

LAW REVIEW¹ 20028

March 2020

Am I Eligible to Vote for all Offices, or Just Federal?

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

7.2—Service member or military spouse voting and domicile

Q: I am the same long-retired Army Reserve Colonel who asked the question in Law Review 20027, the immediately preceding article in this “Law Review” series. For more than a decade, I have been outside the United States, living in an Eastern European country that used to be our sworn enemy, in the Warsaw Pact, and now is our valued ally, in NATO. I have been voting by absentee ballot *for federal offices only* using as my “permanent home address” on the absentee ballot application the home that I sold 11 years ago just before I moved here. It is my understanding that, under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), I am eligible to vote in primary, general, and special elections for federal offices (President, United States Senator, and United States Representative) but not for state and local offices.

This year, my granddaughter is running for the state legislature, in the district that includes the address that I claim as my permanent home address. She has asked me to vote for her, and I certainly want to. Am I eligible to vote for my granddaughter and other non-federal candidates this year?

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.

Answer, bottom line up front

Under UOCAVA, you are eligible to vote by absentee ballot in *federal* elections (including primaries and special elections). Under UOCAVA, you need not be currently *domiciled* in the last place in the United States where you lived before you went overseas. It is enough that you *were domiciled* in that place before you left our country. If you are still *domiciled* in that place, you are eligible under state law to vote by absentee ballot in that place for all offices.

Explanation

UOCAVA gives the right to vote in federal elections, by absentee ballot, to “absent uniformed services voters”³ and “overseas voters.”⁴ You do not qualify as an “absent uniformed services voter” because you are not *on active duty* in one of our country’s seven uniformed services.⁵ You qualify as an “overseas voter” because you are a United States citizen and you are outside our country *temporarily or permanently*.

UOCAVA’s definition of “overseas voter” includes “a person who resides outside the United States and is qualified to vote in the last place in which the person was domiciled before leaving the United States”⁶ as well as “a person who resides outside the United States and (but for such residence) would be qualified to vote in the last place in which the person was domiciled before leaving the United States.”⁷

Let us consider the hypothetical but realistic Mary Jones. She was born 70 years ago (1950) in Houston, Texas. For the first two years of her life, she lived with her family at 4006 Betsy Lane Houston 27, Texas.⁸ In 1952, her father moved the family to Saudi Arabia, where he took a job in the oil industry. For the rest of Mary’s childhood, her father moved the family to various places in Asia and Africa, for his career as a petroleum geologist. When Mary reached adulthood, she remained in Nigeria and has lived there ever since. Mary has not renounced or otherwise lost her United States citizenship.

Mary has been outside our country since she was a toddler, and she does not *intend* to return to our country. Nonetheless, she is eligible to vote by absentee ballot in Houston (Harris County) Texas, and she can use as her “permanent home address” the 4006 Betsy Lane address. It does not matter that the house located at that address was demolished decades ago and the folks who live there now have never heard of Mary. Mary is not eligible to vote in Texas for non-federal offices because she is not *domiciled* in Texas.

³52 U.S.C. § 20310(1).

⁴Id. §20310(5).

⁵The 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 on the National Oceanic & Atmospheric Administration. 10 U.S.C. § 101(a)(5).

⁶52 U.S.C. § 20210(5)(B).

⁷52 U.S.C. § 20210(5)(C).

⁸Zip codes were not adopted in our country until more than a decade later.

Bob Adams was born and raised in Milwaukee, Wisconsin. After graduating from college, he went to work for a major corporation headquartered in Milwaukee—let's call it Coors Heineken & Schlitz Incorporated or CHSI. In 2019, CHSI sent Bob to Australia and directed him to establish a distribution system to sell the company's beer "down under." Bob's assignment to Australia is expected to last three or four years. Bob fully expects to return home to Milwaukee in 2022 or 2023.

Bob is eligible to vote for federal offices, under UOCAVA, because he is a United States citizen and is outside the United States. He is also eligible, under Wisconsin law, to vote by absentee ballot for all offices, because he is still *domiciled* in Milwaukee.

Does your situation resemble that of Mary Jones? Or are you more like Bob Adams? If you can say in good faith that you *intend* to return to the state that you left in 2009, to move to Eastern Europe, you are probably eligible to vote for all offices. If you do not intend to return to that state, you are not eligible to vote for non-federal offices, but you are still eligible to vote for federal offices, under UOCAVA.

Q: The state that I left in 2009 has a high state income tax. For the first two years that I lived in Eastern Europe, I filed a state income tax return and paid state income tax to that state. A lawyer friend at home told me that now that I am living in Europe, I am no longer required to file a state income tax return or pay state income tax. The last time that I filed a state income tax return was in 2012, for 2011.

If I vote by absentee ballot, does that mean that I must pay state income tax to my "home" state?

A: If you vote by absentee ballot *for federal offices only* under UOCAVA, the state cannot use the fact of your having voted to prove that you owe state income tax. UOCAVA provides: "The exercise of any right under this title [UOCAVA] shall not affect, for purposes of any Federal, State, or local tax, the residence or domicile of a person exercising such right."⁹ This does not mean that voting under UOCAVA automatically exempts you from the obligation to pay state income tax, but if the state you left in 2009 sues you for non-payment of state income tax it will have to prove, without reference to your having voted under UOCAVA, that you are still *domiciled* in that state.

Maryland's high court has held: "Evidence that a person registered to vote or voted is admissible and ordinarily persuasive when the question of domicile is at issue."¹⁰ If you mark your absentee ballot for one or more non-federal offices, it is likely that the state will sue you for non-payment of state income tax and use the fact of your having voted as evidence that you are still domiciled in the state and that you owe state income tax.

⁹52 U.S.C. 20309.

¹⁰*Comptroller of the Treasury v. Lenderking*, 268 Md. 613, 619, 303 A.2d 402, 405 (1973).

Like people who vote in person on Election Day, absentee voters enjoy the protection of the *secret ballot*. Your granddaughter does not need to know that you did not vote for her. If you want to help her campaign, send her a campaign contribution.

Please join or support ROA

This article is one of 1900-plus “Law Review” articles available at www.roa.org/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
1 Constitution Ave. NE
Washington, DC 20002