



DEFENSE HUMAN RESOURCES ACTIVITY
FEDERAL VOTING ASSISTANCE PROGRAM
4800 MARK CENTER DRIVE, SUITE 03J25-02
ALEXANDRIA, VA 22350-4000

April 3, 2017

Director Robert A. Brehm and Director Todd Valentine
New York State Board of Elections
40 North Pearl Street, Suite 5
Albany, NY 12207

Dear Director Brehm and Director Valentine:

I am writing today with concerns regarding New York's handling of requests for absentee ballots from overseas American citizens who intend to return to the United States. As you are aware, the Federal Voting Assistance Program (FVAP) is the Department of Defense program charged with administering the federal responsibilities of the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*, 52 U.S.C. § 20301, *et seq.* Our mission is to help ensure Service members, their eligible family members and overseas citizens are aware of their right to vote and have the tools and resources to successfully do so.

Our understanding is that New York's interpretation of its state law definition of "special federal voters" apparently excludes certain voters who are entitled to protections under *UOCAVA*. Under New York Election Law § 11-200, a "special federal voter" is partly defined as a U.S. citizen who is otherwise eligible to vote "even though such citizen does not now maintain a place of abode or domicile in the state of New York." The residency standard under New York Election Law § 1-104 defines a "residence" as a "place where a person maintains a fixed, permanent and principal home and to which he, wherever temporarily located, always intends to return." Based on our understanding of the state's interpretation of these statutory provisions, it appears that New York classifies overseas U.S. citizen voters who select "I am a U.S. citizen residing outside the U.S. and I intend to return" as regular state absentee voters in New York and not as "special federal voters." While this standard may be appropriate to evaluate New York state residency by these voters, the definitions set forth by *UOCAVA* should be used in determining the scope of protections afforded to uniformed and overseas New York voters seeking to vote absentee in federal elections. *UOCAVA*, under the definition of "overseas voter," makes no distinction between a U.S. citizen residing outside the U.S. who intends to return to the U.S. and a U.S. citizen residing outside of the U.S. whose return is uncertain. Specifically, *UOCAVA* defines "overseas voter" to include "a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States; or a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States." 52 U.S.C. § 20310(5)(B)(C).

Excluding overseas voters who intend to return to the U.S. from "special federal voter" status under New York law denies those voters certain *UOCAVA* protections, including the ability to have their ballot sent 45 days prior to a federal election and the option to have their federal ballot electronically transmitted to them. It is FVAP's position that all voters who fall

under the *UOCAVA* definition of “overseas voter,” regardless of whether they intend to return to the U.S., should be provided all of the protections to register and vote absentee under *UOCAVA*. This includes, among other protections, the voter’s ability to be sent a federal ballot 45 days prior to an election under 52 U.S.C. § 20302(a)(8)(A), and the ability to request and receive their federal ballots electronically under 52 U.S.C. § 20302(a)(7).

FVAP stands willing and ready to work with New York to resolve these concerns so that all *UOCAVA* citizens can register and vote in federal elections with the full protections in *UOCAVA*. Please contact Nate Bacchus, FVAP State Affairs Specialist, at nate.a.bacchus@fvap.gov with any questions, concerns or comments you may have.

Thanks for all you, your staff and colleagues in the New York State Board of Elections do to support and assist our military and overseas voters.

Sincerely,

A handwritten signature in black ink, appearing to read "David Beirne". The signature is fluid and cursive, with a large initial "D" and "B".

David Beirne
Director