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Supreme Court Upholds Constitutionality of the SSCRA

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4.5—Protection from State/Local Tax Authorities
10.2—Other Supreme Court Cases

***Dameron v. Brodhead,* 345 U.S. 322 (1953).**

Claiborne Dameron was an Air Force officer on active duty in the late 1940s. Throughout 1948, he was stationed at Lowry Field, near Denver. He lived in an off-base apartment in Denver and commuted to the base. His household goods (furniture, etc.) were valued at $460. The city of Denver imposed a personal property tax of $23.51 on those goods. Dameron paid the tax under protest and then sued for a refund in Colorado state court. The state trial court ruled in his favor, but Denver appealed and the Colorado Supreme Court reversed. *Cass v. Dameron,* 125 Colo. 477, 244 P.2d 1082 (1952). Although the amount of money involved ($23.51) was trivial, even in 1948 dollars, the U.S. Supreme Court granted *certiorari.*

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[1]I invite the reader's attention to https://www.roa.org/page/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 specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

[2]BA 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.

At the time, the Soldiers' and Sailors' Civil Relief Act (SSCRA) provided that a member of the Armed Forces on active duty shall not be considered to be a resident or domiciliary of a place where he or she physically resided pursuant to military orders, and that the servicemember is protected from having to pay state income tax on his or her military salary to the state where he or she physically resides but is not domiciled. The SSCRA provision also provided that the personal (moveable) property of such a servicemember shall not be considered to have a situs in the state where the member physically resides but is not domiciled.

Mr. Dameron was a domiciliary (legal resident) of the Parish of West Baton Rouge, La., the place where he had lived before he entered active duty. He found it necessary to rent an apartment in the Denver area only because the Air Force had assigned him to duty at Lowry Field. He voted by absentee ballot in Louisiana. He did not vote or register to vote in Colorado and did not consider Colorado to be his residence.

Denver claimed first that the SSCRA provision did not preclude it from imposing its personal property tax on Mr. Dameron's household goods. The city also argued that the SSCRA was unconstitutional insofar as it forbade Denver to tax these household goods. The U.S. Supreme Court forcefully rejected both contentions.

Denver asserted that the SSCRA provision was enacted to protect the servicemember from double taxation, by the member's home state as well as the state where he was stationed. Denver pointed out that the state of Louisiana and its political subdivisions had not sought to tax Mr. Dameron's household goods. Denver claimed that the SSCRA provision did not apply as it was not necessary in that instance to protect Mr. Dameron from double taxation.

The Supreme Court held that the SSCRA provision was both broad and clear. It provided that the servicemember's personal property was not considered to have a situs in the state where the member physically resided solely due to military orders. Only the member's home state (Louisiana in this instance) was permitted to tax the member's personal property. The fact that the home state had chosen not to tax the property in question did not authorize (according to the Supreme Court) the physical-presence state and locality to tax that property.

Turning to the constitutional argument, the court held: "The constitutionality of federal legislation exempting servicemen from the substantial burdens of seriate taxation by the states in which they may be required to be present by virtue of their service, cannot be doubted. Generally similar relief has been accorded to other types of federal operations or functions. And we [the Supreme Court] have upheld the validity of such enactments. ... Nor do we see any distinction between those cases and this. ... We have, in fact, generally recognized the especial burdens of required service with the armed forces in discussing the compensating benefits Congress provides. ... Petitioner's [Dameron's] duties are directly related to an activity which the Constitution delegated to the National Government

[national defense]. ... Since this is so, congressional exercise of a 'necessary and proper' supplementary power such as this statute [the SSCRA] must be upheld." *Dameron v. Brodhead,* 345 U.S. 322, 324-25 (1953).

More recently, the Supreme Court has upheld the constitutionality of the "Solomon Amendment," providing that academic institutions that receive federal funds must give military recruiters the same access to students that other employment recruiters enjoy. *Rumsfeld v. Forum for Academic and Institutional Rights Inc.,* 547 U.S. 47 (2006). The statute at issue there was conditioned upon the receipt of federal funds, but the Supreme Court opinion indicates that the constitutionality would have been upheld even if Congress had imposed the access requirement directly, without regard to the institution's receipt or non-receipt of federal funds. Please see my Law Review 0612 (May 2006), titled "Supreme Court Gets It Right." That article and all previous ROA Law Review articles are available at www.roa.org/law_review.

In 2003, Congress enacted the Servicemembers Civil Relief Act (SCRA), a long-overdue rewrite of the SSCRA, which can be traced back to 1917. The 2003 enactment broadens and strengthens the protections enjoyed by those who serve in our nation's armed forces, including specifically the protections against state and local tax authorities. The SSCRA and SCRA, as well as the Uniformed Services Employment and Reemployment Rights Act (USERRA) and its predecessors, have long imposed substantial burdens on state and local governments as well as private persons and entities, including creditors, potential plaintiffs, employers, etc. The burdens placed on these private persons and entities can be significant but are small compared to the immense burdens (including substantial risk of loss of life or limb) voluntarily undertaken by the brave young men and women who enlist in the armed forces, including the Reserve Components.

I have a message for employers, creditors, and others who may contemplate challenging the constitutionality of USERRA or the SCRA. In the immortal words of National Basketball Association great Shaquille O'Neal, "Don't even think about it." If you mount such a challenge, you will lose, and you will incur the wrath of patriotic Americans.

Update: December 2015

As explained in Law Review 15115, the editors of the United States Code (U.S.C.) recently eliminated the "Appendix" of title 50 of the Code, and the Servicemembers Civil Relief Act (SCRA) can now be found in title 50 at sections 3901 and following.

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This article is one of 1800-plus "Law Review" articles available at 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.

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