

## LAW REVIEW<sup>1</sup> 11108

### Maryland Court of Appeals Case on Military Voting

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#### 7.3—Voting in Non-Federal Elections

##### ***Lamb v. Hammond, 308 Md. 286, 518 A.2d 1057 (Maryland Court of Appeals 1987).***

This 24-year-old case decided by Maryland's highest court shows the power of military absentee ballots in deciding a close election.

Maryland has a unique election system. All statewide officials and members of both houses of the legislature are elected for four-year terms that end in the even-numbered non-presidential year, like 1986 or 2010. In such a year, the primary is held in September, just 49 days before the general election. Certifying the primary winners and printing and mailing general election ballots takes some weeks. As a result, Maryland's sons and daughters serving in our armed forces overseas are likely to be disenfranchised in the general election. There just won't be time for the absentee ballot to get to the overseas voter and back by Election Day.

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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).

In 1985 and again in 1986, I traveled to Annapolis and testified before committees of the Maryland Senate and House of Delegates. I asked them to move back the primary to earlier in the year, in order to enfranchise the brave young men and women who serve our country in uniform. The legislators were unwilling to consider changing the primary date. A late primary benefits incumbents, and the legislators we must convince are by definition incumbents.

As a "consolation prize," the legislators passed a bill providing for absentee ballots received up to ten days after Election Day to be counted, under certain conditions. The 1986 general election was the first election to which this new rule applied.

In the 1986 general election, the voters of District 30 in Anne Arundel County had the opportunity to elect three members of the House of Delegates. The top three vote-getters were deemed elected. When the Election Day ballots were counted, Donald E. Lamb came in third with 12,553 votes, and John R. Hammond came in fourth with 12,420. When the absentee ballots were counted, Lamb's margin was reduced to just three votes, 12,898 to 12,895. Among the absentee ballots counted, Hammond won 475 to 345.

With the election down to just three votes, a careful review was made of all the absentee ballots that the canvassing board had decided not to count, for various reasons. Among those ballots were 12 that came in from APO (Army Post Office) addresses that were postmarked *on* Election Day and were received during the first ten days after Election Day. Under the law in effect at the time (since amended—see Law Review 1070), an absentee ballot had to be postmarked by the day *before* Election Day, if the ballot were to be counted if received during the ten-day post-election counting period. These 12 ballots were rejected because they were postmarked *on* Election Day.

Hammond filed suit in the Maryland Circuit Court (trial court), contending that these 12 ballots should be counted because the instructions that accompanied the absentee ballots stated that an absentee ballot had to be postmarked *by* Election Day (not the day before Election Day) for the ballot to be counted. The Circuit Court agreed and ordered the counting of these 12 ballots. Among those ballots, Hammond won 8-4. That four-vote net gain gave Hammond a one-vote margin over Lamb, 12,903 to 12,902. Yes, the outcome of the election turned on the arcane question of whether the deadline for the postmark was Election Day or the day before Election Day.

Lamb appealed, and the Maryland Court of Appeals gave the case expedited handling, because the legislative session was about to start. In an unusual move, the Maryland Court of Appeals reviewed the Circuit Court decision directly, bypassing the Court of Special Appeals, Maryland's intermediate appellate court. The high court held that misleading or incorrect instructions do not override statutory requirements, and the law in effect at the time required that the ballot be postmarked by the day *before* Election Day. Thus, Lamb won by three votes instead of losing by one.

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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.

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