

## LAW REVIEW<sup>1</sup> 16045

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### Service Members Must be Given the Opportunity to Vote

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

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

As we celebrate Memorial Day, let us remember those who serve our country in uniform, as well as those who have served throughout our nation's history. Let us redouble our efforts to ensure that those who sacrifice so much to preserve the rights that we all enjoy (including the right to vote in free and fair elections) are able to exercise those rights. Let us act to ensure that local election officials (LEOs) all over the country get absentee ballots transmitted in time, so that military personnel will have the opportunity to vote, no matter where the service to our country has taken them.

Because of their service, military personnel cannot come home to register or to vote. If they are to vote at all, it must be by absentee ballot.

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<sup>1</sup>I invite the reader's attention to [www.roa.org/lawcenter](http://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.

<sup>2</sup>BA 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](mailto:SWright@roa.org).

In June 1952 (13 months after I was born), the United States House of Representatives (House Administration Committee, Subcommittee on Elections) conducted hearings on voting by military personnel fighting the Korean War. The Honorable C.G. Hall (Secretary of State of Arkansas and President of the National Association of Secretaries of State) testified that most of those service members 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 absentee ballots printed and ready to mail until a few days before Election Day. For a service member on the front line in Korea, or on a ship at sea, or in some other place where mail service was slow and intermittent, there just was not enough time for the service member to receive the ballot, mark it, and return it on time to be counted.

The 1952 congressional report includes a copy of a letter to Congress from President Harry S. Truman.<sup>3</sup> I invite the reader's attention to the most eloquent opening paragraph of President Truman's letter:

About 2,500,000 men and women in the Armed Forces are of voting age at the present time.<sup>4</sup> 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.

President Truman called upon the states to fix this 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 or 1954."

Well it did not work out that way. The Korean War ground to an inconclusive halt in 1953, and this issue dropped off our national radar screen until November 2000, when late-arriving overseas ballots played a crucial part in the resolution of the Florida 2000 presidential recount.<sup>5</sup> The state legislatures were unwilling to make the necessary changes in the election calendar, in order to make it possible for LEOs to get the ballots out in time. Changing primary dates was

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<sup>3</sup>In 1922, Captain Harry S. Truman was one of the founders of ROA, As President, in 1950, he signed our congressional charter.

<sup>4</sup>At the time, the voting age was 21. It was lowered to 18 by the 26<sup>th</sup> Amendment in 1971.

<sup>5</sup>Please see Law Review 23 (March 2001).

especially difficult, because a late primary benefits incumbents seeking reelection, and the legislators making the rules are by definition incumbents.

Finally, in 2009, Congress lost patience with the states. In that year, Congress amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).<sup>6</sup> As amended, UOCAVA explicitly requires each state to transmit absentee ballots to each UOCAVA voter at least 45 days before any primary, general, special, or run-off election for federal office.<sup>7</sup> NO MORE EXCUSES WILL BE TOLERATED. THE BALLOTS MUST GO OUT ON TIME.

This year, the general election will be held on November 8. Election officials need to get the ballots out by September 24. The fact that federal law requires the ballots to go out not later than September 24 does not necessarily mean that this will happen. There are more than 7600 LEOs who administer absentee voting for federal elections. Absentee voting as administered centrally at the state level only in Alaska, Maine, and the District of Columbia. In most states, absentee voting is conducted at the county level, or parishes in Louisiana. In the New England states, Michigan, and Wisconsin, absentee voting is administered at the city, town, or township level. There are more than 1800 LEOs just in Wisconsin and another 1500 just in Michigan.

I am concerned that if no one is watching the LEO will send out ballots when he or she gets around to it, without regard to the requirements of federal law. Please contact your LEO—the County Clerk, County Registrar of Voters, County Auditor, County Board of Elections, Town Clerk, etc. The titles vary, but you can figure it out. Check your own voter registration card. That card should contain the name, title, and contact information for your election official.

Is your election official aware of the September 24 deadline? Does he or she expect to meet the deadline? Please contact the election official again on Monday, September 26. Did the election official meet the deadline? If the deadline is missed for whatever reason, we will seek a federal

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<sup>6</sup>UOCAVA is a federal statute that was enacted in 1986 and is codified in title 52 of the United States Code, at sections 20301 through 20311 (52 U.S.C. 20301-11). UOCAVA gives members of the uniformed services and their voting-age family members accompanying them the right to register and vote by absentee process in primary, general, special, and run-off elections for federal office (President, United States Senator, and United States Representative). 52 U.S.C. 20302(a)(1). Service members and their accompanying family members are eligible to vote under UOCAVA without regard to whether they are presently located within or outside the United States. UOCAVA also accords the right to vote in primary, general, special, and run-off elections for federal office to U.S. citizens who are outside our country temporarily or permanently. 52 U.S.C. 20310(5). Eligibility to vote in state and local elections is a matter of state law.

<sup>7</sup>52 U.S.C. 20302(a)(8). Of course, the 45-day rule assumes that the UOCAVA voter has his or her absentee ballot request in by the 45<sup>th</sup> day before Election Day. It is not too early to submit your absentee ballot request for the 2016 general election. UOCAVA explicitly overrules state “not earlier than” rules with respect to the submission of an absentee ballot request. A UOCAVA voter (military or civilian) is permitted to submit his or her ballot request at any time during the calendar year of the election, even in January for the November election. 52 U.S.C. 20306.

court order extending the deadline for the receipt of an absentee ballot mailed in from outside our country.

Please contact your election official in person or by telephone. Please tell me what you learn. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org) or by telephone at (800) 809-9448, extension 730.

I recognize that getting the ballots out on time requires a special effort by election officials. I respectfully suggest that this is a small thing to ask on behalf of those who are away from home and prepared to lay down their lives in defense of our country. This is the message that we need you to transmit to your own election official. In most states, the election official is also an elected official. They will listen if you call or come by to visit.

Time, distance, and military regulations preclude active duty service members from speaking for themselves on this issue, to protest their disenfranchisement. It is incumbent on those of us who have completed our military careers and retired, and those of us who are Reserve Component members not currently on active duty, to speak for them in contacting election officials.

#### **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](http://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  
1 Constitution Ave. NE  
Washington, DC 20002