

LAW REVIEW¹ 18046

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Service Members Deserve the Right to Vote—Please Help them Exercise it.

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.

In 2009, Congress amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) to add an explicit requirement that ballots go out at least 45 days before the election to UOCAVA voters—members of the uniformed services³ on active duty and their voting-age spouses and dependents accompanying them, as well as United States citizens who are outside the United States temporarily or permanently.⁴ The idea is that the ballots need to go out on time so that those who serve our country in uniform, those who protect the rights that we all

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.

³The uniformed services are the Army, Navy, Marine Corps, Air Force, and Coast Guard, as well as the commissioned corps of the Public Health Service and the commissioned corps of the National Oceanic & Atmospheric Administration. 10 U.S.C. 101(a)(5).

⁴52 U.S.C. 20302(a)(8). This federal 45-day rule applies to primary, general, special, and run-off elections for federal office. It does not apply to non-federal elections, but we certainly hope that ballots for non-federal elections also go out at least 45 days before Election Day.

enjoy, will be able to cast ballots that really do get counted, no matter where the service of our country has taken them.

The 45-day rule is not just a suggestion. It is a mandate of federal law. I recognize that getting the ballots out on time requires a special effort by election officials. I respectfully suggest that this is a small accommodation to make for the brave young men and women who are away from home and prepared to lay down their lives in defense of our country. Were it not for the sacrifices of military personnel, from the American Revolution to the Global War on Terrorism, none of us would have the opportunity to vote in free elections.

Those who serve our country in uniform protect the rights that we all enjoy, including the right to vote in free elections. But all too often military personnel are unable to enjoy the rights that they are prepared to fight and die to protect. Because of late primaries, ballot access lawsuits, and other problems, local election officials (LEOs) sometimes do not have ballots printed and ready to mail until a few days before Election Day. For military personnel at sea or at isolated overseas duty stations, there sometimes is not enough time for the ballot to go from the LEO to the voter and back and the voter is disenfranchised.

I became aware of this issue in November 1976, in my first case as a lawyer, when I represented a freshman Congressman who had been elected to Congress six months earlier in a special election and who very narrowly lost the 1976 general election. Ballots received in the days after Election Day, mostly from Army Post Office (APO) and Fleet Post Office (FPO) addresses, were not counted, and if they had been counted they could have changed the outcome of this exceedingly close election.

I have been working this issue ever since, for 42 years. Finally, in 2009, Congress amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). Federal law now explicitly requires each state to transmit absentee ballots to UOCAVA voters (military personnel and family members within or outside our country and U.S. citizens outside our country temporarily or permanently) at least 45 days before any primary, general, special, or runoff election for federal offices.⁵

The fact that federal law requires that ballots go out at least 45 days before Election Day does not necessarily mean that all LEOs meet that standard. More than 7,600 LEOs administer absentee voting for federal elections. If nobody is watching, the LEO will sometimes send out ballots when he or she gets around to it, without regard to the requirements of federal law.

I recognize that getting the ballots out on time requires a special effort by the LEO. I submit that this is a small accommodation to make to facilitate the enfranchisement of the brave young men and women who are away from home and prepared to lay down their lives in defense of our country. Were it not for the sacrifices of military personnel, from the American Revolution

⁵See 52 U.S.C. 20302(a)(8). The citation refers to section 20302(a)(8) of title 52 of the United States Code.

to the Global War on Terrorism, none of us would have the opportunity to vote in free elections.

Action

Please contact your *local election official (LEO)*. Please remind that official that federal law requires him or her to have absentee ballots printed and ready to mail, and to mail them out, to military and overseas voters who have their absentee ballot applications in *by September 22, 2018* (45 days before the November 6 general election). That is just more than three months from now, when this article is added to the Reserve Officers Association (ROA) website. The official needs to start now preparing to get the ballots out on time. Tell the official that you will check again right after September 22 to see that the ballots have gone out on time.

Who is your LEO? Check your voter registration card. It will likely have the name, title, and contact information for the LEO. In most states, absentee voting is administered at the county level, or parishes in Louisiana. In the New England states, Michigan, and Wisconsin, absentee voting is administered by cities, towns, and townships. Only in Alaska, Maine, and the District of Columbia is absentee voting administered at the state level.

If you know service members or military family members, tell them to get their absentee ballot applications in well before September 22 so that they can receive their absentee ballots in time to mark and return them to be counted.

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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Washington, DC 20002