

**LAW REVIEW<sup>1</sup> 13155**

**November 2013**

**Where Am I To Vote?**

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

4.5—SCRA protection from state/local tax authorities

7.2—Service member or military spouse voting and domicile

**Q: I am a Lieutenant Colonel in the Air Force, nearing retirement. I read with great interest your Law Review 13155, about the race question on the Federal Post Card Application (FPCA) and the federal lawsuit arising out of the 1996 general election in Val Verde County, Texas. I am one of the 800 military absentee voters whose ballots were at issue in that case. I received, completed, and returned the obnoxious residency questionnaire, as you referred to in your article. I have always wondered what all that was about and reading your recent article has answered a lot of questions.**

**I was born and raised in a small town in Wisconsin. I graduated from high school in 1985. Days later, I reported to the United States Air Force Academy (USAFA) in Colorado. In May 1989, I graduated and was commissioned a Second Lieutenant in the Air Force, and shortly**

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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).

thereafter I reported to Laughlin Air Force Base (LAFB) in Val Verde County for undergraduate pilot training (UPT).

While I was a cadet at the USAFA, I considered myself a Wisconsin domiciliary. I paid Wisconsin state income tax, and I voted in Wisconsin by absentee ballot. While I was at LAFB for UPT, one of my instructors told me that I could save on state income tax by declaring myself a Texan. At the time, I intended to return to Texas upon retiring from the Air Force, but of course at the time retirement was a very long way away.

I registered to vote in Val Verde County and voted there in person in one election that was held while I was stationed there. I moved on to other duty stations within and outside the United States, and I have maintained my domicile and voter registration in Val Verde County. That explains why I received the residency questionnaire in the aftermath of the 1996 general election.

Over the years, I have always said (whenever asked) that I intend to return to Texas when I retire from the Air Force, but frankly I never thought much about the question until recently, when I have gone to the place that will almost certainly be my final active duty assignment, at the Pentagon. I live in an apartment near the Pentagon, but I have never considered Virginia to be my residence or domicile. I live in Virginia only because I must sleep at a place which is within reasonable commuting distance of my Pentagon assignment.

I expect to retire from the Air Force at the end of 2014, and I have already tentatively accepted a civilian job in Denver, to start in January 2015. I want to participate in the primary and general election in 2014. Am I still eligible to vote by absentee ballot in Val Verde County, Texas? If not, where should I vote?

A: You are still eligible to vote by absentee ballot in Val Verde County until the day that you leave active duty by retirement or otherwise. The fact that you no longer intend to return to Texas upon retirement makes no difference.

“For the purposes of voting for any Federal office ... or a State or local office, a person who is absent from a State in compliance with military or naval orders shall not, solely by reason of that absence—be deemed to have lost a residence or domicile in that State, *without regard to whether or not the person intends to return to that State.*” Title 50, United States Code Appendix, United States Code, section 595(a)(1) [50 U.S.C. App. 595(a)(1)]. The italicized language is the language that I drafted and that Congress added in 2001. This language was added specifically for the purpose of overruling Judge Fred Biery’s obnoxious decision in *Casarez v. Val Verde County*, 957 F. Supp. 847 (W.D. Texas 1997).<sup>3</sup>

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<sup>3</sup>The citation means that you can find the *Casarez* case in Volume 957 of *Federal Supplement* (the series of books that contain published decisions of the United States District Courts) and you can find this case starting on page 847.

If you cannot vote by absentee ballot in Val Verde County, you cannot vote anywhere. You cannot vote in Wisconsin, because you gave up your Wisconsin domicile when you registered to vote in Val Verde County in 1989. You cannot reestablish a Wisconsin domicile without moving back to Wisconsin, and it is not feasible for you to move back to your home town for the last 13 months of your military career. You cannot register to vote in Virginia because you are not a Virginia domiciliary—you are only in Virginia to be within a reasonable commuting distance of your Pentagon assignment. You cannot register to vote in Denver based on intending to move there 13 months from now.

Your situation is exactly the kind of situation that I had in mind when I drafted the “without regard to whether or not the person intends to return to that State” language and pushed for its enactment. I think that your situation is common among career military personnel. During an active duty career of 20 years or more, the service member will likely change his or her mind many times about where to live upon retirement, to the extent that the service member thinks about this issue at all. The final decision will likely depend upon the availability of a post-retirement civilian job, as in your case.

When you retire from the Air Force and move to Colorado in early 2015, at that point you will no longer have the protections of the Servicemembers Civil Relief Act (SCRA). At that point, and only at that point, you will need to register to vote in Colorado, and starting in January 2015 you will need to pay Colorado state income tax on your civilian salary and probably also on your Air Force retired pay. But until the day that you leave active duty you are a Texan and exempt from the obligation to pay state income tax.

Every human being (whether in the military or not) has one and only one domicile, controlling voting rights, liability for state income tax, and many other important legal considerations. You need to identify your domicile and then keep all your incidents of domicile (where you vote, where you file state income tax returns, etc.) in that state. If you are uncertain as to your domicile, you need to make an appointment to speak to a military legal assistance attorney.

The Air Force operates a free service that provides you the location and telephone number of nearby military (not necessarily Air Force) legal assistance offices. You punch in your zip code, and the system identifies nearby legal assistance offices. You call and make an appointment. Legal assistance attorneys will not, as a matter of policy, give you legal advice by telephone. Here is the link to this system: <http://legalassistance.law.af.mil>.

#### **Update – March 2022<sup>4</sup>**

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 SCR by the Office of the Law Revision Counsel to the United States House of Representatives that became

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<sup>4</sup>Update by Second Lieutenant Lauren Walker, USMC.

effective on December 1, 2015.<sup>5</sup> 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 sections. Therefore, the application of the SCRA throughout this article applies the same today as it did when it was written.

The relevant section cited throughout the article can be found at:

50 U.S.C. App. § 595 discussing the guarantee of residency for military personnel and spouses of military personnel can be found at 50 U.S.C. § 4025.

For a complete conversion chart for the SCRA please see *The Servicemembers Civil Relief Act Has Moved.*<sup>6</sup>

#### **Please join or support ROA**

This article is one of 2,300-plus “Law Review” articles available at [www.roa.org/lawcenter](http://www.roa.org/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 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 eight<sup>7</sup> 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

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<sup>5</sup>*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).

<sup>6</sup>Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

<sup>7</sup>Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://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:

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