

LAW REVIEW¹ 12056
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Eleven California Counties are Late in Sending Absentee Ballots for 2012 Primary

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.

California is conducting its 2012 primary this week, on Tuesday, June 5. All counties should have mailed out their absentee ballots, to military and overseas voters, by April 21, to meet the 45-day rule (discussed below), but 11 counties³ missed this important deadline. As a result, the United States Department of Justice (DOJ) sued California, and California Secretary of State Debra Bowen settled the suit the same day it was filed.

A story published in the *North County Times* on May 30, 2012 quotes San Mateo County elections manager David Tom to the effect that his county was on track to send out 739 overseas ballots on April 21, but at the last minute a County Board of Supervisors candidate had

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.

³The late counties were Contra Costa, Fresno, Modoc, San Diego, San Francisco, San Mateo, Shasta, Sierra, Tehama, Trinity, and Ventura Counties. California has 58 counties.

to be removed from the ballot. Reprinting the ballots without that candidate's name caused the county to miss the April 21 deadline.

What Mr. Tom should have done is to send out the ballots that he had, in order to meet the deadline. Then, he should have sent new ballots, just for the one affected office, to the affected voters, along with a note explaining the need for a second ballot mailing limited to one office.

As amended in 2009, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) *requires* the states to transmit absentee ballots to UOCAVA voters not later than 45 days before any primary, general, or special election for federal offices. Title 42, United States Code, section 1973ff-1(a)(8) [42 U.S.C. 1973ff-1(a)(8)]. The idea is to ensure that the brave men and women defending the rights we all enjoy should themselves enjoy the right to cast a ballot that really does get counted, no matter where the service of our country has taken them.

UOCAVA is a federal statute enacted in 1986. It gives "absent uniformed services voters" and "overseas voters" the right to register and vote by absentee process in primary, general, special, and runoff elections for federal office (President, United States Senator, and United States Representative). 42 U.S.C. 1973ff-1(a)(1). Uniformed services voters are active service members of the uniformed services⁴ or Merchant Marine and their voting-age spouses and family members, whether within or outside the United States. 42 U.S.C. 1973ff-6(1).

In most places, absentee voting is still being conducted as it was during World War II—by shipping pieces of paper across oceans and continents by snail mail. 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).⁵ Second, the *unmarked ballot* must travel from the LEO to the voter, who is often thousands of miles away and at a place where mail service is slow and intermittent. Third, the *marked ballot* must travel from the voter back to the LEO in the voter's hometown.

Military personnel on ships at sea or in places like Afghanistan do not have the opportunity to receive or send mail every day. Their mail service is slow and intermittent. Moreover, the individual service member does not control and often cannot predict his or her movements even a few days into the future. A Soldier at Fort Bragg (North Carolina) on Monday may be in Afghanistan by Thursday. A Soldier wounded in Afghanistan on Thursday may be at a military hospital in the United States by the following Monday. Thus, the absentee ballot may be in Afghanistan while the Soldier is at the Walter Reed National Military Medical Center in

⁴The uniformed services are the United States Army, Navy, Marine Corps, Air Force, and Coast Guard, plus the commissioned corps of the Public Health Service and the commissioned corps of the National Oceanic & Atmospheric Administration. 10 U.S.C. 101(a)(5).

⁵Under UOCAVA, the absentee ballot request can be submitted at any time during the calendar year of the election, even in January for the November general election. UOCAVA explicitly overrides state "not earlier than" rules for the submission of the absentee ballot request, as applied to the UOCAVA voter. See 42 U.S.C. 1973ff-3.

Bethesda, Maryland. Ballots need to go out by the 45th day before Election Day, so that all this can get sorted out in time for the Soldier to vote.

Readers: Please contact your LEO and the LEOs in several nearby counties or municipalities.⁶ Please remind the LEO that absentee ballots *must* be printed and ready to mail by Saturday, September 22, for the November 6 general election. Tell the LEO that you will be back on Monday, September 24, to ensure that the ballots have been mailed. If you find that your LEO expects to miss or has missed the 45-day deadline, *for whatever reason*, please let me know right away. My e-mail is SWright@roa.org. My telephone is 800-809-9448, extension 730.

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-1 discussing state responsibilities can be found at 50 U.S.C § 20310.

42 U.S.C. § 1973ff-6 discussing the definitions can be found at 50 U.S.C § 20310.

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.

⁶In most states, election officials at the county level (or parishes in Louisiana) administer absentee voting. In the New England states, Michigan, and Wisconsin, local officials at the city, town, or township level administer absentee voting. Absentee voting is administered centrally, at the state level, in Alaska, Maine, and the District of Columbia.

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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