

LAW REVIEW¹ 22028
May 2022

Yes, You Can Double-Dip, New Hampshire Law to the Contrary Notwithstanding.

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

- 1.2—USERRA forbids discrimination
- 1.8—Relationship between USERRA and other laws/policies
- 3.0—Military service and reserve retirement

***Cantwell v. County of San Mateo*, 631 F.2d 631 (9th Cir. 1980), cert. denied, 450 U.S. 998 (1981).**³

¹ I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2300 "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 Spouse 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>.

³ This is a 1980 decision of the United States Court of Appeals for the 9th Circuit, the federal appellate court that sits in San Francisco and hears appeals from district courts in Alaska, Arizona, California, the Commonwealth of the Northern Mariana Islands, Guam, Hawaii, Idaho, Montana, Nevada, Oregon, and Washington. The citation means that you can find this decision in Volume 631 of *Federal Reporter, Second Series*. The "cert. denied" mention means that the defendant, San Mateo County, asked the Supreme Court to review this 9th Circuit decision, and the Supreme Court denied that request.

***Almeida v. Retirement Board of Rhode Island Employees Retirement System*, 116 F. Supp. 2d 269 (D.R.I. 2000).**⁴

Q: I am a retired Army Reserve Lieutenant Colonel⁵ and a life member of the Reserve Organization of America (ROA).⁶ I have read with great interest many of your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those of us who serve or have served our country in uniform.

I was born in 1961 and graduated from college in 1983. While in college, I participated in the Army’s Reserve Officers Training Corps (ROTC), and I was commissioned a Second Lieutenant upon graduation in 1983. I then spent the next ten years on full-time regular active duty, until I was released from active duty and affiliated with the Army Reserve in May 1993. I remained active in the Army Reserve and started drawing my retired pay in February 2021, when I turned 60.

I was hired by my local school district on 8/1/1995, at the start of the 1995-96 academic year, and I have worked as a high school teacher continuously since then. I will retire from teaching on 7/31/2022, at the end of the 2021-22 academic year. I will have exactly 27 years of teacher service as of my expected retirement date.

In my State, a teacher can accumulate up to 30 years of retirement credit. A teacher may choose to continue on the job after the 30-year point, but service beyond 30 years adds nothing to the pension. Our state law also permits a teacher to purchase up to three years of teacher service credit for active military service performed before the start of the teaching career. I want to purchase that credit so that I can start drawing the maximum teacher pension as of 8/1/2022.

In preparation for my expected retirement just weeks from now, I have studied in detail the website of the New Hampshire Retirement System (NHRS). Specifically, I have studied the form called the “Request for Cost Calculation to Purchase Service Credit.”⁷ That form states that the eligibility requirements to purchase teacher retirement credit for my 1983-93 active duty period are as follows:

⁴ This is a 2000 decision of the United States District Court for the District of Rhode Island. This court followed the *Cantwell* precedent and struck down the Rhode Island law that precluded state and local government employees in that state from receiving

⁵ I have heard from a retired reservist in New Hampshire, raising this issue, but not all of these facts apply to that person. I changed some of the facts to disguise his identity.

⁶ At the 2018 national convention, members of the Reserve Officers Association amended the ROA Constitution to expand membership eligibility to include anyone who is serving or has served our country in any one of the eight uniformed services, including enlisted personnel as well as officers. ROA also adopted a new “doing business as” (DBA) name, the Reserve Organization of America, to emphasize that the organization represents and seeks to recruit as members all Reserve Component personnel, from E-10 through O-10.

⁷ See https://www.nhrs.org/docs/default-source/members-forms/military-service-purchase.pdf?sfvrsncdd653bb4_14.

Eligibility requirements: To purchase military service credit, you must meet all of the following requirements:

- **Be an active member of NHRS at the time of purchase.**
- **Have earned at least 10 years of creditable service (out of state service is not counted).**
- **Pay the cost and receive the approval of the New Hampshire Retirement System (NHRS) Board of Trustees.**
- **Provide a copy of Form DD-214 or comparable certification of your military service.⁸**

I clearly meet those four criteria, and I want to purchase this military service credit before I retire from teaching, but I am concerned about Section II of the form, the Member Certification. That section requires me to sign, under oath, a statement that “I am not currently in receipt of military retirement benefits.”⁹ Of course, I cannot sign that statement because I have been receiving monthly Army Reserve retired pay since I turned 60 in 2021.

