

Now that You are Retired from the Army, You Must Register to Vote in Virginia

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

7.2—Service member or military spouse voting and domicile

Q: I have been on active duty in the Army for the last 29 years. I retired just days ago, on September 30, 2012. I lived in Florida when I joined the Army 29 years ago, and all these years I have maintained my Florida domicile, partly because Florida has no state income tax. I have voted by absentee ballot in my Florida home town in each major election in the last 29 years.

I spent my last three years on active duty in the Pentagon, and I bought a house in Arlington, an easy commute to the Pentagon. I did not consider that house to be my domicile, but maybe things are different now that I am retired. When I retired this past Sunday, I remained in the house where I have lived for the last two years. I still work in the Pentagon, as an

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.

employee of a defense contractor. Am I still eligible to vote by absentee ballot in Florida? Am I still exempt from having to pay Virginia state income tax?

A: The answer to both questions is clearly no. For the last 29 years, while you have been on active duty, you have been protected by the Servicemembers Civil Relief Act (SCRA).³ The SCRA provides important protections to members of the uniformed services who are *on active duty*. As of midnight on September 30, you are no longer on active duty, and these protections no longer apply to you.

For the civilian (including a service member who has left active duty by retirement or otherwise), the place where the individual *usually sleeps* is his or her domicile, unless that usual sleeping place is temporary (for a period of months, at most). Federal law creates a different rule for active duty service members, because they must go where assigned and do not get to choose where to live. Your protection under that federal law ended the moment you left active duty. Until September 30, your house in Arlington was not your domicile, but as of October 1 it is your domicile. This is by operation of law—it is not a matter of your choice or intent.

As of October 1, you are no longer a Floridian, and you are no longer eligible to vote in Florida. If you are to vote in the 2012 general election, you need to register to vote in Arlington and then vote in person on Election Day. The Virginia voter registration deadline is October 15, 2012. To register to vote in Virginia, go to <https://www.elections.virginia.gov/>. This is the website of the Virginia Department of Elections. Most other states have similar websites.

As of October 1, you are no longer exempt from having to pay Virginia state income tax. In early 2013, you will need to file a “part year” 2012 Virginia income tax return. For the last three months of 2012, you will need to pay Virginia income tax on your Army retired pay and also on any other income that you receive, including your salary with the defense contractor. You will need to pay Virginia income tax for all of 2013, unless you move to another state sometime during the year.

Readers: If you are not on active duty, you need to be registered to vote *at your current residence address*. If you have moved, whether across the street or across the country, you need to change your voter registration to your new address (if you are still within the same county or municipality) or register to vote in your new jurisdiction. The time to do this is *now*. Voter registration deadlines vary from 10 to 30 days before Election Day, and the deadline is fast approaching.

Don’t let anybody tell you that you must wait six months or a year before you register to vote in a new county or state. Forty years ago, the Supreme Court held such durational residence for

³Congress enacted the SCRA in 2003, as a long-overdue rewrite of the Soldiers’ and Sailors’ Civil Relief Act (SSCRA), which dates back to 1917. Under both the SSCRA and the SCRA, you have had important federal law protections relating to your domicile for voting and tax purposes.

voter requirements to be unconstitutional. See *Dunn v. Blumstein*, 405 U.S. 330 (1972). You can register to vote on the very day that you move into a new county or state, and if you register by the deadline you can vote for all offices, not just federal offices.