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President Biden Has Nominated Admiral Lisa Franchetti To Be the Next Chief of Naval Operations. Will She Be the First Woman To Head up an Armed Force? Will She Be the First Woman on the Joint Chiefs of Staff? By Captain Samuel F. Wright, JAGC, USN (Ret.)²

9.0--Miscellaneous

Q: I am a life member of the Reserve Organization of America and a retired Coast Guard Reserve Captain. President Biden recently nominated Admiral Lisa Franchetti to be the next Chief of Naval

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 (VRRRA—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 VRRRA 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 VRRRA 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>.

Operations,³ and several articles in the news media have stated that Admiral Franchetti will be “the first woman to head up one of our country’s armed forces.” Time out! Admiral Linda L. Fagan has been the Commandant of the Coast Guard since June 2022. Please clarify this matter.

A: The definitions section of title 10 of the United States Code defines the term “armed forces” as including the Army, Navy, Marine Corps, Air Force, Space Force, *and Coast Guard*.⁴ You are correct that Admiral Linda L. Fagan was nominated by President Biden and confirmed by the Senate and she has been the Commandant of the Coast Guard since June 2022. Admiral Fagan is the first and the only woman (so far) to head up one of our nation’s armed forces.

When the Senate confirms her nomination, Admiral Franchetti will become the first woman to serve on the Joint Chiefs of Staff. Title 10 of the United States Code defines the composition of the Joint Chiefs of Staff as follows:

- a. The Chairman of the Joint Chiefs of Staff.
- b. The Vice Chairman.
- c. The Chief of Staff of the Army.
- d. The Chief of Naval Operations.
- e. The Chief of Staff of the Air Force.
- f. The Commandant of the Marine Corps.
- g. The Chief of the National Guard Bureau.
- h. The Chief of Space Operations.⁵

³ Admiral Franchetti’s nomination has not yet, as of this writing, been confirmed by the Senate because a single Senator has placed a “hold” on all nominations for flag and general officer positions.

⁴ 10 U.S.C. § 101(a)(4). The Coast Guard is an armed force at all times, not just in those rare instances (most recently during World War II) when the Coast Guard operates as a separate service within the Navy.

⁵ 10 U.S.C. § 151(a).

The Commandant of the Coast Guard is not a member of the Joint Chiefs of Staff, and making her a member would require a statutory amendment. The Coast Guard is an armed force, but it is not part of the Department of Defense (DOD). The Coast Guard is part of the Department of Homeland Security (DHS).⁶

Q: What is the role of the Joint Chiefs of Staff?

A: Title 10 provides:

- (1) The Chairman of the Joint Chiefs of Staff is the principal military adviser to the President, the National Security Council, the Homeland Security Council, and the Secretary of Defense.
- (2) The other members of the Joint Chiefs of Staff are military advisers to the President, the National Security Council, the Homeland Security Council, and the Secretary of Defense as specified in subsection (d).⁷

Q: What are the principal missions of the Coast Guard?

A: According to the Coast Guard itself, the service's six principal missions are maritime law enforcement, maritime response, maritime prevention, maritime transportation system management, maritime security operations, and defense operations.⁸

⁶ The Coast Guard was created in 1790 and was called the "Revenue Cutter Service" until the name "Coast Guard" was adopted in 1915. The Revenue Cutter Service and later the Coast Guard were part of the Department of the Treasury until 1967, when Congress transferred the Coast Guard to the newly created Department of Transportation. In 2003, Congress transferred the Coast Guard to the newly created Department of Homeland Security.

⁷ 10 U.S.C. § 151(b).

⁸ See <https://www.uscg.mil/About/Missions/>.

Q: Vice Admiral Antonia Novello, USPHS was the Surgeon General of the United States from 1990 to 1993 and was the first woman to serve as the Surgeon General (SG). As SG, she headed up the commissioned corps of the Public Health Service (PHS). Why doesn't she count as the first woman to head up a service?

A: Admiral Novello was the first woman to head up a uniformed service but not the first woman to head up an armed force—that would be Admiral Fagan, the current Commandant of the Coast Guard since June 2022. All armed forces are uniformed services, but not all uniformed services are armed forces. The definitions section of title 10 provides:

(5)The term “uniformed services” means—

(A) the armed forces;

(B) the commissioned corps of the National Oceanic and Atmospheric Administration; and

(C) the commissioned corps of the Public Health Service.⁹

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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. We add new articles each month.

ROA is the nation's only national military organization that exclusively and solely supports the nation's reserve components, including the

⁹ 10 U.S.C. § 101(a)(5).

Coast Guard Reserve (6,179 members), the Marine Corps Reserve (32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).¹⁰

ROA is more than a century old—on 10/2/1922 a group of veterans of “The Great War,” as World War I was then known, founded our organization at a meeting in Washington’s historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded “Great War.” 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 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 advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (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,

¹⁰ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

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 eight¹¹ 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 20002¹²

¹¹ Congress recently established the United States Space Force as the eighth uniformed service.

¹² You can also contribute on-line at www.roa.org.