

Pennsylvania Department of State Violates Federal Election Law Leading to the Dilution of Military Votes

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Harrisburg, PA – Erick Kaardal announced today that PA Fair Elections filed a complaint against the Pennsylvania Department of State (DoS) alleging violations of federal election laws. The Help America Vote Act of 2002 ([HAVA](#)) was passed to establish minimum standards for the administration of federal elections including the requirement for verification of identity and eligibility for individuals who seek to vote in a federal election. Many states have verification requirements far beyond the low minimum standard set by HAVA, but no state can legally implement a lesser standard. Unfortunately, the PA Department of State (DoS) has done just that. Through unlawful guidance, the DoS is instructing election officials to violate HAVA and risks the dilution of military votes by allowing ineligible individuals to receive and vote an absentee overseas ballot.

By submitting this complaint, the plaintiffs are seeking to compel the Commonwealth of Pennsylvania to protect the rights of the military voters. As the US Supreme Court has stated, the right to vote “can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of the franchise.” (*Reynolds v. Sims*, [377 U.S. 533, 555 \(1964\)](#))

“As a combat veteran, I can’t think of a higher priority than protecting the vote of the men and women who serve in our military. Over 75% of the individuals who apply to vote with UOCAVA privileges in PA indicate that they are not military or military family members. All members of the military have valid, verifiable, government issued identification. Overseas citizens must have verifiable ID as well. It is important to verify the identity and the eligibility of all non-military overseas voters so the ballots of military voters and their families serving our country are not diluted by ineligible overseas voters.” Sean Parnell, Retired US Army Combat Veteran, Captain (Retired), and 2020 Republican nominee for 17th Congressional District in PA.

The Uniformed and Overseas Citizen Absentee Voting Act (UOCAVA) established the Federal Post Card Application (FPCA) as a standard form for use by members of the US military and their family members to both register to vote and to request an absentee ballot. The FPCA can also be used by US citizens who reside outside of the United States but who are not members of the military. This group of non-military UOCAVA eligible voters includes study abroad students, individuals who work outside of the US, and US citizens who reside abroad. The FPCA is a combined voter registration form and absentee ballot application in a single document. Therefore, HAVA’s minimum requirements for voter registration and minimum requirements for voters who vote by mail for the first time apply.

A critical component of HAVA is that the states are required to verify the accuracy of the identification information provided on applications for voter registration. HAVA also requires states to match the applicant’s identification numbers provided against information in official databases prior to voting in a federal election. All members of the military and their eligible family members possess required forms of identification. No persons are even permitted onto a military base without proper, valid, government issued photo ID. Non-military US citizens overseas must possess a passport to travel overseas, or US citizens who have never lived in the United States must possess a birth certificate indicating their citizenship. In 2022, **over 75% of all UOCAVA voters in Pennsylvania were non-military.**

Most states verify the identity of applicants at the time of registration prior to adding them to the voter rolls. The Pennsylvania DoS has used the decision in [Washington Association of Churches v. Reed](#) to defer the HAVA identification verification and matching requirement from the time of registration to the time of casting a ballot. They made this critical change through a [DoS Directive](#). When that Directive is combined with a [Guidance on identification requirements](#), the result is a serious violation of federal law that allows unverified

individuals to vote in Pennsylvania. That directive states, “Those entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)... are not required to provide proof of identification.” That directive is a direct violation of HAVA. The Department has no authority to disregard the minimum requirements established in HAVA.

HAVA identification verification requirements are unambiguous. HAVA even has additional requirements for individuals who vote by mail for the first time in a jurisdiction and HAVA specifically exempts UOCAVA eligible voters from the requirement for first time voters who vote by mail to include a photocopy of their identification *with* their absentee ballot. The photocopy or copy of identification is the **only** exemption for UOCAVA eligible voters. HAVA does **not** exempt these applicants from eligibility requirements or identity verification prior to voting in a federal election.

Section 20302 of UOCAVA requires states to “accept and process, with respect to any election for Federal office, **any otherwise valid voter registration application** and absentee ballot application from an absent uniformed services voter or overseas voter.” **However, the DoS has instructed counties not to even attempt to determine if the overseas non-military application are valid and not to require identification prior to voting.**

In every case, military voters and their family members have valid ID that can and must be matched to data in government databases to verify identity and eligibility. Non-military UOCAVA applicants must be overseas at the time of the election and must provide verifiable proof of identity. Failure to do so violates HAVA and risks the dilution of military voters by allowing ineligible individuals to receive and vote an absentee ballot. The MOVE Act requires states to email ballots to **eligible** UOCAVA voters. But email delivery of ballots renders the foreign address obsolete as a security feature making the identity and eligibility verification even more important in protecting our vulnerable military voters who – in every case – possess valid, government issued, verifiable photo ID.

Attorney Erick Kaardal, when discussing the complaint stated: “Election integrity is an incredibly important issue across the nation, particularly in Pennsylvania, a known swing state. A serious vulnerability with the state’s handling of overseas ballots was identified, and we are hopeful that the administrative law judge will recognize that problem.”

Relief Requested

The relief requested is for an administrative determination, declaration or declaratory judgment: (1) that Pennsylvania’s Department of State and the Secretary of the Commonwealth’s directives that exempt would-be UOCAVA-eligible voters from first meeting the HAVA identify-verification requirement violate HAVA; (2) that Pennsylvania’s Department of State and the Secretary of the Commonwealth’s directives must be corrected to a legally-compliant policy that meets the minimum HAVA identity verification requirements for voter applications, i.e., to require voter eligibility and identity verification; and (3) any other appropriate administrative relief.

About the Parties

Attorney Erick Kaardal, a partner of Mohrman, Kaardal & Erickson, P.A., has been representing people suing the government to improve it for over 30 years. For election integrity, Kaardal has listed 61 examples of election integrity lawfare successes, including 2 U.S. Supreme Court victories, here: www.mklaw.com/wp-content/uploads/sites/1300759/2023/08/Election-Integrity-Successes.pdf

PA Fair Elections is an association of Pennsylvania citizens attempting to restore confidence in elections by advocating for secure, fair, lawful, and transparent elections in the Commonwealth.