

LAW REVIEW¹ 11059
(Updated April 2022)

Military Voting—Progress in South Carolina

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.

ROA congratulates Rear Admiral James J. Carey, a life member and past Naval Services Vice President, for his role in expanding voting rights for military and overseas voters. Admiral Carey is the founder and Chairman of the National Defense Committee and a consultant on military and overseas voting rights for Pew Charitable Trusts.

On June 7, 2011, South Carolina Governor Nikki Haley signed the South Carolina Uniformed and Overseas Citizens Absentee Voters Act (SCUOCAVA), and Admiral Carey was there for the signing ceremony. More importantly, he was instrumental in getting this legislation enacted, and similar legislation in other states. The SCUOCAVA builds upon a federal law called the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), which Congress enacted in 1986 and substantially amended in 2009.

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.

Under UOCAVA, “absent uniformed services voters” and “overseas voters” are eligible to register by absentee process and vote by absentee ballot in primary, general, special, and runoff elections for federal office (President, United States Senator, and United States Representative). Absent uniformed services voters are members of the uniformed services and Merchant Marine on active duty and voting- age family members of uniformed services and Merchant Marine members. The service member or family member need not be absent from the United States or even from the state where he or she is eligible to vote. For example, a United States Navy sailor from Arlington who is serving on active duty in Norfolk is an absent uniformed services voter for UOCAVA purposes.

UOCAVA also enfranchises overseas voters. These are United States citizens of voting age who are absent from our country temporarily or permanently.

As you can imagine, there are three time-consuming steps in absentee voting. First, the absentee ballot *request* must travel from the voter to the local election official (LEO). Second, the *unmarked* absentee ballot must travel from the LEO to the voter. Finally, the *marked* ballot must travel from the voter to the LEO. Each of these steps can take weeks if “snail mail” must be used, but only seconds if secure electronic means are authorized. SCUOCAVA now authorizes the first two steps to be done electronically, for UOCAVA voters.

As amended in 2009, UOCAVA requires that absentee ballots for federal elections be mailed or otherwise transmitted by the 45th day preceding Election Day. The idea is to ensure that the service member has the opportunity to cast a ballot that really does get counted, no matter where the service of our country has taken that member.

SCUOCAVA now requires LEOs to transmit unmarked absentee ballots by the 45th day prior to Election Day, to UOCAVA voters, for state and local elections as well as federal elections. If the LEO receives the absentee ballot request after the 45th day before Election Day, the LEO must transmit the unmarked ballot by the close of business on the next business day after receipt of the request.

South Carolina is one of a handful of states (mostly in the South) where a *majority* (not just a plurality) is necessary to get the nomination of a political party in a primary. Whenever there are three or more candidates, it is possible that no candidate will receive a majority. In such a situation, a second primary is held shortly after the first primary, and the top two vote-getters face off in the second primary. For this situation, SCUOCAVA prescribes the “absentee instant runoff ballot” for the second primary, for UOCAVA voters.

For example, let us say that there are five candidates in my district, seeking the nomination of my party for the South Carolina House of Representatives. My order of preference among these candidates is as follows: Jones, Smith, Adams, Williams, and Cox. On the instant runoff ballot, I rank the five candidates in this order.

Let us say that the top two vote-getters are Williams and Cox. My instant runoff ballot is counted as a vote for Williams, because I ranked her above Cox on the ballot. This is an innovative solution to a difficult problem.

Readers across the country: Please contact your state legislators (in your state capitol), your state election official (the Secretary of State or State Board of Elections), and your LEO. When were absentee ballots mailed or otherwise transmitted in 2010? When are they expected to be available in 2012? Has your state authorized the transmission of the unmarked ballot by secure and expeditious electronic means? Or does your state still require that the ballot go to Afghanistan or elsewhere by snail mail?

In a 1952 letter to Congress, President Harry S. Truman (one of the founders of ROA in 1922) said that military personnel “deserve above all others to exercise the right to vote in this election year.” Those of us who have already served owe it to today’s service members to monitor the performance of our nation’s 7,500 LEOs. In most states, the LEO is an elected official, like the County Clerk. If local citizens like you are making inquiries about timely transmission of absentee ballots, the LEO has an incentive to ensure that every effort is made for those who serve our nation in uniform. If the LEO has heard from no one on this issue, the overseas service member’s vote may fall through the crack again.

Update – April 2022

In the over ten 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 Nineteen states and DC allow some voters to return ballots via email or fax.⁷ South Carolina is one of the nineteen states that allows some voters to return ballots via email or fax. For more information on the states rules, visit <https://www.ncsl.org/research/elections-and-campaigns/internet-voting.aspx>.

³*Table 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.

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 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.

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>.

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:

Reserve Officers Association
1 Constitution Ave. NE
Washington, DC 20002