

Virginia—Don't Disenfranchise Service Members in the 2013 Gubernatorial Nomination

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7.6—Restrictions on Political Activity of Service Members

7.7—Proposed Reforms for Military Voters

Virginia is a state with some unusual election laws. Virginia is one of five states³ that elect the Governor and other state officials in November of odd-numbered years. In Virginia the political party gets to decide whether its nomination process will be conducted by primary or by convention. Although the 2012 general election is still almost five months away, the 2013 gubernatorial election in Virginia is already well under way. Governor Robert McDonnell is constitutionally ineligible to seek reelection, and the two principal candidates for the Republican nomination are Lieutenant Governor Bill Bolling and Attorney General Ken Cuccinelli.

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.

³The other four are Kentucky, Louisiana, Mississippi, and New Jersey.

The Republican Party of Virginia is currently scheduled to conduct a primary for Governor next year, but a movement is in progress to change this to a convention. On behalf of the 35,785 Virginians currently serving on active duty in our armed forces,⁴ I object to the proposal to nominate the gubernatorial candidate by convention, because active duty service members would thereby be disenfranchised.

Of the 35,785 Virginians on active duty, only a few are currently serving in Virginia. There are tens of thousands of service members stationed in Virginia (Pentagon, Fort Belvoir, Norfolk Naval Base, etc.), but almost all of them vote in other states. The Virginians on active duty are serving in other states or in places like Afghanistan. They are paying Virginia state income tax, through withholding from their military salaries, regardless of where the service of our country takes them. Thus, they should be given the full opportunity to participate in the nomination as well as election of the state officials who spend their tax dollars.

The active duty service member will find it logically very difficult to sign up as a delegate to a state party convention and to travel to the state for the convention, but even if the member can overcome these logistical difficulties he or she cannot overcome an insuperable legal problem. I invite the reader's attention to Paragraph 4.1.2.1 of Department of Defense Directive 1344.10, dated February 19, 2008.⁵ This paragraph provides that active duty service members are *absolutely forbidden* to participate in partisan political conventions.

This directive is a *lawful general order*. This means that a service member can be convicted at court martial of violating it, even if the member was not aware of it. You are *charged with knowledge* of a lawful general order, just as you are charged with knowledge of a statute. Ignorance of the law is no excuse.

To the Virginia Republican Party—please ensure that the 35,785 Virginians serving our country in uniform have the opportunity to participate in the nomination of your gubernatorial candidate next year. That means holding a primary, not a convention.

Update—April 2022

The Virginia gubernatorial election was held on November 5, 2013 following a Democratic primary election on June 11, 2013 and a Republican statewide convention on May 17-18, 2013.⁶

⁴This figure comes from the Federal Voting Assistance Program of the Department of Defense.

⁵Please see [Law Review 1204](#) (January 2012) for a detailed discussion of the regulations limiting political activities by active duty service members. I invite the reader's attention to www.servicemembers-lawcenter.org. You will find 759 articles about military voting rights, reemployment rights, and other military-legal topics, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. I initiated this column in 1997, and we add new articles each week.

⁶*Virginia gubernatorial election, 2013*, BALLOT PEDIA, https://ballotpedia.org/Virginia_gubernatorial_election,_2013 (last visited Apr. 12, 2022).

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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.

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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