

Congress Provides Standard Federal Oath for Military Voting

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 soldier in the U.S. Army. I vote in Vermont by absentee ballot every chance I get. Vermont requires that I copy the archaic “Freedman’s Oath” on my Federal Post Card Application (FPCA) each time that I request an absentee ballot. This is a real nuisance, and there is not room on the form for the oath. I took an oath of allegiance to the United States when I enlisted and each time I re-enlisted. I think that Congress should outlaw burdensome requirements like Vermont’s. What do you think?

A: Fortunately, Congress recently did exactly what you propose. “Each State shall ... if the State requires an oath or affirmation to accompany any document under this subchapter, use the standard oath prescribed by the Presidential designee under section 1973ff(b)(7) of this title.” Title 42, United States Code, section 1973ff-1(a)(5) [42 U.S.C. 1973ff-1(a)(5)]. “The Presidential designee shall ... (7) prescribe a standard oath for use with any document under this subchapter

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.

affirming that a material misstatement of fact in the completion of such a document may constitute grounds for conviction for perjury.” [42 U.S.C. 1973ff(b)(7).]

The presidential designee has accomplished this task. The new FPCA form incorporates the standard oath. Henceforth, if your town clerk refuses to process your completed FPCA because it does not contain the “Freedman’s Oath,” your town clerk will be violating federal law.

Article VI, Clause 2 of the U.S. Constitution is called the “Supremacy Clause.” It provides that a federal statute overrides a conflicting state statute, or even a state constitution.

Q: Who is the “presidential designee?”

A: On June 8, 1988, President Reagan signed Executive Order 12642, 53 *Federal Register* 21975. That Executive Order remains in effect.

Section 1 of the Executive Order designates the secretary of defense as the “presidential designee” for purposes of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), 42 U.S.C. 1973ff *et seq.* Section 2 of the Executive Order authorizes the secretary of defense to delegate UOCAVA functions, responsibilities, powers, authority, and discretion to any person or persons within DOD. The secretary has delegated these matters to the director of DOD’s Federal Voting Assistance Program (FVAP). The current FVAP Director is Ms. Polli Brunelli. Telephone 800-438-VOTE or DSN 425-1584. E-mail brunellip@fvap.ncr.gov.

**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

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 section cited throughout the article can be found at:

42 U.S.C. § 1973ff-1 discussing federal responsibilities can be found at 52 U.S.C. § 20301.

Director of FVAP

Mr. David Beirne currently serves as Director of the Federal Voting Assistance Program.³

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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

³FVAP Leadership, FVAP.Gov, <https://www.fvap.gov/info/about/leadership> (last visited Apr. 19, 2022).

