

LAW REVIEW 0601

Vote, and Make Sure Your Vote is Counted

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The U.S. Supreme Court referred to the right to vote as “preservative of all other rights.” *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). I have long believed that it is absolutely critical that military personnel and their family members vote, and that their ballots be counted. For a quarter century, starting in 1981, I have undertaken a nationwide effort to secure reforms in state and federal election laws. Every state has made at least some progress toward simplifying absentee voting procedures and providing more ballot transmission time, but much remains to be done. The disenfranchisement rate among active duty military personnel remains unacceptably high, more than 25 percent. For overseas military personnel, the disenfranchisement rate is much higher.

As we start the critical election year of 2006, I want to stress to all ROA members the importance of voting, and making sure that your ballot is counted. If you do not vote, or if your vote is not counted, you will not be heard. Now is a good time for you to take stock of your voter registration and to figure out how you will vote in this year’s primary and general election. This applies whether you are a freshly minted 22-year-old second lieutenant about to deploy to Iraq or Afghanistan or a long retired 82-year-old colonel about to move into a retirement facility. The purpose of this article is to explain what you need to do to ensure that you have the opportunity to vote this year, and every year, and that your ballot will be counted. This article deals with voters generally. The next article, Law Review 208 [0602] (Web only), will address the special rules applicable to active duty servicemembers and their families, as well as all overseas Americans.

Register to Vote, and Keep Your Registration Current

Except in a handful of states (like North Dakota and Wisconsin), it is necessary to register to vote before you vote. The deadline for registering varies, but it is usually about four weeks before the election. If you are not registered, and if you have allowed the voter registration deadline to pass, you will not be able to vote.

It is no longer necessary to register to vote in person. As a result of the “Motor Voter” law enacted by Congress in 1993, it is now possible to register to vote by mail. You will need to obtain and use an official state voter registration form. Contact your local election official. The titles vary: registrar of voters, county clerk, county auditor, county supervisor of elections, town clerk, etc. Most states administer elections and voter registration at the county level (parishes in Louisiana).

“Motor Voter” also permits you to register to vote at any state or local government office while doing other government business. For example, you can register to vote at the Department of Motor Vehicles (DMV) when you renew your driver’s license. I do not recommend that you rely

upon the DMV for voter registration. In many states, there have been substantiated reports of thousands of completed voter registration forms never making it to the election office. The DMV exists to register drivers, not voters.

Don't let anybody tell you that you must wait before registering to vote, after you move to a new state or county. More than a generation ago, the Supreme Court struck down, as unconstitutional, all durational residence requirements. *See Dunn v. Blumstein*, 405 U.S. 330 (1972). You are permitted to register to vote on the very day that you move into a new state or county. If you register by the deadline (generally about four weeks before the election), you will be permitted to vote in all elections (not just federal elections).

When you are duly registered, you need not register again unless you move. Even if you move a very short distance, within the same county, it is essential that you notify the local election official of your new address. If you are not registered at your current residence address, it is likely that you will be disenfranchised. Don't wait until the last minute to check your voter registration status.

I Showed Up to Vote, but They Cannot Find My Name on the List!

When that happens, the first question you should ask is: "Am I at the correct polling place?" You must vote at the polling place for the specific precinct where you reside and are registered to vote. In densely populated urban areas, precincts are very small and polling places may be only blocks apart. At the polling place, there should be a map of that specific precinct and information about the locations of nearby polling places.

Better yet, you should check on the location of the polling place before you go to vote. Even if you have been voting at the same place for many years, there may have been a change. Your precinct may have been split or realigned because of population changes. The prior polling place may no longer be available, necessitating a change. The election office will be open on Election Day and during the days leading up to the election. An election officer can advise you as to the correct place for you to go to vote.

Don't show up to vote 10 minutes before the scheduled closing time, especially if you are uncertain as to the location. If you show up at the wrong polling place shortly before closing time, you may not be able to get to the correct location and join the line before it is closed.

If you are certain that you are at the correct polling place and the election judge still cannot find your name on the poll list, you have the right to cast a provisional ballot. You must complete a separate paper ballot and an affidavit. After Election Day, the local election official will research the situation and will count the provisional ballot if the evidence establishes that your name should have been on the poll list. Mistakes are made, and the provisional ballot is a way to ensure that such mistakes do not result in the disenfranchisement of lawful voters. Casting a provisional ballot is certainly not a waste of time if you are convinced that you are entitled to vote.

All states now utilize the provisional ballot because the Help America Vote Act (HAVA), enacted by Congress in 2002, requires the use of this ballot. HAVA requires election officials to research provisional ballots, and to count them when warranted, even if the election is not close. You have the right to have your ballot included in the final, official tally even if your candidate won easily or lost decisively. Please remember that the election results that you read in the newspaper on the day after the election are not final or official.

I'm Old, I'm Sick, or I Am Going to Be out of Town on Election Day

All states permit absentee voting, but the rules vary considerably from state to state. Most states limit absentee voting to persons who will find it difficult or impossible to vote at the polling place on Election Day. If you are voting absentee by mail, you generally must use the official state absentee ballot request form to request an absentee ballot. Check the Web site of your chief state election official (usually the secretary of state)-you may be able to print out the request form from that Web site.

Don't wait until the last minute! Even if you are voting from within the same county, the United States Postal Service will need time to deliver your completed absentee ballot request to the election office, to deliver your unmarked ballot to you, and to deliver your marked ballot back to the election office. In most states, the marked ballot must be actually received by the election official (not just postmarked) by Election Day.

Most states make a distinction between absentee voting, which is conducted by mail, and early voting, which is conducted in person at the county courthouse or other locations within the county during the weeks leading up to the election. If it is feasible for you to vote in person, before the election, this is the preferable way of voting, because you do not have to depend upon the mail service. There is another advantage to early voting. If you try to vote in person during the early voting period and you are unable to vote for any reason, there is time to correct the problem and make another attempt during the early voting period or on Election Day.

Voter registration and absentee voting require foresight and a reasonable effort on your part. Don't wait until the last minute. Check on the status of your voter registration today. If you need to register or to update your registration, do so now—don't wait until shortly before the deadline, which is usually about four weeks before Election Day. If you need to vote early or by mail, start making inquiries now. Don't wait until the week before the election to apply for an absentee ballot. Vote, and make sure that your ballot is counted.

**Military title shown for purposes of identification only. The views expressed are the personal views of the author, and not necessarily the views of the Department of the Navy, the Department of Defense, or the U.S. government.*