

LAW REVIEW¹ 0602

Make Sure Your Vote Is Counted (For UOCAVA Voters)

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7.2—Service member or military spouse voting and domicile

7.4—How a Service Member or Military Spouse Can Vote

In Law Review 0601 (printed as Law Review 207 in the January/February 2006 issue of The Officer), I explained the importance of voting, and I offered suggestions for what you can do to make sure that your ballot will be counted. This article explains the special rules for voter registration and absentee voting for voters covered by a federal statute called the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). The following classes of persons, and no others, are covered by UOCAVA:

- Members of the U.S. uniformed services on active duty, whether within or outside the United States;
- Spouses and voting-age children of active duty servicemembers, whether within or outside the United States;

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 (VRRA—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 VRRA 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 VRRA 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.

- Members of the U.S.-flag Merchant Marine; and
- All U.S. citizens of voting age, outside the United States temporarily or

permanently, whether or not they are employed by or directly connected with the U.S. government.

Registering To Vote and Applying for an Absentee Ballot

In Law Review 0601, I explained that, except in a handful of states, you must register to vote *first* and then vote or apply for an absentee ballot. *This is not the case for UOCAVA voters.* UOCAVA requires any election official in any state, to accept a properly completed Federal Post Card Application (FPCA) as a *simultaneous voter registration application and absentee ballot request*.

This special rule applies *only if you use the FPCA*. If you use a state form or a simple letter request, it is likely the election official will look for your name on the voter registration list. If your name is not on that list, the election official probably will not send you a ballot. *But if you use the FPCA, the election official does not have this discretion.* If you are eligible to use the FPCA, and you use the FPCA, the election official *must* send you an absentee ballot, even if you have not previously voted or registered to vote in the traditional way.

You can obtain a blank FPCA from a military Voting Assistance Officer, either inside or outside the United States. You can also print out the FPCA from the Web site of the Federal Voting Assistance Program (FVAP), Office of the Secretary of Defense. That site is www.fvap.gov.

Although federal law does not require that you have registered to vote, in the traditional way, before using the FPCA to request an absentee ballot, I recommend that you register to vote if it is possible for you to do so. When you are visiting your hometown on leave, take some time to call upon the local election official at your county courthouse. Register to vote, if you have not already done so.

Discuss with the official how she or he can get in touch with you, to verify your mailing address before sending you your absentee ballot. Explain that, because you are on active duty in the armed forces, you do not control where you will be at any given time. You may find that the election official has never served in the military and has little understanding of the circumstances of military life, but you can explain these things. You will most likely find that the election official is most interested in doing all feasible things to ensure that you receive your ballot in time to vote.

UOCAVA also requires that the election official treat a single completed FPCA, submitted by a UOCAVA voter, as a request for absentee ballots for all elections (including primaries and special elections) through the next two regularly scheduled biennial general elections for federal office. Furthermore, UOCAVA outlaws “not earlier than” requirements concerning the submission of the FPCA as an application for an absentee ballot—you can apply for an absentee

ballot at any time during the calendar year of the election, even January for a November election.

In other words, you could submit your FPCA in January 2006 for all federal elections, including primaries and special elections, to be held in that year and in 2007 and 2008. Although UOCAVA only gives you the right to vote in federal elections (president, U.S. Senate, and U.S. House of Representatives), the election official will probably send you ballots for all offices, including state and local offices.

It is important to submit your absentee ballot request early in the year for ample time for the unmarked ballot to get to you—no matter where you are serving—and, in turn, for you to return your marked ballot in time to be counted. In most states, the deadline for the *receipt* (not just postmark) of your marked ballot is Election Day. Most states still conduct the absentee voting process entirely by mail, but you should discuss with the local election official whether more expeditious means are available, such as electronic or fax transmission.

I recognize that you will not know for certain, early in the election year, where you will be in the fall when your unmarked absentee ballot must reach you. Consult with your local election official how you can reach her, or how she can reach you, to confirm the mailing address before mailing the ballot.

Please note that you must provide *two different addresses* on your FPCA. Line 4 is for your “mail my ballot to” address. In line 3, you must provide your permanent residence address *in the county, parish, city, or town of the election official to whom you are sending the FPCA*. Local election officials frequently complain about receiving military absentee ballot requests that have been sent to the wrong county or jurisdiction. If you are uncertain as to the name of your home county, check a *National Zip Code Directory* published by the United States Postal Service (USPS). In that directory, you will find a list of cities and towns, showing the county. It is important that you send your completed FPCA to the correct election official.

