

Where Do Military Personnel and Family Members Vote?

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4.5—Protection from State/Local Tax Authorities

7.2—Service member or military spouse voting and domicile

Where do military personnel vote? And where do military spouses and children of voting age vote? The chart below shows these figures, for each state, as of September 2010. For each state, the first figure is the number of active duty service members who are eligible to vote (usually but not always by absentee ballot) in that state, and the second number is the number of voting-age military family members who are eligible to vote in the state. These figures come from the Department of Defense (DOD) and are accurate and reliable.

The Director of the Federal Voting Assistance Program (in DOD) has informed me that of those military personnel who vote, 2/3 do so by absentee ballot, and the other 1/3 vote in person on

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.

Election Day or during the early voting period in the days leading up to Election Day. Among military family members who vote, a clear majority vote in person.

Domicile of the service member

Joe Smith graduated from high school in Florida and joined the Army. His domicile (legal residence) for important legal purposes (including voting and state income tax liability) is the place where *he lived* and was domiciled before he entered active duty by enlisting, shortly after he graduated from high school in 1999. That place is called his *domicile of origin* and he can retain it for the entire time he is on active duty, even 20 years or more.

Joe's domicile of origin is the place where *he lived* and was domiciled in 1999, when he graduated from high school and shortly thereafter enlisted in the Army. Let us assume that Joe's domicile of origin is the place where he lived with his parents since early childhood, and where he was still living when he entered active duty in 1999. Since he has already been on active duty for 12 years, it is entirely possible that his parents have since moved away or died. Joe's domicile is not controlled by the current domicile of his parents. Joe's domicile is that childhood home in Florida, although his mother now lives and votes in California and his father is deceased.

Local election officials—do not assume that the address that Joe lists as his “permanent residence address” on his Federal Post Card Application (FPCA) will be an address where he can currently receive mail or where relatives of Joe currently reside. Since Joe has been on active duty for 12 years already, and remains on active duty, it is entirely possible that the house at that address has been through two different owners or occupants in the years since Joe enlisted in 1999. The fact that Joe has no relatives at the address and cannot receive mail at the address does not detract from the fact that the 1999 address remains Joe's domicile until he establishes a new domicile elsewhere or until he leaves active duty, whichever comes first.

While he serves on active duty, likely for an entire career, Joe will have many duty stations, both within and outside our country. While he is physically located at a duty station within the United States for a significant time (not a two-week temporary additional duty stint), Joe can establish a new *domicile of choice* at that place. Establishing a new domicile requires *simultaneously* a physical presence at the new place for a significant time and the *intent* to make that place home. Neither intent alone nor physical presence or absence alone can create a new domicile or destroy a preexisting domicile.

Joe's domicile of origin is in a state (Florida) with a very favorable tax policy (no state income tax). Accordingly, Joe will likely retain his domicile of origin in Florida until he retires from the Army, perhaps as late as 2029 (30 years after he entered active duty).

Under the Servicemembers Civil Relief Act (SCRA), a federal statute enacted in 2003 to replace the Soldiers' and Sailors' Civil Relief Act, which goes back to 1917, Joe is not required to pay state income tax to a state (let's say Virginia) where he *physically* resides but is not domiciled,

and Joe does not become a Virginia domiciliary just because he rents an apartment or buys a house in Virginia. If Joe is assigned to duty at Fort Belvoir, he will need to make housing arrangements somewhere near his Army assignment. The SCRA also precludes Virginia (and the county) from imposing a personal property tax on Joe's vehicle, so long as the vehicle is titled in Joe's name and Joe remains on active duty and domiciled elsewhere.

Mary Jones graduated from high school in Vermont in 2009 and joined the Navy. After training, she is assigned to duty at Naval Air Station Corpus Christi, in Texas. Like Florida, Texas has a very favorable tax policy (no state income tax). While stationed at NAS Corpus Christi for a three-year period, Mary establishes her domicile in Nueces County, Texas. She notifies the Navy that she is now domiciled in Texas, not Vermont, and she registers to vote in Nueces County. The Navy stops withholding Vermont state income tax from Mary's salary.

