

**STATEMENT OF  
WILLIAM VINES  
COMMANDER POST 31  
DEPARTMENT OF ARKANSAS  
THE AMERICAN LEGION  
BEFORE THE  
SUBCOMMITTEE ON ECONOMIC OPPORTUNITY  
COMMITTEE ON VETERANS' AFFAIRS  
UNITED STATES HOUSE OF REPRESENTATIVES  
ON  
UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT  
(USERRA) and SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)**

**AUGUST 18, 2008**

Madam Chairwoman and Members of the Subcommittee:

The American Legion appreciates this opportunity to share its views on USERRA and SCRA.

**UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT  
(USERRA)**

Over seven years of war has caused record high deployment rates of reserve component soldiers, who have the responsibility of maintaining civilian employment while waiting for the call to serve their Nation. Many of these soldiers, who struggle daily to balance their dual military and civilian lives, have returned home from deployment to find their employers not hiring them back. According to the Department of Defense's (DOD) Status of Forces study released in November 2007, among Post-9/11 returning National Guard and Reservists, nearly 11,000 were denied prompt reemployment and more than 20,000 lost seniority, pay, and other benefits awarded to them.

In addition, nearly 20,000 saw their pensions cut and more than 15,000 did not receive the training they needed to return to their former jobs. 23 percent of National Guard and Reservists surveyed in 2006 who could not find a job post-deployment said that they were unemployed because their previous employer did not promptly rehire them as required by law. Sustained and multiple deployments have taken a significant toll on service members and their families, who are bearing a disproportionate burden of these wars. Service members, who honorably defend this country, depend on laws like USERRA to protect their jobs while they are involuntarily activated and sent to war. It was the intent of Congress in enacting USERRA that no veteran be denied employment, reemployment, advancement or discrimination in employment for serving their country in the interest of protecting our nation.

*The Uniformed Services Employment and Reemployment Rights Act (USERRA) of 1994, 38 United States Code (U.S.C.) §§ 4301-4334, was signed into law on October 13, 1994. USERRA prohibits discrimination in employment on the basis of an individual's: prior service in the*

uniformed services; current obligations as a member of the uniformed services; or, intent to join the uniformed services. USERRA also provides reemployment rights with the pre-service employer following qualifying service in the uniformed services. In general, the protected person is to be reemployed with the status, seniority, and rate of pay as if continuously employed during the period of service. USERRA applies to private employers, the Federal Government, and State and local governments. It applies to United States employers operating overseas as well.

The Department of Labor, through the Veterans' Employment and Training Service (VETS), provides assistance to all persons having claims under USERRA. The Department of Labor is the enforcement authority for USERRA and it processes all formal complaints of violations of the law. VETS refers unresolved claims to the Department of Justice (DOJ) or the Office of Special Counsel (OSC) for litigation as appropriate. The veteran may then request that the Department of Justice litigate on their behalf but only after a certain period has passed.

Although USERRA defines individual agency roles and responsibilities, it does not make any single individual or office accountable for maintaining visibility over the entire complaint resolution process. In a report addressing USERRA issues by the Government Accountability Office (GAO) in October 2005, it noted that the ability of federal agencies to monitor the efficiency and effectiveness of the complaint process was hampered by a lack of visibility resulting, in part, from the separated responsibilities for addressing complaints from among multiple agencies. The GAO report recommended that Congress consider designating a single individual or office to maintain visibility over the entire complaint resolution process from DOD through DOL, DOJ, and OSC. This would encourage agencies to focus on overall results than agency-specific outputs and thereby improve federal responsiveness to service member complaints that are referred from one agency to another. The American Legion supports this recommendation by GAO.

Since September 11, 2001, DOD has relied on more than 600,000 members of the National Guard and Reserve components to support various operations abroad and at home. In particular, from September 2001 to July 2007, the department deployed more than 434,000 Reservists to support operations in DOD's Central Command area of responsibility that includes Afghanistan and Iraq. During this same period, DOL/VETS have provided USERRA assistance to over 410,000 employers and service members. In FY 2006, VETS staff closed 1,377 USERRA complaints, recovering \$2,346,142.04 in lost wages and benefits and in FY 2007, VETS staff closed 1,200 USERRA complaints, recovering \$1,886,572.95 in lost wages and benefits. Soldiers who are called to active duty serve and protect their country. They should not come home from a military leave of absence to find they have no job or that their seniority has been taken from them.

