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—
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*new
file
Voting
Rights*

January 4, 1984

Mr. Morton Bickwell
Office of Public Liaison
The White House
Washington, DC 20500

Re: Voting rights of military and overseas
citizens

Dear Morton:

Thank you for your telephone call yesterday. At your invitation, I would like to provide you some information about military and overseas citizens and the problems they have in voting by absentee ballot.

WHO ARE THE MILITARY AND OVERSEAS CITIZENS?

As of March 31, 1983, there were 2,127,422 military personnel on active duty in the Department of Defense, plus about 36,000 in the Coast Guard, which is in the Department of Transportation. With the exception of a relative handful who are aliens or 17-year-olds, all are eligible to vote. These active duty personnel have almost 1 million adult spouses and dependents, almost all of whom are eligible to vote. There may be as many as 2 million adult American civilians overseas, and they are eligible to vote at least in federal elections.

For tax reasons explained in my enclosed article entitled "Domicile of Military Personnel and Their Spouses for Voting and Taxation Purposes", most military personnel vote by absentee ballot, even when they are stationed in the United States. As of March 31, 1983, there were 243,705 military personnel "afloat", not including the Coast Guard; there were 1,610,353 stationed in the United States, including Alaska, Hawaii, Guam, etc.; and the remainder were outside the United States but ashore.

Military personnel and dependents vote heavily Republican when they do vote. In this regard, you might be interested in some statistics from a controversial state representative race in Texas in 1980. District 57-C was composed of several suburbs of San Antonio, including Randolph Air Force Base. In the precincts making up that district, there were 3,021 absentee-by-mail ballots, of which 2,804 were cast by military personnel or dependents. Overall, the Republican challenger

received barely 51% of the vote, but among the absentee-by-mail ballots he won 1,711 to 911.

I believe that overseas civilians, most of whom are managerial/professional employees of major corporations, also vote heavily Republican. Thanks to President Reagan and the Republicans in Congress, overseas civilians received a much-needed tax break as part of the Economic Recovery Tax Act of 1981. REPUBLICANS ABROAD is doing an outstanding job of passing this word to overseas Americans all over the world.

According to a Department of Defense survey (see enclosed Navy Times reprint summarizing it), approximately 40% of military personnel voted in the 1980 presidential election, 10% tried to vote but were unable to do so, and 50% made no effort to vote.

For overseas civilians, a separate DoD survey showed that only about 25% tried to vote, many of them unsuccessfully. As a result of the efforts of REPUBLICANS ABROAD, I believe that a much higher percentage will vote, or at least try to vote, in 1984.

DISENFRANCHISEMENT OF MILITARY AND OVERSEAS CITIZENS

The basic problem is that regardless of how early the voter applies for an absentee ballot, the local election official probably won't start mailing out ballots until about 3 weeks before the election, and in 45 states an absentee ballot must be ACTUALLY RECEIVED (not just post-marked) by election day. For many military personnel, especially those at sea or at isolated overseas duty stations, 3 weeks is insufficient time for the ballot to go from the local election official to the voter and back. The same is true for many overseas civilians, especially those who live in countries (like Italy) with terrible postal services.

Another problem, particularly for overseas civilians, is cumbersome NOTARIZATION REQUIREMENTS, which approximately half the states have. (Some states require that the application for an absentee ballot be notarized, some require that the ballot-return-envelope be notarized, and a few require that both be notarized.) In most countries, notaries public are not as inexpensive and readily available as they are here. In some countries, the system of jurisprudence does not even contain the notion of an "oath" or an "official authorized to administer oaths." Of course, one can get voting materials notarized at an American Embassy, but many overseas Americans live far from the capital cities of their host countries. The Federal Voting Assistance Program (in DoD) has letters on file from overseas Americans who report having to travel up to 75 miles or spend up to \$75 to get a single piece of voting material notarized.

WHAT I HAVE DONE ABOUT THIS

Over the past 2½ years, I have written to 47 Governors, more than 400 state legislators, 46 state directors of veterans affairs, 43 state adjutants general (heads of state National Guard contingents), 50 VFW State Commanders, and thousands of other people. I have recruited 357 volunteers or contacts, some of whom have been very active.

Reform bills have been enacted in California, Connecticut, Indiana, Maine, Tennessee, and Texas. (The new Indiana law solves the notarization problem but not the ballot-transmission-time problem.) Bills are pending in New Jersey, Ohio, and Pennsylvania. (The Ohio bill has passed the Senate.) Later this month, bills will be introduced in Virginia and several other states. Bills have been vetoed by Democrat Governors in Colorado and Georgia.

Through my efforts and those of my volunteers, the American Legion, the VFW, and the Reserve Officers Association have adopted national resolutions calling upon the states to mail absentee ballots at least 45 days before the election. I am enclosing a copy of each.

At my request, and using money I have raised (including \$1,100 of my own money), the National Association for Uniformed Services is this month mailing 5,090 letters to legislators in 35 states: Alabama, Arizona, Colorado, Delaware, Florida, Georgia, Hawaii, Illinois, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Jersey, New Mexico, New York, Ohio (House only), Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

I have just started my effort to "make a public fuss" about this issue, through the news media. Over the next few months, I predict that you will see and hear quite a bit about this issue. I am enclosing a copy of a column by Jody Powell in the Dallas Times-Herald issue of November 13, 1983. Jody's column is syndicated to 60 newspapers, but I don't know how many actually ran this particular column. I met Jody on October 1, 1983, at the reunion of the LCI(L) Flotilla 24 Association. (His father served under my late uncle, Rear Admiral A. Vernon Jannotta, in World War II.)

WHAT THE FEDERAL GOVERNMENT SHOULD DO

Overseas citizens, military and civilian, have the right to vote in federal elections as a matter of federal law. See 42 U.S.C. § 1973dd-1. The Attorney General is authorized to sue any state or local election official who violates this right. See 42 U.S.C. § 1973dd-3(a). The Voting Rights Section of the Civil Rights Division at the Department of Justice is responsible for enforcing this law. That same section is also responsible for enforcing the Voting Rights Act, 42 U.S.C. §§ 1973 et seq. (The Voting Rights Act deals with rights of blacks and Hispanics.) Under both Republican and Democrat administrations, enforcement of the Voting Rights Act has received infinitely greater priority than enforcement of the rights of military and overseas citizens. I invite anyone to compare the annotations (case citations) in United States Code Annotated for the Voting Rights Act and for the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act. There are hundreds of annotations for the Voting Rights Act. There is not one single annotation for the Overseas Citizens Voting Rights Act or the Federal Voting Assistance Act.

On August 10, 1983, I wrote to The Honorable Edward C. Schmults, the Deputy Attorney General, on this matter. He responded by letter dated September 6, 1983, expressing interest and inviting me to contact Tim Finn of his staff. I contacted Mr. Finn and arranged a meeting with him for about September 20. Lois Shepard, Chairman of Republicans Abroad, and Mark Hess, Deputy Chief Counsel of the RNC, were also present. During the meeting I urged the Department of Justice to vigorously enforce the Overseas Citizens Voting Rights Act, and I left a "talking paper" with him. I am enclosing a copy of the exchange of correspondence and the "talking paper."

I am aware of only three cases in which the Department of Justice has sued states for violating the voting rights of military and overseas citizens. One case was against New York, one against Colorado, and one against Florida. In each case, these were "friendly suits." (The Secretaries of State asked to be sued.) The Florida case is a good example of how this process works.

In 1980, Florida Secretary of State George Firestone asked the Department of Defense to ask the Department of Justice to sue him. In 1980, by temporary restraining order, Florida's local election officials were required to count absentee ballots received up to 10 days after the election, provided they were postmarked on or before election day. (Post-election ballots were counted only for federal offices.) The Department of Justice and the Secretary of State entered into a consent decree (copy

enclosed) on April 2, 1982, and the decree was approved by United States District Judge William Stafford. (A consent decree is enforceable through the court's contempt power, just like any other court decree.) The decree provided that Florida would again count absentee ballots (for federal offices only) received up to 10 days after the November, 1982 general election. The consent decree provides further as follows:

For federal elections occurring subsequent to 1982, defendants shall, within 60 days after the close of the 1983 regular session of the Florida Legislature, submit to this Court a Plan of Compliance. The Plan shall effect such measures as are necessary and appropriate to permit American citizens residing abroad a reasonable opportunity to return their ballots for federal primary (first, second, and presidential primaries) and general elections prior to the deadline for receipt of ballots.

