LAW REVIEW[1] 109 (expanded)
January 2004

New Developments in Military Voting Rights

By Albert R. Veldhuyzen**1**

7.2—Service member or military spouse voting and domicile
7.7—Proposed Reforms for Military Voters
10.2—Other Supreme Court Cases

Military voting rights came into full focus during the 2000 presidential elections. On 8 November 2000, after phoning then-Governor George W. Bush to concede the election, Vice President Al Gore retracted the concession because the governor's margin of victory was slim enough to mandate an automatic recount.**2** Thus began one of the most amazing chapters in American history.

Because of the closeness of the election, Florida had to wait 10 days past Election Day to count military and overseas ballots. The earliest that the vote count could be certified was 17 November 2000. However, Vice President Gore sought a delay in the certification of the votes and manual recounts in four Democrat-controlled counties.**3**

The Florida Supreme Court set the deadline for certification at 26 November 2000. On that date, the Florida Elections Canvassing Commission certified the results and declared Bush the winner of Florida's 25 electoral votes. On 27 November 2000, Gore filed a complaint contesting the certification, and this led to the Florida Supreme Court order for the immediate hand recounting of 9,000 Miami-Dade County ballots, the inclusion in the certified vote totals of 383 votes for Vice President Gore (from Miami- Dade and Palm Beach Counties), and the manual recounting of all Florida "undervotes."**4** The Supreme Court reversed the decision of the Florida Supreme Court on 12 December 2000, effectively handing the presidency to George W. Bush.**5**

Between 8 November and 12 December 2000, myriad technical ballot issues were discussed and debated over the airwaves and litigated in the courts. Among those issues were "butterfly" ballots, hanging, dangling, and impregnated chads, and absent postmarks on absentee military ballots. Issues surrounding the military vote quickly became a political football as the Democrats sought to disqualify as many overseas ballots as possible and Republicans sought the reverse. Some observers characterized the votes of hundreds of servicemen and women as

---

[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.

"flawed,"**6** whereas others decried the disenfranchisement of countless patriotic citizens through no fault of their own.**7** A Democratic operative wrote a memorandum detailing the grounds on which to disqualify overseas ballots causing howls of protests that led Senator Lieberman, the Democratic vice presidential candidate, to effectively disavow the strategy.**8** Nevertheless, the discrepancy of military overseas votes accepted by Republican- dominated counties and those rejected by Democrat-dominated counties is striking. According to a commentary in the Wall Street Journal, a total of 356 overseas military ballots were disallowed due to postmark challenges and another 157 because there was no independent record of requests for state absentee ballots. Combined with other causes, a total of 788 military absentee ballots were rejected. In Bush counties, 29 percent of overseas ballots were disallowed, but the figure was 60 percent in Gore counties; in pliant Broward, the Gore kill rate was 77 percent.**9**

During the Florida debacle, both sides made charges and counter-charges of disenfranchisement. For many military**10** and non-military voters, disenfranchisement occurred because of the use of outdated voting equipment and procedures. When impartial equipment failed and procedures broke down, all means to effect partisan advantage were employed. The realization by the public and government officials that voting mechanisms were inadequate led to the creation of the National Commission on Federal Election Reform (Election Reform Commission) spearheaded by former presidents Carter and Ford. The Election Reform Commission heard testimony that included issues regarding the military vote**11** and made numerous recommendations.**12**

In addition, the U.S. General Accounting Office (GAO) undertook a study of the procedures surrounding military and absentee voting,**13** and last year Congress incorporated significant changes to military voting rights in the National Defense Authorization Act for FY02 (FY 2002 NDAA).**14** Furthermore, the Department of Defense (DoD) implemented a new directive strengthening the Federal Voting Assistance Program (FVAP).**15**

This article will analyze the court cases emanating from the Florida recount period and service members' equal protection issues generally. It will also explore the case law and background that impelled Congress to amend the Soldiers' and Sailors' Civil Relief Act**16** to guarantee the residency of armed forces members in their last place of domicile. Finally, this article will detail the congressionally mandated DoD changes to the FVAP as well as inform civilian and military legal assistance attorneys and command judge advocates with practice pointers about this significant area of law.**17**

The Florida Recount Cases and Their Progeny

The extremely close 2000 Florida election between George W. Bush and Albert Gore produced an intense judicial scrutiny of Florida's election laws. After a month of confusing recounts and judicial contests, the smoke cleared to reveal the invalidation of Florida's postmark requirement,**18** the upholding of its peculiar 10-day extension for overseas ballots,**19** and the U.S. Supreme Court's overturning of the Florida Supreme Court in Bush v. Gore.**20** In that

decision effectively granting Bush the presidency, the Supreme Court extended equal protection to apply to more than just the initial allocation of the franchise,**21** but also to the manner of its exercise.**22** Bush v. Gore has already inspired a constitutional challenge to the rights of overseas voters,**23** and the judicial overturning of an election in the Northern Mariana Islands.**24** Bush v. Gore is likely to spawn other progeny with potentially significant effects on the rights of military voters. However, before speculating on what that progeny might be, let us explore the legal precedents of the 2000 Florida Recount as well as subsequent decisions based on Bush v. Gore.

Key issues for the contestants in the 2000 Florida recount were how and whether military absentee ballots would be counted.**25** On both issues, courts ruled in favor of overseas citizens and service members. In Bush v. Hillsborough County Canvassing Board,**26** plaintiffs George W. Bush, Richard Cheney, and the Republican Party of Florida alleged that the defendant canvassing boards in Hillsborough, Okaloosa, Orange, Pasco, Polk, Collier, and Walton Counties rejected overseas absentee state ballots and federal write-in ballots based on criteria inconsistent with federal law. Plaintiffs requested that the court declare the rejected ballots as valid. Agreeing with plaintiffs, the court invalidated Florida's postmark requirement on overseas ballots, stating that, "any state statute that requires its election officials to disregard the oath provided on the ballot, by requiring an APO, FPO, or foreign postmark, conflicts with federal law."**27** The court also relied on the Uniformed and Overseas Citizens Absentee Voting Act**28** (UOCAVA) to pre- empt a state requirement that election officials must have a record of the voter's absentee application in their files before counting his or her vote.**29**