Like Joe, Mary is a career active duty service member. She remains on active duty until 2039, when she retires as a Master Chief Petty Officer. During her long career, she serves at many duty stations, within and outside our country. Having established a *bona fide* domicile in Texas, Mary is entitled to maintain that domicile for the remainder of her long military career. The SCRA protects her from having to pay state income tax and personal property tax to states where she serves on active duty but is not domiciled.

Domicile of military family members

Alice Williams was born in California in 1980. In 2005, she met Joe Smith, then serving on active duty in California, and they married in 2006. Alice has lived in California for her entire life to that point. Marrying a Floridian does not make her a Floridian. Moreover, the SCRA does not protect Alice from having to pay state income tax to the state where she physically resides, regardless of whether she votes there, or votes somewhere else, or does not vote at all.

After marrying Joe in 2006, Alice moves in with him in an apartment near the military base where he is stationed, and she changes her voter registration to that address. Joe votes in Florida by absentee ballot, while Alice votes in person on Election Day, at the polling place near the apartment they share. It may seem anomalous for a married couple to live together in the same house or apartment or military quarters but be domiciled in different states, but that result is entirely possible and indeed common when one or both are on active duty in the armed forces.

Remember that many (maybe most) of the military family members eligible to vote in a particular state have no relation with the active duty service members who are eligible to vote in that state. In ten states (Colorado, Georgia, Hawaii, Kansas, Kentucky, Maryland, North Carolina, Oklahoma, and Virginia) and the District of Columbia, the number of military family members eligible to vote is greater (sometimes substantially greater) than the number of service members eligible to vote there. For example, in Virginia there are 35,785 active duty service members and 90,466 military family members eligible to vote.

In 2009, Congress enacted the Military Spouses Residency Relief Act (MSRRA), which supposedly makes it possible for military spouses to enjoy some of the same benefits that active duty service members enjoy, with respect to the determination of domicile for taxation and voting purposes. As I explained in Law Review 0959 (available at www.roa.org/law_review), the MSRRA is poorly drafted and does not accomplish its advertised purpose for most military spouses.

Don't forget the military voters.

Military voters are distinctly overrepresented in states (like Texas and Florida) that have major military installations and favorable tax policies, but every state and every congressional district has military voters. If you are the local election official, it is your duty to ensure that these folks have a reasonable opportunity to cast ballots that really do get counted, no matter where the service of our country has taken them. You have the same obligation, regardless of whether you have one military voter or 100,000 military voters in your county.

Candidates and political party organizations—don't forget military personnel and family members as voters. Remember that military absentee voters probably do not receive many of the political messages that other voters take for granted during the weeks leading up to Election Day. They may be hundreds or thousands of miles away from the places where they vote by absentee ballot. They do not have the opportunity to watch local television or listen to local radio or read local newspapers for the communities where they vote. They are not visited by precinct captains, and they do not receive "get out the vote" calls from political phone banks. They receive little if any political direct mail, unless you take it upon yourselves to reach out to them by mail or e-mail. But they do vote, for state and local offices as well as federal offices, and they care deeply about the issues and outcome of the election.

There are ways to communicate with these military voters, including those who are serving in places like Afghanistan and Iraq, or on ships at sea. Contact me for more information. 800-809-9448, extension 730 or SWright@roa.org.

Here are the numbers.

Alabama: 20,057 service members and 14,471 military family members.
Alaska: 36,430 service members and 14,717 military family members.
Arizona: 27,669 service members and 17,372 military family members.
Arkansas: 11,130 service members and 5,544 military family members.
California: 131,586 service members and 100,577 military family members.
Colorado: 19,615 service members and 28,252 military family members.
Connecticut: 8,764 service members and 4,392 military family members.
Delaware: 3,108 service members and 2,747 military family members.
District of Columbia: 822 service members and 1,821 military family members.
Florida: 187,290 service members and 54,155 military family members.
Georgia: 40,639 service members and 48,287 military family members.

