

LAW REVIEW¹ 22049

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**Because you Are still on Active Duty, you Are still Domiciled and Entitled To
Vote by Absentee Ballot At the Address that you left in 1998.**

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

4.5—SCRA protection against state and local tax authorities

7.2—Service member of military spouse voting and domicile

7.4—How a service member or military spouse can vote

7.5—Federal voting statutes trump conflicting state statutes and state constitutions

Q: I am a Regular Army Lieutenant Colonel on active duty.³ While doing an Internet search, I found your Law Reviews 21072 and 21073, both published in November 2021, and I found those articles to be immensely helpful to me in understanding my rights under the Servicemembers Civil Relief Act (SCRA) and the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). Although I have never been a member of the Army Reserve or the

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,000 "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 Spouses' 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>.

³ The factual set-up for this article is hypothetical but realistic.

Army National Guard, I joined your organization, the Reserve Organization of America (ROA), as a life member because I want to support the excellent work that you are doing with your Law Review Library and your Service Members Law Center.

I was born in 1980 in a sparsely populated rural county in Texas, and I lived there with my parents until 1998, when I graduated from high school and reported to the United States Military Academy (USMA) in West Point, New York. In 2002, just nine months after the terrorist attacks of 9/11/2001, I graduated from the USMA and was commissioned a Second Lieutenant in the Army. I have served on active duty continuously since 1998, if you count the four years at the USMA. I have served multiple tours in Iraq and Afghanistan and at other places both within and outside our country. I am currently serving at the Pentagon, and I live in an apartment in Arlington, Virginia.

In 1998, shortly after I arrived at the USMA, an Army lawyer explained to me that Texas is one of only nine states that do not have state income taxes and that I would be well-advised to maintain my domicile (legal residence) in Texas throughout my military career. I have followed that advice for the last 24 years and continuing. In each major election, I have voted, or at least tried to vote, by absentee ballot in that rural county in Texas where I was born and raised. I have never registered to vote or voted in any of the places where I have been stationed during my Army career. I have saved tens of thousands of dollars in state income tax by maintaining my domicile in Texas.

My father died in early 2002, before I graduated from the USMA. My mother sold the ranch and moved with my three younger siblings to Florida. I have no relatives living in that county, and there is no address in the county where I can receive mail, but in each major election I list the address where I lived until 1998 as my “permanent home address” on the Federal Post Card Application (FPCA) that I complete and submit to request an absentee ballot. Recently, somebody sent me a photograph of that address, informing me that the house where I spent the first 18 years of my life burned to the ground in 2010 and has not been rebuilt.

In June 2022, I achieved 20 years of active duty, after the USMA, and I am qualified to retire from the Army at any time, but I was recently selected for promotion to Colonel (O-6), and I do not reach mandatory retirement until 2032, 30 years after I was commissioned. If I am promoted to Brigadier General, I can remain on active duty even past 2032. I will almost certainly remain on active duty for several more years.

It is most unlikely that I will return to that rural county when I retire from the Army, since I own no property there, have no relatives there, and have no interest in buying and operating a ranch. But I must be domiciled somewhere, and no other place qualifies. I intend to keep voting by absentee ballot in that county until I retire from the Army.

Recently, a controversy has arisen in that small Texas county. There are several folks who have not slept in the county for many years who show up on Election Day to vote or vote by absentee ballot. The new Sheriff, who also serves as the Registrar of Voters, sent out notices to the registered voters that he suspected were no longer residents of the county, and of course my name showed up on that list. The notice that he sent to me, at the address that I always use as my “permanent home address” on my absentee ballot requests, was returned to him by the United States Postal Service (USPS) marked “not deliverable as addressed, no forwarding address on file.”

Recently, I submitted a completed FPCA to this county, requesting an absentee ballot for the 2022 general election to be held on 11/8/2022. The County Sheriff/Voter Registrar responded by mail, saying that he will not send me an absentee ballot because my voter registration in the county has been cancelled because I am no longer a resident of the county.

Have my rights under the SCRA and the UOCAVA been violated? What should I do about this situation?

