

LAW REVIEW¹ 15117

December 2015

Maintain your Texas Domicile until you Retire and Leave Active Duty

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

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. I have read with great interest your “Law Review” articles about military voting rights.

I have been on active duty continuously since May 1992, when I graduated from college in Massachusetts and was commissioned a Second Lieutenant, through the Air Force Reserve Officers Training Corps (ROTC). I currently serve at the Pentagon in Arlington, Virginia. This is my final active duty assignment. I will retire on January 1, 2017.

At the very start of my Air Force career, I was at Laughlin for almost a year, for undergraduate pilot training (UPT). During that time, I changed my domicile from Massachusetts (where I grew up and attended college) to Texas, because Texas has no state income tax and

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.

Massachusetts (sometimes called “Taxachusetts”) has a high state income tax. For almost a quarter century, I have maintained my domicile in Texas. That decision has saved me tens of thousands of dollars in state income tax—tax that I otherwise would have paid to Massachusetts or to other states where I have served on active duty, including Virginia, where I am serving now.

When I established my domicile in Del Rio, Texas, during my UPT at Laughlin, I stated that I intended to make that place my home and that I intended to return to that county to live after I left active duty. That was my intent at the time, and I have maintained that intent for all this time that I have been on active duty, until now, when I am within just over a year of retirement and I have been searching for post-service employment.

When I decided to retire at the end of my current three-year Pentagon assignment, I looked for a job in Del Rio, but I quickly learned that finding a job in that area was not realistic, so I expanded my job search to nationwide. Recently, I was offered an excellent job in San Francisco, California, and I accepted the offer. I will begin that job immediately after I retire from the Air Force. I am already looking for suitable housing in San Francisco.

For almost a quarter century, I have been voting by absentee ballot in Del Rio, Texas (Val Verde County). Am I eligible to vote by absentee ballot in Val Verde County in the primary and general election in 2016? An attorney friend of mine told me that I am no longer eligible to vote in Texas by absentee ballot because I do not intend to return to Texas after I retire from military service in just a few months. Is my attorney friend correct?

A: No. Your attorney friend is wrong. You are eligible to vote by absentee ballot in Val Verde County until the day that you leave active duty by retirement, and I suggest that you do so. If you are not eligible to vote in Val Verde County you are probably ineligible to vote anywhere, and that cannot be the right answer. Every human being has one and only one domicile, even if it is a legal fiction.

You made a bona fide change of your domicile from Massachusetts to Texas while you were stationed at Laughlin for UPT. You did this right. You simultaneously had a physical presence in Texas (and Val Verde County) for a significant time, along with the intent to make that place your home and domicile. Neither intent alone nor physical presence or absence alone is sufficient to create a new domicile or to destroy a pre-existing domicile. Your domicile in Val Verde County remains in effect until you leave active duty or until you establish a new domicile elsewhere, whichever comes first.

For the 2016 primary and general election, you must vote by absentee ballot in Val Verde County if you are to vote at all. You cannot reestablish your Massachusetts domicile (which you gave up 25 years ago) without physically moving back to Massachusetts. You cannot register to vote in San Francisco based solely on intent to move there some weeks after the 2016 general election. You cannot register to vote in Arlington, because you clearly have decided not to remain in Arlington after you retire. It is Val Verde County or nothing.

The pertinent section of the Servicemembers Civil Relief Act (SCRA) is as follows:

§ 4025. Guarantee of residency for military personnel and spouses of military personnel

(a) In general. For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act of 1971 ([2 U.S.C. 431](#)) 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*;

(2) be deemed to have acquired a residence or domicile in any other State; or (3) be deemed to have become a resident in or a resident of any other State.

(b) Spouses. For the purposes of voting for any Federal office (as defined in section 301 of the Federal Election Campaign Act) or a State or local office, a person who is absent from a State because the person is accompanying the person's spouse who is absent from that same 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;

(2) be deemed to have acquired a residence or domicile in any other State; or

(3) be deemed to have become a resident in or a resident of any other State.³

As I have explained in Law Review 15115 and other articles, Congress enacted the Soldiers' and Sailors' Civil Relief Act (SSCRA) in 1917, shortly after the United States entered World War I.

This law served our nation well for more than eight decades, but by the end of the 20th Century the law needed updating. In December 2003, Congress enacted and President George W. Bush signed the SCRA, as a long overdue rewrite of the SSCRA.

Like the SSCRA before it, the SCRA was codified in the "Appendix" for title 50 of the United States Code. Just recently, the codifiers of the United States Code eliminated this confusing "Appendix." The SCRA is now codified in title 50 at sections 3901 and following.

I am proud to say that I drafted the language "without regard to whether or not the person intends to return to that State." In 2001, I lobbied successfully for the enactment of this language. When I drafted and lobbied for the enactment of this language, I had in mind a situation exactly like your situation. The career active duty service member should not lose the right to vote during his or her final active duty assignment, based on a change of plans about where to live in retirement. The career active duty service member approaching military

³50 U.S.C § 4025 (emphasis supplied).

retirement will almost always be searching for a civilian job. Where the person lives after military retirement will depend upon where the person finds a suitable job.

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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.

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 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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