

Military Overseas Voting

Summary: Uniformed Overseas Citizens Absentee Voting Act (“UOCAVA”) the Military and Overseas Voter Empowerment Act (“MOVE Act”) give military voters certain rights and impose certain duties on the Department of Defense and state election officials. However, both the Department of Defense and state election officials have fallen short on their obligations and duties to military voters.

Applicable Law:

- **UOCAVA** — Pub. L. No. 99-410, 100 Stat. 924 (Oct. 21, 1998), *codified at* 42 U.S.C. §§ 1973ff to 1973ff-7, amended by the MOVE Act, Pub. L. No. 111-84, §§ 577-83(a), 584-87, 123 Stat. 2190 (2009).
 - *Absentee Voting*: a means of voting absentee must be provided to military voters (slim on details). *See* 42 U.S.C. §1973ff.
 - *Federal write-in absentee ballot*: available if voter request a ballot by state deadline but does not receive the ballot in time to vote. 42 U.S.C. § 1973ff-2.
 - *Yearly reporting requirement*: Department of Defense must provide a statistical analysis of voter participation and State-Federal cooperation by the end of the year following a Presidential election. 42 U.S.C. § 1973ff(b)(6).
 - *U.S. Postal Service (“USPS”) Delivery*: ballot materials must be carried “expeditiously” and free of charge. 39 U.S.C. § 3406(a).
 - *Department of Justice Enforcement*. 42 U.S.C. §1973ff-4.
- **MOVE Act** — Pub. L. No. 111-84, §§ 577-83(a), 584-87, 123 Stat. 2190 (2009), *codified in part at* 42 U.S.C. §§1973ff - 1973ff-7.
 - *State mailing deadline*: when absentee ballot requested, state election officials must mail ballot to service members no later than 45 days before the election. *See* 42 U.S.C. §1973ff-1(a)(8).
 - *Electronic transmission*: state officials must provide at least one electronic means of transmission of the ballot. 42 U.S.C. §1973ff-1(e).
 - *USPS return of marked ballots*: USPS must work with Department of Defense to provide “expedited mail delivery service” for marked absentee ballots, requiring the USPS to deliver the marked ballots to election officials within seven days of the date of the election. 42 U.S.C. § 1973ff-2a(b)(3). The marked ballots must also be postmarked with a record of the date on which the ballot was mailed. (*Id.* at § 42 U.S.C. § 1973ff-2a(b)(4).
 - *No notarization requirement*: state officials may not require that a return military absentee ballot be notarized. 42 U.S.C. §1973ff-1(i).

- *Early submission permitted:* officials may not reject a registration application or request for absentee ballot on the grounds that it was submitted too early. 42 U.S.C. §1973ff-3.
- *Voting assistance offices:* the presidential designee (Department of Defense) must create voting assistance offices at military installations. *See* 42 U.S.C. §1973ff; 10 U.S.C. §1566.
 - Voting assistance offices must provide:
 - Information on voter registration procedures and absentee ballot procedures (including the official post card form prescribed under *section 101 of the Uniformed and Overseas Citizens Absentee Voting Act* (42 U.S.C. 1973ff)).
 - (2) Information and assistance, if requested, including access to the Internet where practicable, to register to vote in an election for Federal office.
 - (3) Information and assistance, if requested, including access to the Internet where practicable, to update the individual's voter registration information, including instructions for absent uniformed services voters to change their address by submitting the official post card form prescribed under *section 101 of the Uniformed and Overseas Citizens Absentee Voting Act* to the appropriate State election official; and
 - (4) Information and assistance, if requested, to request an absentee ballot under the *Uniformed and Overseas Citizens Absentee Voting Act* (42 U.S.C. 1973ff *et seq.*). 10 U.S.C. § 1566a(a).
 - Allows the Department of Defense to designate offices on military installations as voter registration agencies under the National Voter Registration Act, 42 U.S.C. 1973gg-5(a)(2), 10 U.S.C. § 1566a(e).
- *Compliance waivers:* Department of Defense with assistance from DOJ may grant waivers to states from 45-day deadline for "undue hardship." 42 U.S.C. § 1973ff-1(g).
- *Annual Report:* the attorney general must submit to Congress an annual report on any civil action brought under the act during the preceding year. 42 U.S.C. §1973ff-4(b).
- Uniform Military and Overseas Voters Act ("UMOVA")
 - Uniform law covering all military personnel and their dependents and U.S. citizens residing abroad who are unable to vote in person. *Uniform Law Commission*, Legislative Fact Sheet - Military and Overseas Voters

Act, available at <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Military%20and%20Overseas%20Voters%20Act>.

