

Military Voting in Presidential Caucuses—Part 2

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

7.7—Proposed Reforms for Military Voters

7.8—Military Voting in Primaries or Caucuses

On Saturday, February 4, 2012, Nevada held a presidential caucus involving the four remaining Republican presidential candidates. On that same day, the *New York Times* reported that the Nevada Republican Party had made a special accommodation for the estimated 300 Orthodox Jewish Republicans in Nevada.

Orthodox Jews consider it wrong to engage in secular activity (like voting) on the Sabbath, which runs from sundown Friday to sundown Saturday. For everybody else, the caucuses were over well before sundown on Saturday. The state party approved of the holding of special caucuses on Saturday evening, so that Orthodox Jews could vote without violating their interpretation of the Fourth Commandment.

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 (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.

I approve wholeheartedly of making a special accommodation for religion. No one should be required to choose between giving up the right to vote and violating the dictates of one's conscience.

At the same time, I believe that a special accommodation should also be made for those serving our country in uniform. I argue for making an accommodation for the 16,737 military personnel and 8,844 military spouses and dependents of voting age who claim Nevada as their legal residence. Because of their service to our country, they cannot come home to vote in a caucus or election. In a caucus, there generally is no opportunity to cast an absentee ballot. In this system, the voter must appear in person and publicly state his or her preference; there is no secret ballot.

Later this year, at the Republican Convention in Tampa and the Democratic Convention in Charlotte, the delegates will establish the rules for the 2016 nominating process. I urge the two major parties to establish rules requiring the state parties to provide military personnel and family members the opportunity to participate in a caucus without showing up in person. If a state party cannot figure out a way to give absent military personnel and their families a real opportunity to vote in a caucus, then the state should be required to go to a primary, with absentee voting, as the majority of the states now proceed.

Readers: Will you be attending one of the two major party conventions as a delegate, or do you know someone who will be? Please help me raise this issue. Those who serve our nation in uniform, and those who accompany spouses or parents who serve, should be given the opportunity to participate in the nomination as well as the election of candidates for president and other offices. After all, were it not for their sacrifices, none of us would have the opportunity to vote in free elections.

Update – April 2022

At its 2012 Convention in Tampa, the Republican Party adopted a new rule requiring the state party organizations to give active duty military personnel and wounded warriors a reasonable opportunity to vote in 2016 presidential nomination process.

New Rule 16(d)(7) provides:

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 *shall* use every means practicable to guarantee the right of active duty military personnel and individuals unable to attend meetings due to injuries suffered in military service the opportunity to exercise the right to vote in that process. This rule is

not intended to and shall not prevent a state from using a caucus or convention process that may or may not elect presidential delegates or alternates.³

This new rule requires, not just encourages, the state party organizations to adopt procedures that enable military personnel and wounded warriors to participate.

The Democratic party did not adopt a similar rule.

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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.

³Emphasis supplied.

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:

Reserve Officers Association
1 Constitution Ave. NE
Washington, DC 20002