states which volunteered to participate in a 2010 project by FVAP to provide these voters with comprehensive candidate and referendum information to help them complete the Federal Write-In Absentee Ballot in a more knowledgeable way.

With the enactment of the Military and Overseas Voter Empowerment (MOVE) Act in 2009, Indiana acted promptly to pass the necessary state legislation to implement MOVE for the election of November 2010. House Enrolled Act 1109 was enacted with unanimous bipartisan support, and was effective July 1, 2010. As a result, no waiver or extension of MOVE's deadlines was requested by Indiana. House Enrolled Act 1109 expanded the rights of military and overseas voters to request voter registration and absentee ballot materials by email or fax, and to return voted absentee ballots by email. Since MOVE also required that absentee ballots be mailed to qualified applicants who had requested them at least 45 days before the November 2010 general election, Indiana law was changed to make the 45 day ballot transmittal deadline consistent for all local, municipal, or special elections as well.

The Indiana Election Division began working with the Association of Circuit Court Clerks (the local election administrators in Indiana) to provide information about the role of the counties in implementing MOVE. These included the mid-year publication of revised Election Calendars, highlighting the changes resulting from MOVE, and detailed presentations and training at county association meetings in June and September of 2010. Training and education about the rights of military and overseas voters has always been a high priority for Indiana election administrators. The state's Military and Overseas Guidebook had previously been honored by the United States Election Assistance Commission as a "Best Practice" among the states for its well-organized and readable presentation of information for these voters.

Although county election administrators embraced the opportunity to help military and overseas voters (particularly the overseas members of the military) use email to transmit and receive election material, the 45 day absentee ballot transmittal deadline to mail ballots to those voters who requested that method of delivery proved a problem for a few counties, in particular St. Joseph County, where South Bend, Indiana is located.

The 45 day deadline fell on September 18, 2010. Shortly before that date, the U.S. Department of Justice contacted the Indiana Election Division to ask for information regarding county compliance with the deadline. Upon surveying each of the state's 92 counties, we discovered that 89 counties had either mailed out their absentee ballots on time to military and overseas voters (or, in the case of several counties with small populations, had not yet received any absentee applications from these voters). The three remaining counties, Fountain County, Huntington County, and St. Joseph County, had not met the September 18 deadline. In the case of Fountain County, the serious illness of the circuit court clerk in this small rural county had delayed the approval of ballot proofs, and therefore the printing of the ballots, but even so, only 2 absentee ballots were mailed late. Likewise, in Huntington County, a medium size, but still rural county, the clerk reported severe staff shortages which had delayed ballot production by several days; in that case, 5 absentee ballots were transmitted shortly after the 45 day deadline.

St. Joseph County's situation was more serious. This county is one of the state's largest in population, and includes the cities of South Bend and Mishawaka, as well as Notre Dame University. According to the circuit court clerk, the absentee ballots requested by military

and overseas voters had not been delivered to the county, and therefore not sent to voters by the September 18 deadline. Ten voters who requested absentee ballots by email were not sent those ballots until September 21. In the case of voters who requested absentee ballots by mail, these ballots were prepared and sent to the county's mail room on September 27, and were presumably mailed on September 28 (a full 10 days after the deadline).

According to the County Circuit Court Clerk, the number of absentee ballots delayed in St. Joseph County was not large: 9 ballots requested to be sent by email to overseas military voters; 6 ballots requested to be sent by email to military voters stationed within the U.S.; 9 ballots requested to be sent by regular mail to military voters stationed within the U.S.; 6 ballots requested to be sent by regular mail to overseas military voters; and 17 ballots requested to be sent by email to overseas civilian voters, for a total of 47. On October 14, the Clerk reported that each of these ballots had been returned to the county election board in time to be processed and counted for the general election.

Notwithstanding the fact that no military and overseas voters were disenfranchised as a result, the reasons for the delay are troubling. The primary cause appears to have been a "disconnect" between the county and its voting system vendor. With the increased complexity of voting systems used in the United States, and the uneven access by county election officials to technological support for assistance, many counties have no option other than total reliance on their vendor to program their voting systems, and provide electronic versions of the county's multitude of ballot styles, which are then printed for mailing or emailing to absentee voters.