The permanent residence address you list on your absentee ballot request must be an actual address where you really did live just before entering active duty or at some point earlier in your military career, or maybe the place where you live now, if you are within the United States but will be away from your home on Election Day. If you are uncertain about your legal residence, make an appointment with a *military legal assistance attorney* to discuss this important matter. Your permanent residence is important for many legal reasons, including state income tax liability. You may have some flexibility in changing your legal residence while you are on active duty, but you cannot do so “willy-nilly” to avoid tax liability.

If you do not know the location of a military legal assistance office on or near your base, go to <https://legalassistance.law.af.mil>. That site will show you, from your Zip code, the nearest military legal assistance office, including the telephone number. You need to call and make an appointment. Military legal assistance attorneys are taught not to try to provide legal assistance by telephone or e-mail.

The local election official needs the *exact street address* of your permanent legal residence—a post office box address or a route and box number would not be sufficient. If your home is in a rural area and does not have a street address, you should include, in the remarks section of the FPCA, a description of the location. For example: “The home where I lived with my parents, before I joined the Marine Corps 15 years ago, was on County Road 44, 750 yards west of the Exxon station, on the same side of the road.” The election official needs the exact location of your permanent home within the county to send you the correct absentee ballot for that specific location.

I recommend that you put your e-mail address in the “remarks” section of the FPCA, so that the election official can contact with any questions. If you still have a parent or other relative living in that county, or nearby, provide that person’s name and telephone number.

Every military unit should have a *Voting Assistance Officer (VAO)*. Contact your VAO and ask to see the chapter on your home state in the *Voting Assistance Guide*, published by DoD every two years as a basic reference for military voters and VAOs. You can also find the *Guide* at www.fvap.gov, the Web site of DoD’s Federal Voting Assistance Program.

All States accept the FPCA because federal law requires them to, but there are differences from one state to the next in exactly how you must complete the FPCA. For example, Vermont requires that you copy out the words of the 18th century “Freedman’s Oath” on the FPCA and then sign it. That requirement almost certainly violates UOCAVA, and federal law prevails over conflicting state law, but until that dispute is resolved I recommend that you comply with this archaic requirement. Some other states have rules almost as silly.

Complete the FPCA carefully, and ask the VAO to review it before you mail it. It is important that you complete your FPCA *completely and correctly, and with legible handwriting*. Election officials often complain about military absentee ballot requests that are incomplete, incorrect, or illegible. The election official will not send you a ballot until you complete the form correctly, and there may not be time for you to resubmit the form.

Receiving, Marking, and Returning your Absentee Ballot

Most states still send you your unmarked absentee ballot *by mail*, and they still require you to return your marked ballot *by mail*. For years, I have advocated for federal and state legislation that permits you to receive your unmarked ballot and send your marked ballot by secure electronic means. It is a scandal that we, as a nation, are still conducting absentee voting as we did in World War II, shipping pieces of paper around the world by snail mail.

Every day, business people conduct major financial transactions by secure electronic means. In the military, classified information is transmitted electronically, via the SIPRNET (Secure Intranet Protocol Routing Network). If electronic systems are secure enough for our nation’s most sensitive secrets and for huge sums of money, it should be possible for deployed

servicemembers to vote by secure means, with confidence that their ballots will be counted. Such confidence is not possible as long as we must trust snail mail.

With your unmarked absentee ballot, you will receive a detailed instruction sheet for marking and returning your absentee ballot. It is important to follow the instructions carefully. If you fail to do so, the election official will not count your ballot.

Most states utilize the “double envelope system” in absentee voting. You are to mark your absentee ballot and place it in the “inner envelope” and seal that envelope. The inner envelope contains no identifying information. You are to place the sealed inner envelope in the ballot return envelope, which is addressed to the election official in your hometown. You must complete the affidavit on the back of the ballot return envelope, and please follow the instructions carefully. Many military voters are disenfranchised because their absentee ballot return envelopes are not completed correctly.

Most states require that the marked absentee ballot *actually arrive* at the local election office by Election Day, if the ballot is to be counted. A postmark on or before Election Day is not sufficient, in most states. Some states have extended the deadline by state statute, and some other states have been required by federal court orders to extend the deadline for the receipt of absentee ballots mailed from outside the United States, including APO and FPO addresses.

