



UNIFORM MILITARY AND OVERSEAS VOTERS ACT

- A Summary -

Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, despite repeated congressional and state efforts to facilitate their ability to vote. These include difficulty in registering abroad, frequent address changes, slow mail delivery or ballots and ballot applications that never arrive, difficulty in obtaining information about candidates or issues, the inability to comply with notarization or verification procedures, or the voter's failure to properly comply with non-essential requirements for absentee materials. The federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), as well as the various state efforts, have not been wholly effective in overcoming difficulties that these voters face. The federal laws do not encompass state and local elections. Further, American elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independent of the federal elections to which UOCAVA and the MOVE Act do apply. This lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to more fully enfranchise these voters.

At its 2010 Annual Meeting, the national Uniform Law Commission promulgated the Uniform Military and Overseas Voters Act (UMOVA) to address these issues. UMOVA extends to state elections the assistance and protections for military and overseas voters currently found in federal law. It seeks greater harmony for the military and overseas voting process for all covered elections, over which the states will continue to have primary administrative responsibility. Key highlights of UMOVA include:

- The act simplifies and expands, in common sense fashion, the class of covered voters and covered elections. "Uniformed service" includes the U.S. Army, Navy, Air Force, Marine Corp, Coast Guard, Merchant Marine, commissioned corps of the Public Health Service and the National Oceanic and Atmospheric Administration of the U.S., National Guard, and state militia units. The definition of "covered voter" is expanded from federal usage to include overseas citizens who have not established a specific residence in the U.S. but who have demonstrable ties to a certain state. The act applies to primary, general, special, and runoff elections, or their equivalent, at the federal, state, and local levels for elected candidates and ballot issues.
- The act establishes reasonable, standard timetables for application, registration, and provision of ballots and election information for covered voters. Importantly, the act requires transmission of ballots and balloting materials to all covered voters who have applied no later than 45 days prior to the election, unless the state has received a

waiver under the federal MOVE Act. Further, the act extends expanded use of the Federal Post Card Application and Federal Write-In Absentee Ballot for registration and voting purposes in covered elections.

- The act provides for the determination of the address that should be used for active-duty military and overseas voters. An eligible voter's voting address shall be the last residential address in the enacting state, or that of the eligible voter's parent or legal guardian for citizens born outside of the U.S. that have not established residency. If the address is no longer residential, then the voter must be assigned an address.
- The act allows voters to make use of electronic transmission methods for applications and receipt of registration and balloting materials, and tracking the status of applications. Allowance of electronic submission of voted ballots is left to existing state law. The act defines the obligations of the state's primary election authority with regard to providing information on voting registration procedures, ballot casting procedures, and the form and content of necessary declarations to accompany such, for covered voters. If provided, a voter's e-mail address may not be disclosed to third parties, and may only be used by the election authority for communications about the voting process, transmission of ballots and materials, and necessary verifications related to the act.
- Under the act, a ballot is timely cast if received by the local election official before the close of polls on election day, or submitted for mailing or transmission no later than 12:01 AM on the date of the election. A ballot must be counted if it is delivered to the appropriate state or local election official by the close of business on the business day before the final deadline for completing the canvass or other tabulation to finalize election results.
- The act requires votes to be counted where non-essential requirements are not complied with, and obviates notarization requirements where the proper declaration is made and subject to penalty of perjury.

The new UMOVA uses and builds upon the key requirements of UOCAVA and MOVE, and extends the important protections and benefits of these acts to voting in covered state and local elections. UMOVA will help to facilitate compliance with the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), and help to more fully and effectively enfranchise our military personnel and overseas civilians.

UNIFORM MILITARY AND OVERSEAS VOTERS ACT

Drafted by the

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

and by it

APPROVED AND RECOMMENDED FOR ENACTMENT
IN ALL THE STATES

at its

ANNUAL CONFERENCE
MEETING IN ITS ONE-HUNDRED-AND-NINETEENTH YEAR
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By

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

September 30, 2010

ABOUT ULC

The **Uniform Law Commission (ULC)**, also known as National Conference of Commissioners on Uniform State Laws (NCCUSL), now in its 119th year, provides states with non-partisan, well-conceived and well-drafted legislation that brings clarity and stability to critical areas of state statutory law.

ULC members must be lawyers, qualified to practice law. They are practicing lawyers, judges, legislators and legislative staff and law professors, who have been appointed by state governments as well as the District of Columbia, Puerto Rico and the U.S. Virgin Islands to research, draft and promote enactment of uniform state laws in areas of state law where uniformity is desirable and practical.

- ULC strengthens the federal system by providing rules and procedures that are consistent from state to state but that also reflect the diverse experience of the states.
- ULC statutes are representative of state experience, because the organization is made up of representatives from each state, appointed by state government.
- ULC keeps state law up-to-date by addressing important and timely legal issues.
- ULC's efforts reduce the need for individuals and businesses to deal with different laws as they move and do business in different states.
- ULC's work facilitates economic development and provides a legal platform for foreign entities to deal with U.S. citizens and businesses.
- Uniform Law Commissioners donate thousands of hours of their time and legal and drafting expertise every year as a public service, and receive no salary or compensation for their work.
- ULC's deliberative and uniquely open drafting process draws on the expertise of commissioners, but also utilizes input from legal experts, and advisors and observers representing the views of other legal organizations or interests that will be subject to the proposed laws.
- ULC is a state-supported organization that represents true value for the states, providing services that most states could not otherwise afford or duplicate.

**DRAFTING COMMITTEE ON UNIFORM MILITARY AND OVERSEAS VOTERS
ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Act consists of the following individuals:

STEVE WILBORN, 306 Tower Dr., Shelbyville, KY 40065, *Chair*
TERRY J. CARE, 2300 W. Sahara, Suite 1000, Las Vegas, NV 89102
STEPHEN T. DRAFFIN, South Carolina Legislative Council, 1000 Assembly St., Dennis Bldg.,
P.O. Box 11489, Columbia, SC 29211
BARRY C. HAWKINS, 300 Atlantic St., Stamford, CT 06901
LYLE W. HILLYARD, 595 S. Riverwood Pkwy., Suite 100, Logan, UT 84321
DANIEL IVEY-SOTO, 1420 Carlisle Blvd., N.E., Suite 208, Albuquerque, NM 87110
CLAIRE LEVY, House District 13, 3172 Redstone Rd., Boulder, CO 80305
LUKE MESSER, 345 W. Broadway, Shelbyville, IN 46176
SUSAN KELLY NICHOLS, North Carolina Department of Justice, P.O. Box 629, Raleigh, NC
27602-0629
RALPH G. THOMPSON, 315 N.W. 39th St., Oklahoma City, OK 73118
NORA WINKELMAN, Legal Counsel's Office, Room 620, Main Capitol, Harrisburg, PA
17120
STEVEN F. HUEFNER, Ohio State University, Moritz College of Law, 55 W. 12th Ave.,
Columbus, OH 43210, *Reporter*

EX OFFICIO

ROBERT A. STEIN, University of Minnesota Law School, 229 19th Ave. S., Minneapolis, MN
55455, *President*
JACK DAVIES, 1201 Yale Pl., Unit #2004, Minneapolis, MN 55403-1961, *Division Chair*

AMERICAN BAR ASSOCIATION ADVISORS

JOHN DEWITT ALTENBURG, 2101 L St. N.W., Suite 1001, Washington, DC 20037-1526,
ABA Advisor
JOHN C. KEENEY, 555 13th St. N.W., Suite 10W-206, Washington, DC 20004-1109, *ABA
Advisor*

EXECUTIVE DIRECTOR

JOHN A. SEBERT, 111 N. Wabash Ave., Suite 1010, Chicago, IL 60602, *Executive Director*

Copies of this Act may be obtained from:
NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS
111 N. Wabash Ave., Suite 1010
Chicago, Illinois 60602
312/450-6600
www.nccusl.org

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UNIFORM MILITARY AND OVERSEAS VOTERS ACT

PREFATORY NOTE

Over five million military personnel and overseas civilians face a variety of legal and logistical obstacles to participating in American elections. These problems persist notwithstanding repeated congressional efforts, as well as various state efforts, to facilitate these voters' ability to vote, most prominently the enactment of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), and its amendment with the Military and Overseas Voter Empowerment Act of 2009 (MOVE). The obstacles include: difficulties in registering to vote from abroad; ballots or ballot applications that never arrive; frequent changes of address; slow mail delivery times to and from overseas citizens, especially military personnel; failures to complete absentee voting materials properly, including noncompliance with notarization or verification requirements that can be difficult to meet abroad; and difficulties in obtaining information about issues and candidates.

