

LAW REVIEW¹ 12078
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Don't Make Service Members Wait another 60 Years to Vote!

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.

Sixty years ago, in June and July of 1952, the Subcommittee on Elections of the House Administration Committee, United States House of Representatives, conducted hearings on voting in the armed forces. The Honorable C.G. Hall, Secretary of State of Arkansas and President of the National Association of Secretaries of State, testified that most military personnel fighting the Korean War would likely be disenfranchised in the 1952 presidential election. Because of late primaries, ballot access lawsuits, and other problems, local election officials (LEOs) would not have ballots printed and ready to mail until a few days before Election Day, in many cases. There simply would not be enough time for the absentee ballot to go from the LEO to the voter in Korea, and back, by Election Day.

The 1952 congressional report includes a copy of a letter to Congress, from President Harry S. Truman, dated March 28, 1952. In his letter, President Truman called upon the *states* to fix this

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.

problem, and he called upon Congress to enact *temporary* federal legislation for the 1952 presidential election. He wrote, "Any such legislation by Congress should be temporary, since it should be possible to make all the necessary changes in State laws before the congressional elections of 1954."

Well, it did not work out that way. President Truman left office in January 1953 and the Korean War ground to an inconclusive halt in July 1953. The military voting issue fell off our national radar screen until November 2000, when late-arriving military absentee ballots played a crucial role in determining the outcome of the Florida nail-biter. Please see Law Review 23 (March 2001) for a detailed description of this Florida 2000 issue.

I invite the reader's attention to www.roa.org. Click on "Service Members Law Center." You will find a "Law Review Library" with almost 800 articles about military voting rights, reemployment rights, and other military-legal topics, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. I initiated this column in 1997, and we add new articles each week.

There have been enormous improvements in communications technology in the last six decades, but absentee voting is still being conducted essentially as it was in 1952, 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 LEO. Second, the *unmarked* ballot must travel from the LEO to the voter. Finally, the *marked* ballot must travel from the voter to the LEO, perhaps thousands of miles away. Each of these steps can take weeks if snail mail must be used, but only second if secure electronic means have been authorized.

In 1952, President Truman promised that the states would have this problem solved by 1954. Finally, in 2009, Congress got tired of waiting on the states. Congress enacted the Military and Overseas Voter Empowerment Act (MOVE Act), amending the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). As amended, UOCAVA now *requires* every state to mail out ballots to UOCAVA voters by the 45th day preceding the primary or general election. Title 42, United States Code, section 1973ff-1(a)(8)(A) [42 U.S.C. 1973ff- 1(a)(8)(A)].

This year's presidential election will be conducted on November 6. Please remind your LEO that he or she is *required* to have absentee ballots printed and ready to mail and to mail them out on or before Saturday, September 22, to UOCAVA voters (military and civilian) who have their applications in by that deadline. Tell the LEO that you will be back on Monday, September 24, to determine if the ballots have gone out on time. If you find that your LEO expects to miss or has missed this deadline, for whatever reason, please let me know as soon as possible. My e-mail is SWright@roa.org. You can reach me toll-free at 800-809-9448, extension 730.

There are more than 7,500 LEOs that administer absentee voting for federal elections. In most states, officials at the county level (or the parish level in Louisiana) administer absentee voting. In the New England states, Michigan, and Wisconsin, officials at the city, town, or township

level administer absentee voting. State officials administer absentee voting centrally in Alaska, Maine, and the District of Columbia.

I invite the reader's attention to the most eloquent opening paragraph of President Truman's 1952 letter to Congress:

About 2,500,000 men and women in the Armed Forces are of voting age at the present time. Many of those in uniform are serving overseas, or in parts of the country distant from their homes. They are unable to return to their States either to register or to vote. Yet these men and women, who are serving their country and in many cases risking their lives, deserve above all others to exercise the right to vote in this election year. At a time when these young people are defending our country and its free institutions, the least we at home can do is to make sure that they are able to enjoy the rights they are being asked to fight to preserve.

I respectfully submit that President Truman's words about the brave young men and women fighting the Korean War in 1952 apply equally to their grandsons and granddaughters, and great-grandsons and great-granddaughters, fighting the Global War on Terrorism today. Please bring these eloquent words to the attention of your LEO.

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 52 U.S.C. §§ 20301–20311. The changes in codification have not changed the substance or application of the sections.

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

42 U.S.C. § 1973ff-1 discussing state responsibilities can be found at 52 U.S.C. § 20302.

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 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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