

Voting Rights Letter to State/Local Election Officials

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

7.1—Election officials must get the absentee ballots out in time for the service member to vote.

7.9—Other Military Voting Rights

The ROA Uniformed Services Voting Rights Committee has sent out 51 personalized but essentially identical letters to the Chief State Election Officials. Here is the letter that was sent to Alabama Secretary of State Jim Bennett. It would be most helpful if you could follow up with your own chief state election official and with the local election official (county clerk, etc.) in your county or municipality. For background information on military voting rights, please see "Law Reviews" [No. 43](#) and [No. 44](#), in the May 2002 issue of The Officer.

Dear Secretary Bennett:

As we celebrate Memorial Day, please remember our nation's military personnel, especially the young men and women who are serving thousands of miles away. The September 11 atrocities remind us all anew of our nation's need for the Armed Forces.

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at SWright@roa.org.

At least for a moment during the contentious post-election counting period following the 2000 presidential election in Florida, the issue of uncounted military absentee ballots was very much a hot topic of national discussion. However, this problem is not limited to Florida, and it did not begin in 2000. Many military personnel and family members have been disenfranchised for as long as they have been permitted to vote at all.

Fifty years ago, the Subcommittee on Elections, Committee on House Administration, U.S. House of Representatives conducted hearings on the disenfranchisement of the military personnel then serving in the Korean War. (Upon request, I can provide you a copy of excerpts of the report.) The 1952 congressional report includes a letter to Congress from President Truman. I invite your attention especially to President Truman's eloquent opening paragraph:

About 2,500,000 men and women in the Armed Forces are of voting age at the present time. Many of those in uniform are serving overseas, or in parts of the country distant from their homes. They are unable to return to their States either to register or to vote. Yet these men and women, who are serving their country and in many cases risking their lives, deserve above all others to exercise the right to vote in this election year. At a time when these young people are defending our country and its free institutions, the least we at home can do is to make sure that they are able to enjoy the rights they are being asked to fight to preserve.

Harry S. Truman was one of the founders of our association, in 1922. He was a member for more than half of the 20th century (1922-73). As president, he signed our congressional charter in 1950.

I respectfully suggest that President Truman's words are as true today as they were in 1952, and that those words are addressed to you, as your state's Chief State Election Official. With your help, your state's sons and daughters who serve in our armed forces will not have to wait another half century to enjoy a basic civil right that the rest of us take for granted. I am writing to ask you to make every effort to facilitate the enfranchisement of these military citizens. I also ask that you share this letter and its enclosures with your state's local election officials.

The Fiscal Year 2002 National Defense Authorization Act (Public Law 107- 107, enacted 28 December 2001) contains several important new provisions relating to uniformed services voting. I invite your attention to section 1601(a), which provides as follows:

It is the sense of Congress that each person who is an administrator of a Federal, State, or local election: (1) should be aware of the importance of the ability of each uniformed services voter to exercise the right to vote; and (2) should perform that person's duties as an election administrator with the intent to ensure that (A) each uniformed services voter receives the utmost consideration and cooperation when voting; (B) each valid ballot, cast by such voter, is duly counted; and (C) all eligible American voters, regardless of race, ethnicity, disability, the language they speak, or the resources of the community in which they live, should have an equal opportunity to cast a vote and have that vote counted.

I am enclosing, for your information, a copy of "Law Reviews" Number 43 and 44, as published in the May 202 issue of The Officer, our monthly magazine. Those articles cover other important new

provisions included in Public Law 107-107. If you have further questions, please contact me by e-mail (swright@roa.org) or by telephone (1-800-809-9448, extension 753).

Recent changes in federal and state laws have gone a long way, but I do not believe that the battle is over. We, as a nation, need to get a handle on the problem of disenfranchised military personnel and family members. We need to identify the problems so that we can develop solutions. I am enclosing a copy of a comprehensive questionnaire identifying the rate of and reasons for disenfranchisement of military voters in the 2002 general election. Please task your local election officials to track and report these data this year.

A big part of the problem is insufficient ballot transmission time, especially for personnel serving at sea or at isolated overseas duty stations. The Department of Defense has recommended that each state provide a minimum of 45 days for the absentee ballot to travel from the election official to the voter and back. That means that officials should have ballots printed and ready to mail by 21 September 2002. I am concerned that lawsuits about redistricting and ballot access may interfere with the timely mailing of absentee ballots and thus disenfranchise overseas military personnel.

The underlying problem is that, as we enter the 21st century, most states still conduct absentee voting essentially as they did in the 19th century, by "snail mail." The technology exists to enable military voters to cast secure and secret ballots by electronic means. I invite your attention to the enclosed article entitled "A Call to Arms: Defending the Military Vote," by Jim Adler, the chief executive officer of VoteHere, Inc. You may also want to review that company's Web site, www.votehere.net.

It is most unfortunate that the disputed military absentee ballots became part of the contentious partisan dispute that followed the 2000 presidential election. We of the Reserve Officers Association firmly believe that the effective enfranchisement of the brave young men and women who are away from home and prepared to lay down their lives in defense of our country should never be a partisan issue. We are interested in finding solutions, not in assigning blame. We would greatly appreciate anything that you can do to advance this issue in your state.

Update – April 2022

Electronic means available

In the roughly ten years since this article was written, states have begun embracing technology for absentee voting. Many states allow applications by email (usually with a scanned application).³ There are at least 18 states that offer an electronic alternative to requesting absentee/mail ballot.⁴

³Table 6: States With Online Absentee Ballot Application Portals, NCSL (Jan. 3, 2022), <https://www.ncsl.org/research/elections-and-campaigns/vopp-table-6-states-with-web-based-and-online-absentee-ballot-applications.aspx>.

⁴*Id.*

Additionally, there are four states allow some voters to return ballots using a web-based portal.⁵ One state has mobile voting app.⁶ Nineteen states and DC allow some voters to return ballots via email or fax.⁷ For more information on the states rules, visit <https://www.ncsl.org/research/elections-and-campaigns/internet-voting.aspx>.

In 2021, the U.S. Senate joined the House of Representatives in proposing a law that would allow all active-duty service members to cast votes electronically while stationed overseas. The bill is called the Rescuing Barriers for Military Voters Act.⁸ The bill has not been passed yet.

45-day rule

In 2009, Congress enacted the Military and Overseas Voter Empowerment Act (MOVE Act), which made several important amendments to UOCAVA. One of those amendments included an explicit requirement that each state mail absentee ballots, to UOCAVA voters at least 45 days before Election Day.⁹ But, there is a hardship exception. If the chief State election official determines that the State cannot meet the 45-day deadline dues to an undue hardship, the chief State election official shall request the presidential designee grant a waiver.¹⁰ If the state meets all the requirements, the waiver will be approved.¹¹

⁵*Id.* The states that allow voters to return ballots using a web-based portal are Arizona, Colorado, Missouri, and North Dakota.

⁶*Id.* the state that has a mobile voting app is West Virginia.

⁷*Id.* the nineteen states that allow some voters to return ballots via email or fax are Delaware, District of Columbia, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Massachusetts, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Oregon, South Carolina, Utah, and Washington.

⁸Nikki Wentling, *Federal Bill Would Allow Online Voting for Overseas Military* (July 14, 2021), <https://www.govtech.com/policy/federal-bill-would-allow-online-voting-for-overseas-military>.

⁹52 U.S.C. § 20302(a)(7).

¹⁰*Id.* § 20302(g).

¹¹*Id.*