

The Military's Obligation to Military Voters: A Position Paper for the NIST 2010 UOCAVA Remote Voting Systems Workshop

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Abstract

One of the limiting factors in military member electoral access is the opposition by some civilian groups and reluctance of many military leaders to allow, or require, the Department of Defense to accomplish voting support functions for its members. We address military policies limitations that detract from its ability to support military voters and offer suggestions to change these policies in to efficiently improve military electoral access.

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1. Introduction.

Serving in the military is not just a job, it is a 24x7x365 commitment by both the service member and by the armed services. Unlike virtually any other job, service members often rely exclusively on the military, not just for survival, but for virtually every resource that they need in life. Because of their mission, the military provides such basic services as food, housing, transportation, mail, medical and dental support; even expending substantial resources for morale, welfare, and recreation (MWR). As a military member, I was glad to have these services and many times, there was no alternative service available.

One area where needed services have not been sufficiently addressed is in supporting the ability of citizens that serve in the military to exercise their right to vote. Unfortunately, electoral access is largely delegated to the perennially understaffed Federal Voting Assistance Program (FVAP) and the underappreciated additional duty of Voting Assistance Officer (VAO).

There are three primary reasons for the military's insufficient support for the voting function:

- Misconceptions about military voting
- Political barriers
- Prospective operational impact

We address the misconceptions surrounding military support for member's electoral access, identify military policy barriers to member's voting access, and identify steps that the military can take that can dramatically facilitate the voting function for military members.

2. Misconceptions About the Military and Voting

2.1. Over Exuberance for Non-partisanship

It is widely accepted that partisanship and military service are a toxic mixture. Unfortunately, that recognition has led many to take unnecessarily exaggerated positions regarding military voting. For example, there is a historical record of belief among military members and civilians that even indicates that military officers should not vote:

...a long line of iconic military leaders, stretching from William Tecumseh Sherman to George C. Marshall, who determined that even the slightest degree of political participation would compromise their professional independence and judgment [1].

At one point, this concept was carried to aspiring officer candidates by well-meaning academics.

...Professor Ole Holsti of Duke Universtiy, "long for the days when generals like Marshall never even voted." At a panel discussion at the U.S. Military Academy in 2002, Kohn and fellow historian Andrew Bacevich, a retired Army colonel, reportedly suggested to the cadets in attendance that upon entering active duty, they avoid the pitfalls of partisanship by eschewing voting altogether [1].

Good intentions aside, such efforts have caused immeasurable damage to military members' suffrage. We know that such efforts were wrong and that:

...voting preference does not constitute partisan activity and is not, by itself, harmful to professionalism and civil-military relations [1].

As General George Washington advised congress:

"When we assumed the soldier...we did not lay aside the citizen." [1]

Voting is at the core of citizen's rights. Military voters, who are defending the rights of all citizens to cast their ballots, go to the front of the line to cast their ballots.

2.2. The Prospect of Improper Influence

The nature of the military mission demands that a strong, consistent chain of command be in place. Some see such a command structure as presenting an enticement for voter coercion. Certainly the possibility of improper influence exists in the military structure,

similarly to that in civilian life, where political groups, labor unions, church or civic organizations, etc. can exert direct or indirect pressure on their members.

To mitigate this threat, such electoral coercion in the military is explicitly prohibited in law and governing directives. Violation of these laws is punishable through the Uniform Code of Military Justice. Instances of violation are either few and far between or at least have not received significant media attention.

Finally, as a retired military member, my observation is that this perception is outdated and does not reflect the present day military, where soldiers, sailors, Marines, etc. are highly intelligent, of strong moral character, and exude self confidence that offsets any organizational electoral coercive opportunity that may exist.

2.3. Misconceptions Regarding The Hatch Act

The Hatch Act [2] addresses political activities of non-military Federal civilian employees, including those that may qualify as UOCAVA voters. The Hatch Act was originally targeted only federal civilian policy makers, but was extended with amendments to all federal service civilians.

