

**LAW REVIEW<sup>1</sup> 10072**  
(Updated April 2022)

## **Military Absentee Voting in Maryland**

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

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

7.2—Service member or military spouse voting and domicile

**Q: I am an active duty Soldier, currently serving in Afghanistan. My home is in Maryland, and my mother is running for the Maryland House of Delegates this year. I applied for my absentee ballot back in March. I have received an absentee ballot, but it only gave me the opportunity to vote for the United States Senate and the United States House of Representatives. I have already marked that ballot and put it in the return mail. Can I expect to receive a separate ballot for all the non-federal offices?**

**I am paying Maryland state income tax, through withholding from my Army salary. I want to vote for Governor, other statewide offices, the Maryland Senate and House of Delegates and**

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<sup>1</sup>I invite the reader's attention to [www.roa.org/lawcenter](http://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.

<sup>2</sup>BA 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](mailto:SWright@roa.org).

**for county offices listed on the ballot this year. Of course, I am especially interested in casting a ballot for my mother. Am I eligible to vote by absentee ballot for non-federal offices?**

**A:** Yes. Because you are domiciled in Maryland (as shown by the fact that you are paying Maryland state income tax), you are eligible to vote by absentee ballot for all offices. You will be receiving a new ballot that includes all offices, including both federal and non-federal offices. You should mark that ballot and put it in the mail as soon as you receive it. I sincerely hope that you will receive the ballot in time to send it back to be counted, especially for your mother.

**Q: Is my eligibility to vote governed by federal law or by state law?**

**A:** Both. The federal law that applies here is the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), enacted by Congress in 1986 and amended several times, most recently in 2009. UOCAVA is codified in title 42, United States Code, sections 1973ff through 1973ff-6.

UOCAVA gives “absent uniformed services voters” and “overseas voters” the right to vote by absentee ballot in primary, general, special, and runoff elections for federal office (President, U.S. Senator, and U.S. Representative). UOCAVA is silent as to the eligibility of these folks to vote in non-federal elections, like the election for the Maryland House of Delegates.

An “absent uniformed services voter” is a member of one of the seven uniformed services (Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service commissioned corps, and National Oceanic and Atmospheric Administration commissioned corps) in active service, or the voting-age family member of such a service member. The service member or family member must be absent from the place where he or she is domiciled and is eligible to vote, because of uniformed service of the service member or of the spouse or parent of the family member. The absent uniformed services voter can be either within or outside the United States. An “overseas voter” is a U.S. citizen who is outside the U.S., temporarily or permanently.

**Q: Why am I receiving two absentee ballots this year?**

**A:** As recently amended (2009), UOCAVA now explicitly requires each state to mail absentee ballots to UOCAVA voters (military and civilian) by the 45th day before the election. If a state is unable to make that 45-day deadline, because of an undue hardship caused by something like a late primary, the state can apply to the Secretary of Defense (SECDEF) for a one-time waiver.

To get the waiver, the state must show both an undue hardship caused by something like a late primary that precludes mailing ballots by the 45th day before Election Day and a satisfactory alternative plan (satisfactory to SECDEF) to ensure that UOCAVA voters have sufficient time to receive, mark, and return their ballots in time to be counted, despite the state having missed the 45-day deadline. On July 28, 2010, the Maryland State Board of Elections (MSBE) applied for a waiver, contending that mailing ballots 45 days before Election Day was impossible because the Maryland primary was scheduled to be held (and was held) just 49 days before Election

Day, and it takes a lot more than four days to certify the primary winners and print and mail general election ballots.

On August 25, 2010, the MSBE sent SECDEF a new letter, withdrawing the waiver request. In that letter, the MSBE promised to send out ballots for federal offices only by Saturday, September 18, the 45th day before the election. You can find Maryland's waiver request and waiver request withdrawal at [www.fvap.gov](http://www.fvap.gov). This is the website of the Federal Voting Assistance Program (FVAP), in the Department of Defense. The MSBE did in fact mail out ballots on September 18, but those ballots only listed federal offices.

**Q: When can I expect to receive my regular absentee ballot?**

**A:** Maryland's counties will likely be mailing out the regular ballots sometime between October 12 (21 days before Election Day) and October 18 (15 days before Election Day).

**Q: When do I need to mark my ballot and put it in the return mail? And when must my marked ballot be received?**

**A:** The regulations adopted by the MSBE provide as follows:

**.08 When Ballots Are Timely.**

A. United States.

(1) "United States" means the several states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) "United States" does not include American Samoa, the Canal Zone, Guam, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, an Army Post Office address, or a Fleet Post Office address.

B. In General: An absentee ballot is considered to have been timely received only if:

(1) The ballot is received by the local board office before the polls close on election day; or

(2) The ballot:

(a) Is received by the local board office from the United States Postal Service or a private mail carrier:

(i) On or before 10 a.m. on the second Wednesday after a primary election preceding a gubernatorial election; or

(ii) On or before 10 a.m. on the second Friday after a general or special election or in a primary election preceding a presidential election; and

(b) Was mailed on or before election day, as verified:

(i) By a postmark of the United States Postal Service, an Army Post Office, a Fleet Post Office, or the postal service of any other country; or

(ii) By the voter's affidavit that the ballot was completed and mailed on or before election day, if the return envelope does not contain a postmark or the postmark is illegible.

(C) Untimely Ballots: A ballot that is not timely received as provided in this regulation may not be counted.

Code of Maryland Regulations, Section 33.11.03.08.

**Q: Does my ballot need to be postmarked by the day BEFORE Election Day? Or is it sufficient that it be postmarked ON Election Day? I have seen it both ways, and this is very confusing.**

**A:** This question used to be addressed by statute in Maryland, and when it was addressed by statute the rule was that the ballot had to be postmarked by the day *before* Election Day. Some years ago, the Legislature repealed that statutory section and delegated to the MSBE rulemaking authority to address questions of when absentee ballots must be postmarked and when they must be received. The pertinent administrative regulation is quoted above, in its entirety. Now, the rule is that the ballot must be postmarked on or before Election Day.

**Q: My county is so late in mailing ballots, and my mail service here in Afghanistan is so slow, that I probably won't even receive my ballot by Election Day, much less will I have time to return it. If my ballot does not count for my mother, I am going to be very upset, especially if she loses by just one vote. What gives?**

**A:** The Military Voter Protection Project (MVPP) has filed suit against Maryland, on behalf of John Doe, the pseudonym for a Maryland Army National Guard officer on active duty in Iraq. The suit contends that the way that Maryland is handling military absentee voting this year is illegal and unconstitutional. I invite your attention to my Law Review 1064, titled "Suit Filed to Protect Military Voting Rights in Maryland." Go to [www.roa.org/law\\_review](http://www.roa.org/law_review). You will find more than 750 articles about UOCAVA, the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), and other laws that are particularly pertinent to those who serve our nation in uniform. You will also find a detailed Subject Index and a search function, to facilitate finding articles about very specific topics.

## **Update – April 2022**

The location of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) within the United States Code changed. UOCAVA was previously cited at 42 U.S.C. §§ 1973ff–1973ff-7. After an editorial reclassification, the UOCAVA is now codified at 52 U.S.C. §§ 20301–20311. The changes in codification have not changed the substance or application of the sections.

### **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 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](http://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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