

## LAW REVIEW<sup>1</sup> 12037

April 2012

### Military Voting Rights in Wisconsin

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

7.1—Election officials must get the absentee ballots out in time for the service member to vote.

As I explained in Law Review 1225 and other articles, Congress amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) in 2009. As amended, this law now explicitly requires each state to mail out absentee ballots to UOCAVA voters (military personnel and their family members, and voting-age U.S. citizens outside our country) by the 45<sup>th</sup> day preceding each primary, general, special, or runoff election for federal office.

On April 2 (the day before Wisconsin's primary) the *Wisconsin Reporter* ran the following piece:

In preparation for the state's GOP presidential primary and spring election Tuesday, municipal clerks were required to send absentee ballots to overseas and military voters by February 18, or 45 days before the election, as the MOVE [Military and Overseas Voter Empowerment] Act requires for federal elections. At least 63 of Wisconsin's 1,851

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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).

municipal clerks failed to meet the deadline, with delays ranging from two days to nearly a month. The latest ballots went out on March 15, one each from Jefferson and Oconto counties.

With 1,851 local election offices (LEOs), Wisconsin has more LEOs than any other state (only Michigan is close, with about 1,500). Wisconsin alone has almost 25% of the nation's 7,500 LEOs. Most states conduct absentee voting at the county level (or parishes in Louisiana), but the New England states, Michigan, and Wisconsin conduct absentee voting at the level of towns and townships, which are considerably smaller and more numerous than counties. Only Alaska, Maine, and the District of Columbia conduct absentee voting at the state level.

How does one monitor, much less affect, the performance of 1,851 LEOs in a single state? I call upon the Wisconsin Legislature to centralize the administration of absentee voting at the state level. There are 16,227 active duty military personnel who are eligible to vote in Wisconsin by absentee ballot, according to the Department of Defense, and all of them must be given the opportunity to cast ballots that really do get counted, no matter where the service of our country has taken them.

I also call again on readers to please contact your own LEO and the LEOs of several surrounding jurisdictions. Is the LEO aware of the 45-day requirement? Does the LEO expect to meet the requirement? Please contact the LEO again on the 43rd day before the election. This will be Monday, September 24 for the November 6 general election this year. If you find that your LEO has missed the 45-day deadline, for whatever reason, please send an e-mail to [Bob.Carey@fvap.gov](mailto:Bob.Carey@fvap.gov) and a copy to me at [SWright@roa.org](mailto:SWright@roa.org). Bob Carey is the Director of the Federal Voting Assistance Program in the Department of Defense.

In most states, the LEO is also an elected official, like the County Clerk. The LEO will pay attention to your appeal on behalf of the brave young men and women from your community who are serving in places like Afghanistan. Time, distance, and military regulations preclude active duty service members from speaking for themselves on this issue, to protest their disenfranchisement. It is incumbent on those of us who have already served to speak for them and to contact LEOs on their behalf.

#### **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](http://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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