

LAW REVIEW¹ 13030
FEBRUARY 2013

Important Recent Case on Servicemembers Civil Relief Act

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

[About Sam Wright](#)

- 4.0—Soldiers' and Sailors' Civil Relief Act and the Servicemembers Civil Relief Act generally
- 4.1—Right to interest rate reduction upon mobilization
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Roberts v. Chips Express, Inc., 2012 U.S. Dist. LEXIS 147190 (E.D. Wis. Oct. 12, 2012).

Background

This 2012 decision of Judge J.P. Stadtmueller of the United States District Court for the Eastern District of Wisconsin is important for three reasons:

¹I 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.

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.

1. It represents a great victory for attorney John S. Odom, Jr.³
2. It demonstrates that the Servicemembers Civil Relief Act (SCRA) is relevant to those who serve in the Active Component of the armed forces as well as those who serve in the National Guard or Reserve.
3. It demonstrates that the SCRA, especially with the 2010 amendments on private right of action and attorney fees, has real teeth.

The SSCRA and the SCRA

In 1917, shortly after the United States entered World War I, Congress enacted the Soldiers' and Sailors' Civil Relief Act (SSCRA) to protect the civil rights and financial interests of those who were called to the colors, whether by draft, voluntary enlistment, or mobilization from the National Guard or Reserve. The original SSCRA expired in 1919, at the end of the period of emergency necessitated by World War I. Congress reenacted the law in 1940 and made it permanent after World War II.⁴

In 1917, shortly after the United States entered World War I, Dean John Henry Wigmore of the Northwestern University School of Law voluntarily enlisted in the Army as a 54-year-old Major, and he expeditiously but very carefully drafted the SSCRA.⁵ He was already a most distinguished legal scholar. The first edition of *Wigmore on Evidence* was published in 1904.⁶

From the outset, in 1917, there has been a necessary balancing act in drafting legislation for military civil relief. On the one hand, there clearly needs to be protection for those whose absence from their homes or reduced income, due to military service, has adversely affected their ability to meet their financial obligations or their ability to defend their rights and interests in civil proceedings. On the other hand, if the protection goes too far no one will lend money to or otherwise do business with a member of the armed forces or a person who may become a servicemember.

The SSCRA served our nation well through two world wars, as well as the Korean War, the Vietnam War, and the 1990-91 Persian Gulf War. By the 1990s, some of the provisions of this law were outdated and needed rewriting. Judge advocates from the five-armed forces studied the SSCRA and drafted revisions. In 2003, Congress enacted their work product as the

³John Odom is a retired Air Force Colonel and a life member of ROA. He is an attorney in Shreveport, Louisiana with a nationwide practice pertaining to service members, and he knows as *the experts* of the civil relief statutes. He is the author or co-author of several of our 852 published "law Review" articles that are available at <https://www.roa.org/page/lawcenter>.

⁴Roy L. Kaufmann, *What is the History of the Servicemembers Civil Relief Act?*, SERVICEMEMBERS CIVIL RELIEF ACT CENTRALIZED VERIFICATION SERVICE, <https://www.servicememberscivilreliefact.com/blog/what-is-history-of-servicemembers-civil-relief-act/> (last visited Mar. 10, 2022).

⁵John Henry Wigmore, WE'LL SEE THEM THROUGH, NORTHWESTERN PRITZKER SCHOOL OF LAW IN THE WORLD WAR I ERA, <https://sites.northwestern.edu/plrcwwi/john-henry-wigmore/> (last visited Mar. 10, 2022).

⁶*Id.*

Servicemembers Civil Relief Act (SCRA).⁷ The SCRA is codified in the appendix to title 50 of the United States Code, at sections 501 through 597b (50 U.S.C. App. 501-597b).

Many of the SSCRA/SCRA provisions are for the civilian who undertakes financial obligations, based on expected civilian income, and then suddenly finds himself or herself on active duty, whether through conscription or mobilization in the National Guard or Reserve or voluntary enlistment when a national emergency arises. For example, section 207 of the SCRA (50 U.S.C. App. 527) deals with the situation of an individual (or the individual and his or her spouse jointly) who incurred a financial obligation (credit card account, car loan, etc.) *before* entering active duty, and the obligation bears an interest rate in excess of 6%, and then the individual enters active duty. Under section 207, the interest rate must be reduced to 6% during the individual's active military service, and any payments that the individual makes while on active duty are to be applied to principal and interest at the 6% SCRA rate, not the higher contract rate.

