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Federal Law Overrides State “Not Earlier Than” Rules

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Q: I am a sailor in the United States Navy. I serve in the crew of a nuclear submarine. We deploy for months at a time, sometimes on short notice. We are submerged, and unable to receive mail, during most of the time that we are deployed. I want to apply for my absentee ballot now, in January 2006, because we are in port for a few weeks and this is a convenient time for me to do this.

I called the county clerk in my hometown and asked about submitting my Federal Post Card Application (FPCA) in January for the November general election. She told me that our state law provides that an absentee ballot request must be submitted not earlier than 90 days before the election. She told me that if she receives the application more than 90 days before the election she would destroy it and not act on it.

I protested that her policy is likely to result in my being disenfranchised. She blew me off. She said, “Rules are rules.” She seems to have no appreciation for my Navy service or how the circumstances of my service make voting difficult. Is she correct about the “not earlier than” requirement of state law?

A: Your county clerk is wrong. Regardless of what your state law provides, federal law overrides state “not earlier than” rules, in the case of military voters. “A state may not refuse to accept or process, with respect to any election for federal office, any otherwise valid voter registration application or absentee ballot application (including the postcard form [FPCA] prescribed under section 1973ff of this title) submitted by an absent uniformed services voter during a year on the grounds that the voter submitted the application before the first date on which the state otherwise accepts or processes such applications for that year submitted by absentee voters who are not members of the uniformed services.” Title 42, United States Code, section 1973ff-3(e) [42 U.S.C. 1973ff-3(e)].

Article VI, Clause 2 of the U.S. Constitution is called the “Supremacy Clause.” It provides that a federal statute overrides a state statute, or even a state constitution. If your county clerk refuses to process your completed FPCA on the grounds that it was submitted too early, your county clerk is violating federal law, regardless of what your state law provides.

Q: May I use a single FPCA to request an absentee ballot for both the primary and the general election?

A: Yes. Moreover, you may use a single FPCA to request absentee ballots for all federal elections, including primaries and special elections, for federal office (president, U.S.
Senate, and U.S. House of Representatives) in both 2006 and 2008. “If a State accepts and processes an official post card [FPCA] form (prescribed under section 1973ff of this title) submitted by an absent uniformed services voter or overseas voter for simultaneous voter registration and absentee ballot application (in accordance with section 1973ff-1(a)(4) of this title) and the voter requests that the application be considered an application for an absentee ballot for each subsequent election for Federal office held in the State through the next 2 regularly scheduled general elections for Federal office (including any runoff elections which may occur as a result of the outcome of such general elections), the State shall provide a ballot to the voter for each such subsequent election.” [42 U.S.C. 1973ff-3(a).]

Congress has directed the Department of Defense to revise the FPCA form to facilitate the use of a single application for multiple elections. See 42 U.S.C. 1973ff-3(c). That revision has been made in the new FPCA form.

*Military title shown for purposes of identification only. The views expressed herein are the personal views of the author, and not necessarily the views of the Department of the Navy, the Department of Defense, or the U.S. Government.