- Created by Uniform Law Commission. *Id.*
- Would advance the protections of MOVE Act to state and local elections. *Overseas Vote Foundation*, Progress Update: Uniformed Military and Overseas Voters Act, available at <https://www.overseasvotefoundation.org/UMOVA>.
 - Potentially covers uniformed-service voters who are registered in the enacting state but not necessarily in active duty outside of the state (Section 2(1)(A)-(B));
 - Covers elections for state and local offices and ballot measures (Section 3(2-3));
 - State's chief election authority would have enforcement responsibilities (Section 4) and a covered voter may seek equitable relief from a court (Section 18), and
 - 45-day deadline before election for distribution of election ballots to covered voters (Section 9).
- Enacted by 10 states¹ and the District of Columbia. *Uniform Law Commission*, Legislative Fact Sheet - Military and Overseas Voters Act, available at <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Military%20and%20Overseas%20Voters%20Act>. Currently under consideration in Connecticut, Kentucky, Missouri, and Montana. *Id.*
- National Voter Registration Act of 1993 ("NVRA") — Pub. L. No. 103-31, 107 Stat. 77 (May 20, 1993), *codified at* 42 U.S.C. §§ 1973gg, *et seq.*
 - Requires all military recruitment offices to offer a voter registration information form (DD 2645) and a National Mail Voter Registration Form and Guide to anyone receiving services/assistance. 42 U.S.C. § 1973gg-5 (designation of voter registration agencies); Dept. of Defense Directive 1000.04, Enclosure 4 (ab), (outlining obligation of recruitment offices to provide voting assistance), available at <http://www.fvap.gov/resources/media/dodi1000.04.pdf>.

Key Issues:

- *Installation Voting Assistance Offices*

¹UMOVA has been enacted in California, Colorado, Hawaii, Nevada, North Carolina, North Dakota, Oklahoma, Pennsylvania, Utah and Virginia. *Uniform Law Commission*, Legislative Fact Sheet - Military and Overseas Voters Act, available at <http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Military%20and%20Overseas%20Voters%20Act>.

- Office not established
- Office not properly staffed
- Office staff not properly trained
- Office established in inappropriate location
- Inclusion of visit to installation voting assistance office as part of “check-in” at new posting
- *Provision of Voter Registration Information at Recruitment Offices*
 - NVRA requirement
 - Dept. of Defense Directive
- *Electronic request & receipt of absentee ballots*
 - Varies widely by state law
- *Availability of Electronic Voting*
- *State failure to send absentee ballots by deadline*
 - Run off and special elections
 - State laws in conflict
 - Waivers
 - Electronic request and receipt of absentee ballots
- *United States Postal Service failure to delivery/return absentee ballots in timely manner*
- *Overseas voters not given full range of options on ballot (state time constraints)*
- *Federal Write-in Ballot Not Uniformly Accepted for State Elections*
- *Remote Posts and Battle Situations*
- *Enforcement by DOJ*
 - No private right of action
 - Lack of enforcement against/guidance to Dept. of Defense
 - Lack of enforcement against states
 - Lack of enforcement against/guidance to U.S. Postal Service

- Selective enforcement

Key Advocacy Organizations:

- Department of Defense Federal Voting Assistance Program
 - <http://www.fvap.gov/index.html>
- National Defense Committee
 - <http://www.nationaldefensecommittee.org/>
 - Key Contact: Captain Bob Carey
 - Senior Fellow
 - bob.carey@Empire-Capitol.com
 - 917-273-4262
- Military Voter Protection Program
 - <http://mvppproject.org/>
 - Key Contact: Eric Eversole
- Reserve Officers Association
 - <http://www.roa.org/site/PageServer>
 - Key Contact: Captain Samuel Wright
 - Director, Service Members Law Center
 - swright@roa.org
 - 800.809.9448 ext. 730
 - 202-646-7730
- Vote Vets
 - <http://www.votevets.org/home>
- Overseas Vote Foundation
 - <https://www.overseasvotefoundation.org/vote/home.htm>
 - Susan Dzieduszycka-Suinat

- President & CEO
- Brennan Center for Justice
 - <http://www.brennancenter.org/issues/voting-rights-elections>
- Common Cause
 - <http://www.commoncause.org/site/pp.asp?c=dkLNK1MQIwG&b=4773589>