

To: Uniform Law Commissioners
From: Steve Wilborn, *Chair*, Steve Huefner, *Reporter*
Date: June 10, 2010
Re: Uniform Military and Overseas Voters Act

At the 2009 annual meeting, our drafting committee presented to the Commission for first reading a draft Uniform Military Services and Overseas Civilian Absentee Voters Act. The draft act has undergone a variety of revisions since then, in preparation for its final reading this summer. Among other changes, the act now has a new name: the Uniform Military and Overseas Voters Act (UMOVA). This memorandum reviews the purposes of the act, highlights key features of the drafting committee's approach, and describes several significant policy issues.

Purpose

United States' military personnel and overseas civilians continue to face numerous challenges to their ability to vote in American elections, notwithstanding several congressional and individual state efforts to facilitate the voting process for them. Difficulties faced largely reflect the fact that American elections are conducted at the state and local level under procedures unique to each jurisdiction. This lack of uniformity has complicated the major federal efforts – the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), and the Military and Overseas Voter Empowerment Act of 2009 (MOVE). These obstacles include: difficulty registering to vote from abroad, absentee ballots (or ballot applications) that do not arrive in a timely manner, frequent changes of address necessitated by deployments, excessive mail delivery times, and difficulty complying with varying non-essential requirements.

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 and local elections the assistance and protections for military and overseas voters currently found in federal law. The second is to bring greater uniformity to the military and overseas voting processes in all elections. In addition, we believe the provisions of the act will enhance the assistance and protections provided to all military and overseas voters, without compromising the integrity of the voting process or imposing undue hardships on election officials.

Key Features

The UMOVA covers two groups of voters: (1) U.S. military personnel, and their dependents; and (2) U.S. citizens outside the United States.

The act both tracks and expands upon the protections of UOCAVA and MOVE in a number of respects. First and foremost, the act expands beyond federal elections to all state and local elections conducted pursuant to a state's existing election code, including both primary and general elections, as well as any special or runoff elections. Second, military voters are included even if they are not absent from their home voting jurisdiction on Election Day, and the definition of military voter now includes state National Guard units on active duty. Third, U.S. citizens born abroad who have never established a

residence in one of the fifty states are permitted to establish a voting residence in the state in which a parent or guardian was last eligible to vote.

In addition, several procedural changes have been incorporated to help address voting challenges faced by the military and overseas populations. A timetable has been established that accommodates states with a compressed election calendar yet provides sufficient time for a valid ballot to be cast. State election officials are to provide absentee voting materials to these voters at least 45 days before a regularly scheduled election; and the voters may cast their ballots until the day before the election (or on Election Day if the voter can get the voted ballot into the hands of election officials by the close of the polls). A ballot cast before Election Day, if received by the voting official on or before the day prior to the deadline for completing the local canvass in each state, shall be counted. State election officials are to make use of electronic technologies for transmitting and receiving registration materials, ballot applications, and unvoted absentee ballots. The act does not require electronic transmission of voted ballots, but leaves that to the individual states as they determine its efficacy. States are required to make and update ballot listings electronically, and permit voters to provide an email address to be used if requested to receive absentee ballots automatically for all elections through the end of the next calendar year. Notarization and witness requirements have been eliminated, with voters instead being required to affirm their compliance with voting requirements under penalty of perjury. Other “non-essential” steps in the voting process, such as requiring voters to use specific paper types or paper sizes for registration or ballot applications, have also been eliminated.

Covered voters may continue to use a state’s existing absentee ballot applications and voter registration forms, or use the federal forms available under the UOCAVA. Voters not using the federal forms must affirmatively indicate their status as a covered voter to assure the protections of the act.

An enforcement provision is included that gives state courts authority to grant equitable relief to effectuate the act, and permits an individual alleging a grievance under the act to seek relief.

Significant Policy Decisions

1. Absence Not Required for Military Voters.

The act as currently drafted extends its privileges to military voters without regard to whether they are absent from their voting jurisdiction; military voters or “uniformed service voters” as they are defined in the act, include spouses and dependents. This approach recognizes the highly transient nature of military service, which makes it difficult for military personnel to know in advance where they will be on Election Day, determines there is inherent value in granting all military service personnel this additional convenience, and recognizes the possibility many military voters will come to rely on this method of voting as their normal voting process.

After extended discussion, the committee remains closely divided on this issue. Some members favored extending the protections of the act only to absent military voters, while others favored granting the act’s protections based on military status alone. A third

approach would have extended the act's protections to military service members regardless of absence, but not to their families.

2. Citizens Permanently Abroad.

This act makes no distinctions among the elections in which overseas voters can participate based on whether a voter is permanently or temporarily abroad. Some states, in their implementation of the various federal acts, have limited voters who are permanently abroad to voting only in elections for federal offices, while others have not. The view in support of making no distinction for citizens permanently abroad can best be summarized as follows: (1) some voters permanently abroad maintain significant ties to a home jurisdiction and have a genuine and appropriate interest in the outcome of certain state or local elections; (2) other voters permanently abroad have little interest in many state and local elections, and as a result are not likely to cast a vote in those races even if allowed to do so; and (3) attempting to make distinctions among the specific races during a given election for a particular overseas voter would create significant administrative burdens on election officials, including the potential to require fact-intensive inquiries into the personal circumstances of individual voters or the need to create a separate individual ballot.

3. Coverage of "Non domiciled" Citizens.

A "covered voter," as defined in this act includes U.S. citizens born abroad who have not previously established a voting residency in the United States. There are conflicting views concerning the desirability of enfranchising these "non domiciled" U.S. citizens: the federal statute, UOCAVA, is silent on the issue; and these individuals have few ties to a particular state; on the other hand they are U.S. citizens subject to U.S. taxation, Selective Service registration, and other federal obligations. At this time at least eighteen states permit these citizens to participate in at least some elections, provided their parents are eligible or qualified to vote in the state (or in some cases if they are a spouse of or dependent of a person eligible to vote in that state). These states include: Arizona, Colorado, 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 drafting committee is closely divided on the issue. The draft before you includes these citizens in its coverage thereby making no distinction in the elections in which these voters may participate.