With the rising numbers of USERRA cases across the country, The American Legion is deeply concerned with the protection of the service member and the prevention of the service member not being reemployed by their previous employer after deployment(s). USERRA cases have become more complex than in the past and frequently involve multiple issues. This is due to longer and more frequent deployments of National Guard and Reserve members. As currently drafted, USERRA fails to adequately support military personnel upon their return to civilian

employment as numerous employers have violated the rules laid out in Title 38 of the United States Code. The American Legion thanks this Subcommittee for supporting *H.R. 6225, Improving SCRA and USERRA Protections Act of 2008*, which has passed the House and referred to the Senate Veterans' Affairs Committee. H.R. 6225 would require courts to grant injunctive relief, when appropriate, to veterans filing claims against state or private employers under USERRA. The bill would also prohibit governmental entities from charging fees to some service members for terminating utility contracts, and it would prohibit state and local governments from imposing certain taxes on some spouses of service members. Additionally, the bill would require public institutions of higher learning to refund tuition and fees to service members if they must leave school for military service commitments.

The *Servicemembers Access to Justice Act* (SAJA) is also new legislation that is under consideration. SAJA would strengthen the protections in current law to ensure that service members' and veterans' employment and reemployment rights are effectively enforced under USERRA. Specifically, this bill would make it easier for service members to obtain justice when their employment rights are violated by prohibiting employers from requiring service members to give up their ability to enforce their rights under USERRA in court in order to get a job or keep a job.

### **SERVICEMEMBERS CIVIL RELIEF ACT (SCRA)**

The very nature of military service often compromises the ability of service members to fulfill their financial obligations and to assert many of their legal rights. On December 19, 2003, the President signed into law the *Servicemembers Civil Relief Act* (SCRA). This law is a complete revision of the *Soldiers' and Sailors' Civil Relief Act* (SSCRA) of 1940. This helps ease the economic and legal burdens on military personnel called to active duty status in Operation Iraqi Freedom and Operation Enduring Freedom. Relief under SCRA extends to:

- reducing the rate of interest for debts incurred before entering active duty to 6 percent
- tolling civil statutes of limitations
- staying civil and administrative proceeding and execution of judgments
- protecting against default judgments, evictions, mortgage foreclosures and repossessions of property
- providing the ability to terminate residential and automobile leases

With the military's increased reliance on National Guard and Reserve units and individuals, creditors residing in remote areas of the country outside of the traditional military towns are not aware of this Act, including members of the Reserve components. Therefore, service members are experiencing serious financial difficulties while on active duty-their cars are repossessed, homes foreclosed and credit histories ruined because this legislation is unknown. We simply cannot afford to have our men and women in Afghanistan, Iraq, or elsewhere distracted by concerns over whether someone is seeking a default judgment against them back home, or repossessing their leased car, or evicting their spouse and children, or selling their house at an auction sale, or running up penalties on credit cards with 21 percent interest rates.

In the most unfortunate of circumstances, lenders are unwilling to negotiate and assist veterans who are in default status even though these veterans are in a good position to correct the

situation. It is unfair to expect service members to concentrate on fighting battles overseas and simultaneously attend to all their personal matters at home. Moreover, veterans have a positive track record of following through with payments. During the fourth quarter of 2007, only 2.83 percent of homeowners using Veterans Affairs (VA's) Loan Guaranty program were seriously delinquent. This is much lower when compared to 6 percent for Federal Housing Administration mortgages, and a whopping 14.44 percent for the subprime mortgages.

The American Legion has produced a brochure on active duty legal rights, copies of which will be distributed across the country. If the Transition Assistance Program (TAP) was mandatory, service members and local community businesses would also know of this program, and a lot of frustration, time and misunderstandings could be avoided. To their credit, Navy TAP representatives discuss personal financial planning during workshops and seminars. However, the Reserve components need to have this issue also addressed pre and post deployment.

H.R. 4883 is a bill to amend SCRA to provide for a limitation on the sale, foreclosure, or seizure of property owned by a service member during a 1 year period following the service member's period of military service. This legislation would greatly assist those veterans that were deployed to a combat zone and had little time to successfully transition from active duty military service to the civilian sector. Members of the Reserve components would be the largest benefactors of an extension from 90 days to 1 year. Enactment of this legislation would provide veterans an extended period of time to become employed, correct all their finances and assist them in the transition process. The American Legion supports this legislation.

## **CONCLUSION**

Millions of service members depend on USERRA and SCRA protections while they are called to serve their country. USERRA and SCRA were created to prohibit discrimination against and eliminate the disadvantages faced by deployed servicemembers. Again, The American Legion recommends strengthening the enforcement on USERRA and SCRA. There needs to be effective consequences for non-compliance or proactive regulation of these Acts to ensure that veterans are not disadvantaged or unable to return to their previous jobs, due to their honorable service to our Nation. An individual should never be forced to choose between serving in the National Guard/Reserve and keeping their civilian employment. Such decisions could easily and quickly undermine our National Security. The American Legion urges this Subcommittee to send a strong message to Congress to ensure full protections and benefits under these Acts.

Thank you for the opportunity to submit the opinion of The American Legion on these issues.