

LAW REVIEW¹ 24001

January 2024

We Added 66 new “Law Review” Articles in 2023.

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

9.0--Miscellaneous

I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,100 “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

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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>.

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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. The articles are available for free to everyone, not just ROA members. In 2023, we added 66 new articles. Of those articles, 48 were about USERRA.

I am the author of more than 90% of the “Law Review” articles that ROA has added to its website in the last 26 years, but I am 72 and will not be around forever to author and update these articles. Accordingly, over the last three years I have recruited three understudies who are young enough to be my granddaughters. The Law Review Library is my legacy, and I am making great efforts to ensure that this legacy will continue after my demise.

My first understudy, in 2021-22, was Second Lieutenant (now First Lieutenant) Lauren Walker, USMC. She was a third-year law student at Baylor University (Waco, TX) when I signed her up. In February 2022, she graduated cum laude from Baylor Law and passed the Texas bar exam later that same month. She served as my research assistant until she reported to active duty in June 2022. Lauren authored five new “Law Review” articles for us, and they were posted to our website in October 2021 and April 2022. She also comprehensively reviewed and updated hundreds of our published articles and reorganized our Law Review Subject Index to make it more user-friendly and useful in finding articles about specific topics.

Before she reported to active duty, Lieutenant Walker helped me recruit Second Lieutenant (now First Lieutenant) Tara Buckles, a third-year law student at the University of Pittsburgh Law School. She graduated from law school, cum laude, in May 2022 and passed the Texas bar exam in July 2022. She served as my research assistant and understudy until she entered active duty in March 2023. During her months of work, she authored 12 new “Law Review” articles and collaborated with me on one other article. She also reviewed and updated our 54 articles about the state and territorial laws that provide limited periods of *paid* military leave to state, territorial, and local government employees.

Lieutenant Buckles put me in touch with my current understudy, Second Lieutenant Allison Sturgeon, a second-year law student at Marquette University in Milwaukee. In April 2022, Lieutenant Sturgeon graduated *summa cum laude* from Norwich University, our nation’s premier private military college. Lieutenant Sturgeon is the author of Law Review 24002, the next article in this “Law Review” series.

All 66 new “Law Review” articles added to the ROA website in 2023 are important and relevant, but I will discuss some of the most important articles. In Law Review 23001, the first article published last year, we discussed USERRA and the SCRA in the context of individuals enlisting in the Active Component (AC) of the armed forces. Contrary to popular misconception, these two laws apply equally to AC and Reserve Component (RC) service. In the last two years, all six armed forces have fallen short of their recruiting targets, and we hope that this article will be useful to military recruiters and recruiting commands in persuading qualified young men and women to enlist. Law Review 23001 is by Lieutenant Buckles and me.

Lieutenant Buckles also authored Law Review 23002, calling upon Congress to expand the requirement that young adults (starting at age 18) must register with the Selective Service System to include young women as well as young men. Lieutenant Buckles also authored Law Review 23007, about the recent (9/29/2022) USERRA amendment to provide Federal Emergency Management Agency (FEMA) reservists USERRA protections, Law Review 23016, about the SCRA provision on maximum interest rates that service members can be charged, Law Review 23019, about the recent federal legislation providing for professional license portability when the spouse of an active-duty service member moves from one state to another to accompany the active-duty service member, Law Review 23020, about disability benefits administered by the United States Department of Veterans Affairs, and Law Review 23028, about the unique organizational scheme for the United States Space Force, our nation's newest armed force.

Law Review 23005 is about enforcing the USERRA rights of Reserve Component personnel who work for the Federal Government indirectly, through contractors. Law Review 23026 is about recent Court of Appeals decisions in three separate circuits holding that a person who is away from a civilian job for uniformed service can be entitled to *paid* military leave under USERRA's "furlough or leave of absence clause." Law Review 23033 is about the SCRA provision that enables a person to terminate an apartment lease upon enlisting in the armed forces or when an active-duty service member is transferred to a distant location.

When an active duty service member lives in a condominium that he or she owns and is transferred to a distant location, he or she will likely

want to lease out the condominium unit. Unfortunately, service members in this circumstance are not exempted from condominium association rules that limit the rights of condominium owners to lease out their units. Please see Law Review 23048. That article is by Major Robert Friedman, USAFR.

Active duty service members are encouraged to vote in primary and general elections for federal, state, and local offices, but there are severe limitations on permissible political activities by active-duty service members, and those rules are much stricter than the “Hatch Act” rules that apply to federal civilian employees. See Law Review 23046.

On 6/29/2022, the United States Supreme Court decided *Torres v. Texas Department of Public Safety*, 142 S. Ct. 2455 (2022). In that important precedential case, the Supreme Court decided that State courts in Texas and the other 49 States are required to hear and adjudicate claims that State agencies, as employers, have violated USERRA, without regard to State law or State claims of sovereign immunity. This result is exceedingly important because 10% of Reserve and National Guard part-timers have civilian jobs working for State agencies. I discuss the implications of *Torres* in Law Review 23013 (March 2023).

In *Torres*, Texas’ intermediate appellate court held that Texas has sovereign immunity and that the lawsuit against the Texas Department of Public Safety must be dismissed for lack of jurisdiction, and the Texas Supreme Court refused to review the decision of the intermediate appellate court. After the United States Supreme Court reversed the decision of Texas intermediate court, the case was remanded to the

Texas court system. A trial was held in Corpus Christi in September-October 2023, and the jury found Torres' claim to be meritorious and awarded him \$2.49 million. I discuss *Torres* on remand in Law Review 23061 (November 2023).

The federal Veterans' Preference Act gives individuals who have served on active duty in the armed forces a five-point preference in getting hired for federal civilian jobs, and that incentive can be valuable in help the services meet their recruiting goals. Unfortunately, persons who entered active duty after 8/31/2010 are not eligible for this veterans' preference under current law. See Law Review 23055.

A person who meets five simple conditions is entitled to reemployment under USERRA, and USERRA applies to almost all employers in our country, including the Federal Government. One of the conditions is a five-year cumulative limit on the duration of the period or periods of uniformed service that the person can perform, relating to the employer relationship for which he or she seeks reemployment. A person who leaves a job with one federal department to take a new job with another federal department does not get a fresh five-year limit. See Law Review 23060.

A person who leaves a postsecondary education program to perform voluntary or involuntary uniformed service is not protected by USERRA because the educational institution is not the person's employer, but another federal law provides similar protections. See Law Review 23062.

H.R. 3943 would, if enacted, make major improvements in USERRA. I discuss those improvements in detail in Law Reviews 23063, 23064, 23065, and 23066.

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. 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 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).³

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

³ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

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 legislators and 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 eight⁴ 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 <https://www.roa.org/opage/memberoptions/>.

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:

⁴ Congress recently established the United States Space Force as the eighth uniformed service.

Reserve Organization of America
1 Constitution Ave. NE
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⁵ You can also contribute on-line at www.roa.org.