

## Voting in Union Elections While Mobilized

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

### 7.3—Voting in Non-Federal Elections

**Q: I left my civilian job when I was recalled to active duty involuntarily. My civilian employer has asked my union to make financial accommodations in our salaries and benefits. The employer claims that such concessions are necessary to ensure the continued viability of the company, but that is a matter of some dispute. The union has decided to put the concessions question to a vote of the members.**

**I contacted my union to inquire about obtaining a ballot for this upcoming referendum. The union told me that it will not permit recalled Reservists to vote in this referendum. I think that this is unfair. I definitely intend to return to that employer, just as soon as I am released from active duty. My civilian career will be affected by the outcome of the referendum, just**

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<sup>1</sup>I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about very specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

<sup>2</sup>BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org).

**as much as the careers of my co-workers who were not recalled to active duty. Can you help me?**

A: We of ROA certainly agree that you and the other recalled Reservists should be permitted to vote in the upcoming referendum and also in any union officer elections that are held during your active-duty period. ROA Executive Director Jayson L. Spiegel has written to your national union president, asking for this accommodation. We will keep you posted.

\* Military title used for purposes of identification only. The views expressed in these articles are the personal views of the author and are not necessarily the views of the Department of the Navy, the Department of Defense, the Department of Defense or the U.S. government.

### **Update – April 2022**

On July 28, 2020, the National Relations Board (NLRB) published a Notice of Proposed Rulemaking in the Federal Register.<sup>3</sup> One of the amendments would provide for absentee ballots for employees who are on military leave. While the amendment has not yet been made, it looks like it could be coming soon considering the adjustments the NLRB has made due to Covid-19 pandemic. Since the pandemic began in March 2020, unions and employers have adjusted to mail ballot NLRB elections.<sup>4</sup> This is a drastic shift for the NLRB prefers conducting elections in person, usually at the employer's facility.<sup>5</sup> While the change might not be permanent, one can hope that it pushes the NLRB to allow absentee ballots for employees on military leave going forward.

### **Please join or support ROA**

This article is one of 1800-plus "Law Review" articles available at <https://www.roa.org/page/lawcenter>. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For

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<sup>3</sup>NLRB Issues Proposal on Employee Privacy and Absentee Ballots for Workers on Military Leave, ASSOCIATED BUILDERS AND CONTRACTORS (Wed., Aug. 5, 2020 12:52 P.M.), <https://www.abc.org/News-Media/Newsline/entryid/18020/nlrb-issues-proposal-on-employee-privacy-and-absentee-ballots-for-workers-on-military-leave>.

<sup>4</sup>Todd Dawson & Carlos Torrejon, *A Brave, New World? Recent NLRB Rulings Concerning Mail Ballot Elections May Be The Beginning Of A New Era In Board Elections*, JDSUPRA (Aug. 17, 2021), <https://www.jdsupra.com/legalnews/a-brave-new-world-recent-nlrb-rulings-3796742/>.

<sup>5</sup>*Id.*

many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve.

If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448.