

LAW REVIEW¹ 19020
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SCRA Amended Regarding Voting Rights of Military Spouses

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

On 12/31/2018, President Trump signed into law the Veterans Benefits and Transition Act of 2018, Public Law 115-407. Section 303 of this new Act makes a significant change in the Servicemembers Civil Relief Act (SCRA)³ regarding the treatment of the spouses of active duty members of the uniformed services⁴ for purposes of the voting rights of those spouses and specifically in determining *where* they are eligible to vote.

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.

³On 12/19/2003, President George W. Bush signed the SCRA into law as a long-overdue update and rewrite of the Soldiers' and Sailors' Civil Relief Act (SSCRA), which was originally enacted in 1917. Please see Law Review 116 (March 2004), by Colonel Mark E. Sullivan, USA (Ret.).

⁴For SCRA purposes, the uniformed services are the Army, Navy, Marine Corps, Air Force, and Coast Guard, as well as the commissioned corps of the Public Health Service and the commissioned corps of the National Oceanic & Atmospheric Administration.

Section 4025(b) of title 50 of the United States Code currently reads as follows:

Spouses. 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 \[52 USCS § 30101\]](#))) 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.⁵

Section 303 of the new Act amends section 4025(b) to read as follows:

Spouses. 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 \[52 USCS § 30101\]](#))) or a State or local office,—

- (1) 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—
 - (A) 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;
 - (B) be deemed to have acquired a residence or domicile in any other State; or
 - (C) be deemed to have become a resident in or resident of any other State; and
- (2) *the spouse of a servicemember may elect to use the same residence of the servicemember regardless of the date on which the marriage of the spouse and the servicemember occurred.*⁶

To understand the change made by this very recent amendment, let us consider the hypothetical but realistic Colonel Joe Smith, USMC and his wife Mary Jones. Since they married in 2015, they have lived together in a condominium in Arlington, Virginia, but he is and has been a domiciliary of Texas for tax and voting purposes and she has been a domiciliary of Virginia. She has an excellent job in Washington, DC and makes more money than Joe. She has been paying Virginia state income tax on her salary, and she has been eligible to vote only in

⁵50 U.S.C. § 4025(b).

⁶*Id.* (as amended). This amendment goes into effect 90 days after the date of enactment of this new Act. Since President Trump signed the new law into effect on 12/31/2018, the amendment goes into effect 3/31/2019.

Arlington, Virginia, not in Houston, Texas, where her husband votes by absentee ballot. Joe is on active duty in the Marine Corps, serving at the Pentagon, and the SCRA exempts him from the obligation to pay Virginia state income tax, and the SCRA also protects his right to vote by absentee ballot in Houston, Texas.

In 1992, Joe graduated from high school in Houston. At the time he was living with his parents and younger siblings in the house where the family moved when Joe was in elementary school. Just days after his high school graduation, Joe reported to the United States Naval Academy in Annapolis, Maryland for plebe summer. He survived plebe summer and excelled at the Academy, and in 1996 he graduated and was commissioned a Second Lieutenant in the Marine Corps. He has remained on active duty continuously and is now a Colonel.

Joe has not slept in the Houston house since 1992, except for a few short visits home while at the Naval Academy. In 1999, Joe's father died. His mother sold the house and moved to California. In 2012, the new owner sold the house to a developer, and the developer tore down the house and all the neighboring houses to make room for a new commercial development. Joe has no relatives living in Houston and he cannot receive mail at the former Houston address or any address in the county. Nonetheless, the former address is Joe's domicile (legal residence) until he establishes a new domicile elsewhere or leaves active duty, whichever comes first.

Through the years, Joe has had many physical residences, near his duty stations within and outside our country, but he has maintained his domicile at the Houston address where he lived with his parents until he left in 1992 to report to the Naval Academy. Joe has not voted or registered to vote in any of the places where he has had physical residences. In each major election, he has voted by absentee ballot in Harris County, Texas, using as his "permanent home address" the Houston home address. Maintaining his domicile in Texas has saved Joe tens of thousands of dollars in state income tax over his long and distinguished military career.

In 2014, shortly after he was promoted from Lieutenant Colonel to Colonel, Joe was transferred from Camp Pendleton (in California) to the Pentagon (in Arlington, Virginia). Joe rented an apartment in Arlington, to commute to his duty station in the Pentagon. Joe met the love of his life, Mary, and they married in 2015. Together, they bought a condominium, where they live together as a married couple.

Mary has spent her entire life in Northern Virginia and has never been to Texas. Marrying a Texan in 2015 did not make Mary a Texan. Until very recently, the SCRA did not protect Mary from the obligation to pay Virginia state income tax on her substantial salary. Although Joe and Mary have been living together in the same condominium, Joe has been domiciled in Texas and has been exempt from having to pay Virginia state income tax on his military compensation, while Mary has been domiciled in Virginia and has been required to pay Virginia state income tax on her salary. Mary is registered to vote in Arlington and has been voting in person on Election Day.

The 2018 amendment is a big deal for people like Mary. Starting with her soon-to-be-filed 2018 income tax return, Mary can claim to be a Texan, although she has never set foot in the state, and she can be exempt from having to pay Virginia state income tax.⁷ The 2018 amendment also means that Mary is now eligible to vote by absentee ballot in Houston, using as her “permanent residence address” the same address that her husband has been using (the address of the house where he lived with his parents and siblings when he left to report to the Naval Academy in June 1992).

The 2018 amendment does not change what I have written in several articles about having only one domicile for all legal purposes. Every human being has one and only one domicile, even if it is a legal fiction. Service members and military spouses are not exempted from this rule, but under the SCRA the rules for determining the domicile of the service member or military spouse are different from the general rules that apply to persons generally.

To take advantage of this 2018 amendment, for both voting and tax purposes, Mary needs to cancel her voter registration in Arlington and register to vote in Houston, using her husband’s 1992 home address. Mary needs to cease voting in Arlington and start voting by absentee ballot in Houston. Her domicile for state income tax purposes is inextricably linked to her domicile for voting purposes. Mary cannot become a Texan for state income tax purposes, and thus avoid having to pay Virginia state income tax, while continuing to vote in Virginia.⁸

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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

⁷Please see Law Review 19019 (February 2019), the immediately preceding article in this series.

⁸See *Comptroller of the Treasury v. Lenderking*, 268 Md. 613, 619, 303 A.2d 402, 405 (1973). See also Law Review 11112 (December 2011) and Law Review 18092 (September 2018).

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.

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