In another case regarding the fundamental question of whether to count military overseas absentee ballots, a Florida court again ruled in favor of overseas citizens and service members. In Harris v. Florida Elections Canvassing Commission,**30** plaintiff electors challenged the counting of overseas absentee ballots received after 7 p.m. on Election Day. The court upheld the counting of overseas ballots for 10 days past Election Day. In doing so, it explained the historical rationale for the 10-day extension**31** and made a distinction between the actual casting and counting of votes. The court stated that "overseas absentee voters, like all the rest of the voters, cast their votes on Election Day. The only difference is when those votes are counted. Thus, this case comes down to having very little difference from the typical voting and vote-counting scenario."**32** Had the court decided otherwise by excluding from the count all overseas absentee ballots received after 7 November, the Gore/Lieberman ticket would have had an advantage of 202 votes over Bush/Cheney.**33** The U.S. Court of Appeals for the 11th Circuit upheld the lower court, opining that:

We also observe that to read Florida's law as plaintiffs ask us to do would be a significant change in the actual election practices of Florida. While Florida law seems to favor counting ballots, this change would take away the votes of thousands of Florida citizens-including members of America's armed forces on duty outside of the country pursuant to the nation's orders-who, to cast their ballots, just did what they were told by Florida's elections officials.**34**

The coup de grace for the Gore/Lieberman ticket occurred when the U.S. Supreme Court reversed the Florida Supreme Court in Bush v. Gore. The Florida Supreme Court had ordered the immediate hand recounting of 9,000 Miami-Dade County ballots, the inclusion in the certified vote totals of 383 votes for Vice President Gore (from Miami- Dade and Palm Beach Counties), and the manual recounting of all Florida "undervotes."**35** The U.S. Supreme Court held that mandating the inclusion of the Palm Beach and Miami-Dade recount totals in the certified total constituted "uneven treatment" because each of the counties used varying standards to determine what was a legal vote.**36** Basically, the "intent of the voter" could not be adequately discerned on a uniform basis because there were no standards on how "to interpret the marks or holes or scratches on an inanimate object" and this caused an unequal evaluation of the ballots.**37** Furthermore, mandating a statewide recount of only "undervotes"**38** while allowing the hand recounting of all ballots in Miami-Dade, Palm Beach, and Broward, also posed equal protection concerns.**39** The Court concluded that, "we are presented with a situation where a state court with the power to assure uniformity has ordered a statewide recount with minimal procedural safeguards."**40** The State Supreme Court decision therefore violated the equal protection guarantees of the Constitution.**41** The equal protection of the laws now requires the equal valuation of ballots by the adoption of uniform standards to judge cast votes. A logical extrapolation of Bush v. Gore would be the evaluation of other voting procedures on equal protection grounds.

Bush v. Gore has already spawned significant progeny. In Romeu v. Cohen,**42** the constitutionality of the UOCAVA, which extends voting rights to service members and other citizens living overseas, recently came under attack on equal protection grounds.**43** Xavier Romeu, a U.S. citizen who moved from New York to Puerto Rico, brought suit in federal court because he was denied an absentee ballot to vote in New York. He argued that the UOCAVA violates equal protection by providing presidential voting rights to former residents of states who reside outside the United States but not to former residents of states who reside in Puerto Rico.**44** The Circuit Court disagreed and based its decision in part on the rationale, enunciated in Bush v. Gore, that U.S. citizens do not have "an expressly declared constitutional right to vote for electors in presidential elections."**45** Rather, that right is conferred by the states, which does not include territories such as Puerto Rico.**46** The Circuit Court held that Congress acted in accordance with the Equal Protection Clause when it required "States and territories to extend voting rights in federal elections to former resident citizens residing outside the United States, but not to former resident citizens residing in either a State or a territory of the United States."**47** The court further reasoned that:

Citizens who move outside the United States, many of whom are United States military service personnel, might be completely excluded from participating in the election of governmental officials in the United States but for the UOCAVA. In contrast, citizens of a state who move to Puerto Rico may vote in local elections for officials of Puerto Rico's government. . . . Congress thus extended voting rights in the prior place of residence to those U.S. citizens who by reason of their move outside the United States would otherwise have lacked any U.S. voting rights, without similarly extending such rights to U.S. citizens who, having moved to another political subdivision of the United States, possess voting rights in their new place of residence.**48**

Another interesting case to appear in the wake of Bush v. Gore is Charfauros v. Board of Elections.**49** In Charfauros, the Board of Elections for Rota in the Northern Mariana Islands disqualified four registered Republicans and prevented them from voting. This determined the outcome of the elections as the Democratic candidate won by a margin of three votes. The Democratic Party had challenged Mr. Charfauros' residency and he was thereby denied an absentee ballot. In contrast, the eligibility of challenged Democratic voters was considered after the election. The Ninth Circuit Court of Appeals, relying on the Bush v. Gore precedent, ruled that the creation of two classes of challenged voters, one of which was denied ballots before the election while the other was allowed to vote, violated equal protection guarantees and equal access to the ballot.**50**

The future progeny of Bush v. Gore could have a significant impact on military voting rights. Although the Supreme Court did not address equal protection concerns regarding the overseas absentee vote in Bush v. Gore, it decided that case against a backdrop of controversy regarding the differing standards applied to military overseas ballots, resulting in a wide discrepancy of accepted and rejected ballots between counties.**51** Subsequent evidence has revealed that military and overseas absentee ballots are four times more likely to be disqualified than domestic civilian absentee ballots.**52** Furthermore, overseas ballots are treated inconsistently and differently from stateside ballots across county and state lines.**53** Such differences might account for the higher disqualification rates of overseas ballots. The courts might eventually have to address whether the divergent treatment of overseas ballots rises to the level of a violation of the equal protection clause of the Constitution.

Furthermore, in light of Bush v. Gore and its progeny, it is not far-fetched to argue that some of the 2000 Florida election issues, such as the requirements for postmarks and prior absentee applications on file for overseas ballots,**54** violated equal protection guarantees by creating multiple classes of voters with unequal access to the ballot box. Individuals voting in person as well as stateside absentee voters were not hampered by such requirements. On the other hand, allowing overseas votes to count past Election Day,**55** as is the practice in eight states,**56** may also invite equal protection challenges alleging the creation of two classes of voters with unequal access to the ballot box. These issues out of the 2000 Florida recount were resolved on federal statutory pre- emption grounds before the Bush v. Gore decision. However, by extending equal protection analysis to the manner of the exercise of the franchise, Bush v. Gore appears to open wide the gates to increased equal protection challenges in the area of voting rights.

Voting Residency Guarantee for Military Personnel

A byproduct of the intense scrutiny on voting rights in the aftermath of Bush v. Gore was the enactment of a voting residency guarantee for service members. In the wake of a 1997 federal district court decision, Casarez v. Val Verde County,**57** legislation was introduced in Congress to guarantee service members voting rights in their last place of residence or domicile.**58** However, the annual efforts to enact this voting guarantee did not reach fruition until 2002, when it was included as part of the FY02 NDAA.**59** Section 1603 of the FY02 NDAA amends the

Soldiers' and Sailors' Civil Relief Act (SSCRA) so that a military member who is absent from his or her last home is not, for voting purposes, "deemed to have lost a residence or domicile in that State, without regard to whether or not the person intends to return to that State."**60** In order to properly grasp the rationale behind this new provision, it is necessary to explore the Casarez decision and the role of intent in the establishment of domicile.

