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The Uniformed and Overseas Citizens Absentee Voting Act: Background and Issues

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Summary

Members of the military and U.S. citizens who live abroad are eligible to register and vote absentee in federal elections under the provisions of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) of 1986. The law was enacted to improve absentee registration and voting for this group of voters and to consolidate existing laws. Since 1942, several federal laws have been enacted to assist these voters: the Soldier Voting Act of 1942 (amended in 1944), the Federal Voting Assistance Act of 1955, the Overseas Citizens Voting Rights Act of 1975 (both the 1955 and 1975 laws were amended in 1978 to improve procedures), and the Uniformed and Overseas Citizens Absentee Voting Act of 1986. The law is administered by the Secretary of Defense, who delegates that responsibility to the Director of the Federal Voting Assistance Program at the Department of Defense (DOD).

Improvements to UOCAVA were necessary as the result of controversy surrounding ballots received in Florida from military and overseas voters in the 2000 presidential election. Both the National Defense Authorization Act for FY2002 (P.L. 107-107; S. 1438) and the Help America Vote Act (P.L. 107-252; H.R. 3295) included provisions concerning military and overseas voting. The President signed P.L. 107-107 on December 28, 2001, and P.L. 107-252 on October 29, 2002. The Defense Authorization Act for FY2005 amended UOCAVA as well, to ease the rules for use of the federal write-in ballot in place of state absentee ballots. The act was signed by the President on October 28, 2004. This report will be updated periodically to reflect new developments.

Historical Overview

Several federal laws have been enacted since 1942 to enable those in the military and U.S. citizens abroad to vote in federal elections. The original law, the Soldier Voting Act of 1942 (P.L. 712-561), was enacted to guarantee federal voting rights for members of the armed forces during wartime. The law allowed members of the armed forces to vote for presidential electors, and candidates for the U.S. Senate and House, whether or not they were previously registered and regardless of poll tax requirements. The law provided

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for the use of a postage-free, federal post card application to request an absentee ballot; it also instructed secretaries of state to prepare an appropriate number of “official war ballots,” which listed federal office candidates, as well as candidates for state and local office if authorized by the state legislature. The law “had almost no impact at all” as it was enacted on September 16, only weeks before the November general election.¹

Congressional authority to regulate state voting procedures expired once the war ended, as the law noted that its provisions applied “in time of war.”² The Soldier Voting Act of 1942 was amended in 1944. Under congressional war powers, the 1942 law *mandated* procedures for the states to permit service members to vote, but the amended law of 1944 *recommended* that states follow such procedures. The law was amended again in 1946 to include technical changes.

In 1951, President Truman asked the American Political Science Association (APSA) to study the military voting problem and make recommendations. APSA completed its study in 1952 and the President endorsed the association’s legislative recommendations, which were sent to Congress. Congress passed the Federal Voting Assistance Act in 1955, which recommended, but did not guarantee, absentee registration and voting for members of the military, federal employees who lived outside the U.S., and members of civilian service organizations affiliated with the armed forces. The law was amended in 1968 to include a more general provision for U.S. citizens temporarily residing outside the U.S., expanding the number of civilians covered under the law. The Overseas Citizens Voting Rights Act of 1975 guaranteed absentee registration and voting rights for citizens outside the U.S., whether or not they maintained a U.S. residence or address and their intention to return was uncertain.

Summary of the Law

The current law, the Uniformed and Overseas Citizens Absentee Voting Act (P.L. 99-410), was signed into law by President Reagan on August 28, 1986.³ It was amended in 2002 by the Help America Vote Act (P.L. 107-252) and the National Defense Authorization Act of 2002 (P.L. 107-107). The main provisions of the law require states to do the following:

- Permit absent uniformed services voters, their spouses and dependents, and overseas voters who no longer maintain a residence in the U.S. to register absentee (overseas voters are eligible to register absentee in the jurisdiction of their last residence) and to vote by absentee ballot in all elections for federal office (including general, primary, special, and runoff elections).⁴ The National Defense Authorization Act of 2002

¹ U.S. Department of Defense, *The Federal Voting Assistance Program*, 11th Report, (Washington: Dec. 1977), p. 2.

