

Electronic Voting for Overseas Military Voters

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

7.7—Proposed Reforms for Military Voters

Q: I have read with great interest your Law Review articles about military absentee voting. I am a life member of ROA, and I am currently serving on active duty in Afghanistan. I will likely still be here in the fall, but that is not certain. I really want to vote this year. Since my service here protects the rights that all Americans enjoy, including the right to vote in free elections, I think that it is entirely reasonable that I demand that my country give me the opportunity to participate in the election of the officials who decide when and where I must serve, and with what equipment and compensation.

Here at the remote base where I serve, we have access to the Internet and to e-mail, but our postal mail service is slow, intermittent, and unreliable. When somebody sends me an e-mail, I can read it, but I have no way to print it—we don't have printers at this remote forward

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.

base. Of course, we don't have fax machines—does anybody in my generation even remember the fax machine?

Snail mail seems like such an outdated way to conduct absentee voting. Why can't I receive my absentee ballot, mark it, and return it by secure electronic means?

A: I serve on the Board of Advisors of the Overseas Vote Foundation (OVF). On December 19, 2013, OVF sent out the following press release about secure electronic overseas voting:

Overseas Vote Foundation to Launch Remote Voting Technology Research Project

New Study Will Team Scientists with Election Officials to Examine Feasibility of End-to-End, Verifiable, Secure Internet Voting Using Transparently Auditable Encryption Methodology

Washington, D.C., December 19, 2013- Overseas Vote Foundation (OVF) a nonpartisan, nonprofit organization dedicated to overseas, military, and domestic absentee voter participation has received a grant from the Democracy Fund in support of a research-based approach to the unanswered question of whether remote absentee voting can be conducted securely online.

The project is called *End-to-End Verifiable Internet Voting: Specification and Feasibility Assessment Study (E2E VIV Project)* and will examine a form of remote voting that enables a so-called “end-to-end verifiability” (E2E) property. A unique team of experts in computer science, usability, and auditing together with a selection of local election officials from key counties around the U.S. will assemble for this study.

Their efforts aim to produce a system specification and set of testing scenarios, which if they meet the requirements for security, auditability, and usability, will then be placed in the public domain. At the same time, they intend to demonstrate that confidence in a voting system is built on a willingness to verify its security through testing and transparency.

“The secure, tested, certified remote voting systems that election officials envision aren’t even for sale. Available online ballot return systems are not considered secure by the scientific community, nor are they certified. As a result, email has become the default stopgap method for moving ballots online. Email is especially weak on security, yet it is being used regularly by election officials because viable alternatives are not available,” says Susan Dzieduszycka-Suinat, President and CEO of Overseas Vote Foundation, who spearheaded this project.

“The term E2E is often used casually without precision. E2E-verifiability is considered a property of an election and for the purposes of this study, an E2E-verifiable election has two important components: first, that voters can individually check that their ballots are cast as they intend; and second, that anyone can check that all of the cast ballots have

been accurately tallied" explained Dr. Josh Benaloh, Senior Cryptographer at Microsoft Research, a scientist who will take a major role in the study.

"There is a historical misunderstanding in the U.S. election community that this project aims to correct. Our country's best scientists are not against technology advancements, nor are they inherently at odds with the election officials who seek technology improvements to meet their administrative challenges. What the U.S. scientific community takes issue with are the unproven claims of security regarding existing systems that are not publicly tested or vetted. This study aims to recalibrate this situation. This group of scientific leaders has often pointed out security vulnerabilities in past systems, however they do agree on one thing: that if IV does happen, it should be in a system that takes advantage of end-to-end verifiability and auditability," said Ms. Dzieduszycka-Suinat.

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I will keep the readers informed about progress on the effort to utilize 21st Century communications technologies in absentee voting, so that folks like you will be able to cast ballots that really do get counted, no matter where the service of our country has taken you.

