

Let's Put Some Teeth into Military Voting Law

By Bill Norton²

7.7—Proposed Reforms for Military Voters

Now that election season is upon us and the country's eyes have begun to focus on voting, it's appropriate that attention be given to the balloting problems faced particularly by military voters. The Uniformed and Overseas Citizens Absentee Voting Act which governs in this area establishes various requirements to help ensure that servicemen and others have adequate time to cast absentee ballots in federal elections (including primary, general, special and runoff elections). As you might have guessed, these requirements are not always being met, thereby disenfranchising an important part of our population. It's time to do something about that.

Here's the problem. Under current law, states must mail out ballots by 45 days before an election. This is intended to provide time for three snail mail trips to occur. First, for instance, a serviceman stationed in Afghanistan must send a request for an absentee ballot to his election official back home. Then the unmarked ballot must be sent to the serviceman. And, finally, the voted ballot must be mailed back to the local election official by Election Day.

In a perfect world, this process works pretty well. Of course, the world is not perfect and neither are the deadlines for absentee balloting. For reasons sound, and unsound, states and their localities all too often miss the 45 day requirement which frequently makes it impossible for uniformed and overseas voters to have their ballots arrive in time to be counted on Election Day.

What should happen in this event is for the state to request a waiver for the requirement from the Secretary of Defense and provide for appropriate remedial action such as extending the

¹I invite the reader's attention to <https://www.roa.org/page/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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

²*Guest contributor, Bill Norton is an attorney who served as Deputy Assistant Secretary of the Air Force for Manpower and Personnel.*

time after the election during which late arriving military ballots may be counted. Should, of course, being the operative word. It does not always happen.

For example, according to Sam Wright, an expert in military election law and the Director of the Service Members Law Center of the Reserve Officers Association, "Illinois conducted its 2010 primary in February. There was no apparent reason for any [local election official] in that state to miss the 45- day deadline, and Illinois did not apply for a waiver, but 35 of the 110 counties missed the deadline. One of the seriously late counties was St. Clair County, home to 261,000 people and to Scott Air Force Base."

So while the current law means well, in the real world its application is spotty. I became familiar with good intentions when it comes to election rules while serving as Deputy Assistant Secretary of the Air Force for Manpower and Personnel. I found that the Air Force ranked last in voter participation among the military services despite the fact that statistically its members are more educated, more married and older than their compatriots in the Army, Navy and Marine Corps – all factors pointing to greater voting participation. While the Air Force voting assistance program required that each base have a voting assistance plan and a voting assistance officer, I also found in my visits to bases that the plans were often given lip service and the voting assistance officers sometimes non-existent. One officer admitted that he had only been appointed the day before I arrived.

In short, the intent was good, but compliance was lacking. (Nevertheless, by emphasizing the importance of voting rights for service members, the Air Force was able to go from last place to first place in military voting participation.)

To enforce compliance with the Uniformed and Overseas Citizens Absentee Voting Act, the law presently provides as follows: "The Attorney General may bring a civil action in an appropriate district court for such declaratory and injunctive relief as may be necessary to carry out this subchapter." 42 U.S.C. 1973ff-4. All too often the U.S. Attorney General and the Department of Justice are failing to do this.

To remedy this situation, S. 331, The Military and Overseas Voters' Relief Act, has been introduced in the U.S. Senate by Senators John Barrasso (Wyoming) and John Cornyn (Texas). The measure, which has been referred to the Senate Committee on Rules and Administration, empowers service members and others to go directly to the courts to bring a civil action for necessary declaratory or injunctive relief to remedy violations of voting rights under the current law. No more waiting around for Mr. Attorney General to act.

The measure further puts the bite on the Department of Justice by requiring that the Attorney General provide a report, each year that there is a federal election, on the numbers of lawyers and other staff assigned to enforce the law, and to come up with a plan to detect non-compliance by state and local election officers.

S. 331 puts some teeth into existing statutes and, if enacted, would be another step in achieving the goal of full participation in elections by service members and overseas voters. Surely our men and women who put their lives on the line to protect our republic deserve the facilitation of this most basic democratic right. It behooves the Congress to give this proposed legislation its full and deliberate attention.

Update – May 2022

To date, S. 331, The Military and Overseas Voters' Relief Act, has not been passed.