Questions occasionally arise regarding Hatch Act impact on voting initiatives for military voters. Of course, the Hatch Act does not apply to military members so it is not relevant to military voting issues.

There is official guidance that in some ways parallels the Hatch Act for military members. DoD Directive 1344.10 [3] details allowed and prohibited political activity for military members.

Under this directive, voting is specifically allowed. Military members may "Participate fully in the Federal Voting Assistance Program" and in specifically in critical voting eligibility and access activities as quoted, a member of the Armed Forces on active duty may:

4.1.1.1. Register, vote, and express a personal opinion on political candidates and issues, but not as a representative of the Armed Forces.

4.1.1.2. Promote and encourage others to exercise their voting franchise, if such promotion does not constitute use of their official authority or influence to interfere with the outcome of any election [3].

U. S. Law and military directives clearly acknowledge military members' absolute right to vote. The challenge that members face is how to claim that right and the question for the DoD and the Armed Services is how can they best enable armed forces members to claim their voting right.

3. Political Barriers for Military Voting

As a key component of the political process, voting itself is a fundamentally political process. In the same way that high turnout of their supporters benefits

candidates and political parties, low turnout of the opposing candidates and party's supporters is also of fundamental interest.

Political barriers to military voting are not new.

The first serious attempts to enfranchise military voters began during the American Civil War...Support for such measures was not uniform, however, with Democrats generally in opposition on the assumption that soldiers would vote for the Republican Party candidates [4].

Partisan politics continues to play a part in military voting, as parties and candidates consider the political impact of expanding military enfranchisement.

We know there is tremendous room for improvement.

While federal legislation has made significant progress toward enfranchisement, success has not been as great as reported and much remains to be accomplished to highlight and overcome the unique barriers placed on military voters [4].

4. Negative Operational Impacts of Assuming Responsibility for the Voting Function

It is not novel for the military to resist efforts for enfranchisement of military members:

The first federal level attempt to facilitate military voting came in July 1942, when Rep. Robert L. Ramsay (D-WV) introduced a national military voting rights bill, which called for special elections on military bases to be supervised by the Secretary of State in each state in which the base was located. The War Department and the National Association of Secretaries of State opposed the bill [4].

As a matter of priorities, there is no doubt that commander's throughout history have aggressively resisted accepting low-impact administrative duties; and rightfully so. The canonical military mission typified in the following quip that is routinely attributed to the Duke of Wellington in 1812: "To see to it that the forces of Napoleon are driven out of Spain," dominates any other mission and demands exclusion of any and all unnecessary tasks.

Nonetheless, all military commanders recognize the importance of effectively conducting necessary administration. That is why every military organization from the Company level up has organic resources that conduct administration as their primary duty. Military administrators maintain personnel records, prepare orders, conduct orientation and many other routine duties. The military could not function without administrators.

One "public" service that often isn't recognized outside the military is known as Morale, Welfare, and Recreation (MWR). MWR resources are provided in

virtually every military unit. Sometimes, MWR activities are minimal; in others they are substantial. Large military bases have golf courses, bowling alleys, marinas, hobby shops, etc. Internet cafes and public computers are routinely available somewhere on most bases, e.g. at the library or at base Recreation Centers.

The voting function certainly fits into both the Morale and Welfare MWR categories and merits organic support within the military structure.

5. The State of Military Voting

Military voting access has improved little in the past fifty years. A myriad of studies on this topic repeatedly confirm that military voters are disenfranchised in dramatically disproportions relative to resident voters, and even to resident absentee voters.

Within the past ten years, studies by the EAC [5, 6] and GAO [7, 8] show that even raw data is difficult to collect. More recent studies by the Pew Center for the States [9] and the Overseas Vote Foundation [10] confirm that even the advanced technology that now exists has done very little to improve voting access for military members.