Consent decree at page 8.

The problem in Florida has been the lateness of the runoff primary: the first week of October. Until the primary has been completed and its results certified, the local election officials cannot send the ballot to the printer, much less start mailing out ballots. In the past, local election officials in Florida have not had ballots available to be mailed until 12-3 days before the general election. The consent decree says the following about ballot-transmission time:

To insure that all citizens located abroad, protected under the Overseas Citizens Voting Rights Act and the Federal Voting Assistance Act and qualified to vote in Florida, have a reasonable opportunity to return their ballots for primary and general elections prior to the Florida deadline for receipt, it is necessary that Florida election officials mail out ballots to such persons at least 35 days prior to the deadline for the receipt of ballots for such elections...

Consent decree at page 6.

During the 1983 session of the Florida Legislature, an effort was made to eliminate the runoff primary altogether. (Only 9 states, all in the South, require majorities for primary nominations.) Governor Graham, who has never served in the Armed Forces or lived overseas, and who was himself nominated in a runoff primary after coming in second in the first primary, came out strongly against this bill and was instrumental in its defeat. Another important factor in the defeat was the fact that the Department of Defense did not send a witness to any of the legislative hearings on

this bill. The legislators concluded that there wasn't much of a problem, because the Department of Defense didn't care enough to send a representative.

The 1983 Florida Legislature passed H.B. 305, which moves back the date of the runoff primary by one week, to late September. I am totally dissatisfied with this approach. Even with this change, it will not be possible for local election officials to mail ballots more than 19-20 days before the general election. That is barely enough time for the ballot to get to the voter, much less to the voter and back. Recently, I received a letter from a friend who is the Legal Officer on the USS Midway, an aircraft carrier in the Pacific. His letter took 19 days to reach me, one way.

During our meeting with Tim Finn in September, Lois Shepard and I urged the Department of Justice to take a hard line against Florida. Specifically, we urged them to take the position that Florida's "Plan of Compliance" was insufficient and the post-election counting of absentee ballots should be continued and perhaps extended. (Even with the 10 post-election days, Florida provides substantially less than the 35 days of ballot-transmission time which the consent decree stated was required as a minimum.) I have heard nothing from the Department of Justice since September. Tim Finn has not returned my repeated telephone calls. Perhaps you can look into this.

The discussion above, and most of my efforts heretofore, have concerned those military and overseas citizens who try to vote but are disenfranchised by the circumstances of their service or employment. I also think that the Department of Defense can do a much better job of encouraging military personnel and dependents to vote and providing them with timely and accurate forms and information. In this regard, you might be interested in my exchange of correspondence (copies enclosed) with Secretary of the Navy John F. Lehman, Jr., Under Secretary James F. Goodrich, and Assistant Secretary Chapman B. Cox.

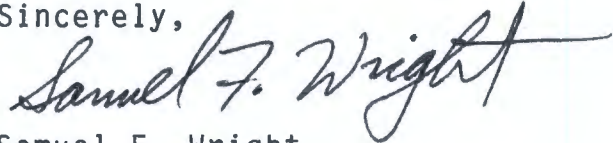
The Federal Voting Assistance Act requires that each member of the Armed Forces and adult dependent be in-hand delivered a Federal Post-Card Application (FPCA) form by August 15 if he is outside the United States or by September 15 if he is inside the United States. See 42 U.S.C. § 1973cc-13(2). Each ship or other command is supposed to have a "voting assistance officer" who distributes FPCA forms and assists personnel in filling them out correctly. All too often, being the voting assistance officer is just one more unwanted task for the most junior Ensign or Second Lieutenant, who is called the "SLJO" (sh.... little jobs officer). There have also been problems in the distribution of FPCA forms, so some voting assistance officers did not even have forms available for personnel asking for them.

From the enclosed Navy Times article quoting Chapman Cox at length, it appears that the voting assistance program may be improving in the Navy and Marine Corps, although a little encouragement from the White House might be appropriate. I don't know much about the situation in the Army, the Air Force, or the Coast Guard.

CONCLUSION

Thank you for your kind attention. Any assistance that you can provide would be greatly appreciated. I recognize that the reforms we are seeking may create some inconvenience for state and local election officials, but it seems to me that these are small accommodations to make to facilitate the enfranchisement of the brave young men and women who are away from home and prepared to lay down their lives in defense of our country. After all, were it not for the sacrifices of military personnel, now and in the past, none of us would have the opportunity to vote in free elections.

Sincerely,



Samuel F. Wright

Enclosures

Copy to: James Schoener, Esquire (National Republican Senatorial Committee)
Mark Braden, Esquire (Republican National Committee)
Ms. Helen Cameron (Reagan-Bush '84 Committee)
Bill Howard, Esquire (National Legal Center for the Public Interest)
Mr. Huck Walther (United States Defense Committee)
Marshall Hendricks, Esquire (Republicans Abroad)
Mr. Eugene Delgaudio (Americans for a Sound Foreign Policy)

SAMUEL F. WRIGHT
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(703) 979-4211

August 10, 1983

The Honorable Edward C. Schmults
Deputy Attorney General
Main Justice Bldg., Room 4111
Washington, DC 20530

Re: Effort to secure reforms in state election laws for
the benefit of military personnel, their spouses
and dependents, and overseas civilians

Dear Mr. Schmults:

I am writing to you at the suggestion of James Schoener, Esquire. I understand that you met with Judge Schoener, Roger Allan Moore, and others on Thursday, August 4. I also understand that when Judge Schoener surfaced the issue of the problems that military and overseas citizens have in absentee voting, you seemed interested.

During the 1978 campaign, I served as the Voting Assistance Officer for the Judge Advocate General of the Navy. During the 1980 campaign, I served as the Absentee Voting Chairman for the Harris County Republican Party in Houston, Texas. In both of those capacities, I became aware of the many frustrating technical impediments (especially mail delays) that often disenfranchise military personnel, their spouses and dependents, and overseas civilians.

According to a Department of Defense survey (see enclosure), approximately 182,000 military personnel who tried to vote in the 1980 presidential election were unable to do so, because they received their absentee ballots too late or not at all. This figure does not include those personnel who are not aware that their ballots were not counted, because local election officials received them after the election. The figure also does not include military dependents and other overseas civilians. If these were included, the number of disenfranchised voters would be several hundred thousand.

The basic problem is that regardless of how early the voter applies for an absentee ballot, the local election official probably won't start mailing out ballots until about 3 weeks before the election, and in 45 states an absentee ballot must be actually received (not just postmarked) by election day. For many military personnel, especially those at sea or at isolated overseas duty stations, 3 weeks is insufficient time for the ballot to go from the local election official to the voter and back. The same is true for many overseas civilians, especially those who live in countries (like Italy) with terrible postal services.

The most serious problem is in those states with primaries after September 1, because until the primary process has been completed and its results determined, the local election official cannot send the ballot to the printer, much less start mailing out ballots. The states with primaries or runoff primaries after September 1 are the following: Alabama (9/25 runoff), Arizona (9/11), Colorado (9/11), Delaware (9/8), Florida (9/27 runoff), Georgia (9/4 runoff), Hawaii (9/22), Louisiana (9/15), Massachusetts (9/18), Minnesota (9/11), Nevada (9/11), New Hampshire (9/11), New York (9/11), Oklahoma (9/18 runoff), Rhode Island (9/11), Utah (9/11), Vermont (9/11), Washington (9/18), Wisconsin (9/11), and Wyoming (9/11).

Overseas citizens (military and civilian) have the right to vote in federal elections as a matter of federal law. (See 42 U.S.C. § 1973dd-1.) The Attorney General is authorized to sue any state or local election official who is denying overseas citizens their right to vote in federal elections. Within the Department of Justice, this responsibility is assigned to the Voting Rights Section of the Civil Rights Division. That Section is, of course, also responsible for enforcing the Voting Rights Act. I think it is significant that in United States Code Annotated there are hundreds of annotations for the Voting Rights Act, but not one single annotation for the Overseas Citizens Voting Rights Act or the Federal Voting Assistance Act, 42 U.S.C. § 1973cc et seq.

