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Alabama Disenfranchises Active Duty Service Members in Runoff

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

7.4—How a Service Member or Military Spouse Can Vote

Q: In 2016, I graduated from high school in Alabama and enlisted in the United States Navy.³ I am now a Third-Class Petty Officer (E-4), and I am serving on a destroyer in the Pacific. When we are at sea, we do not have the opportunity to send and receive mail every day. Our mail service is slow and intermittent.

I am very interested in participating in the primary, runoff primary, and general election in Alabama this year, and I want to make sure that my ballot counts in each election. I think that

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.

³This factual scenario is hypothetical but realistic. If you are on active duty and are eligible to vote in Alabama by absentee ballot this year, please contact me at SWright@roa.org.

it would be unfair if my service to our country in the Navy means that my ballot does not count because it does not arrive on time.

Alabama will conduct its presidential primary and its primary for all other offices up this year on 3/3/2020, “Super Tuesday.” In Alabama, like several other Southern states, winning a primary (other than a presidential primary) requires the winning candidate to receive a *majority, not just a plurality*. If no candidate receives a majority, because there are three or more candidates in the first primary, a runoff primary is held after the first primary and before the general election.

This year, in my home state, there are seven Republican candidates for the United States Senate, plus one Democratic candidate (the incumbent). Because there are seven Republican candidates, it is most unlikely that any one of them will win outright on 3/3. The runoff primary is scheduled for 3/31/2020, just 28 days after the first primary. I am concerned that I will not be able to cast an absentee ballot for the runoff primary—a ballot that really does get counted. Even if my local election official sends me a runoff ballot on March 4, the day after the first primary, I will not have time to receive my ballot, mark it, and return it on time for it to be received by the election official by 3/31/2020.

What arrangements, if any, have been made to make it possible for me to vote in Alabama’s runoff primary in 2020?

A: For the 2020 primary election, Alabama will send to each military voter (within or outside the United States) and to each overseas civilian voter a “special” primary ballot. For each federal office for which there are three or more candidates, your local election official will send you a ballot with instructions telling you to *rank* the candidates from first to last. If there is a runoff primary, your first primary ballot will count for the runoff primary for the highest-ranked among the candidates that have survived to the runoff.

For example, if you vote in the Republican primary you will be asked to rank the seven U.S. Senate candidates #1 through #7. Let us say that the runoff is between your third choice and your seventh choice. In that situation, your ballot will be counted for the runoff as a vote for your third choice.

Q: This is too complicated? As a sailor on a ship in the Pacific Ocean, out of contact with politics in my hometown, it is hard enough for me to identify the *one* U.S. Senate candidate for whom I wish to vote. Asking me to rank seven candidates is just too much. I want to receive a regular absentee ballot for the runoff—a ballot that lists only the candidates that have survived to the runoff. What gives?

A: I agree that the ranked choice voting system is not good, especially for military voters, and that you should be able to receive the same kind of runoff ballot that your friends and neighbors back home receive. I am also aware of some lawyers who are contemplating a federal court lawsuit against Alabama, contending that Alabama’s ranked choice system is

unconstitutional. The lawyers are looking for a real-live human plaintiff, a person who is directly and personally affected. If you qualify, please provide me your name and contact information, and I will put you in touch with those lawyers. The best way to reach me is by e-mail, at SWright@roa.org.

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:

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