Similarly, section 303 of the SCRA (50 U.S.C. App. 533) makes it unlawful for a creditor to conduct or attempt a *non-judicial foreclosure* on real or personal property to enforce a financial obligation that "originated before the period of the servicemember's military service and for which the servicemember is still obligated." 50 U.S.C. App. 533(a)(1).

Other SCRA provisions apply without regard to when the individual entered active duty or whether the alleged financial obligation was incurred before or during the individual's active military service. For example, sections 201 and 202 of the SCRA (50 U.S.C. App. 521 and 522) provide for the right to a continuance and for default judgment protection whenever an individual on active duty is a party to a federal or state civil proceeding in any federal or state court or administrative agency. It does not matter whether the proceeding began before or during the servicemember's active military service.

Roberts deals with section 306 of the SCRA (50 U.S.C App. § 537), which provides as follows:

(a) Liens.

(1) Limitation on foreclosure or enforcement. A person holding a lien on the property or effects of a servicemember may not, during any period of military service of the servicemember and for 90 days thereafter, foreclose or enforce any lien on such property or effects without a court order granted before foreclosure or enforcement.

(2) Lien defined. For the purposes of paragraph (1), the term "lien" includes a lien for storage, repair, or cleaning of the property or effects of a servicemember or a lien on such property or effects for any other reason.

⁷*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra> (last visited Mar. 10, 2022).

(b) Stay of proceedings. In a proceeding to foreclose or enforce a lien subject to this section, the court may on its own motion, and shall if requested by a servicemember whose ability to comply with the obligation resulting in the proceeding is materially affected by military service –

- (1) stay the proceeding for a period of time as justice and equity require; or
- (2) adjust the obligation to preserve the interests of all parties.

The provisions of this subsection do not affect the scope of section 303 [50 U.S.C. App. 533].

(c) Misdemeanor. A person who knowingly takes an action contrary to this section, or attempts to do so, shall be fined as provided in title 18, United States Code, or imprisoned for not more than one year, or both.

50 U.S.C. App. 537.

Why, you may ask, does section 306 of the SCRA make it unlawful for a warehouseman to foreclose on stored property to enforce a lien *without a court order*? Let us assume that the storage company in this case had complied with section 306 and had brought a civil action in state or federal court to collect the rent due on the storage locker. The storage company would have tried to serve a summons and complaint on the servicemember, the owner of the property in storage. Since she was deployed overseas at the time, the servicemember likely would not have been aware of the lawsuit and would not have filed a timely answer.

In a civil action, when the defendant fails to file a timely answer the plaintiff's next step is normally to ask the court for a default judgment for the full amount sought because of the defendant's failure to respond. In any civil or administrative action, in any federal or state court or administrative agency, a party seeking a default judgment must file an affidavit with the court or agency averring under oath that the defaulting defendant is or is not a member of the uniformed services on active duty. *See* 50 U.S.C. App. 521(b)(1)(A).

The Servicemembers Civil Relief Act Website offers a free on-line service whereby creditors and others with a legitimate need to know can determine, usually in seconds, that a named person (with a provided Social Security Number or date of birth) is or is not a member of the armed forces on active duty.⁸ Before filing an affidavit to the effect that the defendant is not on active duty, the plaintiff must first use this service to ascertain the defendant's military status. Filing an affidavit that an individual is not on active duty without having made a reasonable effort to determine the individual's military status is a crime punishable by substantial fine and/or imprisonment for up to one year. *See* 50 U.S.C. App. 521(c).

⁸*See Welcome to SCRA, SERVICEMEMBERS CIVIL RELIEF ACT (SCRA) WEBSITE, <https://scra-w.dmdc.osd.mil/scra/#/home> (last visited Mar. 10, 2022).*

If the storage company had filed suit to enforce its lien and to authorize an auction of the stored property, it would have become clear very soon that the owner of the stored property was a member of the armed forces on active duty and deployed overseas. In that case, several steps would have been required, and the servicemember would have been made aware of the need to pay rent on the storage locker, and this fiasco would have been avoided. By conducting an auction *without* prior judicial authorization, the storage company circumvented these required SCRA precautions, with predictably harmful results. This explains why section 306 requires a court order before the auction.