Intent in the Establishment of Domicile

The domicile of origin (also called home of record) for a service member is where that person resided before entering active duty. That domicile remains valid unless and until the member establishes a domicile of choice at another location by physical presence and intent to make it his present home.**61** Such a domicile of choice cannot be established or changed by intent alone.**62** In other words, a loosely articulated intent without accompanying "proofs" and concurrent physical presence cannot create a new domicile.**63** Furthermore, the requisite intent necessary to establish or change a particular domicile is not dependent upon a service member's motivations, however self-serving.**64**

Because a loosely articulated intent, by itself, cannot create a new domicile, it follows logically that a service member should not lose a domicile and the right to vote absentee simply because he or she stated an intent not to return. Absent "proofs" of a new domicile of choice based on physical presence and factors evidencing intent,**65** a service member's right to vote in the last established domicile should be presumed. Otherwise, someone absent for 20 years without a new domicile would be in a residential no man's land for purposes of the voting franchise,**66** a right "preservative of all rights."**67**

The Casarez Decision

Despite these legal principles, at least one court had shifted the burden upon service members to prove an intent to return in order to have their votes counted in their last established domicile.

On 5 November 1996, the body politic of Val Verde County, Texas, was cast into tumult when approximately 800 military absentee ballots determined the election of Sheriff and Precinct 1 County Commissioner. Two Republicans, Mr. D'Wayne Jernigan, and Murray M. Kachel respectively won the elections for those offices. Had the military ballots not been counted, the two Democrats, Oscar Gonzalez Jr., and Frank Coronado, would have prevailed. As a result, Mr. Gonzalez and Mr. Coronado filed election contests in state court contending election officials "unlawfully allowed the mail-in voters to cast ballots and vote in the local elections by the use of the Federal Post Card Application."**68**

Soon thereafter, a local voter, Jovita Casarez, with the help of Texas Rural Legal Aid, brought suit in federal court to overturn the results of the elections contending that the "approximately 800 military mail-in ballots were improperly allowed to participate in the local, as opposed to federal, elections resulting in a dilution violation of the Voting Rights Act."**69**

The federal court rendered its decision first, prior to the state court, granting a preliminary injunction in favor of Jovita Casarez and not allowing the Republicans to take office.**70** The court justified its intervention on the grounds that there were two federal statutes needing federal interpretation (Voting Rights Act and Federal Post Card Application law).**71** Based upon the Supreme Court's dilution test,**72** the court agreed with the plaintiffs that there was a "substantial likelihood" the influx of the 800 military absentee ballots "diluted the Hispanic vote in violation of section 2 of the Voting Rights Act."**73** In effect, the court examined the Texas voting procedures for military absentee ballots and concluded that it was likely that military voters were given ballots even though they failed to meet residency requirements.**74** The focus of the court's residency inquiry was the intent of the absentee voters to return to Val Verde County.**75**

The Casarez court opined that, in order to vote absentee, a resident of a Texas community must demonstrate the "intent to return"**76** and that "a legitimate intent to return is decreased each year the person remains away."**77** The court wrote that, "the record is replete with examples of FPCA [Federal Post Card Application] voters who, at least for preliminary injunctive purposes, have no intent or evidence of intent to return to Val Verde County."**78** Based upon this finding, the court effectively shifted the burden of proof upon the military voters and the two Republican officials to present "evidence of the bona fides or the ties to Val Verde County of the undisputedly absent voters."**79** The court outlined as serious questions for further development, discovery, and litigation, (1) the bona fide intent to return to Val Verde County of all 800 absent voters;**80** and (2) whether any of the tens of thousands of Air Force personnel stationed at Laughlin Air Force base in the last twenty years could vote because of Texas' legitimate interest in "immunizing its electorate from the concentrated balloting of military personnel, whose collective voice may overwhelm a small local civilian community."**81**

The court's mention of two particular voters-a military voter and his wife who left Val Verde County in 1996 for Colorado Springs, Colorado-is instructive.**82** Responding to the plaintiff's investigation, the military couple stated they intended to return to Austin or San Antonio, Texas, but not to Val Verde County.**83** Under the court's conception of the law, the military voter was probably not qualified to vote because of the failure to demonstrate "an intent to return" to Val Verde County. The issue then becomes whether the military voter can legally vote anywhere else. He cannot vote in his domicile of origin, which he gave up when he established a domicile of choice in Val Verde County. Furthermore, he cannot now vote in Colorado because he has already decided (and stated) that he does not intend to live there after he leaves the service. Finally, he cannot vote in Austin or San Antonio merely by intending to move there and establish a domicile of choice at some point in the future. Therefore, he is effectively disenfranchised. This person's situation is typical for many military personnel who move often during their careers.

Five months after its initial decision, the Casarez court lifted the preliminary injunction.**84** By then, the Democratic plaintiffs had failed to produce convincing evidence during the trial of the state election contest.**85** Although the Casarez court had intended to examine the intent of all 800 military absentee voters,**86** it was prevented from doing so by the Democratic contestants

"who displayed a dearth of discovery in preparation for the state trial on the merits."**87** The preliminary injunction was lifted because plaintiffs did not make the effort to obtain expensive depositions of the contested absent voters and were not likely to go through that expensive process if given a second bite at the apple in federal court.**88** Summary judgment was subsequently granted in favor of the two Republican candidates, Jernigan and Kachel.**89**

The military absentee ballots ultimately made the difference in this election because plaintiffs failed to develop the evidence, and not because of the Casarez court's conception of the law. If the plaintiffs had conducted discovery properly, countless military ballots could have been disqualified because many voters probably did not have the requisite intent to return to Val Verde County.