Data from the 2006 federal midterm election provide dramatic evidence of the problems that these voters have recently faced. In 2006 U.S. military personnel were slightly more likely to have registered to vote than the general U.S. population (87% vs. 83%), yet the voter participation rate among the military was about half that of the general population (roughly 20% vs. roughly 40%). Furthermore, only 25% of overseas and military voters who requested an absentee ballot in 2006 completed and returned one, compared to 85% of all voters who requested an absentee ballot. Meanwhile, more than one in five ballots cast by military service members was rejected.

Although some of these figures improved during the high-interest 2008 presidential election, the overall picture remains troubling. In 2008, roughly two-thirds of those overseas and military voters who requested a ballot returned it, and the rejection rate for those ballots dropped to under one in fifteen ballots. Yet both of these rates remain substantially worse than the comparable 2008 rates for absentee voters generally (which were a return rate of over 90%, and a ballot rejection rate of 1.7%). Meanwhile, according to data collected by the U.S. Election Assistance Commission, fewer than 700,000 absentee ballots were returned by military and overseas voters in 2008. This figure is not much different from the comparable figure for the 2006 federal midterm elections, meaning that the voter participation rate among these voters remained well below 20%, despite the fact that among voters generally the 2008 election produced an overall voter participation rate of over 61%, the largest in four decades. Without additional reforms to the voting processes for military and overseas voters, their ability to participate in American elections likely will continue to suffer.

Strong popular support exists among the American public to make voting much easier and more reliable for these voters than it has been. A 2008 public opinion survey conducted for the Pew Center on the States found "strong universal support . . . across age, regional, and party lines" for the idea that military and overseas voters should be able to participate in elections "back home." A variety of stakeholders who participated in the ULC drafting process for this act were overwhelmingly of a similar disposition.

In important part, the obstacles that overseas and military voters face can be traced to the fact that American elections are conducted at the state and local levels under procedures that often vary dramatically by jurisdiction. This lack of uniformity complicates any federal effort, such as the UOCAVA, to assist these voters to surmount the other major obstacles that they face. For instance, while some states permit overseas absentee ballots to arrive up to ten days after Election Day, other states require that all absentee ballots, including those from overseas, be received by Election Day. Meanwhile, some states permit overseas and military voters to request, and in a smaller number of cases also to cast, an absentee ballot electronically, but other states require transmission by regular mail. Some states require a notary or other witness to vouch for the absentee voter's execution of the absentee ballot affirmation. These and other variations across states both complicate the procedures developed under the UOCAVA to help overseas and military voters, and make it difficult for consular officials, the U.S. military, and non-governmental voting assistance groups to give standard advice to these voters.

In confronting these problems, this act has two independent purposes that can only be achieved through uniform state legislation. The first is to extend to state elections the assistance and protections for military and overseas voters currently found in federal law, which covers only biennial federal elections. The second is to bring greater uniformity to the military and overseas voting processes, which the several states will continue to have primary responsibility for administering, in both federal and non-federal elections. In addition to these two primary purposes, many provisions of the act also enhance the assistance and protections provided to military and overseas voters, wherever this can be done without compromising the integrity of the voting process or imposing inappropriately on election officials.

Critical to both enhancing and bringing uniformity to the voting process for military and overseas voters is establishing adequate time for this group of voters to request, receive, and return a ballot. Directly related to the amount of time needed to accomplish these voting processes is the extent to which electronic transmission mechanisms are employed. The act requires that electronic transmission methods be available for purposes of requesting and receiving unvoted ballots, but does not require the use of electronic means for transmitting voted ballots. This is because no consensus yet exists on the question of whether and how electronic voting can occur securely and privately. However, using electronic transmission methods for just those steps in the absentee voting process prior to the casting of a ballot (such as registering to vote, requesting an absentee ballot, and receiving a blank ballot) can alone dramatically reduce the time required to permit these voters to vote successfully.

Without uniform state legislation, military and overseas voters will continue to confront a panoply of diverging voting requirements, notwithstanding the important role that UOCAVA has played in facilitating military and overseas voting in federal elections for more than two decades, and the additional enhancements that the MOVE Act of 2009 provides. Accordingly, this act should be widely adopted both to simplify the voting process for these voters, and to extend similar protections to state elections not covered by existing federal law.

UNIFORM MILITARY AND OVERSEAS VOTERS ACT

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Military and Overseas Voters Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Covered voter” means:

(A) a uniformed-service voter or an overseas voter who is registered to vote in this state;

(B) a uniformed-service voter defined in paragraph (9)(A) whose voting residence is in this state and who otherwise satisfies this state’s voter eligibility requirements;

(C) an overseas voter who, before leaving the United States, was last eligible to vote in this state and, except for a state residency requirement, otherwise satisfies this state’s voter eligibility requirements;

(D) an overseas voter who, before leaving the United States, would have been last eligible to vote in this state had the voter then been of voting age and, except for a state residency requirement, otherwise satisfies this state’s voter eligibility requirements; or

(E) an overseas voter who was born outside the United States, is not described in subparagraph (C) or (D), and, except for a state residency requirement, otherwise satisfies this state’s voter eligibility requirements, if:

(i) the last place where a parent or legal guardian of the voter was, or under this [act] would have been, eligible to vote before leaving the United States is within this state; and

(ii) the voter has not previously registered to vote in any other state.

(2) “Dependent” means an individual recognized as a dependent by a uniformed service.

(3) “Federal postcard application” means the application prescribed under Section 101(b)(2) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff(b)(2).

(4) “Federal write-in absentee ballot” means the ballot described in Section 103 of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff-2.

(5) “Military-overseas ballot” means:

(A) a federal write-in absentee ballot;

(B) a ballot specifically prepared or distributed for use by a covered voter in accordance with this [act]; or

(C) a ballot cast by a covered voter in accordance with this [act].

(6) “Overseas voter” means a United States citizen who is outside the United States.

(7) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(8) “Uniformed service” means:

(A) active and reserve components of the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States;

(B) the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States; or

(C) the National Guard and state militia.

(9) “Uniformed-service voter” means an individual who is qualified to vote and is:

(A) a member of the active or reserve components of the Army, Navy, Air Force,

Marine Corps, or Coast Guard of the United States who is on active duty;

(B) a member of the Merchant Marine, the commissioned corps of the Public Health Service, or the commissioned corps of the National Oceanic and Atmospheric Administration of the United States;

(C) a member on activated status of the National Guard or state militia; or

(D) a spouse or dependent of a member referred to in this paragraph.

(10) “United States”, used in the territorial sense, means the several states, the District of Columbia, Puerto Rico, the United States Virgin Islands, and any territory or insular possession subject to the jurisdiction of the United States.

Comment

The act’s definition of the term “covered voter” builds upon the definitions of “absent uniformed service voter” and “overseas voter” in the Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. § 1973ff-6(1), but simplifies these definitions and expands them to cover members of the National Guard. However, unlike in the UOCAVA, the act’s coverage of uniformed service voters is based on a voter’s status as an active member of one of the defined services, whether or not the voter is absent from the place of voting. The definition of “uniformed service voter” does not specify that the place where the voter is qualified to vote be in the enacting state because that would create a problem for a spouse (or dependent) who is eligible to vote in this state but whose uniformed service member is eligible in another state. A uniformed service voter still must meet an enacting state’s eligibility requirements (including residency in that state) in order to vote in that state.

The definition of “covered voter,” in paragraph (1)(E), also extends the act’s coverage to U.S. citizens born abroad who have not established a voting residency in the United States. Although UOCAVA makes no provision for these citizens, eighteen states already permit these citizens to participate in at least some elections, if their parents are eligible to vote in that state (or in some cases if they are a spouse or dependent of a person eligible to vote in that state). These states include: Arizona, Colorado (federal offices only), Delaware (federal offices only), Georgia, Hawaii, Illinois, Iowa, Massachusetts, Michigan, Nebraska, New York (federal offices only), North Dakota (federal offices only), Oklahoma, Rhode Island (federal offices only), Tennessee, Washington, West Virginia, and Wisconsin (federal offices only).

The definition makes no distinction between overseas voters merely traveling abroad, voters temporarily living overseas, and voters permanently residing overseas. Other provisions of an enacting state’s existing law may do so, however, and may limit the elections in which voters permanently overseas can vote. Without such distinctions elsewhere in existing state law,

this act would enable all overseas voters to vote in all elections covered in Section 3. Because the act does not require that overseas voters “reside” abroad, it facilitates voting by a wide variety of U.S. citizens, including missionaries, students abroad, and even tourists who because of health or other unanticipated problems or events may have extended their time out of the United States beyond their original plans, but for whom a state’s regular absentee balloting process may be difficult to use.