Answer, bottom line up front

Your rights under these two federal laws have been violated, and you should visit a military legal assistance officer (lawyer) and request that the matter be referred to the United States Department of Justice (DOJ). DOJ will contact the County Sheriff's Office and explain that you have the right to vote by absentee ballot under federal law and that the county must promptly send you an absentee ballot for the 2022 general election. If the ballot is not sent to you promptly, in time for you to mark it and return it on time for it to be counted, DOJ will sue the county in federal court and will obtain an injunction requiring the county to send you the ballot. That injunction will be enforceable through the contempt power of the federal court.

Yes, there are several folks who habitually vote in your county illegally, despite the fact that they live many miles away and seldom if ever sleep in the county, *but you are in a different category because you are on active duty in our nation's military.*

Explanation

In Law Review 21073, Second Lieutenant Lauren Walker and I wrote:

When a civilian (a person who is not presently on active duty) moves from State A to State B, he or she immediately loses his or her domicile in State A and becomes a domiciliary of State B, unless the absence from State A and presence in State B is for a temporary purpose measured in weeks. As an active-duty service member, Lance Corporal Jones is exempted from the application of this general rule.

Jones lived in the house or apartment owned or rented by his parents during his childhood and until June 2019, when he graduated from high school, enlisted in the Marine Corps, and left home to report to boot camp at Parris Island, South Carolina. Jones' *domicile of origin* is at the address of that house or apartment. Jones can maintain that domicile of origin for the entire time that he is on active duty, even for a full career of 20 years or more.

Jones can maintain that domicile of origin at the address where he was living with his parents when he left to report to boot camp even if his parents have since moved away or passed away. Jones' domicile is the place where *he lived* and was domiciled just before he entered active duty.

Jones' right to vote is protected by two federal statutes, the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and the Servicemembers Civil Relief Act (SCRA). The pertinent SCRA provisions are as follows:

§ 4001. Residence for tax purposes

- **(a)** Residence or domicile.
 - (1)** In general. *A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders. ...*
 - **(b)** Military service compensation. *Compensation of a servicemember for military service shall not be deemed to be income for services performed or from sources within a tax jurisdiction of the United States if the servicemember is not a resident or domiciliary of the jurisdiction in which the servicemember is serving in compliance with military orders. ...*
 - **(d)** Personal property.
 - (1)** Relief from personal property taxes. *The personal property of a servicemember or the spouse of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.*
 - (2)** Exception for property within member's domicile or residence. This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember's or the spouse's domicile or residence.

(3) Exception for property used in trade or business. This section does not prevent taxation by a tax jurisdiction with respect to personal property used in or arising from a trade or business, if it has jurisdiction.

(4) Relationship to law of state of domicile. Eligibility for relief from personal property taxes under this subsection is not contingent on whether or not such taxes are paid to the State of domicile.

- **(e)** Increase of tax liability. A tax jurisdiction may not use the military compensation of a nonresident servicemember to increase the tax liability imposed on other income earned by the nonresident servicemember or spouse subject to tax by the jurisdiction. ...
- **(g)** Definitions. For purposes of this section:
 - (1)** Personal property. The term "personal property" means intangible and tangible property (including motor vehicles).
 - (2)** Taxation. The term "taxation" includes licenses, fees, or excises imposed with respect to motor vehicles and their use, if the license, fee, or excise is paid by the servicemember in the servicemember's State of domicile or residence.
 - (3)** Tax jurisdiction. The term "tax jurisdiction" means a State or a political subdivision of a State.⁴

§ 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

⁴50 U.S.C. § 4001 (emphasis supplied).

(3) be deemed to have become a resident in or a resident of any other State.⁵

If Jones remains on active duty and does not establish a new domicile elsewhere, he is eligible to vote in Massachusetts, either in person or by absentee ballot, and he is eligible to vote for all offices and questions on the ballot, not just federal offices. He will be required to pay State income tax to Massachusetts regardless of where he is serving on active duty, within or outside the United States.