Remedying Casarez through the SSCRA

Prior to the FY02 NDAA, not all states had specific legislative provisions protecting service members' right to vote in state and local elections,**90** and the SSCRA only contained a residence clause protecting service members from double taxation.**91** Because the Casarez decision was not wholly consistent with other case law**92** in its treatment of "intent to return" in the context of residency for voting purposes, federal legislation guaranteeing the voting residency of military personnel was needed to bring uniformity to this area of the law.**93** In introducing the legislation, Senator Gramm of Texas stated the following:

I initially introduced this legislation in response to an outrageous case in my home state of Texas in which a federal district court, in a suit brought under federal law and supported by federal tax dollars, threw out 800 absentee ballots cast by military personnel in two closely contested local elections in Val Verde County. While a state court ultimately restored the military votes, the case clearly demonstrated that military personnel who are away from their legal residence on official orders are at risk of losing their right to vote. In fact, based upon current statistics compiled by the Congressional Research Service and the Department of Defense, over 40 percent of our troops on active duty are residents of states that have no specific legislative provisions protecting their fundamental right to vote in state and local elections. As the Val Verde County case demonstrates, absent specific legislative protection, valid absentee votes cast by military personnel will be ripe targets for attack by those seeking to overturn the results of close elections. I find it unconscionable that American military personnel, who stand ready to fight and die for our nation, risk losing their right to vote as a consequence of their military service.**94**

As a consequence of Senator Gramm's legislation, finally enacted in 2002, a service member can now vote confidently in the last place of official residence in the knowledge that his or her vote will not be subject to scrutiny for an "intent to return." The service member will not be deemed to have lost a residence or domicile, "without regard to whether or not the person intends to return to that State."**95**

Practice Pointers

Because of the amendment to the SSCRA, legal assistance attorneys (LAAs) may now clearly advise clients as well as voting officials that soldiers have the right to vote in their last established state of domicile regardless of their present intent to return to that state. If the service member paid taxes to a particular state X, owned property or registered a vehicle there, or maintained other indicia of domicile,**96** and has not established similar ties with intent to remain in another state Y, he or she can vote in state X without having an intent to return there following discharge from the service.

If an LAA has occasion to counsel a soldier regarding voting rights, it is also important to advise him or her to list the last home address in the state of domicile as the voting residence in item 3 of SF-76 (Federal Post Card Application).**97** The failure to list the last home address in the state of domicile, regardless of its current ownership or even existence,**98** is one of the most commonly cited omissions leading to greater rates of disenfranchisement.**99**

Congressional Mandates and the DoD Voting Program

In the aftermath of Bush v. Gore, the GAO undertook a study of the DoD Voting Assistance Program.**100** According to the GAO Study, installation voting assistance programs failed to meet key DoD or service requirements.**101** More than 40 percent of the 28 land-based installations visited did not have installation voting assistance officers (VAOs)**102** and some unit commanders even refused to appoint VAOs.**103** At those installations with VAOs, many were not aware of key DoD requirements. For example, the GAO Study found that at several locations, VAOs "did not know of the DoD requirement to personally deliver a Federal Post Card Application to each service member or the need to provide training to service members on the absentee ballot process."**104** In other instances, VAOs "were unaware of the Federal Write-In Absentee Ballot and when to use it."**105**

DoD also requires that all service members receive at least one briefing on the absentee voting process in a federal election year. The GAO found, however, that 61 percent of service members have never received such a briefing and 22 percent said they did not vote because they did not know how to obtain a ballot.**106** Ballots and other voting materials were also scarce at several installations.**107** The GAO study found very little oversight and command support of the military's voting assistance programs.**108**

As a result of the GAO findings and other reported irregularities in the military absentee voting process,**109** Congress mandated legislative changes, which were incorporated in the FY02 NDAA.**110**

Inspector General Reviews and Inspections

Section 1602 of the FY02 NDAA requires an annual review of the effectiveness of each service's voting assistance programs.**111** By subsequent DoD Directive, the Inspector Generals of the Army, Navy, Air Force and Marine Corps, are now required to review their voting assistance programs annually at every level of command to ensure compliance with DOD regulations and

public law.**112** By 31 March of each year, the DoD inspector general (DoD IG) must submit to Congress a report on the effectiveness and level of compliance of each service's voting assistance program.**113** The DoD IG is also required to conduct at least 10nannounced assessments of DoD installations every year to gauge compliance with the UOCAVA and DoD regulations.**114**

Voting assistance officers

Congress has clarified that it holds commanders at all levels responsible for ensuring that VAOs are properly appointed, trained, and equipped.**115** By DoD directive, all VAOs, except those on remote installations,**116** are required to attend Federal Voting Assistance Program (FVAP) workshops during even-numbered years.**117** Furthermore, installation VAOs should hold the rank of O-4 or higher, whereas unit VAOs may be O- 2/E-7 or above.**118** VAOs are empowered to administer oaths in connection with voter registration and voting**119** and they are expected to obtain and hand deliver Federal Post Card Applications to every eligible voter under their jurisdiction by prescribed dates.**120** VAOs are to advertise their services**121** and train all deploying units and all service members during federal election years on absentee registration and voting procedures.**122** To prevent overloading VAOs and to maximize efficiency, the military departments are tasked with establishing a ratio or maximum number of voters that a VAO may represent.**123** Finally, to encourage proper oversight of VAOs, Congress has mandated that commanders make comments regarding VAO duties on officers' performance evaluation reports.**124**

Mail Delivery and Electronic Voting

As a result of the controversy regarding military ballots arriving late during the 2000 elections, Congress, to ensure the expeditious transmittal of voting materials now requires the secretary of Defense to periodically survey all overseas locations and vessels to determine the length of time it takes for voting materials to be mailed.**125** "During the second and first months before a general Federal election month, such surveys shall be conducted weekly."**126**

Although improving the DoD "snail-mail" system is a laudable goal, the long-term solution to service members' voting woes is electronic voting.**127** Consequently, the FY02 NDAA also requires DoD to establish an electronic voting demonstration project "with participation of sufficient numbers of absent uniformed services voters so that the results are statistically relevant."**128** This demonstration project must be implemented for the November 2004 elections.**129** After its completion, the secretary of Defense "shall submit to Congress a report analyzing the demonstration project."**130**

DoD Facilities as Polling Places

Commanders no longer have the discretion to prohibit the use of their facilities as official polling places for local, state or federal elections except if the secretary of Defense determines that "local security conditions require prohibition."**131**

Mandated State Cooperation with FVAP

Each year, the Federal Voting Assistance Program (FVAP) sends a letter to chief election officials and other state leaders suggesting specific legislative steps states should take to facilitate voting by absentee military voters. To prevent officials from ignoring these letters, state chief executives must now respond within 90 days and "provide a report on the status of implementation of that recommendation by that State."**132** If the recommendation has not been implemented, the report should include a statement of the status of the recommendation before the sate legislature.**133**

Streamlining Absentee Ballot Requests

As a result of section 1606 of the FY02 NDAA, states are required to accept a single Federal Post Card Application (FPCA) as a simultaneous absentee ballot request for all federal elections to be held in a particular calendar year.**134** As some states currently require the submission of a separate FPCA for each primary or election, this new procedure will cut down the red tape and make voting easier for service members.

