

LAW REVIEW¹ 12091
September 2012 (Updated April 2022)

Please Contact your Local Election Official Today!

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.

There are young men and women from your county, city, or town serving on active duty in the armed forces. They want to vote and have the right to vote in the general election to be held on November 6. The problem is that military personnel are subject to being moved around the world with little or no notice, and when they are deployed their mail service is often slow and intermittent. Absentee ballots for these service members need to go out *this week*, if they have not already gone out, so that these service members from your community will have time to receive their ballots, mark them, and return them on time to be counted, no matter where the service of our country has taken them.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), a federal statute enacted in 1986, gives active duty service members, military family members, and U.S. citizens outside the United States the right to vote by absentee ballot for federal offices. As amended in 2009,

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.

UOCAVA now explicitly (it was implicit before) requires every state to mail ballots to UOCAVA voters not later than the 45th day before Election Day. See title 42, United States Code, section 1973ff-1(a)(8)(A) [42 U.S.C. 1973ff-1(a)(8)(A)].

This means that your local election official (LEO) *must* send absentee ballots to UOCAVA voters (military and civilian) who have applied for such ballots by this Saturday, September 22. Please contact your LEO *today*—ensure that the official is aware of the deadline and is planning to meet it. Please call again on Monday, September 24, to ensure that the ballots have in fact gone out. Please let me know as soon as possible if your LEO expects to miss or has missed the September 22 deadline. It may be possible to get court ordered relief if your LEO is late in sending out ballots. Such relief could include requiring the LEO to mail out the unmarked ballots by expedited means (FEDEX, e-mail, etc.) and a court ordered extension on the deadline for the receipt of the marked absentee ballot.

Please understand that ballots need to go out by Saturday for military personnel, even if they are currently serving within the United States. Sergeant Jones is currently at Fort Bragg, North Carolina, but he will be deploying to Afghanistan in early October. It is important that he receive his ballot now, before he deploys.

You can reach me at my e-mail is SWright@roa.org.

Most states conduct absentee voting at the county level, or parishes in Louisiana. In the New England states, Michigan, and Wisconsin, absentee voting is conducted by cities, towns, and townships, which are considerably smaller and more numerous than counties. There are 1,851 LEOs in Wisconsin alone. Only Alaska, Maine, and the District of Columbia conduct absentee voting centrally at the state level.

Your LEO will most likely be an elected official, like the County Clerk.

The LEO will be affected by your call. And after you contact your own LEO, please contact the LEOs in several nearby counties as well.

Time, distance, and military regulations preclude active duty service members from speaking for themselves on this issue, to protest their disenfranchisement. It is important that those of us who have already served contact LEOs on their behalf, to remind those officials of the importance of getting the absentee ballots out this week.

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:

Reserve Officers Association
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