² P.L. 56-393, Sec. 1.

³ 42 U.S.C. §1973ff-ff-6.

⁴ Sec. 107 (1). An absent uniformed services voter is defined as follows: a member of a uniformed service on active duty or a member of the merchant marine who, by reason of such
(continued...)

amended UOCAVA to permit a voter to submit a single absentee application in order to receive an absentee ballot for each federal election in the state during the year. The Help America Vote Act subsequently amended that section of the law to extend the period covered by a single absentee ballot application to the next two regularly scheduled general elections for federal office. The Help America Vote Act also added a new section that prohibits a state from refusing to accept a valid voter registration application on the grounds that it was submitted prior to the first date on which the state processes applications for the year.⁵

- Accept and process any valid voter registration application from an absent uniformed services voter or overseas voter if the application is received not less than 30 days before the election. The Help America Vote Act amended that section of the law to require a state to provide to a voter the reasons for rejecting a registration application or an absentee ballot request.⁶

Furthermore, the law recommends that states accept the federal write-in absentee ballot for general elections for federal office (provided the voter is registered, has made a timely request for a state absentee ballot, the absentee ballot has not arrived with sufficient time to return it, and the ballot is submitted from outside the U.S. or its territories).⁷

The law also stipulates that voting materials be carried “expeditiously and free of postage.”⁸ It recommends that states accept the Federal Post Card Application (FPCA) from uniformed services voters, their spouses and dependents, and overseas voters to allow for simultaneous absentee registration and to request an absentee ballot. While all states and territories accept the FPCA, some require that a voter submit the state registration form separately in order to be permanently registered. Other recommendations in the law suggest that states:⁹

- waive registration requirements for military and overseas voters who do not have an opportunity to register because of service or residence;

⁴ (...continued)

active duty or service in the merchant marine, is absent from the place of residence where the member is otherwise qualified to vote; and a spouse or dependent of a member of a uniformed service or a member of the merchant marine who is absent from his or her place of residence where he or she is otherwise qualified to vote, because of the active duty or service of the member.

⁵ 42 U.S.C. §1973ff-1(1), as amended by section 1606 (b) of the National Defense Authorization Act of 2002, and subsequently, by section 704 of the Help America Vote Act of 2002.

⁶ 42 U.S.C. §1973ff-1(2), as amended by section 707 of the Help America Vote Act of 2002..

⁷ 42 U.S.C. §1973ff-1(3).

⁸ The United States Postal Service domestic mail manual notes that “To be mailable without prepayment of postage, the balloting materials must be deposited at a U.S. post office, an overseas U.S. military post office, or an American Embassy or American Consulate.”

⁹ 42 U.S.C. §1973ff-3.

- send registration materials, along with an absentee ballot to be returned simultaneously, if the FPCA is not sufficient for absentee registration;
- expedite the processing of voting materials;
- permit any required oath to be administered by a commissioned officer in the military or by any official authorized to administer oaths under federal law or the law of the state where the oath is administered;
- assure mailing absentee ballots to military and overseas voters at the earliest opportunity; and
- provide for late registration for persons recently separated from the military.

In addition to the amendments to UOCAVA mentioned above, the Help America Vote Act of 2002 does the following:

- requires the Secretary of Defense to establish procedures to provide time and resources for voting action officers to perform voting assistance duties; establish procedures to ensure a postmark or proof of mailing date on absentee ballots; requires secretaries of the armed forces to notify members of the last day for which ballots mailed at the facility can be expected to reach state or local officials in a timely fashion; requires that members of the military and their dependents have access to information on registration and voting requirements and deadlines; and requires that each person who enlists receives the national voter registration form;
- amends UOCAVA to require each state to designate a single office to provide information to all absent uniformed services voters and overseas voters who wish to register in the state;
- amends UOCAVA to require states to report the number of ballots sent to uniformed services and overseas voters and the number returned and cast in the election; and
- amends UOCAVA to require the Secretary of Defense to ensure that state officials are aware of the requirements of the law and to prescribe a standard oath for voting materials to be used in states that require such an oath.

