

LAW REVIEW¹ 11056

Military Voting in Presidential Caucuses

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7.8—Military Voting in Primaries or Caucuses

According to the Department of Defense (DOD), there are 9,081 active duty military personnel who are eligible to vote in Iowa, and almost all of them are outside the state. There are only a handful of military personnel serving in Iowa (recruiters, etc.), and most of them are not Iowans.

On February 6, 2012, the Republican Party will conduct precinct caucuses in 1,784 precincts across the Hawkeye State. Registered Republican voters will elect delegates to the 99 county conventions, to be held a few days later, and at those county conventions delegates to the Republican National Convention will be elected.

The Iowa caucuses are important, out of all proportion to the state's population, because this is the first step in selecting the party's presidential nominee. The Iowa caucuses perform an

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.

important winnowing function. Some of the candidates who perform poorly in Iowa will not make it to the New Hampshire primary, to be held eight days later.

At least some of the 9,081 Iowans serving in our nation's armed forces want to participate in the Iowa caucuses, and they should be given that opportunity. In a 1952 letter to Congress, President Harry S. Truman wrote that those who serve our nation in uniform "deserve above all others to exercise the right to vote in this election year."

The active duty service member serving outside Iowa (even within the United States) will almost certainly be unable to travel to his or her home precinct caucus on the evening of February 6. Travel costs, inability to get leave, and other logistical issues will likely be overwhelming. If the service member is at sea or in a place like Afghanistan, traveling to the precinct caucus is completely out of the question. I am also concerned about the "wounded warrior" in a military or Department of Veterans Affairs medical facility. They are also precluded from attending precinct caucuses, and they are also deserving of accommodations.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) gives military personnel and their voting-age family members the right to vote by absentee ballot in primary, general, special, and runoff elections for federal office (President, United States Senator, and United States Representative). Does UOCAVA require Iowa and the Republican Party of Iowa to make arrangements for the active duty service member to participate in the caucuses by some alternative means? One might argue so, but that argument will likely not carry the day. When UOCAVA was enacted in 1986 and substantially amended in 2009, Congress was presumably aware that in Iowa and several other states delegates to the national party nominating conventions are selected by a means other than a primary. If the intent was to outlaw the Iowa caucuses, or to require Iowa to provide for service member participation in the caucuses, Congress should have made that intent clear in the text or at least the legislative history of UOCAVA.

At each Republican National Convention, the delegates debate and then enact the rules that will govern the presidential nomination process to be conducted four years later. On September 1, 2008, the Republican National Convention adopted the "Rules of the Republican Party." On August 6, 2010, the Republican National Committee amended those rules. Rule 15(c)(7) provides as follows: "Any process authorized or implemented by a state Republican Party for selecting delegates and alternate delegates or for binding the presidential preference of such delegates may use every means practicable, in the sole discretion of the state Republican Party, to encourage active military personnel the opportunity to exercise the right to vote."

Ron Kaufman, Roman Buhler, Jill Buck, and Robert Laurie brought this issue to the attention of the Rules Committee of the Republican National Committee and urged the adoption of a rule providing for participation by active duty service members in delegate selection processes, including the Iowa caucuses. As enacted, the rule is toothless, but at least it is a start, and I commend Mr. Kaufman, Mr. Buhler, Ms. Buck, and Mr. Laurie for taking the time to raise the

issue. The Republican Party Rules have never contained such a provision prior to 2008. The Democratic Party Rules are silent on this question.

What kind of arrangement can be made to enable the absent service member to participate in a precinct caucus in Iowa or elsewhere? One possibility is a rule enabling the service member or veteran to give a proxy to another registered voter in the precinct, perhaps the individual's mother or father. Of course, I realize the "slippery slope" implications of this suggestion. Yet, if we make this accommodation for the absent service member, why not for the absent college student, the person who cannot get to the precinct caucus because of illness, etc?

I respond that military service is different. Those who serve our country in uniform protect the rights that we all enjoy, including the right to vote. It is fully justified to make accommodations for them that are not made for anyone else.

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This article is one of 1800-plus "Law Review" articles available at 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.

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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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