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A State Cannot Hold its Primary in September and Get the Absentee Ballots for the General Election out in Time.

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

7.1—States must transmit absentee ballots in time.

In a 1952 letter to Congress, during the Korean War, President Harry S. Truman wrote:

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

¹ I invite the reader's attention to [Law Center | ROA](#). You will find more than 2,300 "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), the title 38 chapters that provide for veterans' benefits administered by the Department of Veterans Affairs (VA), 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. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 44 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. As of 5/1/2026, I have come out of retirement and have affiliated with Maher Legal Services in an "of counsel" role. You can reach me by e-mail at samuel@maherlegalservices.com or by telephone at (708) 468-8155.

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 that 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.

President Harry S. Truman, Message to Congress, Special Committee on Service Voting of the American Political Science Association, March 28, 1952 (available at <https://www.truman.library/public-papers/96/letter-secretary-defense-voting-servicemen>).

President Truman's letter is included in a 1952 report of the Subcommittee on Elections, Committee on House Administration, U.S. House of Representatives, concerning voting rights for military personnel fighting the Korean War. The Honorable C.G. Hall, Secretary of State of Arkansas and President of the National Association of Secretaries of State, testified that military personnel serving in Korea and elsewhere were likely to be disenfranchised because **late primaries**, ballot access lawsuits, and other problems made it impossible for local election officials to print and mail absentee ballots until just a few days before Election Day.

In his 1952 letter, President Truman 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.”

It did not work out that way. The Korean War ended inconclusively in 1953, and the issue was largely forgotten in the United States. Finally, in 2009, Congress got tired of waiting on the States to fix this problem and mandated 45 days of ballot transmission time as a matter of federal law. The pertinent section of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) is as follows:

Each State **shall**

transmit a validly requested absentee ballot to an absent uniformed services voter or overseas voter--

(A)

except as provided in subsection (g), in the case in which the request is received at least 45 days before an election for Federal office, **not later than 45 days before the election.**³

It is necessary that every state and every local election jurisdiction have absentee ballots printed and ready to distribute by the 45th day before Election Day, so that military personnel will have the opportunity to cast ballots that really do get counted, no matter where the service of our nation has taken them. Mail service to Navy and Coast Guard ships at sea and to isolated overseas duty stations is unavoidably slow and intermittent. Sufficient time must be provided for the unmarked

³ 52 U.S.C. § 20302(a)(8) (emphasis supplied).

absentee ballot to travel from the election official to the voter and for the marked ballot to travel back to the election official.

The worst problems for overseas military voters have always been in states with late primaries. Until the primary has been conducted and its results have been determined and certified, the local election official cannot print general election ballots, much less transmit them. After Congress amended UOCAVA in 2009 and mandated a minimum of 45 days of ballot-transmission time, several states with September primaries moved their primaries back to earlier in the year, but four states are still holding their primaries in September 2026.⁴

For example, Delaware will hold its primary on 9/15/2026. The 2026 general election will be held on 11/3/2026. The 45th day preceding the general election is 9/19/2026. Will Delaware be able to determine and certify the primary results and prepare and transmit general election ballots in just four days? I think that is most unlikely.

Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?

A: As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an “of counsel” role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of

⁴ Massachusetts is holding its primary on 9/1/2026. New Hampshire is holding its primary on 9/8/2026. Rhode Island is holding its primary on 9/9/2026. Worst of all, Delaware is holding its primary on 9/15/2026.

whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about>.

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