I am aware of only three lawsuits that the Department of Justice has filed under the Overseas Citizens Voting Rights Act, against Colorado, Florida, and New York. I think that roughly half the states should be sued.

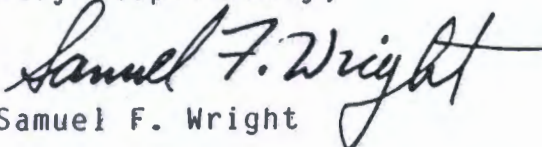
In the Department of Defense there is a "Federal Voting Assistance Program", responsible for protecting the voting rights of military and overseas citizens, in conjunction with the Department of Justice. The Director of the Program is Henry Valentino. He has four attorney positions, but at least two of them are currently vacant. Each military command around the world is supposed to have a voting assistance officer to pass out Federal Post-Card Application forms and to assist personnel in filling them out correctly; but Mr. Valentino has no field organization in the states and counties to monitor the performance of state and local election officials.

I understand that the Department of Justice considers filing suits under the Overseas Citizens Voting Rights Act only when Mr. Valentino requests such action. I also understand that Mr. Valentino does not even consider recommending a lawsuit until he gets a specific complaint. Unfortunately, Mr. Valentino does not know when absentee ballots are mailed in San Diego or Seattle or Miami. His primary source of information in this regard is the frantic telephone calls he receives from military personnel around the world in the last few days before the election, asking "Where the Hell is my absentee ballot?" As you can imagine, that information is too late and too fragmentary to be of much use.

As is explained in the enclosed Navy Times article, I have undertaken to secure reforms in state election laws for the benefit of military and overseas citizens. I am trying to recruit a network of volunteers to work on state and local election officials and state legislators. So far, I have recruited 263 volunteers, and we have gotten reform bills passed in California, Connecticut, Indiana, Maine, Tennessee, and Texas. The volunteers I have recruited, many of whom are lawyers, could be of assistance in gathering information and targeting states for suits by the Department of Justice. I am interested in discussing this matter with you or with someone on your staff.

Thank you for your kind attention. Any assistance that you can provide would be greatly appreciated. I recognize that the reforms we are seeking may create some inconvenience for state and local election officials, but it seems to me that these are small accommodations to make to facilitate the enfranchisement of the brave young men and women who are away from home and prepared to lay down their lives in defense of our country. After all, were it not for the sacrifices of military personnel, now and in the past, none of us would have the opportunity to vote in free elections.

Very respectfully,


Samuel F. Wright

Enclosures

Copy to: James Schoener, Esquire
Roger Allan Moore, Esquire
Ms. Lois Shepard (Republicans Abroad)



U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

September 6, 1983

Samuel F. Wright, Esq.
1201 S. Scott Street #422
Arlington, Virginia 22204

Dear Mr. Wright:

I greatly appreciated the information which you sent me concerning the problems that various state laws pose for absentee voting by overseas citizens. I commend you for the efforts you have personally made to address these problems.

I agree with you that protection of the voting rights of our military and civilian overseas citizens is a very important matter which deserves our close attention. I will be reviewing with the Civil Rights Division the Department's role in assuring that overseas citizens are not disenfranchised.

Again, thank you for your letter. If you wish to discuss further how your organization's efforts might assist us, you should contact Tim Finn (633-2072) of my staff.

Sincerely,

Edward C. Schmults
Deputy Attorney General

SAMUEL F. WRIGHT
ATTORNEY AT LAW
(MEMBER OF THE TEXAS BAR)
1201 S. SCOTT ST., #422
ARLINGTON, VIRGINIA 22204
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TALKING PAPER
MEETING WITH TIM FINN
ABSENTEE VOTING
MILITARY AND OVERSEAS CITIZENS

NATURE AND EXTENT OF THE PROBLEM

According to a Department of Defense survey (see attachment), approximately 182,000 military personnel who tried to vote in the 1980 presidential election were unable to do so, because they received their absentee ballots too late or not at all. This figure does not include those personnel who are not aware that their ballots were not counted, because local election officials received them after the election. The figure also does not include military dependent and other overseas civilians. If these were included, the number of disenfranchised voters would be several hundred thousand.

The basic problem is that regardless of how early the voter applies for an absentee ballot, the local election official probably won't start mailing out ballots until about 3 weeks before the election, and in 45 states an absentee ballot must be actually received (not just postmarked) by election day. For many military personnel, especially those at sea or at isolated overseas duty stations, 3 weeks is insufficient time for the ballot to go from the local election official to the voter and back. The same is true for many overseas civilians, especially those who live in countries (like Italy) with terrible postal services.

INVOLVEMENT OF THE DEPARTMENT OF JUSTICE

Overseas Americans, military and civilian, have the right to vote in federal elections as a matter of federal law. (See 42 U.S.C. § 1973dd-1.) The Attorney General is authorized to sue any state or local election official who denies this right. (See 42 U.S.C. § 1973dd-3.) In

annotation under the Overseas Citizens Voting Rights Act (OCVRA), 42 U.S.C. §§ 1973dd-1 et seq.) Compare this to the Voting Rights Act (VRA, applying to black and Hispanic voters), where there are hundreds of annotations.

We contend that a state or county violates the OCVRA if its election calendar or system has the effect of disenfranchising overseas citizens, regardless of whether the election officials intend to disenfranchise them. The VRA has been interpreted this way. (See Gaston County v. United States, 395 U.S. 285 (1969).) Congress certainly was aware of this interpretation of the VRA when it enacted the OCVRA, so it must have intended that the OCVRA would be interpreted the same way. Furthermore, the OCVRA is remedial legislation intended to protect a fundamental right, so its terms should be broadly construed to carry out its purpose.

The most serious problem is in the 20 states which have primaries or runoff primaries after September 1. Until the primary has been completed and its results determined, the local election official cannot send the ballot to the printer, much less start mailing out ballots.

Florida is a good example of this problem. That state holds its runoff primary the first week in October, so absentee ballots are not available to be mailed until 12-3 days before the general election. At the request of the Department of Defense, the Department of Justice sued Florida. (The suit started out at least as a friendly suit, since the Secretary of State of Florida wants to solve this problem.) By consent decree (copy attached), Florida's Election Supervisors were required to count absentee ballots for 10 days after the election in both 1980 and 1982.

The consent decree further provides as follows: "For federal elections occurring subsequent to 1982, defendants shall, within 60 days after the close of the 1983 regular session of the Florida Legislature, submit to this court a Plan of Compliance." During the 1983 Session, the Florida Legislature enacted H.B. 1305, which pushes back the date of the second primary by one week, to the last week in September. This does not solve the problem. It still will not be possible for local Election Supervisors to mail ballots early enough. The Department of Justice should take the position that Florida's "Plan of Compliance" is insufficient, and the post-election counting of absentee ballots should be continued.

We also feel that the court order does not go far enough. Even with 10 post-election days added on, the ballot-transmission time is only about 22 days, and the consent decree indicates that the evidence shows that one-way ballot-transmission time can be up to 2½ weeks. Therefore, the post-election counting period should be extended to 23 days, so that a total of 35 days of ballot-transmission time is provided. Furthermore, the requirement that the absentee ballot be postmarked by election day should be eliminated. If the ballot is not mailed until about 12 days before the election, the voter cannot receive it and postmark it until after the election.

Pursuant to the consent decree, Florida counted absentee ballots received up to 10 days after the election, but only for federal elections. We think that military and overseas citizens should have the right to vote in state elections as well. The OCVRA applies only to federal elections, but the Department of Justice is also authorized to sue to enforce the 26th Amendment (See 42 U.S.C. § 1973bb.), and that Amendment gives 18, 19 and 20-year-olds the right to vote in state as well as federal elections. Military personnel are disproportionately in that age group, so Florida's election system violates the 26th Amendment and the 14th Amendment, as well as the OCVRA. The Department of Justice should seek the post-election counting of absentee ballots for all elections in Florida.