SECTION 3. ELECTIONS COVERED. The voting procedures in this [act] apply to:

(1) a general, special, [presidential preference,] [or] primary [, or runoff] election for federal office;

(2) a general, special, [recall,] [or] primary [, or runoff] election for statewide or state legislative office or state ballot measure; and

(3) a general, special, [recall,] [or] primary [, or runoff] election for local government office or local ballot measure conducted under [insert relevant state law] [for which absentee voting or voting by mail is available for other voters].

Legislative Note: The bracketed language in paragraphs (1), (2), and (3) pertaining to presidential preference, recall, and runoff elections is only for states with such elections. In paragraph (3), the bracketed reference to “relevant state law” refers to the portion of the state election code or equivalent state statute that governs the conduct of local elections, to the extent that an enacting state wishes to include local elections in the coverage of this act.

Comment

The first category of elections delineated in this section is the only category covered by the UOCAVA. However, even for these elections, this act provides additional accommodations to military and overseas voters that are not provided under the UOCAVA. The second and third categories of state and local elections extend the act’s accommodations to non-federal elections not within the UOCAVA scope. These two categories are distinguished primarily to permit an enacting state more easily to consider providing different accommodations to military and overseas voters depending on the type of election.

SECTION 4. ROLE OF [SECRETARY OF STATE].

(a) The [Secretary of State] is the state official responsible for implementing this [act] and the state’s responsibilities under the Uniformed and Overseas Citizens Absentee Voting Act,

42 U.S.C. Section 1973ff et seq.

(b) The [Secretary of State] shall make available to covered voters information regarding voter registration procedures for covered voters and procedures for casting military-overseas ballots. The [Secretary of State] may delegate the responsibility under this subsection only to the state office designated in compliance with Section 102(b)(1) of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff-1(b)(1).

(c) The [Secretary of State] shall establish an electronic transmission system through which a covered voter may apply for and receive voter registration materials, military-overseas ballots, and other information under this [act].

(d) The [Secretary of State] shall:

(1) develop standardized absentee-voting materials, including privacy and transmission envelopes and their electronic equivalents, authentication materials, and voting instructions, to be used with the military-overseas ballot of a voter authorized to vote in any jurisdiction in this state; and

(2) to the extent reasonably possible, coordinate with other states to carry out this subsection.

(e) The [Secretary of State] shall prescribe the form and content of a declaration for use by a covered voter to swear or affirm specific representations pertaining to the voter's identity, eligibility to vote, status as a covered voter, and timely and proper completion of an overseas-military ballot. The declaration must be based on the declaration prescribed to accompany a federal write-in absentee ballot, as modified to be consistent with this [act]. The [Secretary of State] shall ensure that a form for the execution of the declaration, including an indication of the date of execution of the declaration, is a prominent part of all balloting materials for which the

declaration is required.

Comment

Each state will need to supply the appropriate title for its chief elections authority, whether it is the Secretary of State, head or director of the State Board of Elections, or other official or entity. Where this authority is an organization, rather than an individual, the phrase “state official” in subsection (a) may also merit alternative phrasing. The expectation is that this authority in turn will delegate its duties at least in part to the same office that the state has designated to fulfill the UOCAVA requirement that the state designate a state office to facilitate the state’s compliance with the UOCAVA. Other duties may naturally devolve to local election officials, depending on how the state has structured its election processes generally.

In most states, the implementing authority specified in subsection (a) presumably already has authority to promulgate rules according to the existing rulemaking procedures of the state. States in which this rulemaking authority is not already established may wish to include additional language establishing authority to make rules to implement this act.

The requirement that states develop “standardized” voting materials is not meant to require statewide uniformity in voting equipment and processes where such uniformity does not already exist. Thus, in states using different voting systems in different jurisdictions around the state, “standardized” voting materials may include one standard for jurisdictions using one system, and another standard for jurisdictions using another system. Nevertheless, the state’s chief elections authority should work with local election officials to simplify and standardize as much as possible the materials provided to voters, including developing standard identifying labels and other markings on such materials to expedite their handling. Such standardization is critical primarily because it will simplify the voting experiences of covered voters and enable a variety of support groups to provide more effective assistance to these voters as a group. Greater uniformity also should ease administrative duties and facilitate future reforms to the voting process.

The “electronic equivalent” of privacy envelopes and transmission envelopes means at a minimum a template or instructions to accompany the electronic delivery of an unvoted ballot that assist the voter to prepare and use appropriate envelopes to return the voter’s marked ballot if the voter is returning the ballot physically through the mail. If a state is allowing a voter to return a marked ballot electronically, the state generally should employ digital encryption or other security measures to provide comparable protection of the integrity and secrecy of the marked ballot.

The electronic transmission method established under subsection (c) should be designed to protect the integrity of the transmission and the privacy of the voter’s personal data contained in the transmission. To a similar end, the recent amendments to UOCAVA include provisions requiring that “to the extent practicable,” electronic transmission methods “shall ensure that the privacy of the identity and other personal data of an absent uniformed services voter or overseas voter is protected” and also shall “protect the security and integrity of the transmission.”

SECTION 5. OVERSEAS VOTER'S REGISTRATION ADDRESS. In registering to vote, an overseas voter who is eligible to vote in this state shall use and must be assigned to the voting [precinct] [district] of the address of the last place of residence of the voter in this state, or, in the case of a voter described by Section 2(1)(E), the address of the last place of residence in this state of the parent or legal guardian of the voter. If that address is no longer a recognized residential address, the voter must be assigned an address for voting purposes.

Comment

This section specifies the address of the last place of residence as the address to be used as the voter registration address, and instructs election officials to assign an administratively convenient address to a voter who has no last place of residence in the state. When election officials must assign a voter a non-standard address, where possible they should place the voter in the same precinct or district as the last place of residence, were it still a recognized residential address.

SECTION 6. METHODS OF REGISTERING TO VOTE.

(a) To apply to register to vote, in addition to any other approved method, a covered voter may use a federal postcard application, or the application's electronic equivalent.

(b) A covered voter may use the declaration accompanying a federal write-in absentee ballot to apply to register to vote simultaneously with the submission of the federal write-in absentee ballot[, if the declaration is received by [insert this state's voter registration deadline for that election]]. [If the declaration is received after that date, it must be treated as an application to register to vote for subsequent elections.]

(c) The [Secretary of State] shall ensure that the electronic transmission system described in Section 4(c) is capable of accepting both a federal postcard application and any other approved electronic registration application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to register to vote.

Comment

Both this section and Section 7 are designed to encourage the use of the federal postcard application while yet allowing military and overseas voters to use a state's pre-existing voter forms, and to permit states to develop alternative forms if they wish. However, the sections are not intended to require states or local election jurisdictions to revise their existing forms, or to prepare new forms for voters covered under this act. Instead, to the extent that a state's existing forms do not collect sufficient information to properly classify overseas and military voters, Section 7(e) requires voters who use the state forms to affirmatively indicate their status as a covered voter. States that choose to revise their forms for whatever reason should ensure that the revised forms facilitate voting under this act.

SECTION 7. METHODS OF APPLYING FOR MILITARY-OVERSEAS

BALLOT.

(a) A covered voter who is registered to vote in this state may apply for a military-overseas ballot using either the regular [absentee ballot] application in use in the voter's jurisdiction under [reference state law on regular absentee ballots] or the federal postcard application or the application's electronic equivalent.

(b) A covered voter who is not registered to vote in this state may use a federal postcard application or the application's electronic equivalent to apply simultaneously to register to vote under Section 6 and for a military-overseas ballot.

(c) The [Secretary of State] shall ensure that the electronic transmission system described in Section 4(c) is capable of accepting the submission of both a federal postcard application and any other approved electronic military-overseas ballot application sent to the appropriate election official. The voter may use the electronic transmission system or any other approved method to apply for a military-overseas ballot.

(d) A covered voter may use the declaration accompanying a federal write-in absentee ballot as an application for a military-overseas ballot simultaneously with the submission of the federal write-in absentee ballot, if the declaration is received by the appropriate election official

by [insert the later of the fifth day before the election or the last day for other voters in this state to apply for [an absentee ballot] for that election].

