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GOP Rules Require that Military Personnel have a Reasonable Opportunity to Vote in the 2016 Presidential Nomination Process

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

7.1—Election officials must get the absentee ballots out in time for the service member to vote.

The two major political parties adopt rules at their quadrennial national conventions, governing the presidential nomination process four years later. At its 2012 Convention in Tampa, the Republican Party has adopted a new rule requiring the state party organizations to give active duty military personnel and wounded warriors a reasonable opportunity to vote in the 2016 presidential nomination process.

New Rule 15(c)(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.” (Emphasis supplied.)

Rule 15(c)(7), as adopted in 2008 for the 2012 process, provided as follows: “Any process authorized or implemented by a state Republican Party for selecting delegates and alternate

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.

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 their right to vote." (Emphasis supplied.)

As you can see, this new rule is a big improvement. In 2016, the state party organizations are *required*, not just encouraged, to adopt procedures that enable military personnel and wounded warriors (severely disabled veterans) to participate. If a state party's procedures do not comply with this mandate, the state's delegates will not be permitted to participate in the 2016 Republican National Convention.

Time, distance, and military regulations³ preclude active duty military personnel from participating in caucuses and conventions. Similarly, the severely disabled veteran will likely find it most difficult if not impossible to participate in person in a caucus or convention. When a state conducts a primary, general, or special election to nominate or elect candidates for federal office (including President), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) requires the state to provide military personnel, military family members, and overseas Americans the opportunity to participate by absentee ballot. As amended in 2009, UOCAVA requires the states to mail out absentee ballots 45 days before the primary or election, so that UOCAVA voters will have a reasonable opportunity to cast ballots that really do get counted, no matter where the service of our country has taken them.⁴

In 2012, most states conducted presidential primaries, but Iowa,⁵ Nevada,⁶ and several other states conducted caucuses and conventions to select delegates and alternates to the National Convention. The Iowa "caucus night" system got a lot of publicity, this year and in prior presidential years, because it is the first tangible step in the presidential nomination process, even before the New Hampshire primary a few days later.

The "caucus night" is very important to Iowa. Because it is first, it brings a lot of attention to one of the nation's smaller states, and it fills up a lot of motels and restaurants—all those reporters and political operatives need places to sleep and eat.

Does new Rule 15(c)(7) outlaw the Iowa caucus? No, but Iowa and the other caucus states will need to adopt procedures that enable active duty military personnel and wounded warriors to participate meaningfully in the process without showing up in person. I look forward to working

³Please see Law Review 1258 (June 2012)—a lawful general order that applies to all active duty service members forbids them (on penalty of fine, imprisonment, and punitive discharge) to participate in a political convention. I invite the reader's attention to www.servicemembers-lawcenter.org. You will find 785 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.

⁴42 U.S.C. 1973ff1(a)(8)(A).

⁵Please see Law Review 1156.

⁶Please see Law Review 1213.

with state party organizations in Iowa, Nevada, and elsewhere as they write and enact rules and procedures to make this possible. I envision a rule enabling the active duty service member or wounded warrior to cast a written ballot that will be considered and acted upon at the caucus or convention, just as if the individual were there in person.

I do not want to hear any “slippery slope” arguments. Yes, I realize that the Iowa college student at UCLA and the voter who is suffering from severe influenza on caucus night do not have the opportunity to participate without showing up in person. My answer is that *military service is different*. It is not unreasonable or unconstitutional to make accommodations for those who are away from home and prepared to lay down their lives in defense of our country that are not made for others.⁷

I want to thank all those who played a part in getting this new rule adopted, including Bruce Ash (Chairman of the 2012 Rules Committee of the Republican National Convention), Bob Bennett (Chairman of the Republican Party of Ohio), Chris Brown (Alabama delegate and member of the Rules Committee), Roman Buhler (Military Voting Rights USA), Bob Carey (National Defense Committee Senior Fellow, former Director of the Federal Voting Assistance Program, Navy Reserve Captain, and ROA life member), Soren Dayton (Prism Public Affairs), Jessie Jane Duff (Military Voting Rights USA), and Jim Nicholson (former Chairman of the Republican National Committee, former Secretary of the Department of Veterans Affairs, and retired Army Reserve Colonel).

Next week (September 4-6, 2012), the Democratic Party will hold its National Convention in Charlotte, North Carolina. I urge the Democratic Party to adopt a rule ensuring that military personnel and wounded warriors have the opportunity to participate in the Democratic presidential nomination process in 2016 and beyond.

Update – April 2022

The location of the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) within the United States Code changed. UOCAVA was previously cited at 42 U.S.C. §§ 1973ff–1973ff-7. After an editorial reclassification, the UOCAVA is now codified at 52 U.S.C. §§ 20301–20311. The changes in codification have not changed the substance or application of the sections.

The relevant section cited throughout the article can be found at:

42 U.S.C. § 1973ff-1 discussing state responsibilities can be found at 52 U.S.C. § 20302.

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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

⁷Please see Law Review 1277.

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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