Since the evidence in the Florida showed that one-way ballot transmission time of up to 2½ weeks is necessary, the Department of Justice should take the position that 35 days of round-trip ballot-transmission time is required, and any state which provides less should be sued, and the remedy should be a period of post-election counting necessary to make the total 35 days. The Department should publicize this new position now, and the Attorney General should send a letter to the Governor of each affected state. It is hoped that after fair notice is given to the states, most of them will enact the necessary legislation early in 1984, so that litigation will only be necessary in a few states.

It is admitted that the reforms we are seeking may create some inconvenience for state and local election officials, but it is suggested that these are small accommodations to make to facilitate the enfranchisement of the brave young men and women who are away from home and prepared to lay down their lives in defense of our country. After all, were it not for the sacrifices of military personnel, now and in the past, none of us would have the opportunity to vote in free elections.



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20350

2 February 1983

Lieutenant Samuel F. Wright, USNR
1201 South Scott Street, Apt. 422
Arlington, Virginia 22204

Dear Lieutenant Wright,

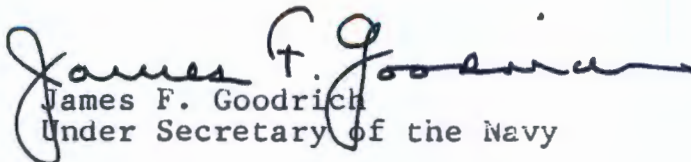
Thank you for your recent letter concerning the Federal Voting Assistance Program (FVAP) and how we might improve its implementation to better serve our personnel.

The FVAP is administered by its director, Mr. Henry Valentino, for the Presidential Designee, the Secretary of Defense. We are working closely with officials of the Federal Voting Assistance Office (FVAO) in a concerted effort geared toward improving all areas of the program. We have arranged for the automatic distribution of Federal Post Card Applications (FPCA) to each naval activity commencing with the 1984 elections. Additionally, we intend to publicize and promote election campaigns through the use of several Navy-wide information bulletins and periodicals such as NAVY TIMES, ALL HANDS, LINK, PERSPECTIVE, Chief of Naval Information Newsgrams, and naval messages to all commands. Also, we will continue to stress the importance of voting to all flag officers, commanding officers, unit commanders, and officers in charge, with emphasis on command support and in-hand delivery of the FPCA. The FVAO is coordinating with the APO/FPO management office in an effort to improve procedures which will be used during future elections.

Mr. Valentino has indicated that the FVAO will correspond directly with the volunteers that you have recruited as the 1983 legislative effort begins.

Thank you for your continued interest in this matter. Your efforts and those of other volunteers are appreciated. We welcome your ideas and encourage you to continue to coordinate your efforts with the Federal Voting Assistance Office.

Sincerely,


James F. Goodrich
Under Secretary of the Navy

SAMUEL F. WRIGHT
ATTORNEY AT LAW
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(703) 979-4211

November 24, 1982

The Honorable John F. Lehman, Jr.
Secretary of the Navy
Pentagon 4E686
Washington, DC 20360

Re: Effort to secure reforms in state election laws
for the benefit of military personnel, their
spouses and dependents, and overseas civilians

Dear Mr. Secretary:

We met Friday night at the Intercollegiate Studies Institute dinner, and we briefly discussed the project I have undertaken to secure reforms in state absentee voting laws and procedures. You seemed quite interested, and you asked me to send you more information about the nature and extent of the problem, what I am doing about it, and what you can do about it.

NATURE AND EXTENT OF THE PROBLEM

According to a Department of Defense survey (see enclosure), approximately 182,000 military personnel who tried to vote in the 1980 presidential election were unable to do so, because they received their absentee ballots too late or not at all. This figure does not include those personnel who are not aware that their ballots were not counted, because local election officials received them after the election. The figure also does not include military dependents and other overseas civilians. If these were included, the number of disenfranchised voters would be several hundred thousand.

The DoD survey shows that roughly 45% of military personnel voted in the 1980 presidential election, 45% made no effort to vote, and 10% tried to vote but were unable to do so. Of those who tried unsuccessfully to vote, about 1/3 were people who waited too long to apply for ballots, or to return ballots, or who failed to follow proper procedures in applying for or returning ballots. The other 2/3 were people who did everything right, but were nonetheless disenfranchised by the circumstances of their service and by state laws which do not adequately make accommodations for those circumstances.

When I speak of a servicemember being disenfranchised by the circumstances of his service, I am speaking primarily

about mail delay. Regardless of how early the voter applies for an absentee ballot, the local election official probably won't start mailing out ballots until about 3 weeks before the election, and in 45 states an absentee ballot must be actually received (not just postmarked) by election day. For many military personnel, especially those at sea or at isolated overseas duty stations, 3 weeks is insufficient time for the ballot to go from the local election official to the voter and back.

WHAT I'M DOING ABOUT IT

As is explained in the enclosed Navy Times article, I have undertaken to secure reforms in state election laws for the benefit of military personnel, their spouses and dependents, and overseas civilians. I am trying to recruit a network of volunteers to work on state legislators and state and local election officials. So far I have recruited 190 volunteers, including at least one in each state. Upon request, I can send more specific information about the kinds of reforms we are seeking and the way we are going about it.

WHAT YOU CAN DO ABOUT IT

1. Recognition for the volunteers I have recruited

It would be very helpful if some recognition ~~of a~~ ~~"semi-official" recognition~~ could be given to the volunteers I have recruited. Most of them are military reservists or retirees, including 51 Navy and Marine Corps reservists and retirees. I can provide you with names and addresses, if you are willing to send them "atta-boy" letters.

2. Improve the distribution of FPCA forms

The Federal Post-Card Application (FPCA) form is absolutely critical to the voting assistance program. All states, with the possible exception of South Carolina, accept the form as a request for an absentee ballot, and about half the states also accept it as a simultaneous voter registration application.

In 1980, the Navy used a very complicated and unworkable system of distributing FPCA forms. Each individual ship or command was expected to order and pay for the forms from its own budget. There are several problems with this method of distribution. A general message was sent explaining how to

order the forms, but general messages are often filed away and forgotten or destroyed unread. In 1978 and early 1980, when I was the Voting Assistance Officer for the Judge Advocate General of the Navy, I recall receiving quite a few requests for FPCA forms. The general message directed commands to order FPCA forms from GSA, but people don't read general messages, and they assume that the Judge Advocate General is in charge of the Voting Assistance Program because voting sounds "legal."

Another problem with the Navy's system of distributing FPCA forms is that disbursing officers often held up the order, since they didn't know what "account" to charge the expense to. Finally, the GSA is very slow in responding to orders. I recall that early in 1980 it took GSA 6 weeks to get the forms we ordered to the Office of the Judge Advocate General of the Navy right here in the Washington area. If they take that long here in the area, I shudder to think how long they take to get forms to a destroyer in the Indian Ocean.

I suggest that Navy headquarters should send out FPCA forms to ships and commands automatically, without waiting for orders to come in. This is the system used by the Army and Air Force. (The Marine Corps started out with the Navy's system but then changed to this system.) In 1982, the Navy used the same system (or non-system) that it had used in 1980, and unless you direct otherwise, the same ineffective system will probably be used again in 1984.

3. Improve the conscientiousness of voting assistance officers

The Federal Voting Assistance Act requires that each servicemember be in-hand delivered an FPCA form by August 15 if he is overseas or by September 15 if he is in the United States. See 42 U.S.C. § 1973cc-13(2). This is almost never done. It was not done this fall in the Office of the Judge Advocate General of the Navy. I'm not trying to put the Judge Advocate General on report. My point is this: If the Judge Advocate General is not aware of this legal requirement, is any commanding officer aware of it? About 2 weeks before the election, I received a telephone call from a Navy Captain in OP-Nav, complaining that no one had given him an FPCA form. Apparently, the word about the duty to distribute FPCA forms did not even get around the Pentagon, much less around the world.

Each commanding officer is required to appoint a voting assistance officer who will take his duties seriously. The voting assistance officer must distribute FPCA forms and help personnel to fill them out correctly. All too often, being the voting assistance officer is just one more unwanted task for the junior Ensign of the ship or command, who is called the "SLJO" ("sh.... little jobs officer").