In your Law Review 21009 (January 2021), you wrote that the Rhode Island “no double dipping” law was struck down by the United States District Court for the District of Rhode Island (*Almeida*) and the California law on that topic was struck down by the 9th Circuit Court of Appeals (*Cantwell*). Is what you wrote about Rhode Island and California also applicable to New Hampshire?

Answer, bottom line up front

Yes. What I wrote in Law Review 21009 is equally applicable to New Hampshire. It is unlawful, under Federal law, for New Hampshire to deny you the opportunity to purchase State retirement credit for three years of your 1983-93 active duty because you are receiving Reserve Component retirement credit that is based, in part, on that active duty period. In our Federal system of government, Federal law trumps conflicting State law. New Hampshire needs to amend this form to make it consistent with Federal law.

Explanation

The pertinent provision of New Hampshire law is as follows:

(a) Notwithstanding any other provision of this section, a member in active service in the retirement system who has completed 10 years of creditable service in the state, shall be entitled to receive credit, upon payment by the member of the cost of such credit and upon

⁸ Id. Emphasis by underlining in original.

⁹ Id.

approval of the board, for not more than 3 years of additional creditable service for active service in the armed forces of the United States, subject to the following:

(1) *The member is not receiving military retirement benefits at the time of application for such credit, other than disability allowances.*

(2) The member is honorably discharged or is an officer honorably separated from the military service of the United States, or is in active status in the New Hampshire national guard or organized reserve. A member on active status in the New Hampshire national guard or organized reserve may apply such service time on a ratio of 5 years active national guard or reserve service to one year of available additional creditable service under this paragraph.

(3) The member is not at the time of application for credit receiving any retirement benefits under this chapter or under any predecessor system.¹⁰

The NHRS contends, based on the italicized subsection (1) above, that you are unable to purchase State teacher retirement credit for any part of your ten-year active-duty period because you are already receiving Federal military retirement credit for that ten-year period. But that italicized clause conflicts with Federal law and is void.

In *Almeida*, a group of Rhode Island State and local government employees sued the Rhode Island retirement system for public employees in the late 1990s, challenging the application of Rhode Island law to their situations. At the time, and still today, Rhode Island law provided as follows:

Any active member of the retirement system, who served on active duty in the armed services of the United States or in the Merchant Marine service of the United States as defined in P.L. 1946, chapter 1721, section 2 may purchase credit for that service up to a maximum of four (4) years provided that he or she received an honorable discharge. Provided further that any employee on an official leave of absence for illness or injury shall be eligible to purchase military credits as defined herein while on the leave of absence.¹¹

These individuals sought to purchase credit for active duty periods that they had served *before they began their careers as State or local government employees*. The State of Rhode Island refused to permit them to purchase the retirement credit based on another section of Rhode Island law.¹²

¹⁰ NHRSA § 100-A:4(VI)(a) (emphasis supplied).

¹¹ Rhode Island General Laws § 36-9-31(a).

¹² Rhode Island General Laws § 36-10-9(5), which, at the time, provided that a State or local government employee was not permitted to purchase credit for pre-employment active duty if the employee was using the same active duty period to qualify for or to determine the amount of pension benefits *under any other law*, including the Federal law that provides for retirement benefits at age 60 for persons who accumulated at least 20 “good years” in the National Guard or Reserve, including credit for active duty.

As I have explained in detail in Law Review 16086 (September 2016), a person who serves in the Reserve or National Guard and who accumulates at least 20 “good years” for Reserve Component retirement purposes qualifies to receive Reserve Component retirement starting at age 60. As I explained in Law Review 16090 (September 2016), a Reserve Component member who has performed “contingency service” as a Reserve Component member after January 28, 2008 can qualify to start receiving the Reserve Component retired pay before his or her 60th birthday.