The disaster that befell Commander Wilma Roberts

Wilma J. Roberts was a Commander (O-5) in the Regular Navy.⁹ She was on active duty for many years. In June 2008, Commander Roberts deployed overseas.¹⁰ To accommodate her deployment, the Navy arranged for her household goods to be stored at a facility owned by Chip's Express, Inc., the defendant in this lawsuit.¹¹ In making this arrangement, the Navy submitted DD Form 1299 to Chips.¹² The form listed Commander Roberts' address as being in Fort Collins, Colorado.¹³

In September 2010, while Commander Roberts was still deployed overseas, the Navy made a profound record- keeping error and sent a DD Form 1164 to Chips and informed the company that the Navy would no longer pay for Commander Roberts' storage locker and that she personally would be responsible for future rental payments.¹⁴

Chips immediately started billing Commander Roberts for rent on the storage locker, sending the invoices to her Fort Collins address listed on the DD 1164 and DD 1299 Forms, but the notices were returned as undeliverable.¹⁵ The company made one attempt to contact Commander Roberts by e-mail, but the e-mail address was not available because it was "over quota."¹⁶

Chips then contacted two civilian employees at the Navy's Personal Property Office (PPO), who were not helpful in providing contact information for Commander Roberts.¹⁷ The company claims that a PPO employee told the company that it could dispose of the property as if it were a civilian

⁹*Roberts v. Chips Express, Inc.* 2012 U.S. Dist. LEXIS 147190, *1 (E.D. Wis. Oct. 12, 2012).

¹⁰*Id.*

¹¹*Id.*

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.*

¹⁷*Id.* From my own Navy service, especially a stint as the Director of the hotline Investigation Division at the Office of the Naval Inspector General I know that the current location of every active duty servicemember is readily available for official purpose and within official channels. If the PPO employees had taken their duties seriously, they easily could have alerted Commander Roberts to the problem with the storage of her household goods.

lot, by auctioning off the property in storage to pay the storage rental fees, because the Navy was no longer responsible.¹⁸

On April 15, 2011, while Commander Roberts was still serving on active duty overseas, Chips published a notice in a local newspaper asserting a warehouseman's lien on the storage locker's contents.¹⁹ Of course, Commander Roberts did not see and was not made aware of this published notice. In early July, Chips auctioned off the property. Just a week later, Commander Roberts returned to the United States and learned that her property had been sold.²⁰

The major part of the blame for this fiasco should attach to two civilian PPO employees who first erroneously cut off government payment for the storage locker while Commander Roberts was still deployed overseas and then massively compounded the error by failing to notify the Commander, or to assist Chips in notifying her, that she was responsible for the rental payments from that point forward. Then, they had the audacity to give Chips "permission" to violate federal law by auctioning off Commander Roberts' property, without judicial authorization, to satisfy unpaid rent.

Unfortunately, Commander Roberts could not recover in tort from the Navy or from the two PPO employees individually because of the doctrine enunciated by the Supreme Court in *Feres v. United States*.²¹ I invite the reader's attention to Law Review 0830 (June 2008), wherein I explain the *Feres* Doctrine in some detail. Commander Roberts was entitled to government-paid storage of her household goods while she deployed overseas because of her active-duty Navy service. Accordingly, her claim for loss of the household goods, attributable to negligence of government employees, would be considered "incident to service" and her recovery on that claim would be precluded by the *Feres* Doctrine.

Commander Roberts sues Chips Express, Inc.

After she learned that her household goods had been lost and could not be recovered, Commander Roberts retained attorney John S. Odom, Jr. and filed suit against Chips Express, Inc. in the United States District Court for the Eastern District of Wisconsin.²² After discovery was completed, Commander Roberts (through attorney Odom) filed a *motion for partial summary judgment*, which the court granted.²³

Attorney Odom's theory, which Judge Stadtmueller largely accepted, was that Chips was *strictly liable* for violating section 306 of the SCRA (50 U.S.C. App. 537) by auctioning off the stored property without a court

¹⁸*Id.*

¹⁹*Id.*

²⁰*Id.*

²¹340 U.S. 135 (1950).

²²*Roberts*, 2012 U.S. Dist. LEXIS 147190, *2.