Practice Pointers

In advising the command, the administrative law attorney should explain the new congressional mandates and the DoD directive. The message is one of full compliance.

By appointing and supervising qualified VAOs, and when requested, making installation facilities available as polling locations, commanders will be following statutory dictates and ensuring positive inspector general reports of their installations to superiors at DoD and the Congress.

To competently advise their respective clients, both administrative law and legal assistance attorneys should become familiar with the new laws on military voting rights and the numerous resources regarding this topic that are available with the Federal Voting Assistance Program.**135**

Conclusion

In 1952, President Truman stated, "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."**136** Chief among those rights is the franchise. In the past decade, we have witnessed significant challenges to military voting rights;**137** however, as a result, service members have gained important protections. They can no longer be disenfranchised simply because of a lack of intent to return to their last official domicile and their overseas right to vote absentee has been strengthened. Furthermore, Congress has passed, and DoD is implementing, significant changes to DoD voting assistance programs at every level of command. These improvements, which give commanders and VAOs the incentive to pay attention to their voting programs, are designed to increase service

member awareness of and access to a fundamental right.**138** Congress has even passed legislation prodding states to streamline their voting processes for the benefit of armed forces members. These changes could provide judge advocates the opportunity to advise soldiers and commanders, in furtherance of the sense of Congress that "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."**139**

FOOTNOTES

1 The author is an attorney at the Federal Election Commission and a major in the U.S. Army Judge Advocate General's Corps. The author would like to express his thanks and appreciation to CAPT Samuel F. Wright, JAGC, USNR, who provided invaluable input and advice for this article and who spurred the author's decade-long interest in military voting rights. This article is a sequel to one published in 1992. See Captain Albert Veldhuyzen & Commander Samuel F. Wright, "Domicile of Military Personnel for Voting and Taxation," Army Law, September 1992, at 15.

2 The Associated Press, Washington Dateline, December 16, 2002, available at http://www.lexis.com.

3 Bush v. Gore, 121 S.Ct. 525, 528 (2000). Commenting on Vice President Gore's strategy, Katherine Harris, the former Florida secretary of state, wrote in her recently released book: The Florida legislature set a strict deadline for the end of the protest phase. The law required all counties to submit certified totals to my Division of Elections by 5:00 p.m. on November 14, 2000, which was seven days after Election Day. My decision to enforce this deadline, however, did not mean the end of all recounts. In fact, had Al Gore not fought my enforcement of that deadline (thereby enabling me to certify the election on November 17, 2000, the deadline for our receipt of overseas military ballots), he could have filed his contest more than one week earlier . . . The Florida Supreme Court might have had more than one week, instead of just one hour, to devise and implement a statewide recount using the uniform counting standards the U.S. Supreme Court mandated. Katherine Harris, Center of the Storm 66-67 (2002).

4 Bush, 121 S.Ct. at 527. An "undervote" is defined as a ballot "on which the machines had failed to detect a vote for president." Id. at 528.

5 Id. at 533.

6 "The flawed ballots included ballots without postmarks, ballots postmarked after the election, ballots without witness signatures, ballots mailed from towns and cities within the United States and even ballots from voters who voted twice. All would have been disqualified had the state's election laws been strictly enforced." David Barstow & Don Van Natta Jr., "How Bush Took Florida: Mining the Overseas Absentee Vote", N.Y. Times, July 15, 2001, available at http://query.nytimes.com/search/advanced.

7 Senator John Warner stated, "I am deeply distressed that our soldiers, and sailors, airmen and Marines may lose their vote for no fault of their own . . . The unique constraints faced by the military and the failure of military postal clerks to follow regulations, should not be allowed to disenfranchise members of the armed forces and their families." Catherine Edwards, "Overseas Ballots Don't Reach Home," Insight Magazine, 8 January 2001, at 23. See also, Jon E. Dougherty,

Election 2000: How the Military Vote Was Suppressed (2001), available at http://www.worldnetdaily.com.
8 Richard L. Berke, "Lieberman Put Democrats in Retreat on Military Vote," N.Y. Times, July 15, 2001, available at http://query.nytimes.com/search/advanced.
9 Bob Zelnick, "The Myth of a Stolen Election," Wall St. Journal, July 17, 2001, available at http://www.wsj.com.
10 According to Congresspersons Mac Thornberry (R-Texas) and Ellen O. Tauscher (D- Calif.): Military voters witnessed their right to vote challenged because of disorder in our voting system. At the heart of the confusion was the troubling news that more than 1,500 military and overseas ballots were not counted. This fact, along with a history of voting irregularities throughout the country, underscores the need to ensure that the voting rights of the military and their families are protected. . . . Military voters should be protected from being disenfranchised because of technical problems that are beyond their control. Reasons for the 1,500-plus military and overseas ballots not being counted in the November 2000 election included postmark discrepancies, missing notarized signatures and confusion about residency requirements. Mac Thornberry & Ellen O. Tauscher, "MOVEing Military Voting into the 21st Century," The Officer, June 2001, at 22.
11 On 5 June 5 2001, RADM Stephen G. Yusem, USNR (Ret.), national president of the Reserve Officers Association, proposed the enactment of a guarantee of residency for military voters, the enfranchisement of persons who leave active duty within 60 days of an election, and the establishment of an electronic voting entitlement for military voters. RADM Stephen G. Yusem, Testimony before the National Commission on Federal Election Reform (5 June 2001) (transcript available from the author and the Reserve Officers Association of the United States).
12 Report of the National Commission on Federal Election Reform 42 (August 2001), available at http://www.reformelections.org.
13 The United States General Accounting Office found that military and overseas absentee ballots were four times more likely to be disqualified than domestic civilian absentee ballots. Furthermore, the study found that there was a lack of command support at the installation level for the Department of Defense (DoD) Voting Assistance Program. For example, even though DoD requires all service members to receive one briefing on the absentee voting process during an election year, 61 percent of service members did not receive such a briefing and 22 percent did not vote because they did not know how to obtain an absentee ballot. U.S. Gen. Accounting Office, "Elections: Voting Assistance to Military and Overseas Citizens Should Be Improved," GAO-01-1026, at 6, 29 (September 2001) [hereinafter GAO Study].
14 National Defense Authorization Act for Fiscal Year 2002, Pub. L. No. 107-107, 115 Stat. 1012 (December 28, 2001) [hereinafter FY 2002 NDAA].
15 U.S. Department of Defense, Dir. 1000.4, Federal Voting Assistance Program (June 3, 2002) [hereinafter DoD Dir. 1000.4].
16 50 U.S.C.S. App. § 501 (2003).
17 The latest edition of the DoD Voting Assistance Guide places the overall responsibility for the operation of a successful voting assistance program on each commanding officer and any legal questions "which cannot be answered by the unit VAO [Voting Assistance Officer] should be referred to the command's legal staff." U.S. Department of Defense, 2002-03 Voting Assistance Guide 16 (2002), available at http://www.fvap.ncr.gov [hereinafter DoD Voting Guide].