Hawaii: 5,580 service members and 29,653 military family members.
Idaho: 8,946 service members and 3,562 military family members.
Illinois: 54,318 service members and 11,903 military family members.
Indiana: 20,282 service members and 3,871 military family members.
Iowa: 9,081 service members and 1,514 military family members.
Kansas: 11,224 service members and 17,430 military family members.
Kentucky: 12,243 service members and 17,135 military family members.
Louisiana: 17,005 service members and 14,024 military family members.
Maine: 5,250 service members and 1,837 military family members.
Maryland: 17,357 service members and 23,232 military family members.
Massachusetts: 12,222 service members and 3,899 military family members.
Michigan: 44,574 service members and 5,419 military family members.
Minnesota: 14,660 service members and 1,763 military family members.
Mississippi: 11,371 service members and 8,529 military family members.
Missouri: 26,332 service members and 11,949 military family members.
Montana: 8,501 service members and 2,510 military family members.
Nebraska: 7,031 service members and 5,531 military family members.
Nevada: 16,737 service members and 8,844 military family members.
New Hampshire: 8,032 service members and 1,035 military family members.
New Jersey: 22,276 service members and 7,006 military family members.
New Mexico: 9,285 service members and 8,900 military family members.
New York: 58,798 service members and 20,508 military family members.
North Carolina: 34,847 service members and 73,901 military family members.
North Dakota: 3,006 service members and 4,083 military family members.
Ohio: 43,357 service members and 10,605 military family members.
Oklahoma: 15,538 service members and 16,744 military family members.
Oregon: 18,708 service members and 2,780 military family members.
Pennsylvania: 51,503 service members and 7,030 military family members.
Rhode Island: 2,590 service members and 1,940 military family members.
South Carolina: 20,648 service members and 20,180 military family members.
South Dakota: 7,701 service members and 2,538 military family members.
Tennessee: 45,560 service members and 18,518 military family members.
Texas: 229,890 service members and 95,227 military family members.
Utah: 6,914 service members and 4,557 military family members.
Vermont: 2,585 service members and 299 military family members.
Virginia: 35,785 service members and 90,466 military family members.
Washington: 52,903 service members and 43,113 military family members.
West Virginia: 9,337 service members and 1,242 military family members.
Wisconsin: 16,227 service members and 2,703 military family members.
Wyoming: 5,466 service members and 2,068 military family members.

UPDATE—March 2019

On 12/31/2018, President Trump signed into law the Veterans Benefits and Transition Act of 2018. This new law amends the Servicemembers Civil Relief Act (SCRA) with respect to determining the domicile (legal residence) of the spouse of an active duty service member. Now, the spouse is permitted to select the domicile of the active duty spouse, without regard to the date of the marriage and even if the non-military spouse has never physically resided in that state. Having changed her (or his) domicile to that of the active duty spouse, the other spouse will be eligible to vote in the state where the service member votes and will be considered a domiciliary of that state for state income tax purposes.

For example, Joe Smith graduated from high school in Houston Texas in 2005 and soon thereafter enlisted in the Navy, and he has been on active duty continuously since August 2005. He is currently stationed in Norfolk, Virginia. He has maintained his domicile in Houston, at the address where he lived with his parents when he enlisted in 2005. He votes by absentee ballot in Houston in each major election. He has not voted or registered to vote in any of the places where he has been stationed in the last 14 years. Under the SCRA, Virginia is precluded from taxing Joe's military income, because he is not domiciled in Virginia. He lives in Virginia only because his military duties require his presence there.

In 2017, Joe was transferred to a Navy base in Norfolk. He met the love of his life, Mary Jones, and they married in 2018. They live together in a rented apartment near Joe's Navy assignment and Mary's civilian job. Until now, Joe has been domiciled in Texas while Mary has been domiciled in Virginia, although they live together in the same apartment. Now, as a result of the recent statutory amendment, Mary can change her domicile to Texas although she has never lived in Texas. If she changes her domicile to Texas, she will be exempt from having to pay Virginia state income tax on her civilian salary.

Please see Law Reviews 19019 and 19020, February 2019.