

Military Voting Rights—Good News from New York

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[About Sam Wright](#)

7.0—Military voting rights

As I have explained in Law Review 20022, the immediately preceding article in this “Law Review” series, military personnel have often been disenfranchised through no fault of their own. Because of late primaries, ballot access lawsuits, and other problems, local election officials have often not had ballots available to transmit until a few days before Election Day. For the service member serving at sea or at an isolated overseas duty station, where mail service is slow and intermittent, there has often been insufficient time for the voter to receive the absentee ballot, mark it, and return it on time for it to be counted.

¹ I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 1900 “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. I am the author of more than 1700 of the articles.

² BA 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.

The problem has been worst in states with late primaries. Until the results of the primary have been certified, the election official cannot print, much less transmit, general election ballots. But late primaries benefit incumbents, and the legislators who write the rules are incumbents.

Finally, in 2009, Congress got tired of waiting for the states to fix this problem. Congress amended the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), and now each state is required by federal law to get the ballots out to military and overseas voters by the 45th day before Election Day.³ Complying with this federal mandate meant that late-primary states were required to move their primaries back to earlier in the year.

In New York, the legislators adamantly refused to move the primary back. As a result, the Attorney General of the United States sued New York in the United States District Court for the Northern District of New York, and that court ordered New York to move its primary back to June, to enable election officials to meet the 45-day standard for federal general elections.

New York moved the federal primary (for United States Senator and United States Representative) back to June but maintained the primary for non-federal offices (Governor, state legislator, etc.) at the traditional September date. As a result, New York continued to disenfranchise the state's sons and daughters in our military with respect to non-federal elections.⁴

Good news! The legislators in Albany have finally come to their senses and have eliminated the September primary for non-federal offices. This year, New York will conduct its presidential primary on 4/28/2020, its primary on 6/23/2020, and its general election on 11/3/2020.⁵ Now, it should be possible for military personnel from New York to cast real absentee ballots, that really get counted, for all primary elections, not just those for federal office.

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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

³ 52 U.S.C. 20302(a)(8).

⁴ Please see Law Review 12025 (March 2012) and Law Review 18093 (September 2018).

⁵ See https://ballotpedia.org/New_York_elections_2020#Statewide_election_dates.

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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