

Tennessee Secretary of State Goes the Extra mile for Military Voters

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

7.4—How a Service Member or Military Spouse Can Vote

Q: I am the staff judge advocate of an Army hospital in Texas. We have a patient in our hospital—a soldier who was seriously burned in combat in Iraq. She applied for her absentee ballot, from the county clerk in her hometown, many months ago. Election Day is rapidly approaching, and still no absentee ballot. Her ballot is probably somewhere in Iraq. She really wants to vote, and it is hard to imagine a more compelling case for the right to vote. Is it possible for her to vote? If so, how?

A: You should help this soldier to complete and mail a Federal Write-in Absentee Ballot (FWAB), provided for in Title 42, United States Code, Section 1973ff-2 [42 U.S.C. 1973ff-2]. She can use the FWAB to vote for federal offices (president, U.S. Senate, and U.S. House of Representatives) in the general election. She marks the ballot “by writing in the name of the candidate or by

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 (VRRRA—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 VRRRA 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 VRRRA 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.

writing in the name of a political party (in which case the ballot shall be counted for the candidate of that political party.” [42 U.S.C. 1973ff- 2(c)(1).]

Q: I have looked, and I cannot find any blank FWAB forms anywhere in the hospital. How can I obtain the form quickly?

A: Go to www.fvap.gov (Web site of DOD’s Federal Voting Assistance Program). You can print the blank FWAB from the Web site.

Q: Joe Smith, a civilian employee of the hospital, has served as our voting assistance officer (VAO) for many years. He told me that we do not have FWABs in stock because federal law requires that the completed FWAB be mailed only from an address *outside* the United States. Is that correct?

A: Not any longer. Congress amended the law just days before the 2004 general election. It is now possible for an “absent uniformed services voter” (a category that includes military spouses and dependents as well as military members) to submit the FWAB from either inside or outside the United States. I invite your attention to 42 U.S.C. 1973ff- 2(b)(1).

Q: We are assuming that the Soldier’s regular state absentee ballot will not arrive here at the hospital before Election Day, but what if it does?

A: In that case, she should complete and mail in the regular ballot even though she has already submitted the FWAB. “An absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives a State absentee ballot may submit the State absentee ballot. The Presidential designee shall assure that the instructions for each Federal write-in absentee ballot clearly state that an absent uniformed services voter or overseas voter who submits a Federal write-in absentee ballot and later receives and submits a State absentee ballot should make every reasonable effort to inform the appropriate State election official that the voter has submitted more than one ballot.” [42 U.S.C. 1973ff-2(d).] If both ballots arrive on time to be counted, the election official is to set aside the FWAB and count the regular ballot. See 42 U.S.C. 1973ff-2(b)(3).

Q: If she has already submitted the FWAB, why would she want to submit the regular state ballot?

A: The state ballot is clearly preferable to the FWAB. The FWAB is limited to federal offices, while the state ballot includes all offices. Moreover, the state ballot includes names of candidates, while the FWAB is limited to titles of offices.

**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-2 discussing federal write-in absentee ballot in general elections for absent uniformed services voters and overseas voters can be found at 52 U.S.C. § 20303.

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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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