(e) To receive the benefits of this [act], a covered voter must inform the appropriate election official that the voter is a covered voter. Methods of informing the appropriate election official that a voter is a covered voter include:

- (1) the use of a federal postcard application or federal write-in absentee ballot;
- (2) the use of an overseas address on an approved voter registration application or ballot application; and
- (3) the inclusion on an approved voter registration application or ballot application of other information sufficient to identify the voter as a covered voter.

[(f) This [act] does not preclude a covered voter from voting under [insert state law on regular absentee voting].]

Comment

The reference in subsection 7(a) to the voter's "jurisdiction" is a reference to the place where the voter is registered to vote. Both this section and Section 6 are designed to encourage the use of the federal postcard application while yet allowing military and overseas voters to use a state's pre-existing voter forms, and to permit states to develop alternative forms if they wish. However, the sections are not intended to require states or local election jurisdictions to revise their existing forms, or to prepare new forms for voters covered under this act. Instead, to the extent that a state's existing forms do not collect sufficient information to properly classify overseas and military voters, Section 7(e) requires voters who use the state forms to affirmatively indicate their status as a covered voter. The bracketed language in subsection (d) mirrors bracketed language in the first sentence of section 8, and allows covered voters in states with an existing absentee ballot application deadline that is closer than five days before election day to take advantage of that later deadline.

SECTION 8. TIMELINESS AND SCOPE OF APPLICATION FOR MILITARY-OVERSEAS BALLOT. An application for a military-overseas ballot is timely if received by [insert the later of the fifth day before the election or the last day for other voters in this state to

apply for [an absentee ballot] for that election]. An application for a military-overseas ballot for a primary election, whether or not timely, is effective as an application for a military-overseas ballot for the general election. [An application for a military-overseas ballot is effective for a runoff election necessary to conclude the election for which the application was submitted.]

Legislative Note: The bracketed language about a runoff election is only for states with runoff elections.

Comment

Many states accept regular absentee ballot applications up until just a few days before an election, or later. Because military and overseas voters can use electronic transmission methods both to request and to receive blank ballots, this section allows them to take advantage of an application deadline close to the election.

SECTION 9. TRANSMISSION OF UNVOTED BALLOTS.

(a) For an election described in Section 3 for which this state has not received a waiver pursuant to Section 579 of the Military and Overseas Voter Empowerment Act, 42 U.S.C. 1973ff-1(g)(2), not later than 45 days before the election or, if the 45th day before the election is a weekend or holiday, not later than the business day preceding the 45th day, the election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit a ballot and balloting materials to all covered voters who by that date submit a valid military-overseas ballot application.

(b) A covered voter who requests that a ballot and balloting materials be sent to the voter by electronic transmission may choose facsimile transmission or electronic mail delivery, or, if offered by the voter's jurisdiction, Internet delivery. The election official in each jurisdiction charged with distributing a ballot and balloting materials shall transmit the ballot and balloting materials to the voter using the means of transmission chosen by the voter.

(c) If a ballot application from a covered voter arrives after the jurisdiction begins

transmitting ballots and balloting materials to voters, the official charged with distributing a ballot and balloting materials shall transmit them to the voter not later than two business days after the application arrives.

SECTION 10. TIMELY CASTING OF BALLOT. To be valid, a military-overseas ballot must be received by the appropriate local election official not later than the close of the polls, or the voter must submit the ballot for mailing[, electronic transmission,] or other authorized means of delivery not later than 12:01 a.m., at the place where the voter completes the ballot, on the date of the election.

Comment

Requiring that the ballot be completed by 12:01 a.m. local time on Election Day ensures that covered voters will not be able to cast a vote with knowledge of the election night returns of the jurisdiction whose ballot the voter is voting. One way in which a military-overseas ballot may be submitted for mailing by a uniformed service member is by giving the ballot to the mail clerk or designated service member responsible for handling mail for a particular unit of the uniformed services. Also allowing a valid ballot to be received by local officials through the close of the polls will increase the voting time available in those circumstances in which facsimile or other electronic transmission of voted ballots is permitted.

SECTION 11. FEDERAL WRITE-IN ABSENTEE BALLOT. A covered voter may use a federal write-in absentee ballot to vote for all offices and ballot measures in an election described in Section 3.

SECTION 12. RECEIPT OF VOTED BALLOT.

(a) A valid military-overseas ballot cast in accordance with Section 10 must be counted if it is delivered by the end of business on the business day before [the latest deadline for completing the county canvass or other local tabulation used to determine the final official results] to the address that the appropriate state or local election office has specified.

(b) If, at the time of completing a military-overseas ballot and balloting materials, the

voter has declared under penalty of perjury that the ballot was timely submitted, the ballot may not be rejected on the basis that it has a late postmark, an unreadable postmark, or no postmark.

Legislative Note: Enacting states will need to ensure that the perjury laws of the enacting state cover a declaration or affirmation made by the voter under this section.

Comment

The bracketed language in subsection (a) is intended to capture the deadline for the event when local election officials complete or certify their official counting of ballots, by whatever name that event is known in the state. Even those ballots of overseas and military voters that arrive after election day can and must be included in these official results if local election officials have received them by the day before the deadline for this event, giving local election officials that day to process them before making their return or certification.

The act precludes rejecting a military-overseas ballot for lack of a postmark (or for a late postmark) in light of the fact that many pieces of military mail enter the postal system through delivery to a mail clerk in a remote location without a postmark, and are only postmarked some days later when they reach a more established facility.

SECTION 13. DECLARATION. A military-overseas ballot must include or be accompanied by a declaration signed by the voter that a material misstatement of fact in completing the ballot may be grounds for a conviction of perjury under the laws of the United States or this state.

Legislative Note: Enacting states will need to ensure that the perjury laws of the enacting state cover a declaration or affirmation made by the voter under this section.

Comment

A declaration made under this section should be structured as an affirmation that plainly subjects a covered voter to the perjury laws of the enacting state.

SECTION 14. CONFIRMATION OF RECEIPT OF APPLICATION AND VOTED BALLOT. The [Secretary of State], in coordination with local election officials, shall implement an electronic free-access system by which a covered voter may determine by telephone, electronic mail, or Internet whether:

(1) the voter's federal postcard application or other registration or military-overseas ballot application has been received and accepted; and

(2) the voter's military-overseas ballot has been received and the current status of the ballot.

SECTION 15. USE OF VOTER'S ELECTRONIC-MAIL ADDRESS.

(a) The local election official shall request an electronic-mail address from each covered voter who registers to vote after [the effective date of this [act]]. An electronic-mail address provided by a covered voter may not be made available to the public or any individual or organization other than an authorized agent of the local election official and is exempt from disclosure under [the public records laws of this state]. The address may be used only for official communication with the voter about the voting process, including transmitting military-overseas ballots and election materials if the voter has requested electronic transmission, and verifying the voter's mailing address and physical location. The request for an electronic-mail address must describe the purposes for which the electronic-mail address may be used and include a statement that any other use or disclosure of the electronic-mail address is prohibited.

(b) A covered voter who provides an electronic-mail address may request that the voter's application for a military-overseas ballot be considered a standing request for electronic delivery of a ballot for all elections held through December 31 of the year following the calendar year of the date of the application or another shorter period the voter specifies[, including for any runoff elections that occur as a result of such elections]. An election official shall provide a military-overseas ballot to a voter who makes a standing request for each election to which the request is applicable. A covered voter who is entitled to receive a military-overseas ballot for a primary election under this subsection is entitled to receive a military-overseas ballot for the general

election.

Legislative Note: In connection with the bracketed language in subsection (a) concerning public records laws, some states require that exceptions to these laws also be specified in the public records law itself. In subsection (b), the bracketed language pertaining to runoff elections is only for states with runoff elections.

Comment

Subsection (a) facilitates the collection of voter e-mail addresses, but depends on assuring voters that their e-mail addresses will not become available for the use of political campaigns and marketers. The subsection allows those jurisdictions that use third-party vendors to print, mail, or otherwise distribute ballots to disclose the e-mail addresses to these vendors, acting as their agents, only for purposes of authorized communications about the voting process. Such jurisdictions should ensure that their vendor contracts properly preclude the vendors from using the addresses other than as authorized by this act. Subsection (b) then ties a voter's ability to make a standing request for a military-absentee ballot to the voter's provision of an e-mail address. This approach is intended to reduce the large quantity of election material that was returned as undeliverable when sent out in hardcopy to an outdated physical address under the now repealed UOCAVA provision that had permitted voters to make a standing request for absentee ballots for two federal election cycles.