Jones can change his domicile while he is on active duty, but he cannot presently change his domicile to Florida or one of the other eight States that do not have a State income tax. To change his domicile while he is on active duty, Jones must *simultaneously* have a physical presence in the State to which he wishes to change and the *intent* to make that State his home. Neither intent alone nor physical presence or absence alone is sufficient to create a new domicile or to destroy an existing domicile.⁶

Because you are still on active duty, and because you have never voted or registered to vote at any of the places where you have physically resided pursuant to your military orders, your domicile, and your “permanent home address” for voting purposes, is the place where *you lived and were domiciled in June 1998, just before you left home to travel to West Point, New York to serve in the Army*. It does not matter that you have not slept there for more than 20 years. It does not matter that you do not own property in that county and that you do not have an address in the county where you can receive mail. It does not matter that you have no relatives currently living in that county. It does not matter that the house where you spent the first 18 years of your life burned down in 2010 and has not been rebuilt.

Q: The County Sheriff/Voter Registrar asked me: “When was the last time that you laid your head down to sleep in our county?” I admitted that the last time that I slept in the county was in February 2002, when I was home on emergency leave from the USMA for my father’s funeral. The Registrar said that, under the Texas Election Code, a person’s legal residence (domicile) is the place where he or she “usually sleeps at night” unless the person is absent for a temporary purpose, measured in weeks or perhaps months, not 20 years. How should I respond to that assertion? The Registrar also said that I am not entitled to vote in his county because I am unwilling to swear that I will return to live in the county when I retire from the Army five to ten years from now. How do I respond to that?

⁵50 U.S.C. § 4025(a) (emphasis supplied).

⁶ Law Review 21073 (November 2021), emphasis in original.

A: It does not matter what Texas law says, because you have the right to vote by absentee ballot in that county under federal law, the SCRA and the UOCAVA. In Law Review 18020 (February 2018), I wrote:

Every service member and every human being has one and only one domicile or legal residence, even if it is a legal fiction.⁷ For a civilian (a person who is not currently on active duty in the armed forces), moving from State A to State B means that the individual immediately ceases to be domiciled in State A and becomes domiciled in State B, unless the move is for a temporary purpose measured in weeks or months and the individual has the clear intent to return to State A at the end of a temporary job assignment or the like. Under a federal statute called the Servicemembers Civil Relief Act (SCRA), active duty service members are exempted from this general rule. The pertinent SCRA section is as follows: {already quoted above}.⁸

Treating active duty service members differently from civilians, for this purpose, is entirely fair and reasonable. Unlike the civilian, the service member does not choose where to live. A civilian can be transferred from one state to another by his or her employer, but there is a big difference. If the civilian does not want to move, he or she can quit the job. You cannot quit the Army until you have completed the active service that you committed to perform. Failing to go to a new appointed place of duty is a military criminal offense called “unauthorized absence” (UA).⁹

The active duty service member can be away from his or her domicile for many years, even a full career of 20 years or more, without losing the domicile at the place where he or she lived and was domiciled just before entering active duty. It should not be necessary, and under the SCRA it is not necessary, for the career service member to assert an intent to return to that domicile of origin throughout an active duty career to be eligible to vote in that original home place for non-federal as well as federal offices. The right to maintain the original domicile and to vote for all offices in that place applies *“without regard to whether or not the person intends to return to that State.”*¹⁰

For many career service members nearing the end of their active duty careers, not being able to vote in the community where he or she lived before entering active duty means not being able to vote at all, and that cannot be the correct answer since every human being has one and only

⁷ Daddy Warbucks can afford to purchase and furnish 365 houses and to spend one night per year in each house, but he still has only one domicile and is only entitled to vote once. I.B. Itinerant is a traveling salesperson with no fixed place to sleep. He sleeps in the trailer that he tows behind his vehicle. Nonetheless, Itinerant has a domicile and is entitled to vote.

⁸ Law Review 18020 (February 2018).

⁹ See 10 U.S.C. § 886.

¹⁰ 50 U.S.C. § 4025(a)(1) (emphasis supplied).

one domicile. for retirement later this year. Like you, she is currently serving at Camp Lejeune in North Carolina.

