

## LAW REVIEW<sup>1</sup> 144

### Where Am I Supposed to Vote?

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

7.2—Service member or military spouse voting and domicile

**Q: More than a quarter century ago, in 1978, I graduated from high school in a small town in Florida and went to boot camp at Parris Island, S.C. I have been on active duty in the Marine Corps ever since. I expect to retire some time in 2005, and I have already started sending out resumes, looking for opportunities for my second career after the Marine Corps. I was not yet 18 when I reported to Parris Island in June 1978, and I have never voted or registered to vote. But I saw the critical role of military absentee ballots in the 2000 presidential election, so I don't want to miss the 2004 election, probably the last major election before I retire from the Marine Corps. But I am confused as to where and how I should vote. Please advise.**

**A:** You should go see your unit's voting assistance officer (VAO). Ask for a Federal Post Card Application (FPCA), and ask to see the 2004 edition of the *Voting Assistance Guide*, biennially

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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).

published by DoD as the basic reference for military voters and VAOs. The *Guide* is also available on the Web site of DoD's Federal Voting Assistance Program (FVAP), [www.fvap.gov](http://www.fvap.gov).

Fill out the FPCA carefully, and send it to the county supervisor of elections for that county where you lived with your parents at the time you graduated high school and joined the Marine Corps. Ask the VAO to check your FPCA, before you mail it, to ensure that you have completed it correctly, completely, and legibly.

Please note that the FPCA asks you for *two different addresses*. In item 3, you must provide your *permanent home address*, and in item 4 you must provide the address where you want the absentee ballot sent. Your permanent home address is the address where you lived with your parents in 1978, unless you have established a *bona fide* domicile (legal residence) somewhere else during your Marine Corps career.

You need to provide the *exact address* where you lived with your parents just before you reported to Parris Island. The name of the town is not sufficient. The supervisor of elections needs the exact address to "precinct" your application—to send you the appropriate absentee ballot for that specific voting precinct.

**Q: But that was 26 years ago! I am not sure that I can even remember the address.**

**A:** Ask to see your Marine Corps personnel record. You will probably find your original oath of enlistment or some other document that you filled out in the spring of 1978 at the recruiter's office.

**Q: My parents moved away to the other side of the state, in 1985. My father died in 1991 and my mother in 1995. The house has been through many different owners in the intervening years, and I think that the house was torn down to make way for a new highway. I have no relatives left in that county, and I have not been back to that county since 1985, when my folks moved away.**

**A:** None of that matters. As long as you remain on active duty and did not establish a new domicile elsewhere, that former address in that small town is your *domicile of origin*. Every human being must have a domicile, governing voting rights and many other important legal issues. For example, if you die without a will, the law of Florida will govern what happens to your property, because you are a Florida domiciliary.

If the supervisor of elections rejects your completed FPCA because of alleged non- residence, contact a military legal assistance attorney right away. To find a legal assistance attorney, go to <https://legalassistance.law.af.mil>. That Web site will show you, from your ZIP code, the nearest military (not necessarily Air Force) legal assistance office. It need not be a Marine Corps office, because military legal assistance is now "purple." Please see Law Review 125 on the ROA Web site, <https://www.roa.org/page/lawcenter>.

**Q: I will be retiring from the Marine Corps, probably early in 2005, and I have already started looking for a civilian job. I don't know where I will live after I retire, but it certainly will not be that small town in Florida—there are no job opportunities for me there, and I have no particular reason to want to live there. Does the fact that I do not intend to live in that county after retirement mean that county is not my domicile?**

**A:** No, until the day you retire from the Marine Corps, that county is your domicile. When you retire, you will then be considered a civilian. You will need to register to vote in the community where you move next year, after your retirement. The special rules for military personnel do not apply to you after you retire, but they do apply until the very day that you retire.

**Q: I heard about a lawsuit in Texas, in 1996, wherein it was held that military personnel lost the right to vote in a county if they did not intend to live in the county after retirement. How did that turn out?**

**A:** You are referring to *Casarez v. Val Verde County*. I discuss that case and its implications in considerable detail in Law Reviews 3 and 43 (available on the ROA Web site). I am concerned that the rule enunciated in that case, if applied literally, would result in the disenfranchisement of most career military personnel. Few such personnel can swear that they will return, upon retirement, to the communities that they claim as their domiciles.

Your situation is a good illustration of what I mean. In the last 26 years, while you have been on active duty, you have probably changed your mind many times about where you intend to live upon retirement, if you have thought about that issue at all. When you do retire next year, you will move to the community where you find a civilian job. You cannot anticipate where that will be.

Fortunately, Congress shared my concern, and in December 2001 it enacted an amendment (that I drafted) to the Soldiers' and Sailors' Civil Relief Act (SSCRA). The new section reads, in pertinent part: "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: (1) 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.*" [Emphasis supplied.]

In December 2003, President Bush signed into law the Servicemembers' Civil Relief Act (SCRA), a long-overdue complete rewrite of the SSCRA, which was originally enacted in World War I and re-enacted on the eve of World War II. This particular section was not changed. It is now codified in Title 50 Appendix, United States Code, section 595.

**Q: What about my wife? We got married in 1985, in San Diego, where I was stationed at the time. When we got married, she was living in a small town east of San Diego. In the last 19 years, she has lived with me around the world, except for a couple of unaccompanied tours. Until recently, she and the kids were with me in Bahrain, where I am stationed, but she and**

**the kids and all the other family members were evacuated recently for security reasons. She and the children are now staying with relatives in a small town in the Midwest. The plan is that they will stay there until I retire from the Marine Corps early next year.**

**When my wife tried to register to vote in that town, she was told that she is not eligible because her husband is not there and does not claim that town as his domicile. The registrar said that the state law provides that the domicile of the husband controls the domicile of the wife. Help!**

**A:** The local election official is confused, and your wife should contest the denial of her voter registration application. Your wife is also eligible for military legal assistance. She should go to <https://legalassistance.law.af.mil> to find the nearest military legal assistance office.

“The joint operation of Georgia Code sections 79-403, 79-407, and 34-632, insofar as it establishes an irrebuttable presumption that the domicile and residence of a married woman is that of her husband, and thereby prevents her from registering to vote in Georgia, violates the 19th amendment of the Constitution of the United States.” [Kane v. Fortson, 369 F. Supp. 1342, 1343 (N.D. Ga. 1973).]

*\*Military title listed for identification only. The views expressed herein are the personal views of the author and not necessarily the views of the Department of the Navy, the Department of Defense, or the U.S. government.*

#### **Update – April 2022**

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 effective on December 1, 2015.<sup>3</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>4</sup>

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<sup>3</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>4</sup>Samuel F. Wright, *The Servicemembers Civil Relief Act Has Moved*, Law Review 15115 (Dec. 2015).

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

This article is one of 1800-plus “Law Review” articles available at [www.roa.org/page/lawcenter](http://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.

Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

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.

If you are now serving or have ever served in any one of our nation’s seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. 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](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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