SECTION 16. PUBLICATION OF ELECTION NOTICE.

(a) At least 100 days before a regularly scheduled election and as soon as practicable before an election not regularly scheduled, an official in each jurisdiction charged with printing and distributing ballots and balloting material shall prepare an election notice for that jurisdiction, to be used in conjunction with a federal write-in absentee ballot. The election notice must contain a list of all of the ballot measures and federal, state, and local offices that as of that date the official expects to be on the ballot on the date of the election. The notice also must contain specific instructions for how a voter is to indicate on the federal write-in absentee ballot the voter's choice for each office to be filled and for each ballot measure to be contested.

(b) A covered voter may request a copy of an election notice. The official charged with preparing the election notice shall send the notice to the voter by facsimile, electronic mail, or regular mail, as the voter requests.

(c) As soon as [ballot styles are certified], and not later than the date ballots are required to be transmitted to voters under [insert state law on regular absentee voter authorization], the official charged with preparing the election notice under subsection (a) shall update the notice with the certified candidates for each office and ballot measure questions and make the updated notice publicly available.

(d) A local election jurisdiction that maintains an Internet website shall make the election notice prepared under subsection (a) and updated versions of the election notice regularly available on the website.

Legislative Note: The bracketed language “[ballot styles are certified]” in subsection (c) is intended to cover the event when the final ballot for candidates (and issues, when applicable) is available.

Comment

This section ensures that election jurisdictions facilitate voting first by making readily available to overseas and military voters a list of the offices and issues to be contested at an upcoming election, and later by also making candidate names readily and quickly available to these voters, thereby permitting voters who have not received the printed ballot to make the most effective use of the federal write-in absentee ballot.

SECTION 17. PROHIBITION OF NONSUBSTANTIVE REQUIREMENTS.

(a) If a voter’s mistake or omission in the completion of a document under this [act] does not prevent determining whether a covered voter is eligible to vote, the mistake or omission does not invalidate the document. Failure to satisfy a nonsubstantive requirement, such as using paper or envelopes of a specified size or weight, does not invalidate a document submitted under this [act]. In a write-in ballot authorized by this [act] [or in a vote for a write-in candidate on a regular ballot], if the intention of the voter is discernable under this state’s uniform definition of what constitutes a vote, an abbreviation, misspelling, or other minor variation in the form of the name of a candidate or a political party must be accepted as a valid vote.

(b) Notarization is not required for the execution of a document under this [act]. An authentication, other than the declaration specified in Section 13 or the declaration on the federal postcard application and federal write-in absentee ballot, is not required for execution of a document under this [act]. The declaration and any information in the declaration may be compared with information on file to ascertain the validity of the document.

Comment

The reference in subsection (a) to a state's uniform definition of what constitutes a vote acknowledges that states are required by the Help America Vote Act, 42 U.S.C. Section 15481(a)(6), to provide a uniform definition of what constitutes a vote. Under subsection (b), jurisdictions that match the signatures accompanying absentee voters' ballots with the signatures that the jurisdiction maintains in its registered voter file may continue to do so.

SECTION 18. EQUITABLE RELIEF. A court may issue an injunction or grant other equitable relief appropriate to ensure substantial compliance with, or enforce, this [act] on application by:

- (1) a covered voter alleging a grievance under this [act]; or
- (2) an election official in this state.

Comment

In addition to providing an enforcement mechanism for other provisions of this act, this section would also empower courts to adopt emergency rules or procedures in the event that exigent circumstances otherwise make compliance with the act impossible or impracticable.

SECTION 19. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Comment

The act also should be construed in harmony with the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. Section 1973ff et seq.

SECTION 20. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. Section 7003(b).

[SECTION 21. REPEALS. The following are repealed:

- (1)
- (2)
- (3)]

SECTION 22. EFFECTIVE DATE. This [act] takes effect



UNIFORM MILITARY AND OVERSEAS VOTERS ACT

- Frequently Asked Questions -

What is the Uniform Military and Overseas Voters Act (UMOVA)? UMOVA was promulgated by the Uniform Law Commission in 2010, after more than two years of study and drafting. UMOVA is a uniform law drafted for consideration and adoption by state legislatures, to extend to state elections the assistance and protections currently found in federal law for military and overseas citizens who need to vote absentee. UMOVA simplifies and expands, in common-sense fashion, the class of covered voters and covered elections found in federal law. The Act establishes reasonable, standard timetables for application, registration, and provision of absentee ballots and election information for covered voters – importantly, it applies the 45-day federal deadline for provision of materials to covered voters who have applied, to both federal and state elections. The Act establishes the timeframe in which an overseas ballot may be validly voted and submitted by the covered voter and received by state elections officials. UMOVA provides for the designation of a covered voter's address in the event it would otherwise be unclear, expands the registration and voting usage of the FPCA (Federal Post Card Application) and FWAB (Federal Write-In Absentee Ballot) for state elections, and obviates non-essential requirements where the proper declaration is made and subject to penalty of perjury.

What is UOCAVA? The federal Uniformed and Overseas Citizens Absentee Voting Act or "UOCAVA" (42 U.S.C. § 1973ff) was enacted by Congress in 1986. The UOCAVA requires that the states and territories allow uniformed service personnel, their families, and civilian U.S. citizens living abroad, to register and vote absentee in elections for federal offices. Among its key provisions, UOCAVA provides for an application called the Federal Post Card Application (FPCA) that qualified uniformed service personnel and overseas citizens can use to register to vote and request an absentee ballot simultaneously. The law also allows for the use of a "back-up" ballot for federal offices, called the Federal Write-In Absentee Ballot (FWAB). This ballot may be cast by voters covered by the Act who have made timely application for, but have not received, their regular ballot from their state or territory, subject to certain conditions. The U.S. Secretary of Defense has administrative responsibility under UOCAVA, which is assigned to the Federal Voting Assistance Program (FVAP) within the U.S. Department of Defense.

What is the MOVE Act? The federal Military and Overseas Voter Empowerment Act, or "MOVE" Act, was enacted by Congress in 2009 as a subtitle of the National Defense Authorization Act for Fiscal Year 2010. The MOVE Act amended UOCAVA to establish new voter registration procedures that states must follow for federal elections, most of which must be implemented by November 2010. In particular, the MOVE Act requires: that UOCAVA voters

be allowed and able to request registration and balloting materials in electronic form, and that methods for electronic transmission of these materials be established; that validly requested materials be transmitted no later than 45 days prior to the federal election in question (unless the request is received later than that time or the state has received a waiver); expanded acceptance of the FPCA and FWAB for registration and voting in all federal elections; creation of a free-access tracking system for UOCAVA voters to track receipt of their submissions; and that failure to meet non-essential requirements or notarization standards will not prevent acceptance of registration applications or voted ballots. The MOVE Act also requires security procedures for its required processes and enacted various related reporting requirements from both state and federal administrative officials.

Why should states treat military and overseas voters differently? Military and overseas voters face unique challenges and obstacles in exercising their fundamental right to vote that citizens living in the United States do not encounter. These include difficulty in registering abroad, frequent address changes, slow mail delivery or ballots and ballot applications that never arrive, difficulty obtaining information about candidates or issues, inability to comply with notarization or verification procedures, or the voter's failure to properly comply with non-essential requirements for absentee materials. Whether a uniformed service member or an overseas civilian, U.S. citizens abroad still carry many of the same obligations (i.e. federal tax obligations, selective service registration, etc.) that voters at home do – they should enjoy the same rights and the benefit of full enfranchisement. Enactment of UMOVA will help achieve that goal.

By adopting UMOVA, is my state compliant with the federal MOVE Act? UMOVA covers the major goals of the federal UOCAVA and MOVE acts. In large part, enactment of UMOVA should bring states into compliance with the core principles of the federal laws. However, UOCAVA, as amended by the MOVE Act, does require some affirmative planning, activity, and reporting from state officials to implement its provisions. The additional affirmative requirements of the federal law are not duplicative, though, and do not conflict with any of the provisions of UMOVA.

Does adoption of UMOVA require electronic voting? No. The federal laws and UMOVA require that a covered voter be allowed to request voter registration materials, election information, and ballot materials electronically, and have these materials transmitted to them electronically. However, whether or not a state is required to accept a *voted* ballot electronically is left to existing state law.

Why does my state need to adopt UMOVA? For those states that have not adopted legislation to comply with the MOVE Act, enactment of UMOVA will help significantly in bringing them into compliance with the federal requirements of amended UOCAVA. For those states that have

adopted legislation to align with the MOVE Act, UMOVA will extend those benefits and privileges for military and overseas citizens to state and local elections in compatible fashion with the federal requirements. Uniformity in absentee balloting laws among the states will be of great assistance to military and overseas voters who are reassigned frequently and have found the variations in statutes confusing. It will also assist election officials who must assist these voters.

