

LAW REVIEW¹ 10073

A Small Price: Laws on the books protect the few who sacrifice for the many

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

1.0—USERRA Generally

4.3—Right to Continuance and Protection Against Default Judgment

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

In a speech to the House of Commons on Aug. 20, 1940, Prime Minister Winston Churchill said: "The gratitude of every home in our island, in our empire, and indeed, throughout the world, except in the abodes of the guilty, goes out to the British airmen who, undaunted by odds, unwearied in their constant challenge of mortal danger, are turning the tide of world war by their prowess and their devotion. Never in the field of human conflict was so much owed by so many to so few."

These eloquent words about the Royal Air Force in the Battle of Britain could apply equally to the men and women of the U.S. armed forces today. The entire U.S. military establishment, including the National Guard and Reserve, amounts to less than three-fourths of 1 percent of

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.

the U.S. population. It is these few who, by their prowess and their devotion, have protected all Americans from a repeat of the horrors of Sept. 11, 2001.

In the seven decades since 1940, Congress has enacted many laws to protect the interests of those who serve or have served our nation in uniform. With three of those laws in particular, Congress was fully aware that it can, and sometimes does, impose costs and inconvenience on election officials, employers, fellow employees, creditors, and others. Yet those who have sacrificed have earned these protections.

The Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), passed in 1986, requires local election officials to have absentee ballots printed and ready to mail to eligible voters overseas 45 days before an election. This law gives armed forces members time to receive their ballots, mark them, and return them in time to be counted, no matter where their service to the country has taken them.

The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994 requires civilian employers to reemploy, upon their return from duty, those who have laid aside their civilian jobs to serve the nation in uniform, voluntarily or involuntarily. The law ensures no loss of seniority and safeguards pension benefits upon reemployment, as if the veteran has been continuously employed in the civilian job. USERRA also protects employees and potential employees from discrimination with respect to initial employment, retention in employment, promotions, and employment benefits.

USERRA was a long-overdue recodification of the Veterans Reemployment Rights Act, which was initially enacted in 1940 as part of the Selective Training and Service Act. In 1941, Congress expanded the reemployment provision to include voluntary enlistees as well.

The Servicemembers Civil Relief Act (SCRA) protects men and women in uniform from default judgments imposed against them in civil and administrative proceedings if their military service precludes them from responding.

The burdens imposed upon these third parties (election officials, employers, and creditors) are small compared to the burdens—and sometimes the ultimate sacrifice—those who serve voluntarily undertake while in uniform.

While strong and effective, these laws are not self-executing.

The legal rights and assurances granted the armed forces through these laws and others are only as effective as the understanding of those laws by employers and—most important—those who serve the nation. The challenge is finding the proper resources for that understanding.

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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:

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