

LAW REVIEW¹ 22031

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**The Fact that the Client Was Doing Business in Corporate Form
Does Not Defeat her SCRA Rights.**

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

4.0—SCRA generally

4.3—SCRA right to a continuance and protection against default judgment

Q: I am an attorney in a community that is close to a major United States Army base. I frequently advise and represent soldiers in civil legal matters. I have found your “Law Review” articles to be immensely helpful in helping me to understand laws like the Servicemembers Civil Relief Act (SCRA) and in finding case law and other authority to cite on behalf of these clients.

I have a client who is a noncommissioned officer in the Army Reserve. On the civilian side, she is the owner-operator of a small business that is organized as a Limited Liability

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2300 "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 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 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

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 45 years, I have collaborated 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 38 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 <mailto:swright@roa.org>.

Corporation (LLC). Some months ago, she was called to active duty and deployed overseas. A company here in our local area sued her LLC in a matter related to something that happened just before my client was recalled to active duty.

My client got her Army commanding officer to sign an affidavit to the effect, because of military exigencies, it is impossible for the client to get leave and travel back to her hometown to defend herself in this civil lawsuit. The commanding officer's affidavit also stated that the client will be available for the lawsuit in October 2022 and thereafter, after her expected release from active duty on 9/30/2022. I used your organization's Law Review 2022 (April 2022), by Colonel Mark Sullivan, in drafting these papers and making these arguments.

The judge ruled, at least preliminarily, that my client is not entitled to a continuance under the SCRA because the named defendant in the lawsuit is my client's LLC, not the client individually. Are you aware of a precedent that I can cite to the judge about applying the SCRA to an LLC that is owned and operated by a service member?

A: Yes. I am aware of a United States Supreme Court decision that is directly on point. That case involves the Religious Freedom Restoration Act (RFRA), rather than the SCRA, but the identity of the statute involved is irrelevant.

In a case involving the Obamacare employer mandate to provide health insurance for employees, including contraceptive services, two closely-held family corporations claimed that providing health insurance coverage for contraceptive services that at least arguably amounted to abortion violated their sincere religious beliefs. They also claimed that the mandate, as applied to them, violated the RFRA. The Supreme Court agreed with this argument and further held that: "In holding that the HHS mandate is unlawful, we reject the argument that the owners of the companies forfeited all RFRA protections when they decided to organize their businesses as corporations rather than sole proprietorships or general partnerships."³

The Supreme Court went on to hold:

The purpose of [the corporate personhood] fiction is to provide protection for human beings. A corporation is simply a form of organization used by human beings to achieve desired ends. ... When rights, whether constitutional or statutory, are extended to corporations, the purpose is to protect the rights of these people.⁴

³ *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 688 (2014).

⁴ *Hobby Lobby Stores, Inc.*, 537 U.S. at 706-07.

The 2nd Circuit has cited and followed this Supreme Court precedent on this point.⁵ This Supreme Court precedent is directly on point. I suggest that you bring this precedent to the attention of the judge and ask her to reconsider her preliminary decision that your client is not entitled to a continuance under the SCRA.

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This article is one of 2,300-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 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 eight⁶ 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 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:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002

⁵ See *New York v. Mt. Tobacco Co.*, 942 F.3d 536, 548 (2d Cir. 2019).

⁶ Congress recently established the United States Space Force as the 8th uniformed service.