

The COVID-19 Pandemic Must Not Disenfranchise Military and Overseas Voters in the 2020 Primaries and General Election

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

7.1—Election officials must get the absentee ballots out in time for the service member to vote.

In 1986, Congress enacted, and President Ronald Reagan signed, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), consolidating the provisions of the Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975 and adding important new provisions. UOCAVA is currently codified in title 52 of the United States Code, at sections 20301 through 20311.

UOCAVA gives “absent uniformed services voters” and “overseas voters” the right to vote by absentee ballot in primary, general, special, and runoff elections for federal office (President, United States Senator, and United States Representative).³ UOCAVA requires each state to

¹I invite the reader’s attention to <https://www.roa.org/page/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 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.

³52 U.S.C. § 20302(a)(1).

transmit absentee ballots for federal offices at least 45 days before any primary, runoff, general, or special election for federal office.⁴ The purpose of the 45-day rule is to ensure that military personnel at sea or at isolated overseas duty stations, as well as United States citizens living outside our country, will have sufficient time to cast ballots that really do get counted, no matter where their service has taken them.

Section 20310 defines terms used in this law. The term “absent uniformed services voter” means a member of one of the uniformed services of the United States⁵ on active duty or active service who is absent, because of such service, from the place that constitutes his or her domicile.⁶ The definition also includes members of the United States flag Merchant Marine and the voting-age spouses and family members of uniformed service or Merchant Marine personnel who are accompanying those personnel and thus are absent from their domiciles.⁷ An absent uniformed services voter can be within or outside the United States. An “overseas voter” is a United States citizen who is outside our country temporarily or permanently.⁸

Section 20301⁹ assigns important “federal responsibilities” to the “presidential designee.” In 1988, when UOCAVA went into effect, President Reagan designated the Secretary of Defense as the “presidential designee.” The Secretary of Defense delegated the UOCAVA authorities and responsibilities to the Director of the Federal Voting Assistance Program (FVAP), an office within the Office of the Secretary of Defense. The 1988 designation and delegation are still in effect.

The current FVAP Director is David Beirne. He has important responsibilities regarding voting rights not only for military personnel and their family members, but also for about 3 million civilian United States citizens who are outside our country temporarily or permanently.

FVAP periodically distributes releases about absentee voting for military and overseas citizens. Here is a recent release on the impact of the COVID-19 pandemic on absentee voting.¹⁰

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This article is one of 1800-plus “Law Review” articles available at <https://www.roya.org/page/lawcenter>. The Reserve Officers Association, now doing business as

⁴52 U.S.C. 20302(a)(8).

⁵Our nation has seven uniformed services—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 of the National Oceanic & Atmospheric Administration. 10 U.S.C. § 101(a)(5).

⁶52 U.S.C. § 20310(1).

⁷*Id.*

⁸52 U.S.C. § 20310(5).

⁹52 U.S.C. § 20301.

¹⁰*Important Information for UOCAVA Voters and Elections Officials During COVID-19 Pandemic*, FVAP.Gov (Mar. 26, 2020), <https://cdn.ymaws.com/www.roya.org/resource/resmgr/lawreviews/2020/AbsenteeVoter.pdf>.

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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