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Lieutenant Margaret A. Ryan, ROA Life Member, Created a Great Precedent for the Rights of Reemployed Veterans.
By Captain Samuel F. Wright, JAGC, USN (Ret.)[2]

1.3.2.4—Status of the returning veteran.
1.4—USERRA enforcement.

Each month, when I receive the *Reserve Voice* electronic newsletter, I carefully peruse the "Taps" list of recently deceased ROA members, and I almost always notice at least one name that I recognize. January 2025 was no exception. I am referring to Lieutenant Margaret A. Ryan, NC, USN (Ret.).

[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 (VRRA—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 VRRA 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 VRRA 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.

Ms. Ryan was a Nurse Corps officer in the Naval Reserve, as the component was then known.[3] In 1985, she was hired by Rush-Presbyterian-St. Luke's Medical Center (RPSLMC) , and in 1987 she was promoted to be the "nurse manager" of one of RPSLMC's facilities in Indiana.

On 8/2/1990, Saddam Hussein's Iraq invaded and occupied Kuwait. President George H.W. Bush drew "a line in the sand" and announced that he would use military force, if necessary, to protect Saudi Arabia and to liberate Kuwait. As part of his forceful response to aggression, President Bush ordered the call-up of Reserve and National Guard units. This was the first significant call-up of the Reserve Components since the Korean War ended in 1953. This call-up marked the start of the transformation of the "Strategic Reserve" (to be used only for World War III) to the "Operational Reserve" (routinely called up for intermediate operations like Operation Desert Storm, Operation Joint Endeavor, and Operation Iraqi Freedom.

When it became clear that it was likely that Ryan would be called to the colors, her civilian supervisor at RPSLMC pressured her to avoid service by falsely claiming illness. To her great credit, Lieutenant Ryan steadfastly resisted this unlawful employer pressure.

When her Naval Reserve unit was called to active duty, Lieutenant Ryan reported with the other unit members. She treated American and allied casualties of the operation. Thankfully, the dire predictions of tens of thousands of American casualties were not realized, and American military medical personnel were mostly blissfully bored during their deployment.

[3] In 2005, Congress changed the name to the "Navy Reserve."

Along with the rest of her unit, Lieutenant Ryan was released from active duty when victory was achieved. She returned home to Indiana and made a timely application for reemployment at RPSLMC. She met the statutory conditions for reemployment under the 1940 reemployment statute that was then in effect.[4]

Ms. Ryan was entitled to reemployment at RPSLMC because she met the five conditions. After giving prior notice to RPSLMC, she left her job to report to active duty. She did not exceed the four-year limit on the duration of her periods of service related to her employer relationship with RPSLMC, and because she was involuntarily called to active duty her 1990-91 active duty period did not count toward the four-year limit.[5] She served honorably and did not receive a disqualifying bad discharge from the Navy. After her release, she made a timely application for reemployment well within the 90-day deadline.

Because she met the conditions, she was entitled to prompt reinstatement in the position that she would have attained if she had been continuously employed or, alternatively, in another position, for which she was qualified, that was of like seniority, *status,* and pay.

Ms. Ryan was entitled to reinstatement into the nurse manager position, but RPSLMC was reluctant to put her in that position because the nurse who had been promoted to that position during Ms. Ryan's absence was doing a fine job and the employer was reluctant to displace the replacement. The employer put Ms. Ryan into an "assistant nurse manager" position. The salary was the same, but the status was not.

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[4] As I have explained in footnote 2 and in Law Review 15067 (August 2015), Congress enacted the Uniformed Services Employment and Reemployment Rights Act (USERRA), and President Bill Clinton signed it into law on 10/13/1994.

[5] Under USERRA, the limit is five years, and involuntary service does not count toward the five-year limit. *See generally* Law Review 16043 (May 2016) for a detailed discussion of what counts and what does not count in exhausting an individual's five-year limit.

Ms. Ryan made a formal, written complaint against RPSLMC with the Veterans' Employment and Training Service of the United States Department of Labor (DOL-VETS). DOL-VETS did a cursory review of her complaint and then closed it as "without merit" because the salary was the same.

At her own expense, Ms. Ryan retained an attorney and sued RPSLMC in the United States District Court for Northern District of Indiana.[6] The District Judge granted the defendant's motion for summary judgment on the same erroneous "no harm no foul" rationale that DOL-VETS had adopted.

Ms. Ryan appealed to the United States Court of Appeals for the 7th Circuit, the federal appellate court that sits in Chicago and hears appeals from district courts in Illinois, Indiana, and Wisconsin. A three-judge panel of the 7th Circuit unanimously reversed the District Court and remanded the case back to the District Court for trial.[7] On remand, Ms. Ryan and RPSLMC resolved their differences in a settlement agreement. Ms. Ryan received a substantial but undisclosed cash settlement.[8]

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This article is one of 2,200-plus "Law Review" articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing

[6] Under section 4323(h)(2) of USERRA, 38 U.S.C. § 4323(h)(2), a service member or veteran who retains private counsel to sue a private employer or political subdivision of a State and prevails is entitled to a court order requiring the lawbreaking employer to pay the attorneys' fees incurred by the prevailing plaintiff. The version of the reemployment statute that was in effort for Ms. Ryan's case had no such fee-shifting provision.

[7] *See Ryan v. Rush-Presbyterian-St. Luke's Medical Center,* 15 F.3d 697 (7th Cir. 1994). The citation means that you can find this important appellate decision in Volume 15 of *Federal Reporter Third Series* and this court decision starts on page 697.

[8] The fact that the case settled in no way detracts from the precedential value of the 7th Circuit decision. For more information about the "status" rights of the returning service member or veteran, please see Law Review 15072 (August 2015).

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).[9]

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, federal and state

[9] *See* https://crsreports.congress.gov/product/pdf/IF/IF10540/. These are the authorized figures as of 9/30/2022.

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 eight[10] uniformed services, you are eligible for membership in ROA,[11] 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/page/memberoptions 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 20002[12]

[10] Congress recently established the United States Space Force as the eighth uniformed service.
[11] Spouses, widows, and widowers of past or present members of the uniformed services are also eligible to join.
[12] You can also contribute on-line at www.roa.org.