²³*Id.* at *6.

order.²⁴ Commander Roberts is not required to prove that the company knew about the law or should have known about it, and the purported “permission” to auction off the property, allegedly granted by one or two Navy civilian employees, is irrelevant. There is no *mens rea* (guilty mind) requirement in a civil action to enforce section 306.²⁵ Readers are probably familiar with the old adage that “ignorance of the law is no excuse.”

The attorney for the storage company insisted that the company had complied with Wisconsin law when it published a notice about overdue storage fees and then auctioned off the property to satisfy those fees. Judge Stadtmueller correctly ruled that compliance with state law is irrelevant, since a federal law (the SCRA) made it unlawful to conduct the auction without a court order.²⁶ Article VI, Clause 2 of the United States Constitution (the “Supremacy Clause”) provides that a federal statute trumps state statutes and state constitutions.

Judge Stadtmueller did throw Chips a bone when he ruled as follows:

“Having determined that it is appropriate to find Chips liable under [50 U.S.C. App. § 537\(a\)\(1\)](#), that issue will not need to be tried to a jury. The matter of liability is not entirely settled, though. Rather, at trial, Chips may still argue and try to prove that Ms. Roberts was contributorily or comparatively negligent in Chips’ sale of her property, as Wisconsin law allows for defendants in strict liability cases to attempt to diminish their liability by arguing contributory and comparative negligence in cases such as product liability and safe-place statutes. *See, e.g., Morden v. Continental AG*, 2000 WI 51 ¶¶ 42-45, 235 Wis. 2d 325, 611 N.W.2d 659; *D.L. by Friedrichs v. Huebner*, 110 Wis. 2d 581, 645-46, 329 N.W.2d 890, 920-21 (1983); *Dippel v. Sciano*, 37 Wis. 2d 443, 461-62, 155 N.W.2d 55, 64-65 (1967); *Presser v. Siegel Construction Co.*, 19 Wis. 2d 54, 119 N.W.2d 405 (1963); *Besnys v. Herman Zohrlaut L. Co.*, 157 Wis. 203, 210-12, 147 N.W. 37 (1914); Erik J. Pless, *Wisconsin’s Comparative Negligence Statute: Applying It to Liability Cases Brought Under a Strict Liability Theory*, WIS. LAWYER (August, 1998). Of course, the SCRA being a federal statute, Wisconsin’s courts have not determined whether defendants governed by its provisions should be allowed to argue contributory or comparative negligence; nonetheless, the Court believes that Chips should be allowed to raise those arguments in this matter. As protective as the Court should be of servicemembers’ rights, it does not wish to blindly protect those rights at the expense of harming innocent lienholders. Here, Chips certainly could have obtained a court order and also could have made more devoted attempts to reach Ms. Roberts. However, if there is evidence that Ms. Roberts, herself, had some negligent hand in the outcome of this situation, then the Court believes that loss should lie with the appropriate party. That is, if Ms. Roberts had some duty to inform the Navy or Chips of her most-current forwarding address, and failed to adequately satisfy that duty, then she may well be held contributorily or comparatively negligent. Furthermore, as the parties agree, the issue of damages must also be presented to the jury. The

²⁴*Id.* at *2—*6.

²⁵*Id.* at *3. Section 306 also makes it a federal misdemeanor, punishable by a substantial fine and/or imprisonment for up to a year, to auction off property of an active duty servicemember to enforce a storage lien, without prior judicial authorization. If this had been a criminal action initiated by the United States Attorney the court likely would have found mens rea requirement for successful criminal prosecution.

²⁶*Id.* at *5.

issue of damages encompasses Ms. Roberts' alleged failure to mitigate, and therefore that issue of mitigation should also be presented to the jury, as requested by Chips. (Chips Resp. 17). Nonetheless, at this time, the Court will grant the plaintiff's motion for partial summary judgment (Docket #29), and leave the other remaining issues to be addressed at trial.”²⁷

I think that Judge Stadtmueller got it wrong in this final part of the decision. I have considerable experience dealing with Navy PPOs, as an individual servicemember and also in my first active-duty job (1977-78), in the Claims Division of the Office of the Judge Advocate General of the Navy, addressing personnel claims and carrier and warehouseman recovery for transportation and storage of household goods in connection with Permanent Change of Station of Navy and Marine Corps personnel.