What is the Uniform Law Commission? Founded in 1892, the Uniform Law Commission, also known as the National Conference of Commissioners on Uniform State Laws (NCCUSL), has worked for the uniformity of state laws on topics where uniformity is desirable and appropriate. It is comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners actually appointed (typically by statute). Commissioners are state officials, and all must be attorneys. The Uniform Law Commission provides states with non-partisan, well-conceived and well-drafted state legislation that brings clarity, stability, and harmonization to critical areas of the law. It supports the federal system and facilitates the movement of individuals and the business of organizations with rules that are consistent from state to state. However, like any other proposed legislation, no uniform law becomes the law of a state until it is passed by the state legislature and approved by the state's Governor.

news

CONTACT: STACIE TEMPLE, 202-692-2114 | stemple@pewtrusts.org

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Pew Commends Uniform Law Commission for Military and Overseas Voters Act

Model law for states would remove obstacles and provide more time to vote in all elections

WASHINGTON—The Uniform Law Commission (ULC) took a major step toward improving state election systems by approving the Uniform Military and Overseas Voters Act at its annual meeting today. The model law would resolve longstanding, widespread voting problems in all federal, state and local elections for American military personnel and citizens overseas. In 2011, many of the commissioners will work to enact the model law through legislation in their respective states.

The ULC, also known as the National Conference of Commissioners on Uniform State Laws, now in its 119th year, comprises more than 350 lawyers, judges, law professors, and lawyer-legislators from every state, the District of Columbia, Puerto Rico and the U.S. Virgin Islands. Commissioners are appointed by their states to draft and promote the enactment of uniform laws designed to solve problems common to all the states.

Critical provisions of the Uniform Military and Overseas Voters Act include:

- mandating that absentee ballots for all elections be sent at least 45 days before an election;
- requiring electronic transmission of voting materials, including blank absentee ballots for all elections, upon request;
- eliminating the requirement for notarization of military and overseas ballots; and
- expanding acceptance of the Federal Write-In Absentee Ballot (used as a back-up measure when official ballots aren't received) for all elections.

“In 1952, President Truman urged reform of an election system that disenfranchised those who served in the military in World War II and in the post-war reconstruction,” said Doug Chapin, director of Election Initiatives for the Pew Center on the States. “We commend the ULC for setting both a gold standard and developing a practical solution that states can adopt to finally answer Truman’s call. This new model law will make it easier for those who defend and represent our nation’s democratic ideals around the world to participate in our democracy here at home.”

In January 2009, the Pew Center on the States issued *No Time to Vote: Challenges Facing America’s Overseas Military Voters*, a report which documented that 25 states and the District of Columbia did not provide adequate time for overseas service members to vote and have their ballots counted. At that time, Pew began working with the ULC to inform the drafting of the Uniform Military and Overseas Voters Act.

In October 2009, Congress passed the Military and Overseas Voter Empowerment (MOVE) Act, which removed many of the obstacles to voting and provided more time for military service members and overseas citizens to participate in federal elections. Since then, Pew has been working with states to bring their laws and regulations into compliance with the MOVE Act and expand the new provisions to state and local elections. The ULC's model act provides a clear blueprint for states to go beyond the federal MOVE law and extend key protections for military and overseas voters to any general, special, primary or runoff election for federal, state and local offices and ballot measures.

In addition to its efforts to improve the election system for military personnel and civilians abroad, the Pew Center on the States is partnering with state election officials and Google to develop the Voting Information Project, which will harness modern information technologies to get voters, no matter where they reside, the election information they need. Pew has also been examining the problems posed by the nation's outdated voter registration system and is collaborating with election officials to evaluate options for building a system that is more efficient and accurate, while reducing costs and administrative burdens.

For more information on Pew's Election Initiatives, visit www.pewcenteronthestates.org/elections.

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The Pew Center on the States is a division of The Pew Charitable Trusts that identifies and advances effective solutions to critical issues facing states. Pew is a nonprofit organization that applies a rigorous, analytical approach to improve public policy, inform the public and stimulate civic life.
www.pewcenteronthestates.org

THE MILITARY



DUSTIN SENGER/ARMY

Soldiers fill out absentee ballot forms during a voting assistance drive at Camp As Sayliyah, Qatar, shortly before the 2008 elections. A panel of experts is urging states to pass legislation that would prevent a repeat of the problems many absentee voters have faced.

Improving the absentee voting process

WHAT'S UP: The Uniform Law Commission has approved a model law aimed at resolving absentee voting problems that have plagued military personnel and overseas citizens for years. At a July 15 meeting, the 118-year-old commission made up of lawyers, politicians, judges and academics — formally known as the National Conference of Commissioners on Uniform State Laws — recommended standard voting laws that would include a requirement for ballots to be sent out 45 days before an election, to

use electronic ballots when possible and eliminate any requirement for absentee ballots to be notarized.

WHAT'S NEXT: Next year, many of the commissioners will work to get their own states to enact the model law through legislation. Changes would not happen right away; adopting standardized voting laws in 2011 would come too late to make a difference in the fall elections. But they would be in place in time for the 2012 presidential election.



THE COUNCIL OF STATE GOVERNMENTS

RESOLUTION SUPPORTING THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT

Resolution Summary

Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, despite repeated congressional and state efforts to facilitate their ability to vote. These include difficulty in registering abroad, frequent address changes, slow mail delivery, ballots and ballot applications that never arrive, difficulty in obtaining information about candidates or issues, the inability to comply with notarization or verification procedures, or the voter's failure to properly comply with non-essential requirements for absentee materials. The federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), as well as the various state efforts, have not been wholly effective in overcoming difficulties that these voters face, and the federal laws do not encompass state and local elections. Further, American elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independent of the federal elections to which UOCAVA and MOVE do apply. Lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to fully enfranchise these voters.

At its 2010 Annual Meeting, the national Uniform Law Commission promulgated the Uniform Military and Overseas Voters Act (UMOVA) to address these issues. UMOVA extends to state elections the assistance and protections for military and overseas voters currently found in federal law. It seeks greater harmony for the military and overseas voting process for all covered elections, over which the states will continue to have primary administrative responsibility.

UMOVA simplifies and expands the class of covered voters and covered elections, and establishes reasonable, standard timetables for application, registration, and provision of ballots and election information for covered voters. The act implements the federal requirement of a 45-day minimum window between providing ballot materials to covered voters and the election, and expands use of the FPCA and FWAB for registration, application for materials, and voting. It settles the issue of which address to use for active-duty military and overseas voters. UMOVA requires creation of electronic transmission methods for applications and receipt of registration and balloting materials, and tracking the status of submissions. It requires ballots to be counted where non-essential requirements are not complied with, and obviates notarization requirements where the proper declaration is made under penalty of perjury. The new UMOVA uses and builds upon the key requirements of UOCAVA and MOVE, and makes these important protections and benefits applicable to federal, state, and local elections.

At the 2010 annual meetings of the Southern and Western Legislative Conferences of the Council of State Governments, those regions adopted policy positions supporting their member

states' enactment of UMOVA. Both regions are supportive of the national Council of State Governments adopting a similar resolution.

This policy resolution:

- Asserts that military personnel and overseas civilians experience a wide variety of obstacles in exercising their right to vote;
- Asserts that the national Uniform Law Commission has promulgated a new uniform law to comprehensively address individual as well as systemic obstructions to military and overseas civilian voting, as a matter of state law;
- Asserts that the Southern and Western Legislative Conferences of the Council of State Governments have adopted policy positions in support of the Uniform Military and Overseas Voters Act; and
- Urges CSG member states to adopt the Uniform Military and Overseas Voters Act.

Additional Resources

- Uniform Law Commission – <http://www.nccusl.org>
- Federal Voting Assistance Program – <http://www.fvap.gov/>
- The Pew Charitable Trusts and the Pew Center On the States – http://www.pewtrusts.org/news_room_detail.aspx?id=47924

CSG Management Directives

- **Management Directive #1:** CSG will transmit a copy of this resolution to the executive and legislative leaders in each state, the National Association of Secretaries of State (NASS), the Adjutants General Association of the United States (AGAUS), the Civil Rights Division of the United States Department of Justice, and to the sponsor and co-sponsors of the Military and Overseas Voter Empowerment Act (S.1415) which was incorporated into the 2010 Defense Authorization Act and which mandated the implementation of the policies contained in UMOVA with respect to federal elections.
- **Management Directive #2:** CSG staff will post this approved resolution on CSG's Web site and make it available through its regular communication venues at the state and local level to ensure its distribution to the state government and policy community.