Long before 2010, most counties had entered into service contracts with their vendors, which specified deadlines for counties to submit ballot information to their vendor, for the county to proof the initial versions of their ballots for accuracy, and then for the vendor to deliver either electronic or paper versions of the final approved ballots to the counties for transmittal to voters. In St. Joseph County's case, the voting system optical scan ballot card printer was RBM Consulting.

Although many other Indiana counties also contract with RBM Consulting to provide ballots, none of these other counties reported delays in ballot delivery that would have affected military and overseas voters. (Fountain County and Huntington County used other vendors in the November 2010 election).

When our office was notified of the delay in ballot delivery to St. Joseph County in mid-September, I telephoned representatives of RBM Consulting to ask for information, and was told that St. Joseph County "could have its ballots tomorrow, if it wanted them." Upon pressing the point, I was assured that the electronic ballot proofs would be sent immediately, which would permit the county to send out ballots by email to military and overseas voters, and that paper ballots would be delivered within a few days.

I did not have the sense from this conversation that the vendor was fully aware of the importance of the earlier absentee ballot delivery deadline for 2010, and that the county

had aggressively pressed its vendor to expedite ballot delivery. Likewise, in contacting county election officials, it took several inquiries to identify which individual staff member had accurate information regarding the county's contractual arrangements with the vendor, and later, exactly how many of each type of absentee ballot application (military v. civilian; overseas v. domestic) had been received

In fairness, I should note that once the St. Joseph County Clerk's office became aware of the nature and scope of the problem, the office did respond promptly and vigorously. The Clerk, Ms. Rita Glenn, voluntarily used express delivery to send out absentee ballots to military and overseas voters who had requested ballots by mail, and was very cooperative in answering inquiries from the Election Division and the U.S. Department of Justice regarding this matter.

Indiana's experience with implementation of the MOVE Act in November 2010 was overwhelmingly positive, but the exceptions to the rule are worth noting. The problems which we experienced may not be atypical.

In the final weeks before an election, the multiple demands made on an office administering elections can be staggering and distracting. It can be extremely difficult to gather accurate data regarding compliance with one aspect of federal law when you do so for the first time six weeks before a General Election Day. Since many local officials who administer elections do so part-time in the midst of other duties (including in some cases, performing marriage ceremonies and forwarding child support payments), and have few if any staff members to assist, even the most motivated election administrator needs both time and information to grasp the importance of changes in existing election procedures mandated by federal law.

I believe that the lessons learned from the implementation of MOVE in the November 2010 election include:

(1) Recognizing the important role that the private sector performs in election administration. More simply put: talk to business. The voting system vendors and companies which provide election support services need to be fully informed when new federal requirements and deadlines are imposed so that they can alter their business practices to provide the products their customers need, when they need them. We should not rely on local election officials to provide this knowledge to these businesses "second-hand."

(2) Raise the understanding of local election officials regarding the importance of the changes required by MOVE. Almost all election officials are enthusiastic in their efforts to get ballots sent to military and overseas voters, and will take extraordinary steps to assist the voter in returning the ballot on time. Both federal and state election administrators must do our part to continue training and educating local election officials about the importance of MOVE's requirements. Due to the regular turnover of officials and staff in local election offices, we cannot assume that the "lessons learned" from 2010 will be remembered if a local election official begins serving in 2012.

(3) Talk to the voters. Military and overseas voters should understand the basic features of absentee ballot voting, and have clear expectations about their rights under the law. A military or overseas voter who doesn't receive an emailed ballot by Day 44 before an election should be prompted to ask if there is a delay or problem back home. Likewise, a voter who hasn't received a mailed absentee ballot within a reasonable period of time after the Day 45 transmittal deadline should be reminded to contact the county election office for assistance. Even the best-intentioned local election official can be hard-pressed to help a voter who is calling on Election Day itself wondering why the voter's ballot hasn't arrived yet.

Thank you for the opportunity to address the Committee. I welcome any questions members may have.