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Tennessee Secretary of State Goes the Extra mile for Military Voters

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

7.5—Federal Voting Statutes Trump Conflicting State Statute or State Constitution

Q: I am a career member of the U.S. Air Force. In August 2004, I mailed a completed Federal Post Card Application (FPCA) to the county clerk in my hometown. She rejected my absentee ballot application because I did not state the *place* of my birth. The FPCA asks for date of birth, but not the place of birth.

The county clerk sent me a letter asking for my place of birth, but I did not receive her letter until the day after the election. I responded and provided the requested information, but of course it was too late. I am angry that my right to vote was effectively denied. Was the county clerk correct as a matter of law?

A: No. The County Clerk violated Federal law when she rejected your completed FPCA. The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) provides: “Each State *shall* ...

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.

use the official post card [FPCA] form (prescribed under section 1973ff of this title) for simultaneous voter registration application and absentee ballot application.” Title 42, United States Code, Section 1973ff-1(a)(4) [42 U.S.C. 1973ff- 1(a)(4)] (emphasis supplied).

In a statute, “shall” means “must, under penalty of law.” Your county clerk was required to process your completed FPCA and to send you an absentee ballot, even though the FPCA does not ask for all the same information (like place of birth) that must be provided on the state voter registration form.

Article VI, Clause 2 of the U.S. Constitution is called the “Supremacy Clause.” It provides that a federal statute, like UOCAVA, trumps a conflicting state statute, or even a state constitution. Your county clerk is required to comply with UOCAVA even if that means violating state law.

The *universal* acceptance of the FPCA is *essential*. It is feasible for the Voting Assistance Officer (VAO) of a military unit to store and distribute FPCAs. It is not feasible for a VAO to store and distribute 54 different state and territorial forms.

**Military title shown for purposes of identification only. The views expressed herein are the personal views of the author, and not necessarily the views of the Department of the Navy, the Department of Defense, or the U.S. Government.*

Update – April 2022

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 section 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.

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This article is one of 1800-plus “Law Review” articles available at 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:

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