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Act Now to Vote in 2012

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

7.2—Service member or military spouse voting and domicile

7.4—How a service member or military spouse can vote

On November 6, 2012, we as a nation will elect our President, 33 United States Senators, all 435 United States Representatives, and thousands of state and local government officials. We hope that all eligible military personnel and family members will vote this year, either in person or by absentee ballot.

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.

³Military title shown for purposes of identification only. The views expressed in this article are the views of the authors and should not be attributed to the Department of the Navy, the Department of Defense, or the United States Government.

However, in order to vote, you must take the initial step of registering and/or requesting an absentee ballot. Many states have fast-approaching deadlines to complete this critical step and, without immediate action, your voice may be silenced on Election Day.

Where to vote

The first question that must be asked and answered is: Where do I vote? In other words, in what state and municipality am I entitled to vote?

If you are currently serving on active duty within the United States, you have a choice. You can register and vote in-person at the place where you *physically* reside, by making that place your domicile, or you can vote by absentee ballot at the place that you consider “home”—i.e., your home of record or the state you claim for state income tax purposes.

Please note that the question of domicile can have important collateral legal consequences, especially as it relates to taxes. Don’t listen to “scuttlebutt” from “sea lawyers.” If you have any questions about these legal consequences, make an appointment with a military legal assistance attorney.

The important point is that you have one domicile (legal residence) for all legal purposes. You cannot simultaneously be a Floridian, because Florida has no state income tax, and register to vote in Nebraska, where you are stationed.

Be election ready

Once you have decided where to vote, you must take the steps needed to become election ready. Nearly all states have requirements to complete a registration and/or absentee ballot request form well before the election. Many states close registration 30 days before the election. Thus, you must take these steps now if you plan to vote.

If planning to vote in-person, you should make sure that your current voter registration is still valid. Many states have web-based programs that allow individuals to look-up their voter registration status online and, if needed, will provide the necessary registration forms. Do an internet search for your Secretary of State or State Board of Elections and that should get you to the right place.

Most active duty service members, however, vote by absentee ballot. If you are serving overseas or on a Navy or Coast Guard ship, you must vote by absentee ballot, if you are to vote at all. If you are serving within the United States, you must vote by absentee ballot unless you consider the place of your current military assignment to be your domicile.

To vote by absentee ballot, you should use the Federal Post Card Application (FPCA), which allows you to register and request an absentee ballot in one simple form. This form is straightforward and takes only a few minutes to complete.

A few organizations, including the Federal Voting Assistance Program (FVAP) (www.fvap.gov), have web-based programs that make it easy to complete the registration form online. These programs walk you through a few simple to answer questions. Once completed, it will provide you an FPCA that is complete, correct, and legible, along with signing instructions and the address of the election official where you are to send the completed form.

If you don't have access to a printer, you also can obtain a paper FPCA from your unit's Voting Assistance Officer (VAO), and you can use the 2012 *Voting Assistance Guide* (published by the Department of Defense) to guide you in completing the FPCA.

When to apply for your absentee ballot

Apply for your absentee ballot *now*. Federal law now explicitly requires every state to send absentee ballots to military personnel and family members (inside or outside the United States) by the 45th day before Election Day, or by Saturday, September 22, 2012. But the election official cannot send you a ballot until he or she has received your application for a ballot.

Even if you have requested an absentee ballot in the past, you need to submit a new application this year. Federal law changed in 2009 and many states now require a military member to request an absentee ballot during the election year. It is better to be safe than sorry. Submit a new FPCA with your current mailing address.

Not sure where you will be

This is a frequently asked question by service members and may be one of the most common reasons they are disenfranchised. If you are uncertain where you will be in the next few months, don't wait to complete your FPCA—complete it now and use your current mailing address.

With modern technology, there are a number of ways to make sure that you get your ballot delivered to the right location, even if you move over the next several weeks. However, in order to use these options, most states require you to request an absentee ballot in the first instance. Don't delay—complete the FPCA now.

What to expect

Once you submit your FPCA or state registration form, your local election official should send you a new voter registration card within the next 30 days. If you don't receive a card, you should call or email your local election official to make sure that your registration has been accepted. You should never assume that it has been.

For those service members voting by absentee ballot, as noted above, federal law requires states and local election officials to send absentee ballots on September 22, 2012. If you

haven't received your absentee ballot by October 1sr, then you should begin to take remedial actions by contacting your local election officials to make sure it was sent.

Federal Write-in Absentee Ballot

A Federal Write-in Absentee Ballot (FWAB) is one of the many options available to the service member who has not received his or her absentee ballot by early October. Like the FPCA, the FWAB can be downloaded at www.fvap.gov. Alternatively, you can pick up the paper FWAB form from your unit's VAO.

By federal law, the FWAB is limited to federal offices in the general election, but some states have expanded FWAB use to include non-federal as well as federal offices and primaries as well as general elections. You mark the ballot by writing in the names of your favored candidates or by expressing a party preference, like "Democratic nominee" or "Republican nominee."

One last note: when completing the FWAB, it is a good idea to also complete an FPCA at the same time in case you are not registered. In many states, if the local election official receives both your FPCA and FWAB at the same time, it will allow them to register you (i.e., the first step in the process) and then submit your FWAB to be tallied with other votes. Once again, don't assume that your registration has been accepted and processed.

Resources for assistance

For procedural questions about voting, see your unit's Voting Assistance Officer or contact the MVP Project at heroesvote@mvpproject.org. The organization was founded by Eric Eversole, a Commander in the Navy Reserve Judge Advocate General's Corps and former litigation attorney with the Voting Section of the Department of Justice. He also is a life member of ROA.

You also can contact Captain Samuel F. Wright, JAGC, USN (ret.). Captain Wright has made it his life's work to reform absentee voting laws and procedures, for the benefit of military personnel and family members. Captain Wright is the Director of the Service Members Law Center at the Reserve Officers Association. Each month, he provides information about voting rights, reemployment rights, and other military-legal topics to upwards of 700 military personnel, military family members, attorneys, employers, congressional staffers, reporters, and others. He is available by e-mail at SWright@roa.org or by telephone at 800-809-9448, extension 730. He is available during regular business hours and until 2200 Eastern Time Monday and Thursday evenings.