

The Case for Expanding USERRA Protections to the Coast Guard Auxiliary and Civil Air Patrol

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Law Review Subject Index Code(s)

1.1.3.6c – USERRA and the Coast Guard Auxiliary and the Civil Air Patrol

As it currently stands, the Coast Guard Auxiliary and Civil Air Patrol (CAP) are not afforded USERRA protections. As auxiliary forces of the Coast Guard and Air Force respectively, they perform important work that otherwise would be assigned to reserve or active forces. Their service frees up active and reserve resources to focus on other missions. Given the current challenges that active and reserve forces are facing in terms of recruitment and retention, it is vital that federal law provides legal protection to members of these auxiliary organizations who volunteer to spend time away from their paying jobs to perform these critical functions.

While many auxiliarists and members of the CAP volunteer their time on weekends or outside of work hours, that does not mean that the tasks assigned to these organizations cease to exist during traditional working hours. Both organizations conduct search and rescue operations, respond to emergencies, and support local, state, and federal law enforcement agencies. These vital responsibilities cannot be scheduled to comport with work schedules; instead, auxiliarists and CAP members should be empowered to volunteer their time knowing that their paying jobs will be protected.

USERRA provides members of uniformed services with job-protected leave whether their orders were voluntary or involuntary. While auxiliarists and CAP members exclusively volunteer

¹ Please see 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, and add new articles each month. Capt. Samuel F. Wright is the author of more than 90% of the articles published so far, but we are always looking for “other than Sam” articles by other lawyers.

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for service, they do not receive compensation for their time. Therefore, auxiliarists and CAP members who volunteer for their time during work hours are currently doing so at great personal sacrifice, and risk to their civilian employment.

For these reasons, it would be in accord with the Congressional intent behind USERRA, to encourage noncareer service in the uniformed services, to expand protections to the Coast Guard Auxiliary and Civil Air Patrol. Please see below for suggested text of amendments and organization-specific statistics supporting this recommendation.

Legislative Amendment to 38 U.S.C. § 4303(17)

Current:

(17) The term "uniformed services" means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, the commissioned officer corps of the National Oceanic and Atmospheric Administration, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, intermittent personnel who are appointed into Federal Emergency Management Agency service under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)) or to train for such service, and any other category of persons designated by the President in time of war or national emergency.

Proposed:

(17) The term "uniformed services" means the Armed Forces, the Army National Guard and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, the commissioned officer corps of the National Oceanic and Atmospheric Administration, System members of the National Urban Search and Rescue Response System during a period of appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, intermittent personnel who are appointed into Federal Emergency Management Agency service under section 306(b)(1) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5149(b)(1)) or to train for such service, ***members of the Coast Guard Auxiliary, members of the Civil Air Patrol,*** and any other category of persons designated by the President in time of war or national emergency.

Other Amendments Required for Internal Legislative Congruence

- Add subsection (D) to §4312(b)(2) regarding the determination of military necessity → "for persons performing service to the Coast Guard Auxiliary, by the Commandant of the Coast Guard Auxiliary as provided under Title IV, Section 401 of the Coast Guard Authorization Act of 1996 (Pub. L. 104-324)."

- Add subsection (E) to §4312(b)(2) regarding the determination of military necessity → “for persons performing service to the Civil Air Patrol, by the Board of Governors of the Civil Air Patrol as provided under 36 U.S.C. § 40303 and 10 U.S.C. § 9497.

COAST GUARD AUXILIARY

“Each year, Auxiliarists save almost 500 lives, assist some 15,000 boaters in distress, conduct more than 150,000 vessel safety checks of recreational vessels, and teach over 500,000 participants in boating and water safety programs. The results of these efforts save taxpayers hundreds of millions of dollars every year.”³

Recruitment and Retainment Facts

- Coast Guard Auxiliary consists of 26,000 members
- The Coast Guard has fallen short of recruiting goals by an average 20% since 2018⁴
- The general military recruitment pool continues to shrink
- Former Commandant of the Coast Guard, Adm. Karl Schultz implemented policies allowing Reserve members to fill in for active-duty personnel while they take up to 120 days of parental leave⁵
- The Coast Guard has changed body composition and grooming standards, and adjusted assignment policies to attract and retain more personnel

The greater the issues with recruitment and retainment of active duty Coast Guard personnel, the greater the role of reservists; the greater the role of the reservists, the greater the role of the Auxiliary.

Coast Guard Auxiliary Missions⁶

- Coast Guard Auxiliary was authorized Feb. 19, 1939
- 50,000 Auxiliarists supported the war effort during WWII; many serving weeks at a time with the Temporary Reserve
- Operate safety and regatta patrols as a part of the Coast Guard Search and Rescue team
- Stand communication watches
- Assist during mobilization exercises
- Perform harbor and pollution patrols
- Conduct Vessel Safety Checks: A free examination provided to any recreational boaters to ensure their craft complies with Federal safety regulations⁷

³ U.S. COAST GUARD, JOIN THE UNITED STATES COAST GUARD AUXILIARY (2023).