There are many demands upon the attention of the commanding officer. It is only natural that he will give his attention to those matters for which he can get in trouble with higher authority for failing to do. Failing to appoint a voting assistance officer is not such a matter. In my opinion, there needs to be more "command attention to this matter."

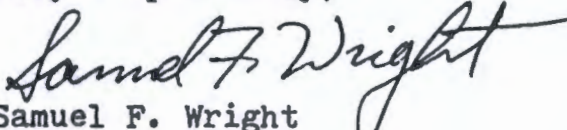
4. Improve the FPO system

I am enclosing a copy of a letter-to-the-editor from the 14 September 1981 issue of Navy Times. The writer, LCdr Bruce W. Stanton, USN, reports that he applied in person for an absentee ballot to be mailed to him for the 1980 presidential election. He has been assured that the ballot was mailed, but he never received it. (He was on board the USS Ranger at the time.) Anything you can do to improve the speed and reliability of the FPO system would be very helpful.

CONCLUSION

Thank you for your kind attention. Any assistance that you can provide would be greatly appreciated. I recognize that the reforms we are seeking may create some inconvenience for state and local election officials, but it seems to me that these are small accommodations to make to facilitate the enfranchisement of the brave young men and women who are away from home and prepared to lay down their lives in defense of our country. After all, were it not for the sacrifices of military personnel, now and in the past, none of us would have the opportunity to vote in free elections.

Very respectfully,


Samuel F. Wright

Enclosures

Copy to: The Honorable Melvin Laird
The Honorable Tidal W. McCoy, ...
The Honorable James M. Juliana
Admiral Elmo R. Zumwalt, Jr., USN (ret.)
Rear Admiral James J. McHugh, JAGC, USN
Rear Admiral Robert H. Spiro, USNR

SAMUEL F. WRIGHT
ATTORNEY AT LAW
(MEMBER OF THE TEXAS BAR)
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—
(703) 979-4211

January 2, 1984

The Honorable Chapman B. Cox
Assistant Secretary of the Navy
for Manpower & Reserve Affairs
Pentagon 4E788
Washington, DC 20350

Re: Voting rights of military personnel and dependents

Dear Mr. Cox:

I enjoyed reading the comments attributed to you in the Navy Times article, in the issue of December 5. Admiral Albright also shared with me a copy of his letter to you and your response. I am flattered that you are aware of my efforts to reform state absentee voting laws.

I was gratified to learn of the increased top-down attention that you plan to put on the voting program, and I think that your requirement that a relatively senior officer be appointed the voting assistance officer is a much-needed reform. In the past, all too often being the voting assistance officer has been just one more unwanted task for the command's most junior Ensign or Second Lieutenant, who is called the "SLJO" (sh.... little jobs officer).

The Federal Voting Assistance Act requires that each member of the Armed Forces be in-hand delivered a Federal Post-Card Application form by August 15 if he is outside the United States or by September 15 if he is inside the United States. See 42 U.S.C. § 1973cc-13(2). No one passed out Federal Post Card Application forms to military personnel in the Office of the Judge Advocate General of the Navy in the fall of 1982. I am not trying to put the Judge Advocate General "on report." My point is this: If the Judge Advocate General is not aware of this legal requirement, how are we to expect the Commanding Officer of an aircraft carrier in the Pacific to be aware of it?

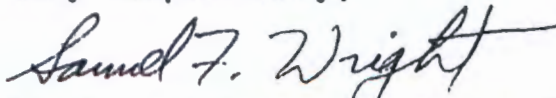
As you know, there are many requirements upon any Commanding Officer, and he is likely to put the greatest attention upon those requirements which he knows higher authority will call him to task for ignoring. In the past, appointing a conscientious voting assistance officer has not been a matter of high priority for Commanding Officers. I am glad that this appears to be changing, as a result of your efforts.

I was very happy to learn, from your remarks in Navy Times, that you see the voting program as a means of getting Congress to take notice of military personnel and their needs. The Supreme Court has referred to the right to vote as "preservative of all other rights." Yick Wo v. Hopkins, 118 U.S. 356, 370 (1886). To the extent that any group does not vote, or is prevented from voting, that group is unlikely to receive its fair share of the values that Government distributes.

I am enclosing a copy of my letter to Secretary Lehman dated November 24, 1982, and the response I received from Mr. Goodrich dated February 2, 1983. One of the primary suggestions I made was that the Navy should arrange for each command to automatically receive an adequate supply of Federal Post Card Application forms and other voting supplies, rather than expecting individual commands to order (and pay for) such supplies, as the Navy has done in the past. In his letter Mr. Goodrich states, "We have arranged for the automatic distribution of Federal Post Card Applications (FPCA) to each naval activity commencing with the 1984 elections." Therefore, I was extremely perturbed by Mr. Valentino's release No. 38, dated August 10, 1983 (copy enclosed), because that release seems to indicate that the Department of Defense is going back to the discredited old system of expecting individual voting assistance officers to order Federal Post Card Application forms. By the time a voting assistance officer is appointed, it may be too late for him to order forms in time to obtain them and meet the deadline set forth above for their distribution. Please look into this matter to ensure that forms and other materials are automatically distributed.

I would like very much to meet with you to discuss these matters and to bring you up-to-date on my progress in securing reforms in state absentee voting laws. I shall contact your secretary to try to arrange a time convenient for you.

Very respectfully,



Lieutenant Commander Samuel F. Wright,
JAGC, USNR-R (title for purposes
of identification only)

Enclosures

Copy to: Rear Admiral James J. McHugh, JAGC, USN
Rear Admiral Penrose L. Albright, JAGC, USNR
Brigadier General Walter J. Donovan, USMC

Navy Begins Push to Get Sailors

By TED BUSH
Times Staff Writer

WASHINGTON — The Navy Department is going all out to get sailors and Marines to register and vote. The campaign isn't the usual get-out-and-vote advice, but is a push on the Navy's part to make Congress aware of Navy and Marine Corps people as a political force.

In an interview with Navy Times, Assistant Secretary of the Navy for Manpower and Reserve Affairs Chapman B. Cox detailed differences between the new program and the way voting has often been handled in the past.

"We have no right to require

anyone to vote," Cox said. "All we are trying to do is make sure those who do want to vote can do so with a minimum of problems."

Among the points of the new program are:

- A requirement that the Voting Assistance Officer (VAO) of each command be someone of "relatively senior rank."

- The VAO's effectiveness in the campaign will be noted in regular fitness reports.

- Establishment of a system to monitor states' responses to military personnel and military families when they request ballots.

- A pledge from the Defense Department to go into court as late as the day before an election if a state fails to make the ballots

available or process registration on time.

- A toll-free phone number which anyone in the Navy or Marine Corps can call if they are having difficulty registering to vote or getting absentee ballots.

- Navy and Marine Corps Finance Centers will provide voting information to each member or the monthly leave and earnings statement until election day.

To get some horsepower and speed behind the program, the Commander Military Personnel Command has been designated the Voting Program Manager for the Navy. For the Marines, a VPM will be designated at Headquarters here.

The horsepower is being added to make sure the whole program doesn't degenerate into a token effort headed by some very junior individual who is already inundated with other collateral duties, officials said. The speed is injected to get as many people as possible registered before the first presidential primaries, set for March 13 in five states.

The first step visible at the local commands will be receipt of federal postcard applications for registration and absentee ballots. These application forms are valid in all states for both registration and ballot requests, Navy officials said. Using the cards will make it easier for individuals to get on the election rolls because the cards mean that individuals do not have to research specific details of registration in the area where they want to vote.

The VPO in the command qualifies as a Federal Voting Representative for all legal matters related to voting, Cox said.

Having a stock of these forms aboard before deployment will be one of the items on the predeployment checklist for all units, he added.

Each command will receive enough cards for all service members and voting dependents. In addition, the local command VAOs will get special guides for use in helping members and their families who want to register and vote.

A major reason people have been frustrated in trying to vote in the past is that they have used their military address as their voting address. This is not satisfactory, Cox emphasized. Military addresses will not be accepted by

*Through the deafening
noise of traffic, comes a
whisper.*



J&B. It whispers.