The Defense Authorization Act for FY2002 also included provisions that 1) required an annual review of the voting assistance program and a report to Congress, 2) guaranteed state residency for military personnel who are absent because of military duty, 3) continued the online voting pilot project begun for the 2000 elections, and 4) permitted the use of DOD facilities as polling places if they had previously been used for that purpose since 1996 or were designated for use by December 2000.

The Federal Voting Assistance Program

The Federal Voting Assistance Act of 1955 called for the President to designate the head of an executive department to be responsible for and coordinate the federal functions described in the law. President Eisenhower designated the Secretary of Defense, who delegated the responsibility to the Assistant Secretary of Defense for Public Affairs, as coordinator of the Federal Voting Assistance Program (FVAP). Under the current law, the Director of the Federal Voting Assistance Program administers the FVAP for citizens covered by the Uniformed and Overseas Citizens Absentee Voting Act. This office publishes the *Voting Assistance Guide*, a compilation of state requirements and practices with respect to the federal law (including information on possible tax liability incurred in some states based on residence, as determined by voter registration). The FVAP office also maintains a toll free phone number to provide assistance to voters and to military and federal government personnel who are responsible for implementing the law; the office also maintains a website [<http://www.fvap.gov>].

SERVE Internet Voting Program, 2004. The FVAP has administered an experimental internet voting program, the Secure Electronic Registration and Voting Experiment (SERVE), for military and overseas citizens since the November 2000 election. Those eligible to cast ballots via the Internet were voters whose legal residence was in one of fourteen participating counties in Florida, South Carolina, Texas, and Utah. The pilot project was limited to a total of 350 voters, of whom 84 cast absentee ballots over the Internet. The FVAP issued a June 2001 report evaluating the program. An expanded version was in place in seven states for the 2004 elections, but it was cancelled after a report reviewing the program raised Internet security concerns. Among other conclusions, the report noted that because fundamental vulnerabilities exist with Internet voting, a successful cyber attack on the SERVE program could undermine the November election.

Current Issues

The Federal Voting Assistance Program conducted a post-election survey of voters covered by UOCAVA in an effort to make improvements to the absentee voting process. Participation was voluntary and anonymous, and respondents could complete the questionnaire using a paper or web-based version. Survey results showed a 2004 participation rate of 80% for federal employees overseas, 79% for those in the uniformed services, and 58% for U.S. citizens living abroad.¹⁰

The Defense Authorization Act for FY2005, signed by the President on October 28, 2004, included a provision that permitted members of the military on active duty in the United States and their dependents to use the federal write-in ballot to vote absentee. The law amended UOCAVA, which previously permitted this group of voters to use the write-in ballot only if they were out of the country. A second change amended UOCAVA to alter the timing for using the ballot. Previously, a voter could use the write-in ballot only if they had applied for the state's regular absentee ballot and the state received that application at least 30 days before the election. Now, states may establish a deadline

¹⁰ Survey results can be found at [<http://www.fvap.gov/services/17threport.html>], accessed Jan. 25, 2006.

closer to the election than 30 days to receive the absentee ballot application (thus easing the rules for using of the write-in ballot).

In September 2004, the Election Assistance Commission issued a report on best practices for administering the overseas voting law, including a recommendation that states send out absentee ballots at least 45 days before the general election. Also in September, the Federal Voting Assistance Program launched an Internet absentee ballot retrieval system for members of the military and their family members, but many states declined to participate and overseas citizens could not access the site, according to news reports. Some states permit voters to request and return ballots by facsimile, but privacy issues are a concern for those who cast their ballot in this manner.

In April, 2004, a General Accountability Office report highlighted problems with mail delivery to troops serving in Operation Iraqi Freedom, which raised concerns about military and overseas voting in the 2004 elections as well. Delays in overseas mail delivery is a principal obstacle to participation for those in the military or those who live abroad, because multiple steps may be required to register, request, and return an absentee ballot.