The ROA/National Defense Committee survey of election officials showed a significant number of absentee ballots arriving after the deadline and not being counted, but the survey also showed a much larger number of absentee ballots that *never came back at all*. I recommend that you mark and return your absentee ballot *no matter how late you receive it, even months after the election*. Such late-arriving ballots are not opened, much less counted, but at least you can make the point that “I wanted to vote in that election, and the system failed to get me my ballot in time to vote.”

If you receive your absentee ballot after Election Day, please also send a letter to the election official, and mail that letter in a separate envelope. In that letter, include when you applied for your absentee ballot and when you received it. Send a copy of that letter to your governor and chief state election officer (usually the secretary of state). These letters can help lay the groundwork for electronic voting.

Federal Write-in Absentee Ballot

If you have made a proper and timely application for an absentee ballot, and if you do not have the ballot by early October, you should obtain a *Federal Write-in Absentee Ballot* (FWAB) from your unit’s VAO or from the FVAP Web site, www.fvap.gov. You can use the FWAB to vote for federal offices (president and vice president, U.S. senator, and U.S. representative) in the general election. This is a “blank” ballot for the whole country, not a particular state. You will not find names of candidates on the FWAB, only titles of offices. You vote by writing in the

names of your favored candidates or by expressing a party preference, like “Republican nominee” or “Democratic nominee.”

The FWAB is a pretty sorry substitute for a ballot, but it beats being disenfranchised. The beauty of the system is that you need not give up on the regular absentee ballot when you mail in your marked FWAB. If you receive your regular ballot after having submitted the FWAB, you should mark and return the regular ballot as well. You should include, in the ballot return envelope, a note to the effect that “I have already submitted an FWAB for this election.” If both the regular ballot and the FWAB arrive on time to be counted, the election official will count the regular ballot and set aside the FWAB.

Voting Information Center

Since 1988 DoD has operated the *Voting Information Center* (VIC) to give military personnel and others the opportunity to learn about elections and public affairs in states and congressional districts back home so they can cast *informed* absentee ballots. Call the VIC toll-free from all over the world at DSN 425-1343 or 1-800-438-VOTE. Overseas civilians who do not have access to the DSN system can nonetheless call the VIC toll-free from 66 countries. For instructions on how to do this, go to www.fvap.gov and click on “Voting Information Center” on the right side of the main page.

If you need assistance in voting, you should start with your unit’s VAO. If your unit does not have a VAO, ask the commanding officer, via the chain of command, to appoint a VAO. If you are unable to obtain the assistance you need within your unit, you can use the VAO to contact the *Voting Program Coordinator* for your branch of the service (Army, Navy, Marine Corps, Air Force, Coast Guard, or State Department). You can also contact the FVAP itself via the VIC.

DoD has asked each chief state election official to record a VIC message with the dates of upcoming elections, the offices and questions included, and *how to obtain an absentee ballot*. You can use the VIC to call your State’s Chief State Election Official, with no long-distance charge. If you have access to the DSN system, you can use the VIC to call the Secretary of State of Texas, in Austin, from Afghanistan, with no long-distance charge to you.

DOD has also asked each U.S. senator, U.S. representative, and governor to record VIC messages. If an official has not recorded a message, the caller hears a “default message” saying, “No message has been recorded.” After listening to the message or the default message, the caller can press 1 to be connected to the official’s principal office here in Washington or in the state capital (for governors).

You can also utilize the VIC to listen to messages recorded by *candidates* for president, U.S. senator, and U.S. representative, *but only during the last 30 days before the primary or election*. If you have your absentee ballot in hand and are trying to decide how to cast it, you can call the VIC to listen to candidate messages. But if the candidate messages are not yet available, do not

wait for them before marking and returning your ballot, especially if you are overseas. The most important thing is that you get your absentee ballot in on time for it to be counted.

The views expressed are the views of the author and not necessarily the views of the Departments of the Navy, Defense, Labor, or the U.S. government.

Update – April 2022

In the 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

Additionally, there are four states allow some voters to return ballots using a web-based portal,⁵ one state has mobile voting app,⁶ and 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.

Please join or support ROA

This article is one of 1800-plus “Law Review” articles available at <https://www.roa.org/page/lawcenter>. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For

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.*

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>.

many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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