Under Rhode Island law and policy in effect at the time, a new State or local government employee was permitted to purchase State-local government retirement credit for up to four years of active military duty performed prior to the start of his or her civilian career *only if* the veteran had chosen not to affiliate with the Reserve or National Guard after leaving active duty. This “no double dipping” provision of Rhode Island law conflicted directly with section 12736 of title 10 of the United States Code. That section provides:

No period of service included wholly or partly in determining a person’s right to, or the amount of, retired pay *under this chapter* may be excluded in determining his eligibility for any annuity, pension, or old-age benefit, *under any other law*, on account of civilian employment by the United States *or otherwise*, or in determining the amount payable under that law, if that service is otherwise properly credited under it.¹³

In 1948, Congress enacted legislation¹⁴ providing for the retirement system for Reserve and National Guard members. The purpose was to encourage some of the 16 million young men and women who had served on active duty during World War II to sign up for the National Guard or Reserve and to remain for 20 years or more. Congress correctly anticipated that those experienced veterans might be needed again to defend our country. Just two years later, in June 1950, North Korea invaded South Korea and the Korean War began. Many of the American service members who successfully fought the North Korean and Communist Chinese invaders were Reserve and National Guard personnel recalled to active duty for this new emergency.

Section 12736 has been part of the title 10 chapter dealing with Reserve Component retired pay since 1948, although the section number has changed as the title 10 numbering system was reorganized. The point of offering Reserve Component retirement benefits is to encourage qualified young men and women to serve in the Reserve Components for 20 years or more. Section 12736 means that no State is permitted to undo this valuable incentive by denying State or local government retirement on the basis that the person is also receiving Reserve Component retirement credit for the same active duty period.

¹³ 10 U.S.C. § 12736 (emphasis supplied).

¹⁴ At ROA headquarters, in the treasured Minuteman Memorial Building, we have the pen that President Harry S. Truman (one of the founders of ROA in 1922) used to sign this vital legislation.

The Supremacy Clause of the United States Constitution provides:

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the Supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.¹⁵

Almost two centuries ago, the Supreme Court held that a Federal statute overrides a conflicting State statute.¹⁶ State and local government officials sometimes need to be reminded that General Ulysses S. Grant did not surrender to General Robert E. Lee at Appomattox Courthouse.

In *Almeida*, the United States District Court for the District of Rhode Island not surprisingly struck down Rhode Island's "no double dipping" rule as applied to a State or local government employee receiving Reserve Component retirement credit for periods of active duty. The court relied on a precedent from the 9th Circuit¹⁷ striking down a similar California law.

Q: My good friend Joe Smith was also commissioned a Second Lieutenant, with me, in 1983, at the same ROTC unit and the same university. He served on regular active duty for the next 25 years and retired as a Colonel in 2008, and then he became a New Hampshire public school teacher. He teaches, with me, at the same high school. How does section 12736 apply to Joe Smith?

A: Section 12736 does not apply to Joe Smith. Section 12736 applies to a person who is receiving or will receive retired pay "under this chapter." "This chapter" refers to Chapter 1223—"Retired Pay for Non-Regular Service." This is the chapter of title 10 of the United States Code that provides for Reserve Component retired pay at age 60, or perhaps sooner based on "contingency service" performed after 1/28/2008. Joe Smith is receiving military retired pay under a different chapter of title 10.

Q: How does section 12736 of title 10 relate to the Uniformed Services Employment and Reemployment Rights Act (USERRA)?

A: Under USERRA, a person who leaves a civilian job (Federal, State, local, or private sector) to perform voluntary or involuntary service in the uniformed services, as defined by USERRA, and who meets the five simple USERRA conditions,¹⁸ is entitled to reemployment in the civilian job

¹⁵ United States Constitution, Article VI, Clause 2. Yes, it is capitalized just that way, in the style of the late 18th Century.

¹⁶ *Gibbons v. Ogden*, 22 U.S. 1 (1824).

¹⁷ *Cantwell v. County of San Mateo*, 631 F.2d 631 (9th Cir. 1980), *cert. denied*, 450 U.S. 998 (1981).