The present situation is unacceptable, even under optimistic assumptions. Numerous efforts to incrementally improve military voting access have failed miserably. This practice is sometimes called "satisficing", that is, using vagaries (such as "as few as possible") to be able to claim mission accomplished with a solution that is "good enough".

The MOVE Act¹ offers opportunity to improve access for military voters by providing electronic forms of election materials (including blank ballots), authorizing pilot projects that provide electronic marked ballot return, etc. Nonetheless, these provisions cannot meet the ultimate needs of military voters, which is to allow every military member that desires to vote can cast their timely, well-informed ballot with confidence that it will be counted.

While it may be the best that can be done today, the MOVE Act certainly isn't good enough for members of the armed service that put their lives on the line and endure amazing hardships so that we are free to go to polls in our communities.

6. The Goal for Military Voters

6.1. First Class Voters

There is no doubt that military voters are dramatically disadvantaged relative to their resident counterparts. The goal must be to elevate military voters to first class status; that is, to provide military voters access that is comparable to resident voters in their home jurisdiction.

As an example, if a resident voter can register and vote on election day, military voters from the same precinct should also be able to register, vote, and have their vote confidently counted on election day.

Military voters rarely complain about the hardships that they face, particularly those members that are in harm's way, but these are the members whose votes should be counted first. We cannot allow that lack of a "squeak" to cause us to settle for relegating them to ineffective voting support.

It is imperative that every military voter be able to vote with comparable confidence and effort as any other voter in their jurisdiction. In support of our troops, we cannot accept anything less than parity with their civilian counterparts.

6.2. Properties of First Class Voter Status

One de facto standard for sound voting systems architecture is the Precinct Count Optical Scan (PCOS) voting system paradigm. While other voting systems may offer some specialized advantages, the overall properties of PCOS are widely accepted as effectively meeting the needs of the voting public for speed, accuracy, and security.

The following properties form a foundation for military "First Class Voters" status and are approximated in optical scan systems in local polling places:

1. Ballots can be cast and counted on election day
2. There is no delay between marking the ballot and casting the ballot
3. The system provides error checking to the voter
4. Voters can attain one or more replacement ballots without delay
5. The voter is able to verify that their ballot was cast
6. Where state law allows, the voter may register and vote on election day

Collectively, these tenets identify first class voter status. Effectively, every military voter should have the same electoral rights and privileges as any other voter in their voting district. To date, it has not been possible to provide first class status to military voters. Nonetheless, nothing less than first class status is satisfactory.

7. Opportunities for the Military to Enfranchise Military Members

Like food, water, and housing, voting service is an integral need for military members that the armed forces should organically support. We address three categories of improvements that can facilitate electoral access for military voters.

¹ Military and Overseas Voter Empowerment Act

7.1. Permanent Election Responsibility of the Unit Administrative Officer Throughout the Service

The military's participation in the voting process is mostly limited to FVAP and to those military members that are assigned the additional duty of Voting Assistance Officer (VAO). The UOCAVA-mandated formalization of VAOs is an example of incremental efforts to improve military electoral access. There are several hard constraints that limit VAO's capability to help military voters.

7.1.1. Election Complexity and VAOs

On one hand, VAOs are ill-equipped to make a real impact. Election law & operation is inherently complex. Elections officials with years of experience may not grasp the subtleties and nuance associated with election operations law and practice within their own jurisdiction. Laws and procedures vary dramatically from state to state and VAOs must support military voters that hail from any of more than 3,000 voting jurisdictions across the country. It is unreasonable to expect that temporarily assigned VAOs can have a comprehensive understanding of even their own voting process, let alone provide sufficient advice and assistance to other voters that is needed in the highly complex absentee voting process that military members must navigate.

Worse yet, many voters, particularly new voters, often do not know anything about the voting process, including such essential information as the voting jurisdiction where they are eligible to vote. VAOs do not have access to personal information that could help them to assist these voters.