18 Bush v. Hillsborough County Canvassing Bd., 123 F. Supp. 1305 (N.D. Fl. 2000).
19 Harris v. Florida Elections Canvassing Commission, 122 F. Supp. 2d 1317 (N.D. Fl. 2000), aff'd 235 F.3d 578 (11th Cir. 2000).
20 121 S. Ct. 525 (2000).
21 For a historical view of how service members have faced legal discrimination in the initial allocation of the franchise, see Veldhuyzen and Wright, supra note 1, at 16-17.
22 Bush, 121 S. Ct. at 530 ("Having once granted the right to vote on equal terms, the State may not, by later arbitrary and disparate treatment, value one person's vote over that of another.").
23 Romeu v. Cohen, 265 F.3d 118 (2d Cir. 2001).
24 Charfauros v. Bd. of Elections, 249 F.3d 941 (9th Cir. 2001).
25 See supra notes 6-9 and accompanying text.
26 123 F. Supp. 2d 1305 (N.D. Fl. 2000).
27 Id. at 1316.
28 42 U.S.C.S. § 1973ff (2002).
29 The court stated: "We must presume, without evidence to the contrary, that if the election official does not have application on record, it is because of a problem with the overseas mail system or their own clerical error. Any state procedure that requires election officials to disregard the oath promulgated by the presidential designee under legislative mandate, merely because they have no record of an application, conflicts with the UOCAVA." 123 F. Supp. 2d at 1317.
30 122 F. Supp. 2d 1317 (N.D. Fl. 2000), aff'd 235 F.3d 578 (11th Cir. 2000).
31 In 1980, the U.S. attorney general sued Florida to enforce the Overseas Citizens Voting Rights Act, alleging that Florida was depriving overseas citizens their right to vote by providing only 20 days of transit time for overseas ballots. A judge entered a temporary restraining order directing that overseas ballots should be received and counted if they were received within 10 days of the election. In 1982, the Florida secretary of state reached an agreement with the U.S. attorney general implementing the 10-day extension and requiring the mailing of absentee ballots at least 35 days before an election. See United States v. Florida, No. TCA-80-1055 (N.D. Fla. 1982). However, it was not until 1984 that the legislature codified the 35-day advance mailing and 10-day extension provisions in Florida Administrative Code § 1S-2.013. These provisions have remained the same since 1984. Harris, 122 F. Supp. 2d at 1323.
32 Harris, 122 F. Supp. 2d at 1325.
33 Id. at 1320.
34 Harris, 235 F.3d at 580.
35 Bush v. Gore, 121 S. Ct. 525, 527 (2000).
36 For example, "Broward County used a more forgiving standard than Palm Beach County, and uncovered almost three times as many new votes, a result markedly disproportionate to the difference in population between the counties." Id. at 531.
37 Id. at 530-31 ("the standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another.")
38 An "undervote" is defined as a ballot "on which the machines had failed to detect a vote for President." Id. at 528.
39 "The recounts in these three counties were not limited to so-called undervotes but extended to all the ballots. The distinction has real consequences." Id. at 531.

40 Id. at 532. Katherine Harris, former Florida secretary of state, comments: "A seldom reported fact, we requested the Florida Supreme Court to declare uniform counting standards less than one week after the election; however, the court denied our motion. By a 7-2 vote in Bush v. Gore, the United States Supreme Court declared the absence of such uniform standards to be unconstitutional." Katherine Harris, Center of the Storm, 66 (2002).
41 Bush, 121 S. Ct. at 531.
42 265 F.3d 118 (2d Cir. 2001). 43 Id. at 124.
44 Id.
45 Id. at 123.
46 Id.
47 Id. at 125.
48 Id. at 124-25.
49 249 F.3d 941 (9th Cir. 2001).
50 Id. at 954.
51 See supra text accompanying note 9.
52 See GAO Study, supra note 13, at 6.
53 Among the differences in treatment accorded overseas voters, the GAO Study found the following:
(States have different deadlines for military and overseas voters who wish to register and request an absentee ballot in one step as opposed to voters who are registered but who use the same form to request an absentee ballot. Id. at 43.
(States have different deadlines for receiving overseas ballots and some of the deadlines do not properly account for transit time to overseas locations. Id. at 43-44, 46.
(Counties within states vary in implementing state laws regarding overseas and military voters. Id. at 44.
54 See supra text accompanying notes 26-29.
55 See supra text accompanying notes 30-34.
56 Harris v. Florida Elections Canvassing Commission, 122 F. Supp. 2d 1317, 1325 (N.D. Fl. 2000).
57 957 F. Supp. 847 (W.D. Tx. 1997).
58 For purposes of this article, residence and domicile shall be used interchangeably to mean the same thing, namely one's home and fixed place of habitation. "'Residence' means domicile, that is, one's home and fixed place of habitation to which [one] intends to return after any temporary absence." Tex. Elec. Code Ann. § 1.015(a) (West 2000).
59 FY 2002 NDAA, supra note 14, § 1603.
60 The full codified provision reads as follows:
Guarantee of residency for military personnel
(a) For purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 (2 U.S.C. 431)) or a state or local office, a person who is absent from a state in compliance with military or naval orders shall not, solely by reason of that absence--
(1) be deemed to have lost a residence or domicile in that state, without regard to whether or not the person intends to return to that state;

