

Virginia-Please Don't Disfranchise Military Personnel in Primaries

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

7.3—Voting in Non-Federal Elections

Virginia and most other states are having fiscal difficulties and are looking for ways to save money. Virginia State Senator Mark Obenshain has proposed to terminate state and local government funding for the process of nominating major party candidates for federal and state office. He contends that the parties themselves should be required to pay all these costs. In an e-mail blast to constituents on Jan. 6, 2011, he wrote:

Ending Subsidies to Political Parties

Virginia is in somewhat unique situation: we don't allow voter registration by political party, but we still pay for party primaries. And the truth is, we pay through the nose, sometimes as much as \$20 per voter.

¹I invite the reader's attention to 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.

²BA 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 (VRRA—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 VRRA 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 VRRA 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.

There are perfectly good alternatives. Parties often choose to nominate via convention or party canvass, or through a “firehouse primary,” in which a limited number of polling places are opened in each locality, usually for fewer hours than in a government-run election. All of these methods are common, all are relatively affordable—and all are paid for by the political parties themselves.

If a political party wants a conventional primary, fine—but they can pay for it. Our localities are burdened enough as it is. If a party cannot or will not put up that much money, they can always go with a cheaper option. Our localities can ill afford it—and under my proposal, they won’t have to.

I fundamentally disagree with Senator Obenshain’s contention that firehouse primaries, party canvasses, or party conventions constitute “perfectly good alternatives.” These alternatives do not serve the 34,447 Virginians serving on active duty in our armed forces, outside the Commonwealth of Virginia. These service members are paying Virginia state income tax, as well as federal income tax, through withholding from their salaries, no matter where the service of our country has taken them. If they are to vote at all, it must be by absentee ballot, and absentee voting is not an option in a convention, canvass, or firehouse primary. Instead of going to more of these “cheaper options,” I would like to see Virginia require a conventional primary (including an absentee voting option) for all elections to public office.

I fundamentally disagree with Senator Obenshain’s basic premise that financing the primary is the responsibility of the party, not the government. The nomination process is an integral part of the election process, just as the regular season and the playoffs are an integral part of determination of the Super Bowl champion. *See Smith v. Allwright*, 321 U.S. 649 (1944), holding that the primary was part of the election and rejecting the argument that the Democratic Party of Texas was a “private association” and could constitutionally determine its own membership rules and exclude African Americans from participation.

This issue is near and dear to my heart. Almost every year, I attend the Virginia Republican State Convention as a delegate. I signed up to attend and planned to attend the convention in May 2001, but the Navy Reserve deployed me to Bahrain a few days before the convention, so I had to miss it.

In a speech to the House of Commons on Aug. 20, 1940, Prime Minister Winston Churchill said: *“The gratitude of every home in our Island, in our Empire, and indeed throughout the world, except in the abodes of the guilty, goes out to the British airmen who, undaunted by odds, unwearied in their constant challenge of mortal danger, are turning the tide of world war by their prowess and their devotion. Never in the field of human conflict was so much owed by so many to so few.”*

I respectfully submit that the Prime Minister’s eloquent words about the Royal Air Force in the Battle of Britain apply equally to the men and women of the United States armed forces today, in the Global War on Terrorism. Active duty, Reserve, and National Guard personnel total less

than 3/4 of 1% of our nation's population. Were it not for the sacrifices of these few (including the 34,447 Virginians on active duty), none of us would have the opportunity to vote in free elections. Service members deserve above all others to exercise the right to vote in primary as well as general elections.

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 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 or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

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