8-First to Get Sailors to Register and Vote

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A major reason people have been frustrated in trying to vote in the past is that they have used their military address as their voting address. This is not satisfactory, Cox emphasized. Military addresses will not be accepted by

voting officials in any state, he said.

The voter's address must be a street or postal route address in most states. Post office boxes are not sufficient because they cannot be tied to specific polling places in most cases, officials say.

Cox provided examples of what "relatively senior" means in terms of who should be named the VAO. Aboard a destroyer, he said, it will probably be a lieutenant or a lieutenant (jg). In a carrier, a commander would be appropriate, he said. These grades would also apply in shore commands of comparable size.

The guidance is being provided, Cox said, because in the past the voting officer has often been the junior ensign on the ship. This meant that the individual was often hard to find, had trouble getting the command support and had an assortment of other collateral duties demanding his time.

The requirement for mention of the VAO's effectiveness in regular fitness reports is intended to make the command and the individual aware of the importance the Secretary of the Navy's office attaches to the voting program. To give the VAO additional help, there is a provision in the guidance which permits the VAO to have direct access to the Voting Program Manager's staff in Washington.

Each unit is expected to include an orientation on the voting program as part of its check-in requirements, Cox said. To insure that each command takes the program seriously, Cox's guidance says, "All commands will be encouraged to cover management of the voting program in command inspections." This part of the program is already being established within the Training Commands, Cox reported.

Both the Navy and the Marine Corps will participate in a program to monitor the response of states to requests for registration and for ballots. The sample used to monitor will be small, Cox said, but it is the best that can be attempted within the short time available. The Navy will provide the name of one sailor or officer from each fleet from each of the 50 states whose request will be followed. The Marines will do the same for each Fleet Marine Force.

This means that a total of 200

individuals will be followed through the election process. Any problems that show up for the test group will be followed up immediately. This does not mean, however, that problems of those outside the test group will be ignored if they are identified, Cox said.

The support, he said, would include filing suits in federal court right up to election day in order to force states to provide the necessary materials for registration and for voting to service people.

"The purpose of such a suit," Cox explained, "would be to block the election if a service member denied the opportunity to vote and have that vote counted."

The Navy will provide a toll-free telephone number for people who want information. The Marine will not be on the 800 line, Cox said. NMPC officials say the number will be operating in December.

The voting information on the monthly leave and earnings statement will be keyed to the home address or the home of record of the member, Cox said. This material on the statement will tell members the dates and deadline for applications for various elections in the state shown in their record.

Late next year, the Navy will compile statistics on the program to determine its effectiveness, Cox said. He is not sure that the current statistics on voting participation are accurate and wants to get better information.

Master Chief Petty Officer of the Navy Billy C. Sanders has been inquiring about voting participation during his visits to fleet and shore units during the past year. His estimate is that only about 20 percent of eligible Navy voters actually cast ballots.

Bob Nolan, executive secretary of the Fleet Reserve Association told Navy Times his experience in visits outside Washington indicates that the 20 percent figure is accurate.

The Department of Defense statistics show that about 39 percent of the military eligibles vote. Part of this discrepancy may be because most Army and Air Force personnel are on large bases in the United States where they are assimilated in the community to some degree. But Cox said he is not satisfied that the actual participation of the total military population is 39 percent.

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DEPARTMENT OF THE NAVY

OFFICE OF THE ASSISTANT SECRETARY
(MANPOWER AND RESERVE AFFAIRS)
WASHINGTON, D C 20350

07 DEC 1983

Mr. Penrose Lucas Albright
Mason, Mason and Albright
Attorneys at Law
2306 South Eads Street
Arlington, VA 22202

Dear Mr. Albright,

In response to your letter of 29 November regarding the Navy voting program, I am aware of Mr. Samuel Wright's work and applaud his efforts. Mr. Wright is pursuing the same course of action as the Director of Federal Voting Program, Mr. Henry Valentino.

The current Navy voting initiatives are intended to motivate our sailors and marines to exercise their right to vote, to ensure that all material required to vote is available to our personnel, and to ensure that their votes are counted when received in their home States. The Department of the Navy will be greatly assisted by the current efforts of both Mr. Valentino and Mr. Wright in resolving voting problems at the State level.

I appreciate your interest in the Navy voting program and support for the Navy.

Sincerely,

CHAPMAN B. COX
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

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DEC 13 1983

MASON, MASON & ALBRIGHT

MASON, MASON AND ALBRIGHT

ATTORNEYS AT LAW
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C. A. MASON (1866-1943)
JOHN M. MASON (1893-1963)
PENROSE L. ALBRIGHT
WILLIAM B. MASON

TELEPHONE
703 979-3242

November 29, 1983

The Honorable Chapman B. Cox
Assistant Secretary of the Navy
for Manpower and Reserve Affairs
Department of the Navy
Washington, D. C. 20350

Dear Mr. Secretary:

I am pleased to learn from the NAVY TIMES December 5, 1983, page 44 that you are affirmatively encouraging registration and voting by absentee ballots in the Navy and Marine Corps.

Are you aware of what Samuel F. Wright, a Naval Reserve Lieutenant Commander, Judge Advocate General's Corp has been doing almost singlehandedly in this respect? If not, I would suggest that you take a look into same. He has put together a nationwide team of over 200 to revise state election laws as necessary. If successful, this will ensure that more servicemen's absentee votes are counted.

Sincerely yours,

Penrose Lucas Albright

PLA/lml

DOMICILE OF MILITARY PERSONNEL
AND THEIR SPOUSES FOR VOTING AND
TAXATION PURPOSES

Although 1982 is not a presidential election year, many important elections will be held; therefore, it is anticipated that legal assistance officers will hear questions relating to domicile for voting and taxation purposes. A servicemember's choice of domicile for voting purposes may affect his domicile for taxation purposes, and vice-versa. It is hoped that this article will be helpful to legal assistance officers in advising about such questions.

I. DOMICILE OF MEMBERS OF THE ARMED FORCES

For purposes of taxation, a member of the Armed Forces shall not be deemed to have gained or lost a domicile or residence solely by reason of presence in or absence from a state in compliance with military orders. 50 U.S.C. App. § 574 (1976). Similarly, under most state election codes, a member of the Armed Forces who leaves the state in compliance with military orders does not thereby lose his or her voting residence in the state, unless he or she has become a bona fide resident of some other place. See, e.g., Tex. Elec. Code Ann. art. 5.08(i) (Vernon Supp. 1982); and a member of the Armed Forces moving into a state does not automatically become a resident (for voting purposes) of that state. See, e.g., Tex. Elec. Code Ann. art. 5.08(j) (Vernon Supp. 1982). For this reason, a member of the Armed Forces can continue voting in and paying state income tax to the state where he or she was domiciled prior to his or her entry onto active duty. As long as domicile is retained in the "home" state, the servicemember will not be required to pay state income tax on military pay and benefits to the state where he or she is stationed, and the servicemember will not be required to pay any taxes on personal property (automobile, etc.) to the state where he or she is stationed, as long as that personal property is titled in the member's name exclusively (not the nonmilitary spouse's name), and as long as the personal property is not used in and does not arise from a trade or business. 50 U.S.C. App. § 574 (1976).

Most state election codes use the word "residence" instead of "domicile" in describing where a person should vote, but a voting "residence" is generally the same as a domicile. See, e.g., Tex. Elec. Code Ann. art. 5.08(a) (Vernon Supp. 1982). If one votes in a particular state, this is evidence (not necessarily conclusive) that this state is his domicile. See, e.g., Comptroller of the Treasury v. Lenderking, 269 Md. 613, 303 A. 2d 402 (1973). But see Part IV, infra. There are two ways to think about such "evidence." In the first place, the

act of voting in a state is evidence of one's interest in the public affairs of that state, from which a court might infer that one's absence from the state is only temporary or that one's presence in the state is not merely temporary. In the second place, when a person applies for voter registration or for an absentee ballot he or she is impliedly or expressly representing himself or herself to be a voting resident or domiciliary of that state, and he or she may be estopped from denying that representation later.