(2) be deemed to have acquired a residence or domicile in any other state; or
(3) be deemed to have become a resident in or a resident of any other state.
(b) In this section, the term "state" includes a territory or possession of the United States, a political subdivision of a state, territory, or possession, and the District of Columbia.
50 U.S.C.S. App. § 594 (2002).
61 See, e.g., Ellis v. Southeast Constr. Co., 260 F.2d 280, 281-82 (8th Cir. 1958): Generally speaking, in order to acquire a domicile of choice, the law requires the physical presence of a person at the place of the domicile claimed, coupled with the intention of making it his present home . . . The fact that one is on military duty does not preclude him from establishing his residence where he is stationed if the circumstances show an intent on his part to abandon his original domicile and adopt the new one. See also Wife (J.F.V.) v. Husband (O.W.V. Jr.), 402 A.2d 1202, 1204 (Del. 1979) ("The essentials of domicile of choice are the fact of physical presence at a dwelling place and the intention to make that place home. There must be a concurrence of act and intent."); Blount v. Boston, 718 A.2d 1111, 1117 (Ct. App. Md. 1998) ("In order to effect a change of domicile, 'there must be an actual removal to another habitation, coupled with an intention.'"); Wolff v. Baldwin, 9 N.J. Tax 11, 1986 N.J. Tax LEXIS 4, 10 (1986) ("It is well settled that military service personnel are presumed to retain their domicile as of the date of enlistment, unless an intent to abandon an original domicile and adopt a new one can be established by the proofs.").
62 See, e.g., District of Columbia v. Woods, 465 A.2d 385, 387 (D.C. Ct. App. 1983) ("Intent alone to establish a new place of abode without physical presence there is neither sufficient to abandon a former domicile nor to establish a new one."); Cal. Elec. Code § 2024 (West 2001) ("The mere intention to acquire a new domicile, without the fact of removal avails nothing, neither does the fact of removal without the intention.").
63 See e.g., Mitchell v. Delaware State Tax Commissioner, 42 A.2d 19, 22 (Super. Ct. Del. 1945) ("A loose, indefinite, or as it is called, a floating intention to return will not avail to prevent a change of domicile."); Gambelli v. United States, 904 F. Supp. 494, 497 (E.D. Va. 1995): Courts have examined a number of facts that indicate an intent by a member of the armed forces to change her domicile to the state in which she is serving. These factors include purchasing or renting a home off-base, registering one's car in that state, obtaining a driver's license in that state, joining community groups, and testifying to one's intention to remain in the state where stationed. In Fiske v. Fiske, the Washington Supreme Court opined that Colonel Fiske, a California domiciliary who had visited relatives in Washington, registered his car there, and had voted absentee in Washington, did not thereby establish a Washington domicile. The Court wrote, "The acts [Fiske described] show [only] an intention to acquire a residence in Washington at some time in the future. That is not enough. The intention to establish a residence must relate to a present residence." Fiske v. Fiske, 290 P.2d 725, 728 (Wash. 1955).
64 See Roberts v. Lakin, 665 A.2d 1024, 1028 n.5 (Ct. App. Md. 1995): Under circumstances where one intends his domicile to be in a particular area, and takes the appropriate steps to evidence a domicile in that area, his motive for doing so is ordinarily not pertinent. One may intend to be domiciled in a particular area because of perceived tax advantages, because of the climate, because he wants to run for public office from that area, or for countless other "self-serving" reasons. The fact that the motivation is "self-serving" in no way undercuts the intent shown by various objective factors.

65 Factors used to consider a person's "residence" or "domicile" include the following: direct statement of intention . . . location of any dwelling currently occupied . . . place where any motor vehicle owned by the person is registered . . . residence address shown on current income tax . . . residence address of mail . . . residence on hunting and fishing licenses . . . residence address on motor vehicle's license . . . any other objective facts tending to indicate a person's place of residence. Me. Rev. Stat. Ann. tit. 21-A, § 112(1) (West 1999).
66 See Ellis, 260 F.2d at 282: "It has been pointed out, however, that during a long period of military service one may not be viewed as occupying, in a residential sense, 'no man's land.'"
67 Voting "is regarded as a fundamental political right, because preservative of all rights." Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886).
68 Casarez v. Val Verde County, 957 F. Supp. 847, 850 (W.D. Tx. 1997).
69 Id.
70 Id. at 866. The court stated that the "purpose of a preliminary injunction is to preserve the status quo pending final determination of the lawsuit." Id. at 852.
71 The court wrote that, "in the interests of 'wise judicial administration,' federal courts may stay a case involving a question of federal law where a concurrent state action is pending." Id. at 851.
72 In Thornburg v. Gingles, 478 U.S. 30, 50-51 (1986), the U.S. Supreme Court identified a three part test to determine whether a voting procedure dilutes minority voting strength and therefore violates the Voting Rights Act: "The minority group must demonstrate it is: (1) 'large and geographically compact'; (2) 'politically cohesive'; and (3) the non-minority 'votes sufficiently as a block to enable it . . . to defeat the minority's preferred candidate." Casarez, 957 F. Supp. at 861.
73 Casarez, 957 F. Supp. at 864.
74 Id. at 859. The court granted plaintiff's injunction because "voters in Val Verde County, would be irreparably harmed by elected officials taking office as a result of votes improperly allowed in violation of the Texas Election Code and the Voting Rights Act." Id. at 865.
75 Id. at 857.
76 Id.
77 Id. at 858.
78 Id. at 861.
79 Id. at 858.
80 Id. at 865.
81 Id. at 866. For a contrary viewpoint, see, for example, Township of New Hanover v. Kelly, 296 A.2d 554 (N.J. Super. Ct. Law Div. 1972). In Kelly, attorneys for New Hanover argued that the town had an overriding interest in restricting the right to vote in local elections to individuals who were affected substantially by local electoral decisions. See id. at 555. The attorneys claimed that "military personnel do not have a stake equal to those residents in the operation of the local government," adding that New Hanover has no "power to tax . . . military personnel . . . [and cannot] enforce its ordinances upon military personnel." See id. The court flatly rejected these arguments, concluding, "To forbid a soldier ever to controvert the presumption of nonresidence imposes an invidious discrimination in violation of the 14th Amendment [because] . . . the Constitution of the United States [in no way indicates] that