THE COUNCIL OF STATE GOVERNMENTS

RESOLUTION SUPPORTING THE UNIFORM MILITARY AND OVERSEAS VOTERS ACT

WHEREAS, Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, including difficulty in registering abroad, frequent address changes, slow mail delivery, ballots and ballot applications that never arrive, difficulty in obtaining information about candidates or issues, the inability to comply with notarization or verification procedures, and cumbersome non-essential requirements for absentee materials;

WHEREAS, these problems exist despite many state and federal legislative efforts to alleviate them, and the protections of the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment (MOVE) Act of 2009 amendments extend only to federal elections;

WHEREAS, U.S. elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and a lack of uniformity and consistency in procedures for overseas civilians and military personnel is, in itself, a primary obstacle to many of these voters' ability to effectively exercise their right to vote;

WHEREAS, at its 119th Annual Meeting in 2010, the national Uniform Law Commission promulgated the Uniform Military and Overseas Voters Act (UMOVA) to extend application of the protections for military and overseas civilian voters currently found in federal law to state and local elections; simplify and expand the class of covered voters and covered elections; establish reasonable, standard timetables for application, registration, and provision of ballots and election information for covered voters; and to seek greater harmony within state law for the military and overseas voting process for all covered elections; and

WHEREAS, at the 2010 annual meetings of both The Council of State Governments – West and the Southern Legislative Conference of The Council of State Governments, those regions adopted policy positions supporting their member states' enactment of UMOVA.

NOW, THEREFORE BE IT RESOLVED, that The Council of State Governments urges that all member states consider and enact the 2010 Uniform Military and Overseas Voters Act (UMOVA), to help states comply with the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009

(MOVE), and to extend the application of, and broaden the coverage of, the important principles of these laws with regard to state and local elections, for the benefit and enfranchisement of our military personnel and overseas civilians.

BE IT FURTHER RESOLVED, that a copy of this resolution shall be forwarded to the executive and legislative leaders of each state, the National Association of Secretaries of State (NASS), the Adjutants General Association of the United States (AGAUS), the Civil Rights Division of the United States Department of Justice, and to the sponsor and co-sponsors of the Military and Overseas Voter Empowerment Act (S.1415) which was incorporated into the 2010 Defense Authorization Act and which mandated the implementation of the policies contained in UMOVA with respect to federal elections.

Adopted this 6th Day of December, 2010, at CSG's 2010 National Conference in Providence, Rhode Island.

Governor M. Michael Rounds, SD
2010 CSG President

Senate President David L. Williams, KY
2010 CSG Chairman

Guest Column

They protect democracy. Let's protect their votes

By JAMES J. CAREY
Special to Stars and Stripes
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For decades, millions of U.S. military members have made extraordinary sacrifices to protect and represent our nation's system of democracy around the world, while missing out on the democratic process at home. Americans serving overseas have faced numerous obstacles to participating in their own elections. Next month, however, men and women in the armed forces, their families and civilians stationed abroad have a historic chance to cast ballots — and have them count.

In 1952, President Harry Truman implored Congress to reform an election system that disenfranchised those serving in World War II and the postwar reconstruction. Yet for nearly 60 years, the flaws persisted as states wove a complex maze of laws, processes and unrealistic deadlines for citizens seeking to cast ballots from across the globe.

In 2009, the Pew Center on the States published “No Time to Vote,” a report showing that the laws and procedures of 25 states and the District of Columbia left the votes of overseas military personnel at risk of being uncounted. Thankfully, Congress responded with overwhelming bipartisan support later that year by passing the Military and Overseas Voter Empowerment (MOVE) Act.

This November marks the first general federal election since the enactment of that law, which requires states to provide ample time and multiple avenues for ballots to be sent abroad, returned and counted. Registered voters currently serving overseas should have received their ballots and election information by now and should submit them quickly to ensure that their votes count.

As a retired Navy officer with 33 years in the service, I have long looked forward to this day. Years ago, I realized that the election system in our nation did not adequately protect the votes of servicemembers such as submariners at sea patrol or soldiers on the front lines who have limited mail access.

Now, those serving our country can cast their votes with greater assurance. Overseas voters are entitled to receive their ballots for all federal elections earlier (45 days before the election) and faster (through technology such as e-mail). If it still fails to arrive in time, there is also a backup plan — the federal write-in absentee ballot, which can be accessed online, printed as a blank form, filled in manually and sent to an election official.

No longer should members of our military have to deal with cumbersome obstacles or worry that their votes won't count. No longer should they have to find a notary to vote or have ballots rejected because of early deadlines and mail delays.

And yet, while these measures are a significant step forward, still more must be done to protect the votes of servicemembers and overseas Americans in all elections. That's why the Uniform Law Commission, which drafts and promotes legislation across states to address problems common to all of them, has developed the Uniform Military and Overseas Voters Act. The group, with Pew's support, created the model law that extends the MOVE Act's requirements to the state and local level. State legislatures will begin the process of considering it when they convene next year.

As efforts continue to streamline military and overseas voting, new opportunities for reform are beginning to emerge. For example, we should use the latest proven technology to eliminate the obstacles to voting created by the nation's increasingly obsolete voter registration system. Pew is working with election officials and technology experts to design a modernized system to improve the accuracy of state voter rolls, thus reducing the threat of fraud, while ensuring that voters' registration records are always up-to-date. This is especially important for military and overseas voters, whose ballots are far more likely to be misdirected and returned undeliverable because of outdated or incorrect information.

Truman understood that the sacrifices of our military shouldn't include sacrificing the right to vote. Americans overseas deserve a fighting chance to have their ballots count. With more time and better use of technology, this is finally a reality in federal elections.

Next month, I hope that all who proudly serve our country abroad will help make history by participating in the democracy they dutifully protect.

For help casting overseas ballots, visit fvap.gov or overseasvotefoundation.org

Rear Adm. James J. Carey (retired) has been involved in military voting rights for the past 30 years. He serves as a senior policy adviser to the Pew Center on the States, a division of The Pew Charitable Trusts, and is national chairman of the National Defense Committee.

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Excellent article, Adm. Carey. Voting is a right and a privilege that must be available to all our troops on a non-partisan basis. We salute your vigilance and hard work on this issue. Elaine Donnelly President, Center for Military Readiness

1. PROPOSED POLICY POSITION

UNIFORM MILITARY AND OVERSEAS VOTERS ACT (UMOVA)

BACKGROUND

Military personnel and overseas civilians face a variety of challenges to their participation as voters in U.S. elections, despite repeated congressional and state efforts to facilitate their ability to vote. These include difficulty in registering abroad, frequent address changes, slow mail delivery of ballots and ballot applications that never arrive, difficulty in obtaining information about candidates or issues, the inability to comply with notarization or verification procedures, or the voter's failure to properly comply with non-essential requirements for absentee materials. The federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), as well as various state efforts, have not been wholly effective in overcoming these difficulties. The federal laws do not encompass state and local elections. Further, U.S. elections are conducted at the state and local levels under procedures that vary dramatically by jurisdiction, and many are conducted independently of the federal elections to which UOCAVA and MOVE apply. This lack of uniformity, and lack of application of the federal statutes to state and local elections, complicates efforts to more fully enfranchise these voters.

At its 2010 Annual Meeting, the national Uniform Law Commission promulgated the Uniform Military and Overseas Voters Act (UMOVA) to address these issues. The Act extends to state elections the assistance and protections for military and overseas voters currently found in federal law. It seeks greater harmony for the military and overseas voting process for all covered elections, over which the states will continue to have primary administrative responsibility.

The Uniform Military and Overseas Voters Act simplifies and expands, in common sense fashion, the class of covered voters and covered elections, and establishes reasonable, standard timetables for application, registration, and provision of ballots and election information for covered voters. Further, it settles the issue of which address should be used for active duty military and overseas voters. The Act allows voters to make use of electronic transmission for applications and receipt of registration and balloting materials, as well as tracking the status of submissions. It requires votes to be counted where non-essential requirements are not in compliance, and obviates notarization or other verification requirements where the proper declaration is made under penalty of perjury. The UMOVA uses and builds upon the key requirements of UOCAVA and MOVE, and makes these important protections and benefits applicable to federal, state, and local elections.