7.1.2. The Bane of Additional Duty

Maybe the greatest challenge to VAO effectiveness is the position's "additional duty" status. Military performance is competitive; that is, individual performance is evaluated in the context of the individual's peers. Additional-duty assignments detract from the time that a VAO can direct toward their primary duties, so there is a natural disincentive to spend more than the absolute minimum time necessary on the VAO responsibility.

Worse yet, those VAOs that do put forth extra effort to assist military voters in their unit may suffer negative consequences in their performance appraisal that can have a long term negative impact. Even if they are able to effectively compete in spite of the additional time demands of the VAO assignment, it is unlikely that they will ever reuse the knowledge that they acquire, since they are unlikely to be VAO more than once or twice in a career.

7.1.3. Voting as an Admin Function

On the other hand, military organizations cannot function without accurate personnel administration (admin). Admin units maintain all information on service members needed to properly advise and assist them in accomplishing electoral requirements so that their votes may be confidently cast. Assigning admin personnel to assist with voting will minimize atrophy and allow synergy between functions that can maximize those functions.

Title 10, Section 1566 of US Code [11] and its implementing directive [12] allow commanders to designate officers as elections officials for the purpose of voter registration. This is a natural admin function that could be coupled with the more broad electoral functions assigned to admin officers.

While assigning admin officers the voting function as an organic responsibility will efficiently improve voting access, it is not free, any more than providing mail to military members is free. It would require training and staff time that must be considered in unit descriptions.

It is impossible to know how many military members have been disenfranchised how many elections have been effected because of the military's resistance to this added service to its members, but we know it is way too many. Now is the time to incorporate voting support into admin sections throughout the armed services.

7.2. Vote Centers and Absentee Ballot Collection Points on Military Bases

Virtually all U. S. voters assigned to military bases overseas cast absentee ballots. In order to accommodate pilot projects that help these voters, the Department of Defense (DoD) should modify existing policies to promote these efforts. For example, DoD policy should specifically encourage base commanders worldwide to allow states to utilize base facilities as absentee ballot collection points and for other pilot projects that improve voting access for military members, their families, and federal service employees.

7.2.1. UOCAVA Vote Centers

There are many benefits operating vote centers on base to support military voters as exemplified list:

- Voters may attain voting assistance on the spot.
- Opportunity for face to face authentication
- Opportunity to use CAC
- Opportunity to use electronic communication that controls both ends of the transmission channel

Just as it set the precedent for assigning formal voting responsibility to military members, Title 10, Section 1566 of US Code [11] set the precedent for using

military facilities in support of the voting function. It goes so far as to allow use of military facilities as a voter registration assistance. Unfortunately, Section 1566 does not go far enough, leaving determination of ballot collection cooperation up to the bi-annual DoD Public Affairs Policy Guidance Concerning Political Campaigns and Elections².

There are important challenges to implementing vote centers on military bases. One challenge is how to manage the tens of thousands of distinct ballot styles that are necessary in regular elections. Pilot projects are needed to investigate alternatives to meet this challenge.

8. Conclusion

Military voters have been disgracefully disenfranchised throughout our country's history. Every few years, efforts to incrementally improve their electoral access suppresses attention sufficiently to avoid addressing the issue head on.

It is time for the DoD to provide full electoral access for military members as a fundamental, organic armed service responsibility and to put in place policies and procedures that ensure that every military member that chooses to do so, can confidently cast their ballot.

Substantive improvement is achievable through three simple actions:

1. Incorporate elections advice and assistance into the organic responsibility of armed services admin units at all levels.
2. By DoD policy, authorize & encourage military commanders to allow vote centers, absentee ballot collection points, and other appropriate polling activity aboard military bases.
3. By DoD policy, authorize military commanders to utilize military communications channels to accomplish electoral functions by its members.

Now is the time to dispense with incremental change, embrace the problem of military voting and once and for all, fix it.

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² E.g. SECDEF WASHINGTON DC//PA// message date-time-group, 281449Z JAN 08