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Thou Shalt Not Politick while on Active Duty

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

7.0—Military voting rights

Since we are now within one year of the 2016 presidential election, now is a good time for a reminder about the restrictions on political activity by members of the armed forces on active duty. If you are on active duty, it is most important that you familiarize yourself with Department of Defense (DOD) Directive 1344.10, dated February 19, 2008.³

Section 4.6.4 of this Directive provides: “This is a lawful general regulation. Violations of paragraphs 4.1 through 4.5 of this Directive by persons subject to the Uniform Code of Military Justice are punishable under Article 92, ‘Failure to Obey Order or Regulation.’” This means that you are *charged with knowledge* of this Directive. You can be court-martialed for violating it, and “I did not know about the Directive” is not a defense. The prosecution is not required to prove that you had read the Directive or that somebody had put a copy of it in your hands. Ignorance of the law is no excuse.

If you are on active duty, these restrictions apply to you 24 hours per day, 365 days per year. The rules apply when you are on leave or liberty—“I did it on my own time” is not a defense.

I am aware of an active duty physician who was elected as a delegate to a national political party convention in 2012. When questioned about the propriety of his attending the convention as a delegate, he claimed that he had made a full report to his commanding officer and had received permission to run for delegate at the precinct, county, and state levels. Please

¹ Please see www.servicemembers-lawcenter.org. You will find more than 1400 “Law Review” articles about laws that are especially pertinent to those who serve our country in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. This article is essentially a reprint of Law Review 1204 (January 2012). I have determined that Department of Defense Directive 1344.10 of February 19, 2008 has not been amended or rescinded.

² Captain Wright received his BA in 1973 from Northwestern University, his JD in 1976 from the University of Houston, and his LLM in 1980 from Georgetown University. He is retired from the Navy Reserve Judge Advocate General’s Corps. He was the Director of the Service Members Law Center (SMLC) at the Reserve Officers Association (ROA) from June 2009 through May 2015. Please see Law Review 15052 (June 2015) for a report on the accomplishments of the SMLC. Captain Wright is the author or co-author of more than 1200 of our published “Law Review” articles.

³ You can find the text of the directive at <http://dtic.mil/whs/directives/corres/pdf/134410p.pdf>.

understand that no one in the chain of command has the authority to give you permission to violate a lawful general order.

Section 4 of DOD Directive 1344.10 sets forth the underlying policy as follows:

It is DoD policy to encourage members of the Armed Forces (hereafter referred to as “members”) (including members on active duty, members of the Reserve Components not on active duty, members of the National Guard even when in a non-Federal status, and retired members) to carry out the obligations of citizenship. In keeping with the traditional concept that members on active duty should not engage in partisan political activity, and that members not on active duty should avoid inferences that their political activities imply or appear to imply official sponsorship, approval, or endorsement, the following policy shall apply...

Section 4.1.1 outlines the kinds of political activities that service members are specifically *permitted* to engage in:

4.1.1. A member of the Armed Forces on active duty may:

4.1.1.1. Register, vote, and express a personal opinion on political candidates and issues, but not as a representative of the Armed Forces.

4.1.1.2. Promote and encourage others to exercise their voting franchise, if such promotion does not constitute use of their official authority or influence to interfere with the outcome of any election.

4.1.1.3. Join a partisan or nonpartisan political club and attend its meetings when not in uniform, subject to the restrictions of subparagraph 4.1.2.4. (See DoD Instruction 1334.1 (Reference (c).)

4.1.1.4. Serve as an election official, if such service is not as a representative of a partisan political party, does not interfere with the performance of military duties, is performed when not in uniform, and the Secretary concerned has given prior approval. The Secretary concerned may NOT delegate the authority to grant or deny such permission.

4.1.1.5. Sign a petition for a specific legislative action or a petition to place a candidate’s name on an official election ballot, if the signing does not obligate the member to engage in partisan political activity and is done as a private citizen and not as a representative of the Armed Forces.

4.1.1.6. Write a letter to the editor of a newspaper expressing the member’s personal views on public issues or political candidates, if such action is not part of an organized letter-writing campaign or a solicitation of votes for or against a political party or partisan political cause or candidate. If the letter identifies the member as on active duty (or if the member is otherwise reasonably identifiable as a member of the Armed Forces), the letter should clearly state that

the views expressed are those of the individual only and not those of the Department of Defense (or Department of Homeland Security for members of the Coast Guard).

4.1.1.7. Make monetary contributions to a political organization, party, or committee favoring a particular candidate or slate of candidates, subject to the limitations under section 441a of title 2, United States Code (U.S.C.) (Reference (d)); section 607 of title 18, U.S.C. (Reference (e)); and other applicable law.

