LAW REVIEW 14085[1]

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Please Contact your Local Election Official

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7.0—Military voting rights

Please contact your local election official (LEO) to determine if he or she met the September 20 deadline for printing and sending out absentee ballots for the general election to be held on November 4, 2014. As amended in 2009 by the Military and Overseas Voter Empowerment Act (MOVE Act), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) explicitly requires every state to send out ballots to UOCAVA voters[3] at least 45 days prior to any general, primary, special, or runoff election for federal offices.[4]

If your LEO failed to send out ballots by September 20 (45 days before November 4) for whatever reason, your LEO is in violation of federal law. It may not be too late to remedy this violation. If the ballots did not go out in time, a temporary fix for this year could be an extension of the deadline for the *receipt* of absentee ballots mailed in from outside the United States, including ships at sea and Afghanistan.

The idea is that those who serve our country in uniform protect the rights that we all enjoy, including the right to vote in free elections. It is most important that they be given a realistic opportunity to cast ballots that really do get counted, no matter where the service of our country has taken them. Mail service for some overseas military personnel is unavoidably slow and intermittent. It is essential that at least 45 days be provided for the unmarked ballot to travel from the LEO to the voter and for the marked ballot to travel from the voter back to the LEO.

In June 1952 (13 months after I was born), the Subcommittee on Elections, Committee on House Administration, U.S. House of Representatives conducted hearings on voting in the 1952

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[1] We invite the reader's attention to www.servicemembers-lawcenter.org. You will find almost 1,300 "Law Review" articles about military voting rights, reemployment rights, and other military-legal topics. You will also find a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997, and we add new articles each week.

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[3] UOCAVA voters are members of the uniformed services (Army, Navy, Marine Corps, Air Force, Coast Guard, Public Health Service, and National Oceanic & Atmospheric Administration) in active service and their voting-age family members (whether inside or outside the United States) as well as U.S. citizens who are outside our country temporarily or permanently. *See* 52 U.S.C. 20310(1).

[4] *See* 52 U.S.C. 20302(a)(8).

general election for military personnel fighting the Korean War.[5] The Honorable C.G. Hall (Secretary of State of Arkansas and President of the National Association of Secretaries of State) testified that most military personnel fighting in Korea would probably be disenfranchised in the 1952 presidential election. Because of late primaries,[6] ballot access lawsuits, and other problems, LEOs would not have ballots printed and ready to mail until just a few days before Election Day, in many instances. There just would not be time for the absentee ballot to travel from the LEO to the voter in Korea and back by Election Day.

The 1952 congressional report includes a letter to Congress from President Truman, dated March 28, 1952. In his letter, he called upon the states to fix this problem and he called upon Congress to enact *temporary* federal legislation for the 1952 presidential election. He wrote, "Any such legislation by Congress should be temporary, since it should be possible to make all the necessary changes in State laws before the congressional elections of 1954."

Well, it did not work out that way. The Korean War ground to an inconclusive halt in 1953 and this issue fell off our national radar screen until 2000, when late-arriving overseas ballots played a crucial and very visible role in the resolution of the Bush-Gore Florida cliffhanger.[7] Finally, in 2009, Congress tired of waiting on the states and *mandated* a minimum of 45 days of ballot transit time for UOCAVA voters in federal elections. If a late primary makes it impossible for a state to meet the 45-day rule, a federal court can order the state to move back its primary to earlier in the year.[8]

There are more than 7,600 LEOs who administer absentee voting for federal elections. Only Alaska, Maine, and the District of Columbia administer absentee voting centrally at the state level. In most states, absentee voting is administered at the county level, or parishes in Louisiana. In the New England states, Michigan, and Wisconsin, absentee voting is administered by cities, towns, and townships, which are smaller and more numerous than counties. There are 1,851 LEOs in Wisconsin and another 1,500 in Michigan.

Please check your voter registration card for the name, title, and contact information for your LEO.[9] Contact the LEO by telephone or e-mail, or better yet schedule a meeting in person. Try to get a straight answer to one simple question: Did the absentee ballots go out to UOCAVA voters on or before September 20? If your LEO missed this deadline for any reason, please contact me immediately. My telephone is (800) 809-9448, extension 730. My e-mail is SWright@roa.org.

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[5] Hearings before the Subcommittee on Elections of the Committee on House Administration, 82nd Congress, 2nd Session (1952). The report is available through the Library of Congress.

[6] Until the results of the primary have been officially certified, the LEO cannot *print* general election ballots, much less mail them out.

[7] Please see Law Review 23 (March 2001), available at www.servicemembers-lawcenter.org.

[8] Please see Law Review 14086 (October 2014), the immediately following article in this "Law Review" series. The recent articles, starting with Law Review 14072, are available at www.texasroa.org.

[9] The titles vary by state—County Clerk, Town Clerk, County Board of Elections, County Auditor, etc.

In order to meet the 45-day rule, several states moved their primaries back to earlier in the year, either by legislative action or by federal court order. New Hampshire and Delaware are two states that held September primaries again this year. I am particularly interested in hearing about the performance of LEOs in those two states.

I invite your attention to the most eloquent opening paragraph of President Truman's 1952 letter:

> About 2,500,000 men and women in the Armed Forces are of voting age at the present time. Many of those in uniform are serving overseas, or in parts of the country distant from their homes. They are unable to return to their States either to register or to vote. Yet these men and women, who are serving their country and in many cases risking their lives, deserve above all others to exercise the right to vote in this election year. At a time when these young people are defending our country and its free institutions, the least we at home can do is to make sure that they are able to enjoy the rights they are being asked to fight to preserve.

I respectfully submit that President Truman's eloquent words about the brave young men and women fighting the Korean War in 1952 are equally true of their grandsons and granddaughters and great-grandsons and great-granddaughters fighting the Global War on Terrorism today. Please share these eloquent words with your LEO and your state legislators. The one-sentence message is: "*Don't make America's military personnel wait another 62 years to exercise a basic civil right that the rest of us take for granted.*