occupation affords a permissible basis for distinguishing between qualified voters within the state." Id. at 557.
82 Casarez, 957 F. Supp. at 860.
83 Id.
84 Casarez v. Val Verde County, 967 F. Supp. 917, 920 (W.D. Tx. 1997).
85 Id. at 918.
86 Casarez, 957 F. Supp. at 866.
87 Casarez, 967 F. Supp. at 919. The judge went on to say: "A modicum of perspicacity and large amounts of money would have lead [sic] contestants to develop through depositions the intent to return and community ties to Val Verde County, or lack thereof, of the 800 absent voters. The paucity of contestants' preparation transformed the braying blare into something more akin to a fizzling whisper."
88 Id. The court stated that the contestants "failed to anchor the foundation of support for continuation of the preliminary injunction." Id. at 920. In a further litigation of this matter, plaintiff Casarez correctly pointed out that she was not a party in the state court action. Nevertheless, the court found that she could have intervened in state court, and for "plaintiff Casarez to now have a second bite at the apple in federal court on the state law issue is not in the interest of judicial economy and is precluded by concepts of collateral estoppel." Casarez v. Val Verde County, 16 F. Supp. 2d. 727, 728 (W.D. Tx. 1998).
89 Casarez v. Val Verde County, 1998 U.S. Dist. LEXIS 12594 (W.D. Tx. 1998).
90 Although some state codes do not protect service members' right to vote, other states specifically provide for this important right. See, e.g., Cal. Elec. Code § 2025 (West 2001) ("A person does not gain or lose a domicile solely by reason of his or her presence or absence from a place while employed in the service of the United States . . ."); Me. Rev. Stat. Ann. tit. 21-A, § 112(7) (West 1999) ("A person does not gain or lose a residence solely because of the person's presence or absence while employed in the armed forces of the United States or of this state . . .").
91 For purposes of taxation, a member of the armed forces "shall not be deemed to have lost a residence or domicile in any state . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in . . . any other state . . . solely by reason of being, so absent." 50 U.S.C.S. App. § 574 (2002).
92 See supra notes 61-67 and accompanying text.
93 See supra note 60 and accompanying text.
94 Congressional Record S301 (daily ed. 22 January 2001) (statement of Senator Gramm).
95 50 U.S.C.S. App. § 594(a)(1) (2002) (emphasis added).
96 See supra note 65 and accompanying text.
97 For an example of the Federal Post Card Application (FPCA), see DoD Voting Guide, supra note 17, at 17.
98 For example, if a former home was razed to make room for a shopping mall, the soldier should still list the former address as the voting residence.
99 See DoD Voting Guide, supra note 17, at 16. See also GAO Study, supra note 13, at 13 ("almost two-thirds of the disqualified absentee ballots were rejected because the ballots arrived too late or the envelopes or forms accompanying the ballots were not completed properly.").

100 See supra note 13 and accompanying text. 101 See GAO Study, supra note 13, at 27.
102 Id.
103 Id. at 31.
104 Id. at 28.
105 Id.
106 Id. at 29.
107 According to the GAO Study, "several installations had no postcard applications for several months last year [2000], and this had a negative impact on their voter registration efforts. One installation did not have voting materials until October 2000, according to a voting assistance officer. Other voting assistance officers told us that they did not have a sufficient number of write-in ballots. One voting assistance officer told us his ship deployed without the write-in ballots and another told us that she was only able to obtain 20 ballots for her unit of 2,000 people.
Id.
108 Id. at 31.
109 For anecdotal testimonies of what went wrong in the military voting process, see Dougherty, supra note 7. See also Bill Sammon, "Stiffing the troops serving overseas," Washington Times, May 5, 2001, available at http://www.washtimes.com/archives.htm.
110 See FY 2002 NDAA, supra note 14. For an informative summary of the congressionally-mandated changes to military voting rights, see Captain Samuel F. Wright, "Military Voting Rights," The Officer, May 2002, at 44-45, available at http://www.roa.org.
111 FY 2002 NDAA, supra note 14, § 1602(c)(1)(A).
112 DoD Dir. 1000.4, supra note 15, para. 5.2.1.8.
113 FY 2002 NDAA, supra note 14, § 1602(c)(3).
114 Id. § 1602(d). These assessments must include "not less than 20 percent of the personnel assigned to duty at that installation." Id. § 1602(d)(3)(A).
115 Id. § 1602(f).
116 VAOs on remote installations may access the FVAP Web site for training. DoD Dir. 1000.4, supra note 15, para. 5.2.1.15.
117 Id.
118 Id. paras. 5.2.1.4.1. and 5.2.1.4.2.
119 Id. para. 5.2.1.4.2.
120 Id. paras. 5.2.1.5.3 and 5.2.1.6.
121 Id. para. 5.2.1.10.
122 Id. para. 5.2.1.14
123 Id. para. 5.2.1.1.
124 FY 2002 NDAA, supra note 14, § 1602(f). See also DoD Dir. 1000.4, supra note 15, para. 5.2.1.16.
125 FY 2002 NDAA, supra note 14, § 1602(g).
126 Id.
127 See Wright, supra note 110, at 45: "As you can imagine, there are three time- consuming steps in the absentee voting process. First, the absentee ballot request must travel from the voter to the election official. Second, the unmarked ballot must travel from the election official to the voter. Finally, the marked ballot must travel from the voter to the election official. Each

of these steps can take weeks if "snail-mail" must be used, but only seconds if secure electronic means are used."
128 FY 2002 NDAA, supra note 14, § 1604(a)(1).
129 Id. § 1604(a)(2).
130 Id. § 1604(c).
131 Id. § 1607(b).
132 Id. § 1605(a).
133 Id.
134 Id. § 1606(b).
135 The Federal Voting Assistance Program can be reached at: Director, Federal Voting Assistance Program
Department of Defense
Washington Headquarters Services
1155 Defense Pentagon
Washington DC 20301-1155
World Wide Web: www.fvap.ncr.gov
E-mail: vote@fvap.ncr.gov
U.S. Toll-free: (800)438-VOTE (8683)
DSN: 425-1584
136 Letter from President Harry S. Truman to Congress, March 28, 1952: Hearings Before the Subcommittee on Elections, Committee on House Administration, H.R. Doc. No. 82-407 (1952).
137 The most notable challenges were: (1) The Casarez decision upsetting established notions of service member domicile. See supra notes 57-95 and accompanying text. (2) The attempt to invalidate the UOCAVA, which guarantees overseas service members the right to vote absentee. See supra notes 42-48 and accompanying text. (3) The challenges to military absentee votes during the Florida 2000 elections. See supra notes 25-53 and accompanying text.
138 In Bush v. Gore, the U.S. Supreme Court wrote that, "When the state legislature vests the right to vote for President in its people, the right to vote as the legislature has prescribed is fundamental; and one source of its fundamental nature lies in the equal weight accorded to each vote and the equal dignity owed to each voter." 121 S. Ct. 525, 529 (2000).
139 FY 2002 NDAA, supra note 14, § 1601(a)(2)(C).

Update – April 2022

SCRA

The location of the SCRA within the United States code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), there was an editorial reclassification of the SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.[2] The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The

[2] *The Servicemembers Civil Relief Act (SCRA),* THE UNITED STATES DEPARTMENT OF JUSTICE, https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra (last visited Mar. 10, 2022).

changes in codification have not changed the substance or application of the sections. Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written.

The relevant sections cited throughout the article can be found at:

50 U.S.C. App. § 501 discussing the short title can be found at 50 U.S.C. § 3901.

50 U.S.C. App. § 574 discussing residence for tax purposes can be found at 50 U.S.C. § 4001.

50 U.S.C. App. § 594 discussing health insurance reinstatement can be found at 50 U.S.C. § 4024.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved.*[3]

UOCAVA

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-1–1973ff-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.

[3]Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).