4.1.1.8. Display a political bumper sticker on the member's private vehicle.

4.1.1.9. Attend partisan and nonpartisan political fundraising activities, meetings, rallies, debates, conventions, or activities as a spectator when not in uniform and when no inference or appearance of official sponsorship, approval, or endorsement can reasonably be drawn.

4.1.1.10. Participate fully in the Federal Voting Assistance Program.

Section 4.1.2 of the Directive sets forth the prohibitions on partisan activity by active duty service members, as follows:

4.1.2. A member of the Armed Forces on active duty shall not:

4.1.2.1. Participate in partisan political fundraising activities (except as permitted in subparagraph 4.1.1.7.), rallies, conventions (including making speeches in the course thereof), management of campaigns, or debates, either on one's own behalf or on that of another, without respect to uniform or inference or appearance of official sponsorship, approval, or endorsement. Participation includes more than mere attendance as a spectator. (See subparagraph 4.1.1.9.)

4.1.2.2. Use official authority or influence to interfere with an election, affect the course or outcome of an election, solicit votes for a particular candidate or issue, or require or solicit political contributions from others.

4.1.2.3. Allow or cause to be published partisan political articles, letters, or endorsements signed or written by the member that solicits votes for or against a partisan political party, candidate, or cause. This is distinguished from a letter to the editor as permitted under the conditions noted in subparagraph 4.1.1.6.

4.1.2.4. Serve in any official capacity with or be listed as a sponsor of a partisan political club.

4.1.2.5. Speak before a partisan political gathering, including any gathering that promotes a partisan political party, candidate, or cause.

4.1.2.6. Participate in any radio, television, or other program or group discussion as an advocate for or against a partisan political party, candidate, or cause.

4.1.2.7. Conduct a political opinion survey under the auspices of a partisan political club or group or distribute partisan political literature.

4.1.2.8. Perform clerical or other duties for a partisan political committee or candidate during a campaign, on an election day, or after an election day during the process of closing out a campaign.

4.1.2.9. Solicit or otherwise engage in fundraising activities in Federal offices or facilities, including military reservations, for any political cause or candidate.

4.1.2.10. March or ride in a partisan political parade.

4.1.2.11. Display a large political sign, banner, or poster (as distinguished from a bumper sticker) on a private vehicle.

4.1.2.12. Display a partisan political sign, poster, banner, or similar device visible to the public at one's residence on a military installation, even if that residence is part of a privatized housing development.

4.1.2.13. Participate in any organized effort to provide voters with transportation to the polls if the effort is organized by or associated with a partisan political party, cause, or candidate.

4.1.2.14. Sell tickets for or otherwise actively promote partisan political dinners and similar fundraising events.

4.1.2.15. Attend partisan political events as an official representative of the Armed Forces, except as a member of a joint Armed Forces color guard at the opening ceremonies of the national conventions of the Republican, Democratic, or other political parties recognized by the Federal Elections Committee or as otherwise authorized by the Secretary concerned.

4.1.2.16. Make a campaign contribution to, or receive or solicit (on one's own behalf) a campaign contribution from, any other member of the Armed Forces on active duty. Any contributions not prohibited by this subparagraph remain subject to the gift provisions of sections 2635.301-2635.304 of title 5, Code of Federal Regulations (Reference (f)). See subparagraph 4.1.2.1. for general prohibitions on partisan fundraising activity.

These restrictions apply to military personnel on active duty. Military retirees and Reserve Component members not on active duty are generally free to engage in political activity so long as not in uniform. Section 4.1.4 of the Directive provides:

4.1.4. Subject to any other restrictions in law, a member of the Armed Forces not on active duty may take the actions or participate in the activities permitted in subparagraph 4.1.1., and may take the actions and participate in the activities prohibited in subparagraph 4.1.2, provided the

member is not in uniform and does not otherwise act in a manner that could reasonably give rise to the inference or appearance of official sponsorship, approval, or endorsement.

Please note that Section 4.1.5 contains some “catch-all” language, as follows:

4.1.5. Activities not expressly prohibited may be contrary to the spirit and intent of this Directive. Any activity that may be reasonably viewed as directly or indirectly associating the Department of Defense or the Department of Homeland Security (in the case of the Coast Guard) or any component of these Departments with a partisan political activity or is otherwise contrary to the spirit and intention of this Directive shall be avoided.

The Department of Defense and the services do not attempt to regulate the political activities of military spouses and family members, but I urge them to avoid activities that may appear to involve military commands in political activities or that take advantage of their special access to a military installation as a military spouse or family member.

Please remember that appearances count, and err on the side of caution. Military personnel should have the opportunity vote, no matter where the service of our country has taken them, and whether they support or oppose the party in power. But political activities beyond voting will largely have to wait until the service member leaves active duty.