Q: In the military, we routinely send classified information electronically via the SIPRNET (Secure Intranet Protocol Routing Network). If this system is secure enough for our nation's most important military secrets, why is it not secure enough for voting?

A: I will urge OVF and the Department of Defense to study SIPRNET utilization as part of the study of electronic overseas voting.

As a condition precedent to the utilization of the SIPRNET for absentee voting, it will be necessary to get the states to centralize at the state level the processing of absentee ballots, at least for military and overseas voters. Currently, only Alaska, Maine, and the District of Columbia administer absentee voting at the state level. In all other states, absentee voting is administered at the local level by counties, cities, towns, and townships, and parishes in Louisiana. There are more than 7,500 local election officials (LEOs) who administer absentee voting for federal elections.

In 2002, Congress amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to require each state to designate a state official to provide information for UOCAVA voters and to *recommend* (but not require) the states to consolidate at the state level the responsibility of administering absentee voting for UOCAVA voters:

(b) Designation of single State office to provide information on registration and absentee ballot procedures for all voters in State

(1) In general

Each State shall designate a single office which shall be responsible for providing information regarding voter registration procedures and absentee ballot procedures to be used by absent uniformed services voters and overseas voters with respect to elections for Federal office (including procedures relating to the use of the Federal write-in absentee ballot) to all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

(2) Recommendation regarding use of office to accept and process materials

Congress recommends that the State office designated under paragraph (1) be responsible for carrying out the State's duties under this Act, including accepting valid voter registration applications, absentee ballot applications, and absentee ballots (including Federal write-in absentee ballots) from all absent uniformed services voters and overseas voters who wish to register to vote or vote in any jurisdiction in the State.

Title 42, United States Code, section 1973ff-1(b) [42 U.S.C. 1973ff-1(b)].

In more than a decade since this provision was enacted, only one state (Maine) has implemented this suggestion. In Alaska and the District of Columbia, absentee voting has always been administered at the state level.

I think that it would be possible for DOD to provide SIPRNET accounts for 55 state election officials.³ Of course, it is not feasible to incorporate 7,500 county clerks, town clerks, registrars of voters, boards of elections, etc. into the SIPRNET system.

Update—April 2022

Electronic Means Available

States are beginning to allow certain voters, mostly those voters that fall under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), to submit absentee ballots electronically.⁴ Four states allow some voters to return ballots using a web-based portal.⁵ One state has mobile voting app.⁶ Nineteen states and DC allows some voters to return ballots via

³I am including the District of Columbia, Puerto Rico, the U.S. Virgin Islands, Guam, and American Samoa in this count of 55.

⁴*Electronic Transmission of Ballots*, NATIONAL CONFERENCE OF STATE LEGISLATURES (Sept. 5, 2019), <https://www.ncsl.org/research/elections-and-campaigns/internet-voting.aspx>.

⁵*Id.* The states that allow voters to return ballots using a web-based portal are Arizona, Colorado, Missouri, and North Dakota.

⁶*Id.* the state that has a mobile voting app is West Virginia.

email or fax.⁷ For more information on the states rules, visit <https://www.ncsl.org/research/elections-and-campaigns/internet-voting.aspx>.

Additionally, in 2021, the U.S. Senate joined the House of Representatives in proposing a law that would allow all active-duty service members to cast votes electronically while stationed overseas. The bill is called the Rescuing Barriers for Military Voters Act.⁸ The bill has not been passed yet.

Location of UOCAVA

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 sections 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

⁷*Id.* the nineteen states that allow some voters to return ballots via email or fax are Delaware, District of Columbia, Hawaii, Idaho, Indiana, Iowa, Kansas, Maine, Massachusetts, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, North Carolina, Oregon, South Carolina, Utah, and Washington.

⁸Nikki Wentling, *Federal Bill Would Allow Online Voting for Overseas Military* (July 14, 2021), <https://www.govtech.com/policy/federal-bill-would-allow-online-voting-for-overseas-military>.

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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