I think that two points are very relevant. First, the Navy PPO ordinarily instructs the servicemember to deal *only* with the PPO, not with the carrier or warehouseman directly. Second, the individual servicemember normally is not informed as to the specific location of his or her stored household goods or the identity of the company operating the storage facility. Moreover, the individual servicemember (especially the unmarried servicemember) cannot reasonably be expected to maintain a postal mailing address in the United States while serving on active duty overseas.

Navy Times reported that Commander Roberts and Chips Express have settled.²⁸ The story quotes attorney Odom to the effect that Commander Roberts received “a six-figure settlement that she was pleased with.” The settlement renders moot any error that Judge Stadtmueller may have made in giving Chips Express the opportunity to reduce its liability based on a “comparative negligence” or “failure to mitigate damages” defense.

Lessons learned from this snafu

The *Navy Times* article reports that there have been other snafus of this nature, and not just in the Navy, where military PPO offices have given storage companies “permission” to auction off personal property of servicemembers. On March 1, 2012, Lieutenant Colonel Derek Oliver, USAF, the Deputy Chief of Staff for Personal Property at the Military Surface Deployment and Distribution Command (MSDDC) sent out a “policy statement” to PPOs of all services, reminding them of the pertinent SCRA provisions and that no one in the service has the authority to give a storage company permission to violate the SCRA. There has been a thorough Inspector General investigation, and I hope that errors of this nature will not recur in military PPO offices. Military personnel deployed overseas, especially to places like Afghanistan, have plenty on their plates. They should not have to worry about their personal property in storage back home in the United States. I hope that the MSDDC will take effective action to ensure that errors of this kind never happen again.

²⁷*Id.* at *5—*6.

²⁸See Karen Jowers, *Sailor gets big payout in storage unit snafu*, NAVY TIMES (Feb. 11, 2013).

The *Navy Times* article contains some common-sense suggestions for military personnel who are putting their household goods in storage while deploying overseas. You should prepare your own thorough inventory of your property, including photographs, and store the inventory and photographs in a safe place, with a trusted friend or at a secure place in the “cyber cloud.” Do not store your inventory and photographs with the stored property. Do not rely on the moving company’s inventory—that inventory only lists the size of the box, not its contents.

How 2010 SCRA amendments helped to resolve this case

As is explained in Law Review 1083 (November 2010), President Obama signed the Veterans’ Benefits Act of 2010, Public Law 111-275, on October 13, 2010. That new law made several important amendments to the SCRA, including providing for an explicit private right of action, attorney fees for the successful SCRA plaintiff who relies on private counsel like John Odom, and a civil penalty (in addition to other relief) for those who violate the SCRA. These 2010 amendments were immensely helpful in this case.

Update – March 2022²⁹

The location of the SCRA within the United States code changed in late 2015. Previously codified at 50 U.S.C App. §§ 501-597(b), there was an editorial reclassification of the SCRA by the Office of the Law Revision Counsel to the United States House of Representatives that became effective on December 1, 2015.³⁰ The SCRA is now codified at 50 U.S.C. §§ 3901-4043. The changes in codification have not changed the substance or application of the rules. Therefore, the case is still just as relevant today as when it was decided in 2012.

The relevant sections cited throughout the article can be found as follows:

50 U.S.C. App. § 527 discussing the six percent interest cap can now be found at 50 U.S.C. 50 § 3937.

50 U.S.C. App. § 533 discussing non-judicial foreclosures can now be found at 50 U.S.C. § 3953.

50 U.S.C. App. §§ 521 and 522 discussing protections against default judgment can now be found at 50 U.S.C. § 3931.

50 U.S.C App. § 537 discussing the enforcement of storage liens can now be found at 50 U.S.C. § 3958.

²⁹Update by Second Lieutenant Lauren Walker, USMC.

³⁰*The Servicemembers Civil Relief Act (SCRA)*, THE UNITED STATES DEPARTMENT OF JUSTICE, <https://www.justice.gov/servicemembers/servicemembers-civil-relief-act-scra> (last visited Mar. 10, 2022).

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved*.³¹

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ROA is almost a century old—it was established on 10/1/1922 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 almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, 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 eight³² uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. 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 Organization of America
1 Constitution Ave. NE

³¹Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

³²Congress recently established the United States Space Force as the 8th uniformed service.