Because the concepts of "voting residence" and "taxation domicile" are so closely interrelated, a member of the Armed Forces should seek legal advice before changing his or her voting residence. If he or she is from a state without a state income tax or from a state which does not tax him or her as long as he or she is not physically present in the state, he or she will probably not want to vote in the state where he or she is stationed, and he or she will want to vote absentee in the "home" state. On the other hand, if he or she is from a state which is taxing his or her military salary, and if he or she is stationed in a state which does not have a state income tax or which has a state income tax rate which is lower than that of the "home" state, he or she may very well want to register to vote in the state where he or she is stationed. (He or she will also want to title his or her car in that state, get a driver's license from that state, open a savings account, etc.) See generally JAG NOTE 5840 of 16 December 1981.

If a member of the Armed Forces chooses to become a domiciliary and voting resident of the place where he or she is stationed, and if he or she understands and accepts that by registering to vote there he or she will become a domiciliary of that state for all legal purposes, he or she should have no difficulty registering to vote. The Supreme Court struck down a Texas constitutional provision which provided that a member of the Armed Forces from another state could not, under any circumstances, register to vote in Texas while still on active duty. Carrington v. Rash, 380 U.S. 89 (1965). Many state election codes provide that a member of the Armed Forces from another state, stationed in the state, may not establish a voting residence in the state unless the member intends to remain there and to make that place home indefinitely, both during the remainder of military service (whenever military duties do not require presence elsewhere), and after military service has terminated. See, e.g., Tex. Elec. Code Ann. art. 5.08(k) (Vernon Supp. 1982). Most states have similar provisions with respect to college students. These provisions generally provide that a college student does not become a resident, for voting purposes, of the place where he or she lives while attending college unless he or she intends to make that place his or her home indefinitely after he or she ceases to be a student. See, e.g., Tex. Elec. Code Ann. art. 5.08(k) (Vernon Supp. 1982). In recent years such provisions

pertaining to college students have often been litigated, and such provisions are almost always construed very narrowly or declared unconstitutional. See, e.g., United States v. Texas, 445 F. Supp. 1248 (S.D. Tex. 1978), aff'd per curiam sub nom. Symm v. United States, 439 U.S. 1105 (1979), reh'g. denied, 440 U.S. 951 (1979). See generally, "Residence of Students for Voting Purposes," 44 A.L.R. 3d 797. It is suggested that the provisions relating to servicemembers will similarly be construed narrowly or declared unconstitutional.

Once a servicemember has established a bona fide domicile in the state where he or she is stationed, he or she should be allowed to maintain that domicile for the remainder of his or her military career, even when military duties require presence elsewhere. Some state election code provisions seem to limit this right to maintain a voting domicile to servicemembers who were domiciliaries of the state at the time they joined the service. See, e.g., Tex. Elec. Code Ann. art. 5.08(i) (Vernon Supp. 1982). It is suggested that these provisions are unconstitutional insofar as they thus limit this important right. Such a limitation amounts to a distinction between absent but bona fide state domiciliaries who had a domicile in the state at the time they joined the service and absent but bona fide state domiciliaries who established their domiciles while on active duty. If a state-imposed distinction affects a fundamental right (such as voting), the distinction will be constitutional only if it is justified by a "compelling state interest." Kramer v. Union Free School District, 395 U.S. 621, 627 (1969). It is suggested that there is no compelling state interest which can plausibly be advanced to support this unfair distinction.

The upshot of the above discussion is that if a servicemember establishes a domicile in Texas or Florida while stationed there, he or she can lawfully avoid paying state income taxes for the remainder of his or her military career, even when military duties require presence in a state with a state income tax. One's domicile in Texas or Florida (or another state with no state income tax) cannot be a sham used to evade taxes; but domicile is partly a matter of intent, and in deciding upon his or her intent, it is perfectly proper for the servicemember to compare the tax policies of the various states where he could be domiciled. One cannot become a domiciliary of Texas or Florida merely by "intending" such a domicile if one does not have a physical presence in that state. Likewise, a physical presence in Texas or Florida is insufficient to establish a domicile if the servicemember does not have the requisite intent. To change one's domicile, one must have physical presence and the requisite intent simultaneously.

If a member of the Armed Forces establishes a domicile in Texas or Florida while stationed there and desires to maintain

it while stationed elsewhere, he or she should be very careful to do as much as possible to show evidence of continuing Texas or Florida domicile, and to avoid actions that might be construed as evidence of domicile in the state where he or she is stationed, because a challenge to the member's claim of Texas or Florida domicile might come many years later. Continuing to vote in Texas or Florida (if necessary, by absentee ballot) is one of the most effective and least expensive ways of evidencing a continuing domicile in Texas or Florida. The member should vote in his Texas or Florida county not just in general elections, but in local elections as well. See Sanftner, The Serviceman's Legal Residence: Some Practical Suggestions, 26 JAG J. 87, 99 (1971).

Once a member of the Armed Forces has qualified as a bona fide voting resident of the place where he or she is stationed, he or she is almost immediately eligible to vote a full ballot. Durational residence requirements longer than 30 days are per se unconstitutional. Dunn v. Blumstein, 405 U.S. 330 (1972). Exception: Arizona's 50-day durational residence requirement has been upheld upon a strong showing of administrative necessity. Marston v. Lewis, 410 U.S. 679 (1973). Of course, the member would be required to register to vote by the deadline, which is usually about 30 days before the election. (Most states exempt servicemembers from voter registration requirements when they vote by absentee ballot, but only a few states exempt servicemembers from registration requirements when they vote in person.)

Many military bases are under "exclusive Federal jurisdiction." Such a base is theoretically not part of the surrounding state, as the District of Columbia is no longer part of Maryland. (Article I, § 8, cl. 17 of the U.S. Constitution gives to Congress the power to establish "exclusive legislation" for a Federal district and for other land areas acquired for the Federal Government's purposes.) From time to time, some states have attempted to disenfranchise persons living on board "exclusive Federal jurisdiction" military bases, etc. In 1970, the Supreme Court declared this practice unconstitutional. Evans v. Cornman, 398 U.S. 419 (1970).

Although Evans v. Cornman was decided 12 years ago, some states and counties have not yet complied with it. If a local election official tells you that your military base is not part of the surrounding county or not included in any election precinct, contact the Federal Voting Assistance Program immediately. See Part V, infra.

II. DOMICILE OF SPOUSES OF MEMBERS OF THE ARMED FORCES

The taxation provision of the Soldiers and Sailors Civil Relief Act protects only the military income of an active duty member of the Armed Forces. If a nonmilitary spouse earns income in the state where he or she lives because the military spouse is stationed there, the nonmilitary spouse must pay state income tax to the state where the income was earned, regardless of whether such nonmilitary spouse votes in that state or considers it to be his or her residence or domicile. Similarly, if the nonmilitary spouse owns personal property (automobile, etc.) in that state, he or she must pay personal property tax to that state. Because the nonmilitary spouse must pay these taxes whether or not he or she votes in the state where the military spouse is stationed, the nonmilitary spouse might prefer to vote in that state, even if the military spouse votes in his or her "home" state. Voting in person is generally more convenient than voting by absentee ballot, and the nonmilitary spouse will probably be more directly affected by the governmental decisions of the state where he or she actually lives. Furthermore, if the nonmilitary spouse votes in the "home" state, he or she may end up paying state income tax to two states. If the nonmilitary spouse works in the state where he or she lives with the military spouse, he or she will probably have to pay state income tax to that state, because the Soldiers and Sailors Civil Relief Act does not apply to the nonmilitary spouse. If that spouse votes in the "home" state, he or she will probably be considered to be a domiciliary of that state and will thus have to pay state income tax to that state, although he or she is not present in that state and receives no services from that state.

It might seem anomalous that a married couple could live together in the same house but be domiciled in different states, but that result is possible when only one spouse is a member of the Armed Forces. Some states have provisions stating that the voting residence of a married woman not permanently separated from her husband is presumed to be where her husband has his residence [See, e.g., Tex. Elec. Code Ann. art. 5.08(h) (Vernon Supp. 1982)], but such provisions are probably unconstitutional. See Kane v. Fortson, 369 F. Supp. 1342 (N.D. Ga. 1973).

