

## LAW REVIEW<sup>1</sup> 18057

July 2018

### Military and Overseas Voting in the 2018 Mid-Term Elections

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.

In 1986, Congress enacted the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), consolidating the provisions of the Federal Voting Assistance Act of 1955 (pertaining to voting by military personnel and their family members within or outside the United States) and the Overseas Citizens Voting Rights Act (pertaining to voting by U.S. civilian citizens outside our country). UOCAVA provides for a “presidential designee” who is responsible for federal functions and responsibilities under this Act. When UOCAVA went into effect in 1988, President Ronald Reagan designated the Secretary of Defense, and the Secretary delegated these responsibilities and authorities to the Director of the Federal Voting Assistance Program (FVAP). That designation and delegation remain in effect today, 30 years later. The FVAP Director recently sent out a release about military and overseas voting in the 2018 mid-term elections, and a copy of that release is appended below.

---

<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).

Under UOCAVA, a member of the United States uniformed services (Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service commissioned corps, or National Oceanic & Atmospheric Administration commissioned corps) or the voting-age spouse or family member of an active duty service member is eligible to vote by absentee ballot in primary, general, special, and runoff elections for federal offices (President, U.S. Senator, and U.S. Representative) if he or she is absent, because of the service member's service, from the place where he or she is eligible to vote. The service member voter (including a spouse or family member) need not be outside the United States or even outside the state where he or she is domiciled and eligible to vote. For example, Josephine Smith graduated from Arlington High School in Arlington, Virginia in 2015 and shortly thereafter joined the Navy. She is now on active duty as a third-class petty officer and is serving in Norfolk, Virginia, about 200 miles away from her Arlington home. She is eligible to vote by absentee ballot in Arlington because her Navy service has necessitated her absence from Arlington.

UOCAVA only applies to federal elections, but the great majority of active duty service members and military family members are also eligible, under state law, to participate in non-federal elections. Please see Law Reviews 18016 and 18020, both published in February 2018, for a detailed discussion about *where* service members and military family members are eligible to vote, either in person or by absentee ballot.

UOCAVA also accords to U.S. citizens outside our country the right to vote by absentee ballot for federal elections. This applies to those who have been away for 50 hours as well as those who have been away for 50 years. Those U.S. citizens who are away temporarily, with the intent to return, are generally eligible, under state law, to vote for all offices. Those who do not have the intent to return are at least eligible, under federal law, to vote for federal offices.

The UOCAVA voter, military or civilian, should use the Federal Post Card Application (FPCA)<sup>3</sup> to register to vote and request an absentee ballot. You can also use a state form to request your absentee ballot, but if you use the state form the local election official (LEO) will look for your name on the state voter registration list and will not send you a ballot if he or she cannot find your name on that list. If you use the FPCA, one completed FPCA form serves as a simultaneous voter registration application and absentee ballot request, even if you have not previously voted or registered to vote.

It is still possible to obtain an old-fashioned paper FPCA from the Voting Assistance Officer (VAO) of a military unit (inside or outside our country) or at a U.S. embassy or consulate overseas. In the second decade of the 21<sup>st</sup> Century, a much better way is to complete the FPCA electronically. You can complete the FPCA electronically at the FVAP website, [www.fvap.gov](http://www.fvap.gov). Please see the FVAP release appended below.

---

<sup>3</sup>The FPCA is misnamed. The FPCA is a federal form, designed, printed and distributed by FVAP, that serves as a simultaneous voter registration application and absentee ballot request, but only for UOCAVA voters. The 2003 version of this form folds over into a sealed envelope. UOCAVA voters are no longer asked to put personally identifiable information on a postcard.

Please note that completing the FPCA electronically at the FVAP website or another website *does not amount to applying for an absentee ballot*. You must print out your completed FPCA and send it to the appropriate election official by mail, by fax, or by electronic means. Please see Law Review 16118 (November 2016).

All too often, military personnel have been disenfranchised through no fault of their own. Because of late primaries, ballot access lawsuits, and other problems, election officials have not had absentee ballots printed and ready to mail until a few days before Election Day, in some cases. For military personnel at sea or at isolated overseas duty stations, where mail service is slow and intermittent, there just has not been enough time for the ballot to go from the election official to the voter and back by Election Day, and the voter has been disenfranchised.

As I have explained in Law Review 18046 (June 2018), there has been a great deal of progress in recent years. Federal law (UOCAVA) now explicitly requires election officials to get the ballots out by the 45th day before Election Day, so that service members will have sufficient time to receive, mark, and return ballots that really do get counted, no matter where the service of our country has taken them, and most election officials now meet this deadline.

Of course, the election official cannot send you a ballot until he or she has received your completed FPCA. It is important that you have your absentee ballot request in by 9/22/2018 (45 days before the general election of 11/6/2018). If you submit your application after that date, you cannot complain about not receiving your ballot on time.

### **Federal Voting Assistance Program Supports Armed Forces Voters Week and Overseas Citizens Voters Week June 25-July 5, 2018**

**ALEXANDRIA, Va.** - To help Americans vote - wherever they are - the Federal Voting Assistance Program (FVAP) is sponsoring Armed Forces Voters Week and Overseas Citizens Voters Week from June 25 to July 5 with support from the Military Services and Department of State. During the week, U.S. military installations, embassies, consulates, and overseas citizens groups offer voter registration opportunities as part of Independence Day celebrations.

FVAP recommends voters use the Federal Post Card Application (FPCA), available at [FVAP.gov](http://FVAP.gov), to register to vote and request an absentee ballot by Aug. 1 to ensure they can participate in the General Election on Nov. 6. The sooner voters register and request their ballot, the greater the likelihood they can successfully vote. That is because ballots must be sent back before individual state deadlines, which vary.

"Using the FPCA is the easiest way for overseas citizens, Service members, and their families stationed away from home to register and request a ballot," FVAP Director David Beirne said. "The FPCA not only allows these voters to register and request an absentee ballot simultaneously, it also guarantees certain benefits under federal law."

Voters can visit [FVAP.gov](https://FVAP.gov) for their state's specific voter registration and ballot request deadlines, as well as information on completing their FPCA, which is accepted by all states and territories. Voters can fill out the form by hand or use the online assistant before they print, sign and send the FPCA to their election office.

The voting rights of 2.6 million U.S. citizens living overseas, as well as Service members and their eligible family, are protected by the *Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA)*. About 95 percent of the 1.3 million Service members are eligible to vote absentee through the *UOCAVA* process since they are stationed away from their voting residence and polling place.

For additional information, visit [FVAP.gov](https://FVAP.gov), email [vote@fvap.gov](mailto:vote@fvap.gov) or call 1-800-438-VOTE (8683).

###

## **Federal Voting Assistance Program**

The Federal Voting Assistance Program (FVAP) is a Department of Defense (DoD) organization that works to ensure Service members, their eligible family members, and overseas citizens are aware of their right to vote and have the tools and resources to successfully do so — from anywhere in the world.

FVAP assists voters through partnerships with the Military Services, Department of State, Department of Justice, and election officials from the 50 states, U.S. territories and the District of Columbia. State and local governments administer U.S. elections, including those for federal offices. FVAP supports state and local election officials by providing absentee voting information, materials, training and guidance.

If you'd like more information on the Federal Voting Assistance Program or need help with the absentee voting process please go to [FVAP.gov](https://FVAP.gov) or call FVAP at 703-588-1584 (toll free 1-800-438-VOTE or DSN 425-1584) or email ([vote@fvap.gov](mailto:vote@fvap.gov)).



**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