

LAW REVIEW¹ 12002
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Vote in 2012

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.
7.4—How a Service Member or Military Spouse Can Vote

Now that presidential election year 2012 has begun, it is not too early for you to submit your absentee ballot request for the 2012 primary and general election. A federal statute called the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) specifically overrides state “not earlier than” rules with respect to a UOCAVA voter’s submission of an absentee ballot request:

A State may not refuse to accept or process, with respect to any election for Federal office, any otherwise valid voter registration application or absentee ballot application (including the postcard form prescribed under section 1973ff of this title) submitted by an absent uniformed services voter during a year on the grounds that the voter submitted the application before the first date on which the State otherwise accepts or

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.

processes such applications for that year submitted by absentee voters who are not members of the uniformed services.

Title 42, United States Code, section 1973ff-3 (42 U.S.C. 1973ff-3).

If you are a member of the uniformed services on active duty, or if you are a voting-age family member of an active duty member, you are eligible to use the Federal Post Card Application³ (FPCA) as a simultaneous voter registration application and absentee ballot request, under a UOCAVA. (42 U.S.C. 1973ff-1(a)(4)). UOCAVA applies to military personnel and family members, within or outside the United States [42 U.S.C. 1973ff-6(1)], and to U.S. citizens of voting age who are outside our country temporarily or permanently. (42 U.S.C. 1973ff-6(5)).

If you are a UOCAVA voter, it is important that you use the FPCA, not a state absentee ballot request form. If you use the state form, your local election official (LEO) will look for your name on the voter registration list. If she does not find your name, she won't send you a ballot. If you use the FPCA, the LEO is required to send you an absentee ballot, even if you have never voted or registered to vote previously.

To complete the FPCA, go to www.fvap.gov. This is the website of the Federal Voting Assistance Program (FVAP), in the Department of Defense. Using this well-designed website, you can prepare an FPCA that is complete, correct and legible. The website will also provide you with signing instructions and the address of your LEO, where you are to send the application by mail. The LEO will then send you an unmarked absentee ballot for the primary and general election. In some states, you can submit your completed FPCA electronically, and where applicable you can do this through this website, www.fvap.gov.

I realize that you may not know for sure where you will be in October 2012, when your absentee ballot for the general election will be delivered to you. I suggest that you go ahead and submit your application for an absentee ballot now, and then obtain the name, e-mail address, and telephone number for your LEO. When you have the correct mailing address for the 2012 general election, be sure to notify your LEO by e-mail and/or telephone.

The 2012 general election will be conducted on Tuesday, November 6. In 2009, Congress amended UOCAVA to require LEOs to explicitly mail out ballots not later than the 45th day before Election Day. (42 U.S.C. 1973ff-1(a)(8)(A)). This means that your LEO should mail you your ballot by Saturday, September 22.⁴ If you do not have your general election ballot by October 1, you should complete and submit the Federal Write-in Absentee Ballot (FWAB), as provided for by 42 U.S.C. 1973ff-2. You can complete this ballot through the FVAP website,

³This form is misnamed, as the 2003 version is no longer a postcard. It folds up into a sealed envelope.

⁴This assumes, of course, that you have your application in by that date. Get your application in *today*.

www.fvap.gov. The FWAB is a blank ballot, without candidate names, but you can find the candidate names through the FVAP website. By federal law, the FWAB is limited to federal offices in the general election, but some states have expanded the use of the FWAB to include primaries as well as general elections, and non-federal as well as federal offices. You can find all the information you need at www.fvap.gov.

Update – April 2022

The location of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) within the United States Code changed. UOCAVA was previously cited at 42 U.S.C. §§ 1973ff—1973ff-7. After an editorial reclassification, the UOCAVA is now codified at 50 U.S.C. §§ 20301—20311. The changes in codification have not changed the substance or application of the sections.

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

42 U.S.C. § 1973ff-3 discussing the prohibition of refusal of application on grounds of early submission can be found at 50 U.S.C § 20306.

42 U.S.C. § 1973ff-1 discussing state responsibilities can be found at 50 U.S.C § 20302.

42 U.S.C. § 1973ff-6 discussing definitions can be found at 50 U.S.C § 20302.

42 U.S.C. § 1973ff-2 discussing the federal write-in absentee ballot in general elections for Federal office for absent uniformed services voters and overseas voters can be found at 50 U.S.C § 20302.

Please join or support ROA

This article is one of 1800-plus “Law Review” articles available at 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.

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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