Texas law defines “residence” for election purposes as follows: “Residence means domicile, that is one’s home and fixed place of habitation *to which he intends to return* after any temporary absence.”¹¹ In 1997, in a case arising out of a hotly contested election in Val Verde County, Texas, the United States District Court for the Western District of Texas held that a career service member who averred an intent to return to Texas upon retirement from active duty many years in the future, but who candidly admitted that he would probably not return to the specific Texas county where he had voted by absentee ballot, was not domiciled in the county at the time of the 1996 general election and was not entitled to vote for non-federal offices in that county.¹²

In Law Review 3 (May 1998), I pointed out that the rule stated by that case would result in the disenfranchisement (at least as to non-federal offices) of most career military personnel. It is the rare career service member who can positively state under oath that he or she will return, upon retirement or release, to the specific county where he or she has been domiciled and voting during career-long military service. Where the service member chooses to live after retirement will in most cases depend upon where he or she finds a post-retirement civilian job.¹³

In 1997, shortly after *Casarez* was decided, I drafted a proposed amendment to the Soldiers’ and Sailors’ Civil Relief Act (SSCRA), adding “or a State or local office” and “without regard to whether or not the person intends to return to that State” to the pertinent SSCRA section. I lobbied for this amendment diligently for more than four years, and finally, in 2001, Congress enacted this amendment to the SSCRA.¹⁴

The purpose and effect of the 2001 amendment were to overrule *Casarez* and to make clear that the service member has the right to maintain his or her domicile and the right to vote, for non-federal as well as federal offices, until he or she establishes a new domicile elsewhere or leaves active duty, whichever comes first, and that the service member is not required to maintain an ongoing intent to return to a specific county or state to be eligible to vote in that county and state by absentee ballot while on active duty.

¹¹ Texas Election Code, § 1.015(1) (emphasis supplied).

¹² *Casarez v. Val Verde County*, 957 F. Supp. 847 (W.D. Texas 1997).

¹³ In almost all cases, the career service member will be retiring sometime between his or her late 30s and early 50s. This is far too early to “retire retire” in the military lingo. The career service member probably won’t be able to find a suitable job in his or her home county, especially if that county is not a major metropolitan county.

¹⁴ On December 19, 2003, President George W. Bush signed into law the SCRA, Public Law 108-189, 117 Stat. 2865. The SCRA was a long-overdue rewrite of and improvement upon the SSCRA, which was originally enacted in 1917. This SSCRA section was carried over into the new law unchanged.

Section 4025 of the SCRA¹⁵ supersedes and overrides section 1.015 of the Texas Election Code, as applied to active duty service members, insofar as the Texas law can be read to require that the service member aver an intent to return to Texas and/or to a specific Texas county as a condition precedent to eligibility to vote by absentee ballot for non-federal offices while on active duty. Under the Supremacy Clause of the United States Constitution, a federal statute like the SCRA trumps a conflicting state statute or even a state constitution.

The Supremacy Clause reads as follows:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.¹⁶

The SCRA was validly enacted by Congress, under the authority conferred by the Constitution, Article I, section 8, clauses 11-16.¹⁷ Almost 65 years ago, the Supreme Court upheld (rejecting a vigorous objection by the State of Colorado) the constitutionality of the SSCRA provision that made it unlawful for a state or local government to impose a personal property tax on personal (moveable) property of an active duty service member who has a physical residence in the state, to be near the service member's military assignment, but who is domiciled elsewhere.¹⁸

In firmly rejecting Colorado's constitutional objection to the SSCRA, the Supreme Court held:

The constitutionality of federal legislation exempting servicemen from the substantial burdens of seriate taxation by the states in which they may be required to be present by virtue of their service cannot be doubted. Generally similar relief has often been accorded other types of federal operations or functions. And we have upheld the validity of such enactments, even when they reach beyond the activities of federal agencies and corporations to private parties who have seen fit to contract to carry on functions of the

¹⁵ 50 U.S.C. § 4025.

¹⁶ United States Constitution, Article VI, Clause 2. Yes, it is capitalized just that way, in the style of the late 18th Century. Almost two centuries ago, in one of its seminal cases, the Supreme Court established the cardinal principle that a federal statute overrides a conflicting state statute. *See Gibbons v. Ogden*, 22 U.S. 1 (1824).

¹⁷ These six clauses are collectively referred to as the "war powers clauses." Clause 11 gives Congress the power to declare war. Clause 12 gives Congress the power to raise and support armies. Clause 13 gives Congress the power to provide and maintain a navy. Clause 14 gives Congress the power to make rules for the government and regulation of land and naval forces. Clause 15 gives Congress the power to provide for calling forth state militia forces. Clause 16 empowers Congress to provide for organizing, arming, and disciplining militia forces. These clauses, taken together, give Congress plenary power to "provide for the common defence" in the words of the Constitution's Preamble.

