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The Uniformed and Overseas Citizens Absentee Voting Act: Background and Issues for the 107th Congress

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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).

The closeness of the 2000 presidential election focused attention on ballots received in Florida from military and overseas voters under the provisions of UOCAVA, particularly the standards by which individual ballots were counted. After the election, then-Secretary of Defense William S. Cohen directed the DoD Inspector General to investigate issues with military and overseas ballots in the election; a report was issued on June 22, 2001 (<http://www.dodig.osd.mil/audit/reports/fy01/01145sum.htm>], pdf version). 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 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

Report Documentation Page

Form Approved
OMB No. 0704-0188

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1. REPORT DATE 02 APR 2002		2. REPORT TYPE		3. DATES COVERED 00-00-2002 to 00-00-2002	
4. TITLE AND SUBTITLE The Uniformed and Overseas Citizens Absentee Voting Act: Background and Issues for the 107th Congress				5a. CONTRACT NUMBER	
				5b. GRANT NUMBER	
				5c. PROGRAM ELEMENT NUMBER	
6. AUTHOR(S)				5d. PROJECT NUMBER	
				5e. TASK NUMBER	
				5f. WORK UNIT NUMBER	
7. PERFORMING ORGANIZATION NAME(S) AND ADDRESS(ES) Congressional Research Service, The Library of Congress, 101 Independence Ave, SE, Washington, DC, 20540-7050				8. PERFORMING ORGANIZATION REPORT NUMBER	
9. SPONSORING/MONITORING AGENCY NAME(S) AND ADDRESS(ES)				10. SPONSOR/MONITOR'S ACRONYM(S)	
				11. SPONSOR/MONITOR'S REPORT NUMBER(S)	
12. DISTRIBUTION/AVAILABILITY STATEMENT Approved for public release; distribution unlimited					
13. SUPPLEMENTARY NOTES					
14. ABSTRACT					
15. SUBJECT TERMS					
16. SECURITY CLASSIFICATION OF:			17. LIMITATION OF ABSTRACT	18. NUMBER OF PAGES	19a. NAME OF RESPONSIBLE PERSON
a. REPORT unclassified	b. ABSTRACT unclassified	c. THIS PAGE unclassified			

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 1955 version of 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

President Reagan signed the Uniformed and Overseas Citizens Absentee Voting Act (P.L. 99-410), the current law, on August 28, 1986.³ Its main provisions require states to:

- permit absent uniformed services voters,⁴ 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);⁵

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 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).

- 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;⁶ and
- 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 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;
- 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.

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

⁶ 42 U.S.C. §1973ff-1(2).

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.

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 at [<http://www.fvap.gov>].

Issues in the 2000 Election

Among the controversies in Florida during the 2000 election was the issue of absentee ballots from military and overseas voters. The controversy in Florida centered on two issues—the requirement that ballots must be postmarked by election day and the deadline for counting them (10 days after election day)—neither of which is specifically addressed in the federal law. Because the law left such details to the states, postmark requirements and deadlines for returning ballots vary by state (as is the case with most aspects of registration and voting).

Postmarks. The UOCAVA requires that voting materials “shall be carried expeditiously and free of postage,” and there is no stated requirement that ballots need to have a postmark.¹⁰ Florida state law requires that ballots must be postmarked by election day, and some ballots were reportedly not counted because they lacked a postmark or the postmark was illegible.¹¹ In any case, Florida’s postmark requirement is not unique. Thirteen states require absentee ballots to have a postmark in order to be counted, and two states require that a ballot must be postmarked the day before election day.¹² In a number of cases, the state requires that ballots must be received by election day, but will count a ballot received after that time if it is postmarked by election day.

Deadline for Counting Absentee Ballots. A second issue in Florida concerned the deadline for receiving military and overseas ballots. According to news reports, some ballots were not counted because they were received after Florida’s deadline.¹³ The state’s requirement that military and overseas ballots must be received by county election officials within 10 days of election day is a comparatively late deadline. Most states (35) require that such ballots must be received by election day, and four states require that these ballots be returned before election day. The issue of mail delays is particularly relevant for military and overseas voters, who may otherwise have made every effort to have their ballots counted (S. 1261, summarized below, includes a provision concerning a uniform

¹⁰ 39 U.S.C. §3406. DoD postal regulations require postmarking of all mail, but the Deputy Director of the Military Postal Service noted that “there are instances when time constraints do not allow for proper postmarking/cancellation of mail....The last flight may be departing ship and the mail has to get on it.... No one is going to refuse to take a letter or ballot at the last minute because they do not have time to postmark it. It could be weeks before they see mail service again.” Robert Alt, “Florida is Wrong,” [<http://www.nationalreview.com/alt/alt112000.shtml>], visited Nov. 21, 2000.

¹¹ Brent Kallestad, “Counties skirmish over overseas absentee ballots,” Associated Press, [<http://www.herald.com/content/archive/news.elect2000/decision/045744.htm>], visited Nov. 27, 2000.

¹² Federal Voting Assistance Program, *Voting Information News*, Oct., 2000. pp. 2-4.

