Number 143-UPDATE, January-February 2005:

Federal Write-in Absentee Ballot

By CAPT Samuel F. Wright, JAGC, USNR*

In Law Review 143 (The Officer, October 2004), I addressed the Federal Write-in Absentee Ballot (FWAB), which is provided for in the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). That law was originally enacted in 1986.

In Law Review 143, I explained that the FWAB is a fallback ballot for the military member, military family member, or overseas civilian who has made a timely application for a regular absentee ballot but has not received it in time to use it. It is possible to use the FWAB (available from a military or State Department voting assistance officer) to vote for president, U.S. senators, and U.S. representatives in the general election. You mark the ballot by writing in the names of your favored candidates or by expressing a party preference for each federal office.

I also explained in Law Review 143 that it is necessary to utilize the actual paper FWAB, printed by the Government Printing Office (GPO). I wrote that the FWAB is not available on any Web site. On October 22, 2004, the Department of Defense (DoD) approved the Online FWAB (OFWAB). That form is now available at www.fvap.gov, the Web site of DoD's Federal Voting Assistance Program (FVAP). The OFWAB was approved too late to be of much use in 2004, but it should prove most useful in future elections.

In Law Review 143, I also explained that UOCAVA requires that the FWAB be submitted only from outside the U.S. I gave examples where it would be most useful if the servicemember were permitted to submit the FWAB from within the United States-for example, a crew member on a nuclear submarine about to deploy and expected to remain submerged until after Election Day. I wrote: “I strongly suggest that Congress be asked to address this deficiency [in UOCAVA] next year [2005].”

As it turned out, we did not have to wait until 2005. This issue was addressed in section 166 of the Ronald Reagan National Defense Authorization Act (NDAA) for FY05, Public Law 108-375, 118 Stat. 1811. President Bush signed the NDAA on October 28, 2004.

Section 166 amends UOCAVA to permit an Active duty servicemember or family member to submit the FWAB from within the United States. Yes, the authorization applies to family members as well. (I am aware of a military wife who was incorrectly told by an Air Force voting assistance officer that only servicemembers are permitted to use the FWAB.) Section 166 uses the term “absent uniformed services voter.” That term, defined in UOCAVA, explicitly includes family members of uniformed servicemembers. As I explained in Law Review 52, when a statute defines a particular word or phrase, the statutory definition controls for purposes of that statute, even if the definition is

different from how that same term might be defined elsewhere in the United States Code or in a dictionary.

I also explained in Law Review 143 that it is necessary, as a condition precedent to the submission of the FWAB, that the voter have submitted the Federal Post Card Application (FPCA), applying for the regular absentee ballot, sufficiently early so that the completed FPCA was received by the election official at least 30 days before the election. Section 166 amended this deadline in a favorable way. Now, the completed FPCA must be received by the thirtieth day preceding the election or by the state's voter registration deadline, whichever is later.

Section 166's changes will be most useful in enfranchising military and overseas citizens in future elections. I know the Capitol Hill staffer and ROA member who read Law Review 143 and got Section 166 added, at the very last minute, during the House-Senate Conference Committee on the NDAA. Thank you, nameless member. He is one of several congressional staffers who read this Law Review column religiously.

* Military title used for purposes of identification only. The views expressed herein are the personal views of the authors and should not be attributed to the U.S. Marine Corps, the Department of the Navy, the Department of Defense, or the U.S. government. The best way to reach Captain Wright is by e-mail, at **samwright50@yahoo.com**.