¹⁸ *Dameron v. Brodhead*, 345 U.S. 322 (1953). I discuss *Dameron* in detail in Law Review 09017 (April 2009).

Federal Government. *Carson v. Roane-Anderson Co.*, 342 U.S. 232, and cases cited; cf. *James v. Dravo Contracting Co.*, 302 U.S. 134, 160-161.

Nor do we see any distinction between those cases and this. Surely, respondent may not rely on the fact that petitioner here is not a business contractor. He is not the less engaged in a function of the Federal Government merely because his relationship is not entirely economic. We have, in fact, generally recognized the especial burdens of required service with the armed forces in discussing the compensating benefits Congress provides. *Le Maistre v. Leffers*, 333 U.S. 1; *Boone v. Lightner*, 319 U.S. 561. Cf. *Board of Commissioners v. Seber*, 318 U.S. 705. Petitioner's duties are directly related to an activity which the Constitution delegated to the National Government, that "to declare War," U.S. Const., Art. I, § 8, cl. 11, and "to raise and support Armies." *Ibid.*, cl. 12. Since this is so, congressional exercise of a "necessary and proper" supplementary power such as this statute must be upheld. *Pittman v. Home Owners' Corp.*, 308 U.S. 21, 32-33; *Federal Land Bank v. Bismarck Co.*, 314 U.S. 95, 102-104. *Carson v. Roane-Anderson Co.*, *supra*, at 234. What has been said in no way affects the reserved powers of the states to tax. For this statute merely states that the taxable domicile of servicemen shall not be changed by military assignments. This, we think, is within the Federal power.¹⁹

Protecting the rights and economic interests of service members is even more important today than it was in 1953, when the Supreme Court decided *Dameron*. In 1973, Congress abolished the draft and established the All-Volunteer Military. Without laws like the SCRA and the Uniformed Services Employment and Reemployment Rights Act (USERRA), the services would not be able to recruit and retain the quality and quantity of military personnel needed to defend our country.

Section 4025 is clearly necessary, reasonable, and constitutional. You have the right to vote for all offices (not just federal offices) in the county where you lived just before you traveled to West Point to begin your military career. You can vote there by absentee ballot until the day you leave active duty, even if you have firmly decided not to return to that county after you retire from the Army. This is an important legal principle that affects many (perhaps most) career military personnel.²⁰

Thus, it does not matter that you have not slept in the county for more than two decades and that you do not intend to return to the county when you retire from the Army. While you remain on active duty, your domicile is the place that you lived and were domiciled for the first 18 years of your life, until you left home to report to the USMA in June 1998, and you have the right to vote, using that address as your permanent home address, until you leave active duty or establish a new domicile elsewhere. To the extent that Texas law conflicts with your federal

¹⁹ *Dameron*, 345 U.S. at 324-25.

²⁰ Law Review 18020 (February 2018) (emphasis in original).

right to vote, that Texas law is void under the Supremacy Clause of the United States Constitution.

Q: The Registrar said that he will not send me an absentee ballot because I am not a registered voter in the county. He said that he cancelled my voter registration months ago when I did not respond to the notice that he sent to my “permanent home address” and the notice was returned to him by the USPS as “undeliverable.” How should I respond to that?

A: It does not matter that you are not registered to vote because federal law requires election officials to treat the FPCA (either the traditional paper form or the on-line equivalent) as a *simultaneous voter registration application and absentee ballot request*.²¹

Summary

Do not let this county deprive you of your right to vote in the 2022 general election or any other elections while you are on active duty. Make a formal complaint to DOJ as soon as possible.

Please join or support ROA

This article is one of 2,000-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

²¹ See 52 U.S.C. §§ 20302(a)(1), 20310(1)(A). See generally Law Review 21072 (November 2021) for a detailed discussion of the procedures that active-duty service members must utilize when voting by absentee ballot under UOCAVA.