¹³ MSNBC, “Military votes, hand recounts still at issue,” [<http://www.msnbc.com/news/492686.asp>], visited Nov. 21, 2000.

deadline). As the DoD Inspector General's report on the 2000 election noted, "FVAP recognizes the potential problems associated with the States' timelines for absentee ballots and has encouraged the States to use a 45-day timeline," meaning that an absentee ballot is mailed to a voter 45 days before the election.¹⁴

The total number of federal absentee ballots counted in Florida was 2,490. The number of absentee ballots submitted is difficult to determine because some were counted with regular ballots if they arrived by election day, and those that arrived after election day were counted only if they were received by November 17 (Florida's deadline for counting overseas and military ballots). A survey by the *St. Petersburg Times* estimated that over 22,000 absentee ballots were mailed to military and overseas voters, but it was not known how many were returned.¹⁵ Furthermore, the *Miami Herald* reported that Florida officials mailed two ballots to military and overseas voters who sent in absentee ballot requests: one ballot was due on November 7 (this ballot was sent to any eligible voter who requested an absentee ballot), and the other was due on November 17 (the ballot for military and overseas voters).¹⁶ According to press reports and the Florida Secretary of State's office, 1,527 military and overseas ballots were rejected and 2,490 were counted; if these totals are accurate, 4,017 military and overseas ballots were returned in Florida.¹⁷

107th Congress Legislation

The Defense Authorization Act for FY2002 (P.L. 107-107; S. 1438) included a number of military voting provisions and was signed into law by the President on December 28, 2001. The law: 1) requires an annual review of the voting assistance program and a report to Congress; 2) guarantees state residency for military personnel who are absent because of military duty; 3) continues the online voting pilot project begun for the 2000 elections; 4) simplifies the voter registration and absentee ballot application process, including a provision that permits a voter to make a single absentee ballot request for all elections (primary and general) during the year; 5) permits 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.

In addition to the provisions contained in the Defense Authorization Act, the House approved a bill with military and overseas voting provisions in December 2001. H.R. 3295 was introduced on November 14, 2001 and reported by the House Administration Committee on December 10; the House passed the bill on December 12. The bill would:

¹⁴ U.S. Department of Defense, Office of the Inspector General, "Audit Report: Overseas Absentee Ballot Handling in DOD," Report No. D-2001-145 (June 22, 2001), p. 22.

¹⁵ Sean Holton and Jim Leusner, "Nobody Has Full Count of Overseas Absentees," *Orlando Sentinel*, [<http://orlandosentinel.com/automag...00-11-16/ASECelabsent161116000.html>], visited Nov. 28, 2000.

¹⁶ Meg Laughlin, "Military vote drive may benefit Republicans," [<http://www.herald.com/content/arch...ws/elect2000/decision/103345b.htm>], visited Nov. 27, 2000.

¹⁷ Vote totals are from the Florida Secretary of State's website, [<http://enight.dos.state.fl.us/report.asp?Date=001107>], visited Dec. 21, 2000, and the number of rejected ballots is from MSNBC, "Military votes, hand recounts still at issue," [<http://www.msnbc.com/news/492686.asp>], visited Nov. 21, 2000.

1) require the Inspector General of the Department of Defense to report to Congress annually on voting assistance programs; 2) require the Secretary of Defense to ensure postmarking of absentee ballots; 3) require states to designate a single office to facilitate military and overseas voting, report registration and voting statistics, use a standard oath for election materials, and accept the post card form as an absentee ballot request for all elections in the state during the two subsequent federal election cycles.

The Senate began floor debate on S. 565 (substitute amendment) on February 13. The bill was withdrawn after a second attempt to invoke cloture failed on March 4 (51-44). Under a unanimous consent agreement announced on March 22, the Senate will take up the bill again soon after it returns on April 8. With respect to military and overseas voting, S.Amdt 2858 (Allard) was offered and approved by voice vote on February 13. It would clarify the standard by which military absentee ballots may be invalidated; maximize voting access for those who recently left the uniformed services; prohibit the refusal of absentee applications because of early submission; and require distribution of copies of the military and overseas voting law to all jurisdictions in each state. Senator Rockefeller submitted S.Amdt. 2944, which would provide for a study of permanent overseas voter registration; designate a single office in each state to administer the law; require public reporting of the number of ballots sent and returned by military and overseas voters; and require studies on the use of a standard oath and eliminating notarization requirements.

Other bills in the 107th Congress include H.R. 159 (Riley), which would prohibit states from excluding a military voter's absentee ballot because it was improperly or fraudulently cast, unless the state finds "clear and convincing evidence of fraud." H.R. 311 (Vitter), also would prohibit states from excluding such absentee ballots unless there is evidence of fraud, and would direct the Secretary of Defense to prepare a plan for electronic voting for uniformed services voters. H.R. 492 (Bachus) would similarly prohibit states from excluding absentee ballots unless there is evidence of fraud, and would direct the Secretary of Defense to conduct a study to improve voting under the law. In the Senate, S. 17 (Daschle) includes provisions that would clarify state residency issues for purposes of voting and would extend the UOCAVA to state and local elections. S. 28 (Gramm) would amend the Uniformed and Overseas Citizens Absentee Voting Act by extending the law's provision to include state and local elections, as well as federal elections. S. 122 (Campbell) and S. 470 (Bond) would prohibit states from excluding an absentee ballot from a uniformed services voter unless there is evidence of fraud. S. 154 (Shelby) would amend the existing law to ensure uniform treatment of military and overseas ballots and would authorize the use of buildings on military installations as polling places. S. 381 (Allard) would amend UOCAVA to maximize access for military voters and those recently separated from the armed services. S. 467 (Roberts) would provide grants to states to adopt the federal write-in ballot and would require uniform treatment in the states of such absentee ballots. S. 479 (Cleland) would amend the Soldiers and Sailors Relief Act concerning residence requirements and voting and would extend the provisions of UOCAVA to state and local elections. S. 738 (Smith) would amend the Voting Rights Act of 1965 to include a provision that protects the voting rights of members of the Armed Forces. S. 731 (Nelson) would amend the Soldiers and Sailors Relief Act concerning residence requirements and voting and would extend the provisions of UOCAVA to state and local elections. S. 1261 (Rockefeller) would simplify registration procedures, eliminate the need to request an absentee ballot for each election, and require states to count military and overseas ballots that are received within 14 days of the election, signed by the voter, and dated not later than the day before the election.