⁴ Patricia Kim, *Coast Guard Turns Eye Toward Recruitment, Retention as It Misses Goals*, MILITARY.COM (Jul. 18, 2022), <https://www.military.com/daily-news/2022/07/18/coast-guard-turns-eye-toward-recruitment-retention-it-misses-goals.html>.

⁵ U.S. COAST GUARD, U.S. DEPT. OF HOMELAND SECURITY, PARENTAL LEAVE (2023).

⁶ U.S. COAST GUARD, WHAT WE Do (2023).

⁷ *Id.*

- Provide Commercial Fishing Vessel Examinations
- Host Recreational Boating Safety Courses
- Marine Environmental Protection
- Support Air Operations
- Aids to Navigation/Chart Updating
- State Liaison Programs
- Recruiting for the Coast Guard and Academy
- Public Affairs
- Bridge Administration
- Merchant Mariner Exam Administration

These are all tasks vital to support public safety, the environment, and national defense that would otherwise be tasked to the regular Reserve or Active Duty components.

An Average Day in the USCG Auxiliary:⁸

- Saved \$729,000 Worth of Property
- Educated 929 People on Recreational Boating Safety & Marine Environmental Protection
- Completed 7 Regatta Patrols
- Completed 91 Safety Patrols
- Accomplished 19 SAR Assists
- Assisted 56 People in Trouble on Water
- Completed 15 Recruit Support Missions
- Performed 615 Vessel Safety Checks
- Participated in 120 USCG Operational Support Missions
- Participated in 42 USCG Administration Support Missions
- Completed 122 Public Affairs Missions
- One or two recreational boaters, whose death was certain - somewhere on the waters of the U.S. - had his or her life saved by a Coast Guard Auxiliarist.

CIVIL AIR PATROL

About CAP

- CAP consists of over 35,000 adult members and 25,000 youth volunteers

Civil Air Patrol Missions⁹

- CAP is a congressionally chartered, federally funded 501(c)(3), headquartered at Maxwell AFB

⁸ *Id.*

⁹ CIVIL AIR PATROL U.S. AIR FORCE AUXILIARY, FACT SHEET 2023 (2023).

- Perform Air Force-assigned missions as a Total Force Partner, as well as other federal, state, and local agencies
- Conducts 90% of inland search and rescue in the U.S. as tasked by the Air Force Rescue Coordination Center and other agencies.
- Has 5,400 aircrew members and 34,000 emergency professionals trained to Federal Emergency Management Agency standards.
- Performs aerial reconnaissance for homeland security.
- Provides air intercept training, impact assessment, light transport, communications support and low-level route surveys for the Air Force.
- Assists federal, state, and local law enforcement agencies in the war on drugs
- Develops, publishes, and distributes national academic standards-based science, technology, engineering, and mathematics (STEM) aerospace education curricula for kindergarten through college classrooms, affecting more than 500,000 K-12 students nationwide.
- Attracts more than 25,000 members ages 12 through 20 for participation in its cadet programs.

These are all tasks vital to support public safety, disaster relief, search and rescue, and national defense that would otherwise be tasked to the regular Reserve or Active Duty components.

Civil Air Patrol Accomplishments¹⁰

- “Using proprietary cellphone forensics and radar analysis technology (used in 95% of 525 searches in 2022), Civil Air Patrol was credited with 391 finds and saving 151 lives, making it one of the most successful years ever for the Air Force auxiliary’s search and rescue efforts.
- Civil Air Patrol contributed \$219,265,664 in volunteer hours in 2022, serving the disaster relief and emergency service needs of every American state and territory.
- Operating the world’s largest fleet of single-engine piston aircraft, Civil Air Patrol operates its aircraft for only \$170 per flight hour, which makes CAP an unrivaled low-cost provider to help the Air Force achieve its pilot training objectives.
- Returning greater than \$3 in value for every \$1 spent in the past year
- Civil Air Patrol flew 95,182 hours last year, conducting Air Force-assigned missions as well as support for states and communities
- CAP pilots provided 30,920 orientation flights to CAP cadets, as well as Air Force ROTC and Junior ROTC cadets.”

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, and we add new articles each month.

¹⁰ CIVIL AIR PATROL U.S. AIR FORCE AUXILIARY, FACT SHEET 2023 (2023).

ROA is more than 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 more than a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s national 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, ESGR volunteers, DOL investigators, 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 their membership status, or lack thereof, in our organization, but please understand that ROA members, through their dues and contributions, pay the cost of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any of our country’s eight uniformed services,¹¹ you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership.¹² Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to persons who are serving or have served in the Active Component of the armed forces, as well as the National Guard and Reserve.

If you are eligible, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448. If you are not eligible, please contribute to help us continue our vital work. You can send us a contribution at:

Reserve Organization of America
1 Constitution Avenue NE
Washington, DC 20002¹³

¹¹ Congress recently created the United States Space Force as the 8th uniformed service.

¹² If you are under the age of 35, you can become an associate member for free for five years or when you turn 35, whichever comes first.

¹³ You can also contribute on-line at www.roa.org.