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 eight²² 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 20002²³

Here is the letter that I sent to the Secretary of State of Texas on this issue:

**Samuel F. Wright
Captain, JAGC, USN (Ret.)
1202 Elmwood Dr.
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July 5, 2022

Honorable John B. Scott
Secretary of State of Texas
1019 Brazos St.
Austin, TX 78701

Re: The career member of the armed forces can be absent from his or her domicile for many years and still be eligible to vote at that address.

Dear Secretary Scott:

²² Congress recently established the United States Space Force as the 8th uniformed service.

²³ You can also donate on-line at www.roa.org.

I agree that election officials must be vigilant in ferreting out election fraud and voting by persons who are not eligible, but I am concerned that career service members (and Texas has more of them than any other state) may be inadvertently caught up in the assumption that because an election notice sent to the service member's "permanent home address" was returned by the United States Postal Service as undeliverable, the service member must be wrongfully asserting that the address is still the member's permanent address, the place where he or she is eligible to vote in person or by absentee ballot. In many cases, that assumption is just plain wrong in the case of career members of our nation's armed forces.

Let us take a hypothetical but realistic example. Joe Smith was born in Texas in 1980 and graduated from high school in 1998. Weeks after graduation day, he reported to the United States Military Academy (USMA) in West Point, New York. In 2002, he graduated and was commissioned a Second Lieutenant in the Army. He has remained on active duty continuously since 1998, including his four years at the USMA, and he is still on active duty. He was recently promoted to Colonel so he can remain on active duty until 2032 (30 years of commissioned service) or even longer if he is promoted to general officer rank or has a special skill that is in short supply.

Under federal law, Smith's domicile is the place where he lived and was domiciled in 1998, just before he traveled to New York to report to the USMA, unless he has left active duty or unless he has established a new domicile elsewhere by voting or registering to vote somewhere else. Texas is one of just nine states that have no state income tax, so Smith has a powerful incentive to maintain his Texas domicile for his entire active duty career.

Smith's domicile is the home that he shared with his parents 24 years ago. It does not matter that his parents have since moved away or passed away. It does not matter that the house has passed through several owners since 1998, or even that the house burned to the ground and has not been rebuilt. It does not matter that Smith has no relatives still living in that county or that he has no place in the county where he can receive mail. It does not matter that Smith has not laid his head down to sleep in that county for almost a quarter of a century. It does not matter that it is unlikely that Smith will move back to that county when he finally retires from the Army in 2032.

Smith has the right (enforceable in federal court) to continue using that 1998 address as his "permanent home address" in absentee ballot applications for his entire active duty military career. It would be wrong for a County Tax Assessor or Election Administrator to assume that if a notice sent to Smith's permanent home address was returned as undeliverable Smith must be wrong in asserting that the address is still his permanent home address. Certainly, you do not want to countenance disenfranchising career service members because of the circumstances of their service.

I invite your attention to www.roa.org/lawcenter. You will find more than 2,000 "Law Review" articles about military voting rights, reemployment rights, civil relief rights and other military-legal topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997, and we add new articles each month. New military judge advocates are informed about this "Law Review Library" as a resource for legal research, and military judge advocates, other lawyers, judges, service members, military spouses, and others use these articles to help them understand their legal rights and how to exercise and enforce those rights.

I am enclosing for you a draft of Law Review 22049, which will be added to the ROA website on or about 8/1/2022. This is a draft, and I may do some additional editing before the article is added to the ROA website. I would like to add a note to the effect that you, as Secretary of State, have been made aware of this issue and that you have taken action to ensure career service members who are domiciled in Texas but currently serving elsewhere, within or outside our country, have the opportunity to vote in Texas by absentee ballot during their active duty service, whether that service lasts for three years or for 30 years or more. Please contact me by telephone or e-mail, or have someone in your Elections Division contact me.

As we celebrate Independence Day, let us remember that statesmen in the Continental Congress declared our nation's independence on 7/4/1776, but members of our nation's armed forces secured that independence through seven years of hard fighting against the military superpower of the 18th Century, and in each succeeding generation young men and women have answered the call to serve and have ensured, through their prowess and their devotion, that government of the people, by the people, and for the people shall not perish from the earth.

Very respectfully,

Samuel F. Wright

Enclosures

Copy to: Mr. Keith Ingram