A spouse of a servicemember may be required to vote in the state where the servicemember is stationed if he or she is to vote anywhere. For example, assume that the military husband is from Texas and has maintained his Texas domicile. While stationed in Virginia, he meets a woman domiciled in Maryland and marries her. Then he is transferred to California and she moves there with him. She would not be a Texas domiciliary solely because her husband is a Texas domiciliary. There is probably no way that she could claim a domicile in Maryland or

Virginia. She must vote in California if she is to vote at all, although her husband votes in Texas.

III. REMEDIES AVAILABLE FOR VOTER REGISTRATION DENIALS

Most state election codes expressly provide for judicial review of denials of voter registration applications. See, e.g., Va. Code § 24.1-67 (1980). It should be emphasized that such provisions often provide for very limited periods of time within which to perfect such appeals. For example, the Virginia provision cited requires the rejected applicant to appeal to the Circuit Court within 10 days of the denial of his or her registration application. The local bar association might be able to provide attorneys willing to represent such persons on a pro bono basis. In some cases it may be possible to get the Secretary of State or State Board of Elections to informally advise a local official to reverse a denial of a voter registration application. (The author was recently successful in having the Virginia State Board of Elections advise the General Registrar of Prince William County to accept the registration of the wife of a naval officer.)

If a voter registrar exhibits a pattern of discrimination against servicemembers or their spouses, the Federal Voting Assistance Program should be contacted. See Part V, infra.

IV. OVERSEAS CITIZENS VOTING RIGHTS ACT OF 1975, AS AMENDED

Under the provisions of the Overseas Citizens Voting Rights Act of 1975, as amended, 42 U.S.C. §1973dd, (hereinafter "OCVRA"), a United States citizen residing or temporarily living outside the United States can vote by absentee ballot for Federal offices only in the state in which he or she was domiciled prior to his or her departure from the United States, even if he or she maintains no home and owns no property in that state and has no clear intention of ever returning to that state. See, 42 U.S.C. §1973dd-1 (1976 § Supp. III 1979). Most Americans abroad, especially members of the Armed Forces and their spouses, are generally eligible under state law to vote full ballots; however, a servicemember or spouse living abroad might choose to vote a limited ballot under the OCVRA because voting under that Act cannot be used as evidence of residence or domicile for Federal, state, or local tax purposes. See, 42 U.S.C. §1973dd-5(b) (Supp. III 1979). This is not to say that a person voting under the provisions of the OCVRA will necessarily be exempted from having to pay state income tax. It only means that voting under the Act cannot be used as

evidence of domicile for tax purposes. See, Additional Views of Representative Bill Frenzel (Rep. - Mich.), 1978 United States Code Congressional and Administrative News pages 7276-77.

If one votes a full ballot under state law, that can be used as evidence of domicile for tax purposes. See part I, supra.

V. FEDERAL VOTING ASSISTANCE PROGRAM

In the Department of Defense, there is a "Federal Voting Assistance Program" responsible for protecting the voting rights of military personnel, their spouses and dependents, overseas civilians, etc. The Program has four attorneys working for it. If you have difficulty advising a client about a voting problem, you should consult with one of them. Likewise, if you have reason to believe that a state or local election official is violating the Federal Voting Assistance Act, 42 U.S.C. § 1973cc, or the Overseas Citizens Voting Rights Act, 42 U.S.C. § 1973dd, it is requested that you contact the Federal Voting Assistance Program immediately.

The address for the Federal Voting Assistance Program is as follows:

Federal Voting Assistance Program
Office of the Secretary of Defense
Pentagon 1B457
Washington, D.C. 20301

The telephone number is (202) 695-9330 or AUTOVON 224-4960.

RESOLUTION NO. 113

ACTION TAKEN

*approved as
amended*

DEPARTMENT OF DISTRICT OF COLUMBIA

U. S. ARMED SERVICES VOTING RIGHTS

WHEREAS, A survey conducted by the Department of Defense Voting Assistance Office indicated that approximately 182,000 military personnel who tried to vote in the 1980 Presidential election were unable to do so because their absentee ballots arrived too late or not at all; and

WHEREAS, Absentee ballots are not actually received in time for qualified personnel to return the completed ballot to be counted, since the ballot must actually be received by election day; and

WHEREAS, Many states mail absentee ballots 30 days before election day, which is inadequate for many military personnel, who meet the voting requirements of the respective states involved, especially those at sea or at isolated overseas duty stations; now, therefore, be it

RESOLVED, By The American Legion in National Convention assembled in Seattle, Washington, August 23, 24, 25, 1983 that ~~the National Legislative Service of~~ The American Legion initiate work with the several state legislatures and federal authorities where applicable, to urge enactment of legislation, wherever a state does not have legislation, to allow the election officials concerned to begin mailing absentee ballots to those state residents who meet the voting criteria of that state and who have an A.P.O., F.P.O. and/or a foreign address, at least 45 days or more before a general election day of the state involved.

Resolution No. 439

ABSENTEE BALLOT REFORM

WHEREAS, a survey conducted by the Department of Defense Voting Assistance Office indicated that approximately 182,000 military personnel who tried to vote in the 1980 Presidential election were unable to do so because their absentee ballots arrived too late or not at all; and

WHEREAS, absentee ballots are not actually received in time for the uniformed personnel to return the completed ballot to be counted, since the ballot must actually be received by election day; and

WHEREAS, many states mail absentee ballots 30 days before election day, which is inadequate for many military personnel, especially those at sea or at isolated overseas duty; now, therefore

BE IT RESOLVED, by the 84th National Convention of the Veterans of Foreign Wars of the United States, that we encourage each VFW Department, the National Legislative Service of the VFW, and the VFW-PAC coordinators to all work with the several state legislatures, and the proper Federal authorities to enact legislation, wherever a state does not have such legislation, to allow the election officials concerned to begin mailing absentee ballots to APO, FPO, and foreign addresses 45 days or more before the general election day.

Adopted by the 84th National Convention of the Veterans of Foreign Wars of the United States held in New Orleans, Louisiana, August 12-19, 1983.

Resolution No. 439

RESERVE OFFICERS ASSOCIATION OF THE UNITED STATES

Absentee Ballot Reform

WHEREAS, a survey conducted by the Department of Defense Voting Assistance Office indicated that approximately 182,000 military personnel who tried to vote in the 1980 presidential election were unable to do so because their absentee ballots arrived too late or not at all; and

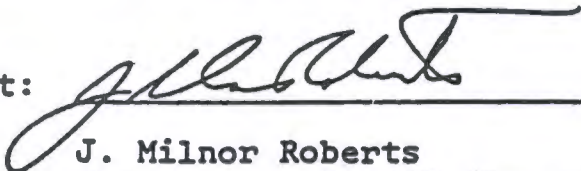
WHEREAS, absentee ballots are not actually received in time for uniformed personnel to return the completed ballot to be counted, since the ballot must actually be received by election day; and

WHEREAS, many states mail absentee ballots 30 days before election day, which is inadequate time for many military personnel, especially those at sea or at isolated overseas duty stations;

NOW, THEREFORE, BE IT RESOLVED that the Reserve Officers Association of the United States encourages each ROA Department to work with their state legislatures to enact legislation wherever a state does not have such legislation, to allow county clerks to begin mailing absentee ballots to APO, FPO and foreign addresses 45 days or more before election day.

Adopted By the National Convention
25 June 1982

Attest: _____


J. Milnor Roberts
Major General, AUS (Ret.)
Executive Director



NATIONAL GUARD ASSOCIATION OF THE UNITED STATES

ONE MASSACHUSETTS AVENUE, NORTHWEST • WASHINGTON, D.C., 20001 • (202) 789-0031

24 October 1983

Mr. Samuel F. Wright
1201 S. Scott Street, No. 422
Arlington, Virginia 22204


Dear Mr. Wright:

Enclosed, please find our latest issue of NATIONAL GUARD magazine. You are featured on page 2 for your new organization's efforts in launching a state-by-state drive to greater facilitate absentee voting by military personnel.

This truly is an outstanding effort, and on behalf of our more than 56,000 members from throughout the nation and three territories, I thank you for your interest in our military personnel.

I hope you enjoy the article.

Sincerely,


FRANCIS S. GREENLEAF
Major General, NGUS (Ret.)
Executive Vice President

Enclosure:
NATIONAL GUARD magazine