

## Military Voting and Redistricting

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

7.1—Election officials must get the absentee ballots out in time for the service member to vote.  
10.2—Other Supreme Court Cases

On January 9, 2012 the Supreme Court conducted oral argument in the case of *Perry v. Perez*, No. 11-713. I had the honor to witness the argument firsthand.

Because of massive population growth between the 2000 Census and the 2010 Census, Texas gained four seats in the United States House of Representatives, going from 32 districts to 36. The Texas Legislature drew new lines for Texas' 36 congressional districts and also new lines for the Texas Senate and Texas House of Representatives.

Under the Voting Rights Act (VRA) of 1965, Texas and several other states (mostly in the South) must get “pre-clearance” before implementing any change in voting procedures, including redistricting. The VRA provides two alternative means for obtaining pre-clearance—from the

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<sup>1</sup>I invite the reader's attention to [www.roa.org/lawcenter](http://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.

<sup>2</sup>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](mailto:SWright@roa.org).

United States Department of Justice (DOJ) or from a 3-judge federal court in our nation's capital. Texas chose to bring suit in the 3-judge court, seeking pre-clearance. The trial is ongoing now, and the decision is expected in early February but may be delayed.

Texas' primary was scheduled for March but has been postponed until April. The primary and general election cannot proceed until the shape of the districts has been finalized. A federal district court in Texas held a trial and granted emergency relief, establishing congressional and state legislative lines for 2012 only—subject to final determination of lines by the 3-judge court here in DC. The Texas judge came up with lines that were considerably different from the lines that passed the Texas Senate and House of Representatives and were signed into law by Governor Rick Perry.

Texas appealed, and the Supreme Court agreed to hear the case on an emergency basis, bypassing the United States Court of Appeals for the 5th Circuit, the federal appellate court in New Orleans that hears appeals from district courts in Texas, Louisiana, and Mississippi. The Supreme Court stayed (delayed) the application of the Texas court's decision and scheduled oral argument for January 9, 2012.

Texas' primary has already been delayed from March to April. It seems to me, from listening to the oral argument, that all parties seemed to assume that the primary will need to be delayed again. Chief Justice Roberts asked the Solicitor General of the United States (representing the United States in this case) how much the primary could be delayed.

The Solicitor General pointed out that under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) absentee ballots for the general election must go out by 45 days before Election Day, or by September 22, 2012. The Solicitor General told the Supreme Court that Texas needs approximately 90 days after the primary to print and start mailing out general election ballots. Thus, the primary must be held not later than late June.

I am pleased that the needs of overseas military voters have been brought to the attention of our nation's highest court. We will keep the readers informed of developments in this important and fascinating case.

### **Update – April 2022**

The Supreme Court of the United States vacated the District Court for the Western District of Texas' orders implementing the interim maps for the 2012 Texas elections and remanded the case for further proceedings.<sup>3</sup> The reason is because the Supreme Court found it unclear whether the district court followed the appropriate standards in drawing interim maps for the 2012 Texas elections.<sup>4</sup>

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<sup>3</sup>Perry v. Perez, 565 U.S. 388, 399 (2012).

<sup>4</sup>*Id.*

On February 28, 2012, the Court issued Plan C235 as the interim plan for the districts used to elect members to the United States House of Representatives.<sup>5</sup> However, plaintiffs sought to stay the implementation of the interim Plan C235 based on constitutional and statutory grounds.<sup>6</sup> The district court denied the plaintiffs relief.<sup>7</sup> The Court stated it independently reviewed Plan C235 and determined that it complied with the Supreme Court's standards set forth in *Perry v. Perez* and that the plan was appropriate.<sup>8</sup> Following the district court's opinion there was an application to the United States Supreme Court for a writ of certiorari, which the Court denied.<sup>9</sup>

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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.

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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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<sup>5</sup>*Perez v. Texas*, 891 F.Supp 2d 808, 810 (W.D. Tex. 2012).

<sup>6</sup>*Id.* at 813.

<sup>7</sup>*Id.* at 838.

<sup>8</sup>*Id.*

<sup>9</sup>*League of United Latin Am. Citizens v. Perry*, 567 U.S. 966 (2012).

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