RECOMMENDATION

The Southern Legislative Conference of The Council of State Governments recommends its member states enact the 2010 Uniform Military and Overseas Voters Act (UMOVA) to facilitate compliance with the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA) and Military and Overseas Voter Empowerment Act of 2009 (MOVE), and to extend the application of these important principles to state and local elections for the benefit and enfranchisement of our military personnel and overseas civilians.

Adopted by the SLC Policy Positions Committee, August 2, 2010, Charleston, South Carolina.

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COMMENTARY

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Protecting the Voting Rights of Military and Overseas Voters



Steven F. Huefner

*Professor of Law; Director of Clinical Programs; Legislation Clinic Director; Senior Fellow, Election Law @ Moritz
Moritz College of Law*

Last week marked not only the end of this year's primary election season, but also the date when, under a new provision of federal law, states were required to send absentee ballots for the upcoming federal elections to U.S. military and overseas citizens. Specifically, last Saturday, September 18, was the 45th day prior to the November 2 general election. Under the Military and Overseas Voter Empowerment Act ("MOVE"), which Congress passed in 2009, the 45th day before a federal election is the deadline (except in a handful of states that recently received a waiver of this requirement) for sending absentee ballots to voters covered by the Uniformed and Overseas Citizens Absentee Voting Act ("UOCAVA"). This is a substantial improvement in the law protecting the voting opportunities of military and overseas voters, but precisely how well these voters are served, both by the requirements of the new governing law itself, and as a matter of the implementation of that law, merits close attention over the next two months.

U.S. military personnel and overseas civilians, who are collectively estimated to constitute approximately six million potential voters, have long struggled with greater voting challenges than most absentee voters face. These challenges reflect both the high degree of transiency of these citizens, as well as the difficulties of delivering mail to and from remote locations around the globe. Although military voters have tended to register to vote at rates higher than those of the general population, their voting participation rates have usually been dramatically lower. For some of these potential voters, blank ballots may never arrive, or may arrive too late to be timely cast, or may be timely cast but returned too late to be counted. Other voters may find the process of applying for an absentee ballot from abroad too complicated, or may have difficulty getting information about candidates and issues. In its 2009 study "[No Time to Vote](#)," the Pew Center on the States found that more than one third of U.S. states do not provide enough time for military voters abroad to reliably cast their ballots, and that half of the states needed to improve their absentee balloting processes for these voters.

The MOVE Act seeks to address some of the difficulties facing military and overseas voters in part by mandating that states provide these voters a minimum 45-day time period for the round-trip that begins when a blank ballot is sent to a voter and ends when a voted ballot is returned to an election official. In addition, the act requires states to establish electronic means for voters to register to vote and to apply for an absentee ballot, as well as electronic means for election officials to send voters the blank absentee ballot itself. The act does not require states to permit voters to *cast* their absentee ballot electronically (although a handful of states have independently begun to permit some limited electronic voting, even if it is just accepting a faxed version of a paper ballot in some special circumstances). MOVE also prohibits the imposition of notarization requirements, which can be particularly onerous in some foreign jurisdictions, on ballots cast by military and overseas voters.

Last year's MOVE Act is but the latest in a series of congressional efforts over many decades to reduce the challenges

and to improve the absentee balloting process for military and U.S. citizens abroad. MOVE itself was an amendment to UOCAVA, a 1986 measure that established special voting rights and protections for military service members, their families, and U.S. civilians abroad. Yet notwithstanding the many previous federal efforts, difficulties for military and overseas voters have persisted, in large part because U.S. elections are conducted at the state and local level under procedures that vary widely from jurisdiction to jurisdiction. This panoply of divergent requirements and processes has complicated the efforts of military voting assistance officers, State Department officials, and non-governmental organizations to help individual voters.

Because of these difficulties, for the past two years the Uniform Law Commission ("ULC," also known as the National Conference of Commissioners on Uniform State Laws) has been drafting a uniform state law for military and overseas voters. That effort concluded earlier this summer with the ULC's approval of the Uniform Military and Overseas Voters Act ("UMOVA"). [Disclosure: I served as the Reporter for the ULC drafting committee that drafted UMOVA.] A copy of UMOVA is [available here](#), and state legislatures are now beginning to consider adopting this act. While building upon existing federal law in the area, UMOVA also would extend protection to state and local elections not held in conjunction with the federal elections that MOVE and UOCAVA cover, and would provide additional uniformity in the voting process for military and overseas voters across the states.

Obviously, no state will adopt UMOVA in time for it to affect the November 2010 election. Instead, improvements this year in the participation of military and overseas voters are most likely to come from individual state responses to last year's MOVE Act. But regardless of how well state efforts to become MOVE compliant succeed in improving the 2010 voting experience of UOCAVA voters, the 2010 election is likely to establish that UMOVA deserves to be widely enacted across the U.S. for future elections.

Among other things, while MOVE's 45-day requirement surely will improve the voting participation rate of many UOCAVA voters, it does not apply to non-federal elections, as UMOVA would. In addition, although the 45-day time period will be a substantial improvement in some states, even 45 days may not always be enough for some potential voters. Indeed, the extent to which the 45-day period is sufficient will deserve careful monitoring during this election. UMOVA would extend this time period by allowing ballots cast before Election Day to reach local election officials *after* Election Day, as long as they are received in time to be included in the local canvass. This is an accommodation that several states have already made in litigation or in negotiation with the U.S. Department of Justice, and standardizing this practice across all states would enfranchise additional voters.

The MOVE Act's centerpiece, its 45-day requirement, itself reflects another accommodation between the desire to fully enfranchise military service personnel, on the one hand, and some of the logistical challenges that election officials face in conducting an election, on the other, as well as the political realities of many states' existing primary election calendars. Until the official canvass (and any potential recounts and contests) of the primary election is complete, local election jurisdictions cannot finalize their general election ballots. Thus, it would have been problematic for a state still tallying the official results of its primary election from last Tuesday to send out absentee ballots last Saturday. Accordingly, complying with the 45-day requirement demands that a state's primary election occur at least two months before the general election, and ideally earlier than that. (Although the fact that ballots can be transmitted electronically means not only that they can be available to the voter almost immediately after the ballot content and style are finalized, without the delays typically associated with mail delivery, but also that the time between primary election and absentee ballot distribution may be somewhat reduced, without the need to wait for ballots to be printed.)

But how well is this accommodation working? As this first election under MOVE unfolds, a number of questions about the 45-day minimum deserve attention. The threshold question, immediately pertinent, is whether ballots are already available for these voters? Are states that did not request a waiver of the 45-day deadline in fact complying with the deadline? If not, why not? In the four states (Alaska, Colorado, Hawaii, and Wisconsin, along with the District of Columbia and the U.S. Virgin Islands) that sought a waiver this year but were denied it, what is happening to protect these voters? In the five states (Delaware, Massachusetts, New York, Rhode Island, and Washington) that received a waiver of this requirement for this election, will they be able to comply with the 45-day requirement in 2012?

Beyond these questions about the round-trip time requirement, many other questions also are worth considering in this first MOVE election: How well are the electronic methods of transmitting ballot applications and blank ballots working? Are voters better able to get the information and assistance they need? Can they complete the ballot and

accompanying materials successfully? Are they in fact casting a ballot that ultimately is counted? If not, why not? Will enforcing their participation rights, particularly in a close election, eventually become a matter of litigation?

In short, the voting experiences of military and overseas voters deserve careful attention in the federal midterm elections now underway. Between now and mid-November there likely will be multiple opportunities to continue to reflect on how to further facilitate these voters' participation. This reflection may confirm that the MOVE Act framework is sensible and therefore worth extending to state and local elections. It also may suggest how, for purposes of protecting this particularly deserving subset of the American electorate, federal law alone remains less effective than an effort to develop a more uniform voting process for these voters in every state, as UMOVA seeks to do. Given that elections themselves are state rather than federal undertakings, the value of additional state control over this process should not come as a surprise.

Steven F. Huefner has wide-ranging election law experience and interests, including the specific areas of contested elections, term limits in state legislative elections, military and overseas voting, legislative redistricting, and poll worker responsibility and training. Prior to joining the faculty at Moritz, Professor Huefner spent five years in the U.S. Senate's Office of Legal Counsel, where his responsibilities included advising the U.S. Senate in matters of contested Senate elections, as well as assisting in the 1999 presidential impeachment trial. [View Complete Profile](#)

Election Law @ Moritz | The Ohio State University Michael E. Moritz College of Law | electionlaw@osu.edu

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