

Good News on Military Voting in San Bernardino County, California

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.

Thank you to Michael Scarpello, the Registrar of Voters of San Bernardino County, California, for providing this data and for his efforts to ensure that the brave young men and women who are away from home serving our country in uniform are able to enjoy the right to vote, one of the precious rights that they preserve for all of us. And thank you to Navy veteran William C. Bradshaw for contacting Mr. Scarpello and obtaining this information.

San Bernardino County has a population of 2,035,210, according to the 2010 Census. It is also the largest county in the United States, by area. It is larger than New Jersey, Connecticut, Delaware, and Rhode Island combined. It is home to several military installations, including March Air Reserve Base and Marine Corps Base 29 Palms.

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.

The county elections office received 2,682 absentee ballot requests from members of the armed forces and military family members and mailed out ballots to all 2,682. No requests were rejected for procedural deficiencies or other reasons, but 91 of those ballots were returned by the United States Postal Service as undeliverable.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), as amended by the Military and Overseas Voter Empowerment Act (MOVE Act) in 2009, requires all election officials to send out ballots by the 45th day before Election Day (September 22, 2012 for the 2012 general election) to UOCAVA voters who have their applications in by that deadline. I am pleased to report that San Bernardino County met this deadline.

Mr. Scarpello reports that 1,165 of those 2,682 ballots came back (as marked ballots) by the deadline, and 1,135 of them were counted. The other 30 ballots were rejected for procedural deficiencies. The most common deficiency was the lack of a signature on the ballot return envelope. There were 45 ballots that came back late and were not counted.

This means that 1,381 ballots (51.5% of the 2,682 ballots sent out) did not come back. That high percentage is disconcerting, but its meaning is unclear. For years, we have been urging service members and military family members to get their absentee ballot applications in early, well before the 45th day before Election Day, whether or not they are certain that they wish to vote. The idea is that you should apply early and have your unmarked ballot in hand, in case you do get interested in the election. There are always service members who are disenfranchised because they get interested in the election and decide to vote in the last month before Election Day. If they have not already applied for absentee ballots, they will almost certainly be disenfranchised, especially if they are serving overseas or at sea. It is better for the service member to have the ballot in hand and choose not to use it than to be without a ballot when he or she wants to vote.

Readers—please contact your local election official (LEO). This will be the Town Clerk, County Clerk, Registrar of Voters, Supervisor of Elections, County Auditor, etc. The titles vary from state to state, but you can figure it out. Check your own voter registration card—you should have it in your wallet. Your voter registration card will contain the title, and possibly the name, of the LEO, along with the office address and telephone number. Please obtain and report this data for your town or county.

In most states, the local election official is also an elected official, like the Town Clerk or County Clerk. The LEO wants you to vote for her next time, so she has an incentive to listen to your pitch and take heed. It may be necessary for you to do an education job. Please remember that it has now been 40 years since Congress abolished the draft in 1973. The entire U.S. military establishment, including the National Guard and Reserve, amounts to less than 3/4 of one percent of our national population. And it is mostly the same families that serve, from one generation to the next.

I find that each year a greater and greater percentage of those who are in charge of things have never served in the military, and no one in their family has ever served and none of their close friends have ever served. They support the military—they clap for service members in airports—but as to military matters they often don't have a clue. This applies to the local official who administers elections, to the HR Director at the company where you work, to your state and federal legislators, judges, etc. We must continually educate these folks about the special circumstances of military service and the special needs of military personnel.

A few years ago, I had a telephone conversation with the County Clerk of a major California county (not San Bernardino County). This was a county with a population of more than 1 million people, and a county where a major Navy base was located until it closed about 20 years ago. The County Clerk told me that he had received absentee ballot requests from "USS RONALD REAGAN" and USS this and USS that. He asked me, without a hint of irony in his voice, "What does USS stand for?" I patiently explained that it stands for United States Ship.