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As an Active-Duty Service Member who Is Domiciled in VA, you Are Eligible To Vote in the 2025 VA Gubernatorial Election.

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

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

7/2—Service member or military spouse voting and domicile.

7.3—Voting in non-federal elections.

7.4—How a service member or military spouse can vote.

Q: I was born in 2006, and I graduated from high school in 2024, in Arlington, Virginia (VA). I enlisted in the Navy during my senior year of

[1] I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,000 "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 Spouses' 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. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

[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 45 years, I have collaborated 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 38 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 mailto:swright@roa.org.

high school, and I reported to basic training at Great Lakes, Illinois in July 2024. I recently completed my initial training in the Navy and reported to a ship that is home-ported in Norfolk, Virginia.

I have never voted or registered to vote, but I am starting to get interested in the public affairs of our country. My father told me that VA will be electing a new Governor this year (2025). I thought that elections were held in even-numbered years. What gives?

A: In 45 states, the important state elections are held in even-numbered years, along with federal elections. In the other five states, the important state elections are held in odd-numbered years. Those five states are Virginia, New Jersey, Kentucky, Louisiana, and Mississippi.

This year, VA voters will elect a new Governor, Lieutenant Governor, and Attorney General. VA voters will also elect members of the lower house of the state legislature (the House of Delegates). The primary will be held on 6/17/2025 and the general election on 11/4/2025.[3]

Q: Am I eligible to vote in the VA primary and general election, by absentee ballot, in 2025?

A: Yes. You are a United States citizen by birth, and you have attained your 18th birthday. You are eligible to vote.

Q: Do I need to register to vote separately and then apply for an absentee ballot? Or is it possible for me to register to vote and apply for an absentee ballot by filling out a single form?

A: Because you are on active duty in one of our nation's uniformed services, and because you are away (because of your service) from the place where you are eligible to vote, you can use a single Federal Post

[3] Id.

Card Application (FPCA) form to register to vote and to apply for an absentee ballot.

Q: How do I apply for an absentee ballot for the 2025 primary and general election?

A: You should use the FPCA form to make a simultaneous voter registration application and absentee ballot request.[4] It is still possible to obtain a paper copy of the FPCA and to complete it in the old-fashioned way, with pen on paper, and then mail the application to your election official back home. In the 21st Century, a much better way to register to vote and request an absentee ballot is through the website of the U.S. Vote Foundation or its overseas vote initiative.[5] Using either of those websites, you can complete your FPCA and submit it electronically or by mail to the appropriate local election official.

Q: The FPCA requires me to provide two addresses, my "permanent home address" and the different address where I want the election official to send me my absentee ballot. I am confused as to the "permanent home address" that I should provide.

My parents bought a house in Arlington shortly before I was born, and I lived with them in that house from birth to 7/5/2024, when I traveled to Great Lakes, Illinois for Navy basic training. After I was out of the house, my parents sold the house and moved to another state. Under these circumstances, what is my "permanent home address?"

[4] 52 U.S.C. §§ 20301(b)(2), 20302(a)(4). If you are on active duty in one of the eight uniformed services, your hometown election official is required by federal law to treat your completed FPCA as a simultaneous voter registration application and absentee ballot request and to send you an absentee ballot *even if you have not registered to vote in the traditional way.*

[5] *See* https://www.overseasvotefoundation.org/vote/home/htm.

A: Your domicile of origin, and the address that you should use for absentee voting, is the place where you lived and you were domiciled before you entered active duty in the Navy. It does not matter that your parents no longer own that house and no longer live there. It does not matter that you cannot receive mail at that address. Even if the house burns down or is torn down for a new commercial development, that address is your permanent residence for voting and taxation purposes, unless and until you establish a new domicile at some other place.

Q: I spoke to a friend who serves with me on the same Navy ship. He told me that he is from Florida and that he is not required to pay state income tax because Florida does not have a state income tax.[6] I want to change my legal residence to Florida to avoid having to pay state income tax but I want to continue voting in VA by absentee ballot. Is that possible?

A: No, that is not possible. You have one domicile (legal residence) for all purposes. You cannot simultaneously claim Florida for tax purposes and VA for voting purposes. Maryland's high court has held: "Evidence that a person has registered to vote or voted is admissible and ordinarily persuasive when the question of domicile is at issue."[7]

Q: I intend to serve on active duty for a career spanning 20 years or more. Is it possible for me to change my domicile to Florida or one of the other no-tax states and stop paying VA state income taxes?

A: If you remain on active duty, you will have that opportunity at some point, but you do not have that opportunity now, while you are serving

[6] New Hampshire and Tennessee tax only interest and dividend income, not salary or wages. Alaska, Florida, Nevada, South Dakota, Texas, Washington, and Wyoming have no State income tax. *See 9 States With No Income Tax,* Jim Probasco, INVESTOPEDIA, https://investopedia.com/financial-edge/0210/7-states-with-no-income-tax.aspx (last updated Mar. 16, 2021).

[7] *Comptroller of the Treasury v. Lenderking,* 303 A.2d 402, 405 (Md. 1973). *See also Suglove v. Okla. Tax Comm'n,* 605 P.2d 1315 (Okla. 1979).

on a ship that is home-ported in Virginia. To change your domicile while you are on active duty, you must *simultaneously* have a physical presence in the state to which you wish to change, for a significant time, and you must have the *intent to make that place your home.* Neither physical presence nor physical absence is sufficient to create a new domicile or to destroy an existing domicile.[8]

Q: The ship where I serve is currently at the dock in Norfolk, Virginia. We can deploy within 24 hours after receiving the order to do so. When we deploy, it is usually for months at a time. When we are at sea, we do not have the opportunity to receive or send mail every day. If our ship is deployed in the fall of 2025, I am concerned that I will not receive my absentee ballot in time to mark it and return it on time for the ballot to be counted. How does this work?

A: A federal law called the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires local election officials (LEOs) to transmit absentee ballots to military personnel and family members (within or outside the United States) and to U.S. civilian citizens outside our country not later than 45 days before a primary, general, special, or runoff election *for federal offices.*[9]

Because the 2025 election in VA will only be for state and local offices, not federal offices, the requirement to transmit absentee ballots by the 45th day before Election Day does not apply. Nonetheless, I believe that the local election officials in VA will transmit absentee ballots by the 45th day before Election Day. Please let me know if you do not receive your absentee ballot in time.

[8] *See generally* Law Review 24008 (January 2024).
[9] *See* 52 U.S.C. § 20302(a)(8).

Of course, the election official cannot send you an absentee ballot until he or she receives your absentee ballot application. Apply for your ballot today.

Please join or support ROA.

This article is one of 2,300-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. We add new articles each month.

ROA is the nation's only national military organization that exclusively and solely supports the nation's reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve 32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).[10]

ROA is more than a century old—on 10/2/1922 a group of veterans of "The Great War," as World War I was then known, founded our organization at a meeting in Washington's historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded "Great War." 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 adequate national security. For more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

[10] *See* https://crsreports.congress.gov/product/pdf/IF/IF10540/. These are the authorized figures as of 9/30/2022.

Through these articles, and by other means, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, we advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, federal and state legislators and staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, 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 eight[11] uniformed services, you are eligible for membership in ROA,[12] and a one-year membership only costs $20 or $450 for a life membership. 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 https://www.roa.org/page/memberoptions 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:

[11] Congress recently established the United States Space Force as the eighth uniformed service.
[12] Spouses, widows, and widowers of past or present members of the uniformed services are also eligible to join.

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[13] You can also contribute on-line at www.roa.org.