New York, Illinois Fail to Deliver Absentee Ballots

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.

The MOVE Act permits states to apply to the Secretary of Defense (SECDEF) for one-time waivers of the 45-day rule. To obtain the waiver, a state must show an undue hardship (caused by something like a late primary) preventing the state from mailing ballots by the 45th day before the election and a satisfactory alternative arrangement (satisfactory to SECDEF) to ensure that UOCAVA voters have sufficient time to receive, mark, and return their ballots in time for those ballots to count, despite the state having missed the 45-day deadline.

Ten states, the District of Columbia, and the Virgin Islands applied to the SECDEF for waivers of the 45-day rule this year. Five states, including New York, were granted waivers because late primaries prevented those states from mailing out ballots by September 18, 45 days before the election. To obtain the SECDEF waiver, New York promised to have ballots mailed by October 1 and to extend the deadline for the return of mailed-in ballots from outside the U.S. (including APO and FPO addresses) to provide at least 45 days of round trip ballot transit time. The

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[1]I 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.

[2]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.

problem is that 13 major counties, including all five New York City boroughs (Bronx, Brooklyn, Manhattan, Queens, and Staten Island), seriously missed the October 1 deadline. These counties were so late that there was not time for the unmarked absentee ballot to get to the voter in Afghanistan, much less to the voter and back, by November 2.

It was predictable that the states with late primaries would have difficulty meeting the 45-day rule. Until the results of the primary have been officially certified, the local election official cannot *print* general election ballots, much less mail them out. But the problem of late absentee ballots is not limited to late primary states. One of the worst states this year is Illinois, and it held its primary on February 2. Thirty-five of the 110 Illinois counties seriously missed the September 18 deadline for mailing absentee ballots. One of the seriously late counties was St. Clair County, home to 261,000 people and to Scott Air Force Base.

The Department of Justice (DOJ) sued Illinois because of this late mailing. The lawsuit was resolved with a consent decree under which overseas ballots received up to 14 days after Election Day will be counted, but the consent decree extended by only one day (November 1 to November 2) the deadline for these ballots to be *postmarked.* Some Illinois voters in Afghanistan and elsewhere will be disenfranchised because they won't even receive their unmarked ballots by Election Day.

Readers, Election Day is next week and this is our last chance to obtain data for the 2010 general election, the first election to which the MOVE Act applies. There are 7,810 local election officials (County Clerks, County Registrars, Town Clerks, etc.) who administer absentee voting for federal elections. Please contact your local election official. Did he or she mail out ballots to UOCAVA voters by Saturday, September 18? Please let me know what your local election official says. My e-mail is swright@roa.org.

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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.

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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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