

LAW REVIEW¹ 20029

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NDAA 2020 Amended the SCRA regarding Class Action Lawsuits

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[About Sam Wright](#)

4.9—SCRA enforcement

More than a decade ago, I wrote:

When Congress enacts a statute and creates rights for certain classes of persons, it presumably intends for those persons to have some means of enforcing their rights, because a right without a remedy is of little value. A private right of action is the right to initiate a civil action in court, in one's own name and with one's own attorney.

Some federal statutes explicitly create private rights of action, while other federal statutes explicitly preclude private rights of action, because the statute provides some

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1900 "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. I am the author of more than 1700 of the articles.

² 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.

other enforcement mechanism (such as an action brought by the Attorney General in the name of the United States, as plaintiff.

Other federal statutes neither explicitly create nor explicitly preclude private rights of action. In such a situation, it is necessary for a court to determine, as a matter of statutory construction [interpretation], whether there is an *implied* private right of action.³

As Colonel Mark E. Sullivan, USA (Ret.) explained in Law Review 116 (March 2004), on 12/19/2003 Congress enacted and President George W. Bush signed into law the Servicemembers Civil Relief Act (SCRA), as a long-overdue update and rewrite of the Soldiers' and Sailors' Civil Relief Act (SSCRA), which was originally enacted in 1917, shortly after our country entered World War I. As I explained in Law Review 09041, the SSCRA never had a provision on the private right of action issue, either explicitly creating or explicitly precluding private rights of action. As enacted in 2003, the SCRA contained no provision on the private right of action issue.

I further explained in Law Review 09041 that most courts that considered the issue had held that, under the SSCRA or SCRA, there was an implied private right of action, but some courts had cast doubt on that conclusion. On 10/13/2010, President Barack Obama signed into law legislation creating an explicit private right of action under the SCRA.⁴ The pertinent SCRA provision is as follows:

- (a) In general.** Any person aggrieved by a violation of this Act [50 USCS §§ 3901 et seq.] may in a civil action—
 - (1) obtain any appropriate equitable or declaratory relief with respect to the violation;
 - (2) recover all other appropriate relief, including monetary damages; and
 - (3) *be a representative party on behalf of members of a class or be a member of a class, in accordance with the Federal Rules of Civil Procedure, notwithstanding any previous agreement to the contrary.*
- (b) Costs and attorney fees.** The court may award to a person aggrieved by a violation of this Act [50 USCS §§ 3901 et seq.] who prevails in an action brought under subsection (a) the costs of the action, including a reasonable attorney fee.⁵

Each year, Congress enacts the National Defense Authorization Act (NDAA) for the current fiscal year.⁶ The NDAA authorizes the activities of the Department of Defense (DOD) and the national

³ Law Review 09041 (October 2009) (emphasis in original).

⁴ Public Law 111-275, Title III, section 303(a), 124 Stat. 2877.

⁵ 50 U.S.C. 4042 (emphasis supplied).

⁶ The federal fiscal year starts on October 1 and ends of September 30. Fiscal Year 2020 began on October 1, 2019.

defense activities of the Department of Energy (nuclear weapons and nuclear power for Navy aircraft carriers and submarines). The NDAA also makes many substantive changes to various titles of the United States Code. On December 20, 2019, President Trump signed the NDAA for Fiscal Year 2020.⁷ Section 547 of NDAA 2020 amended the SCRA by adding the italicized language above.

A prominent law firm has explained:

A class action is a legal procedure that allows many people with similar grievances to join together and file a lawsuit. The lawsuit is filed by a lead plaintiff (or lead plaintiffs) on behalf of a larger group, the class.⁸

When a large corporation violates a law like the SCRA and harms scores, hundreds, or even thousands of people, the class action lawsuit can be a very effective and efficient way to right the wrongs. Corporations often try to avoid accountability by including “no class action” clauses in the boilerplate of consumer agreements. The purpose and effect of section 547 of NDAA 2020 is to make such “no class action” clauses unenforceable, at least with respect to SCRA claims. This amendment is most welcome.

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This article is one of 1900-plus “Law Review” articles available at 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 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

⁷ Public Law 116-92, 133 Stat. 1378.

⁸ See <https://www.classaction.com>.

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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