

## **Number 16, August 2000 (updated March 2003): Department Involvement in State Issues**

The complete set of Law Review articles is now available in the members section of our ROA Web site at [www.roa.org](http://www.roa.org). I continue to receive calls, letters, faxes, and e-mails relating to Law Review Topic 13, "Pension Credit for Pre-Employment Military Service," which was published in the June 2000 issue of *The Officer*.

As I explained in Topic 13, Virginia law permits state and political subdivision employees to purchase credit for military service preceding their state or political subdivision employment, but not if they are using the same periods of military service for Reserve (age 60) retirement purposes. The "but not" clause clearly violates Title 10, United States Code, Section 12736 (10 U.S.C. 12736).

In other words, 10 U.S.C. 12736 is an "anti-anti double dipping" rule. This federal law overrides and invalidates any state law or local ordinance that says you cannot use the same period of active duty for both state and Reserve retirement purposes.

At its convention in May, ROA's Department of Virginia adopted a resolution calling upon the Virginia governor and general assembly to resolve this inequity either administratively (by recognizing the invalidity of the state law and obeying the federal law) or legislatively (by amending the state law). Department President LCDR George R. Gacser, USNR, sent a copy of the resolution to Governor James S. Gilmore III, Lieutenant Governor John H. Hager, Attorney General Mark Earley, and Speaker of the House of Delegates S. Vance Wilkins Jr.

So far, only the lieutenant governor has responded favorably. In a letter to Commander Gacser dated 12 July 2000, Lieutenant Governor Hager said, "As a retired captain in the U.S. Army, I have been a longtime supporter of all members (active, Reserve, and retired) of our armed forces. As such, I look forward to working with [State] Senator Chichester in order to help correct this situation."

Speaker of the House S. Vance Wilkins Jr. responded to Commander Gacser by letter dated 29 June 2000. The Speaker promised to research the issue prior to the 2001 legislative session, but he also said, "I am not at all sure the same years [of military service] should be used twice to purchase time in two different retirement systems." I have written to Speaker Wilkins to set him straight. It would be helpful if other ROA members would write to Speaker Wilkins and also to their own state senators and delegates. Speaker Wilkins' address is P.O. Box 462, Amherst VA 24521.

In *Cantwell*, the United States Court of Appeals for the Ninth Circuit held that Congress enacted the Reserve Retirement Law to encourage people who

have served on active duty to remain in the Reserve components, so that they will be available for recall in an emergency. Any state law that mitigates or undoes the incentive that Congress is spending our federal tax dollars to create is invalid under 10 U.S.C. 12736 and the Supremacy Clause of the United States Constitution.

At a time when our nation is more dependent than ever on the Reserve components for cost-effective defense, it should not be necessary to sue the Commonwealth of Virginia to achieve recognition of this important principle. Please contact your state legislators, and please send them a copy of this article.

I want to take this opportunity to commend the Department of Virginia and Department President Gacser for their initiative on this important issue. I hope that other ROA departments will emulate Virginia's example.

Here at ROA headquarters, we have our hands full with Congress. We are not in a position to monitor, much less to affect, what is going on in 50 state capitals.

There are many state-government issues that have important national defense implications, including the following:

--How does your state treat state and local government employees who are Reservists (paid military leave, seniority and pension credit for military service, etc.?)

--How does your state treat Reserve component drill pay for purposes of unemployment compensation? (See Law Review Number 14, July 2000.)

--How does your state treat military pay (active, Reserve, and retired) for state income tax purposes?

--Do local election officials in your state have absentee ballots printed and ready to mail at least 45 days before the election? The Department of Defense has asked each state to provide at least 45 days of ballot transmission time. The idea is to ensure that overseas military personnel and others will have sufficient time to receive, mark, and return their ballots in time to be counted, no matter where the service of our country has taken them.

--Does your state government have a Veterans Home and a Veterans Cemetery? Are they adequately funded and maintained?

These are the five issues that occur to me. I am sure that many more may occur to you. I want to work with ROA departments, chapters and members to distinguish state issues from federal issues, and to analyze federal laws that may impact on state decisions, but I simply cannot undertake to lobby

50 state legislatures. I am trying to promote the revitalization of the position of ROA department judge advocate to address questions of this kind.

Note: Captain Wright's military title is used for purposes of identification only. The views expressed in this article should not be attributed to the Department of the Navy or the U.S. government generally.

You can reach Captain Wright by telephone (1-800-809-9448, ext. 713), by fax (202-646-7751), by e-mail ([swright@roa.org](mailto:swright@roa.org)), or by letter (1 Constitution Ave. NE, Washington DC 20002). If you are calling concerning a problem with your civilian employer, it would probably not be a good idea to call from work. If your question appears to affect or be of interest to many members, Captain Wright will include it (without your name) in this column.