¹⁸ The person must have left the civilian job to perform uniformed service and must have given the employer prior notice. The person's cumulative period or periods of uniformed service, relating to the employer relationship for

after release from the period of service. Under section 4318 of USERRA,¹⁹ a person who meets the five conditions and is reemployed is entitled to civilian pension credit for the military service time. Most of the plaintiffs in *Almeida* were seeking to purchase civilian retirement credit for military active duty periods that they performed *before* they began their relevant civilian careers. Thus, USERRA did not apply directly to their situations.

One can certainly argue that denying a person the right to purchase State-local retirement credit for active duty performed before the start of the relevant civilian career on the basis of the person having chosen to affiliate with the National Guard or Reserve after leaving active duty violates section 4311 of USERRA. That section provides:

(a) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, reemployment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(b) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (1) has taken an action to enforce a protection afforded any person under this chapter, (2) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (3) has assisted or otherwise participated in an investigation under this chapter, or (4) has exercised a right provided for in this chapter. The prohibition in this subsection shall apply with respect to a person regardless of whether that person has performed service in the uniformed services.

(c) An employer shall be considered to have engaged in actions prohibited—

(1) under subsection (a), if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

which the person seeks reemployment, must not have exceeded five years. Under section 4312(c) of USERRA, 38 U.S.C. § 4312(c), there are nine exemptions from the five-year limit. That is, there are nine kinds of service that do not count toward exhausting the individual's five-year limit. Please see Law Review 16043 (May 2016) for a detailed discussion of what counts and what does not count toward the five-year limit. The person must have been released from the period of service without having received a disqualifying bad discharge from the military, like a bad conduct discharge or an OTH (other than honorable) discharge. After release from the period of service, the person must have made a timely application for reemployment. After a period of service of 181 days or more, the person has 90 days to apply for reemployment. 38 U.S.C. 4312(e)(1)(D). Shorter deadlines apply after shorter periods of service. Please see Law Review 15116 (December 2015) for a detailed discussion of the five USERRA conditions.

¹⁹ 38 U.S.C. § 4318.

(2) under subsection (b), if the person’s (A) action to enforce a protection afforded any person under this chapter, (B) testimony or making of a statement in or in connection with any proceeding under this chapter, (C) assistance or other participation in an investigation under this chapter, or (D) exercise of a right provided for in this chapter, is a motivating factor in the employer’s action, unless the employer can prove that the action would have been taken in the absence of such person’s enforcement action, testimony, statement, assistance, participation, or exercise of a right.

(d) The prohibitions in subsections (a) and (b) shall apply to any position of employment, including a position that is described in section 4312(d)(1)(C) of this title.²⁰

It is not necessary to argue that the New Hampshire policy violates section 4311 of USERRA because section 12736 of title 10 is explicit and directly on point.

Q: What is the relationship between USERRA and other Federal laws, State laws, local ordinances, collective bargaining agreements, etc.?

A: Under section 4302 of USERRA, this Federal law is a floor and not a ceiling on the rights of service members and veterans. State laws and union agreements can give the service member or veteran *greater or additional rights*, but they cannot limit the rights that Congress conferred when it enacted USERRA. Section 4302 provides:

(a) Nothing in this chapter shall supersede, nullify or diminish any Federal or State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter.

(b) This chapter *supersedes any State law* (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by this chapter, including the establishment of additional prerequisites to the exercise of any such right or the receipt of any such benefit.²¹

Resolution

This individual provided a copy of an earlier draft of this article to an attorney for the NHRS, and the attorney gave him three years of State retirement credit for his ten years of active service before he started his teaching career in New Hampshire. The attorney recognized that the New Hampshire “no double dipping” rule is invalid as applied to a person receiving military retired pay under Chapter 1223 of title 10—Retired Pay for Non-regular service.

Lesson learned

²⁰ 38 U.S.C. § 4311.

²¹ 38 U.S.C. § 4302 (emphasis supplied). It is

Do not depend upon the wording of the application form. The official New Hampshire form called “Request for Cost Calculation to Purchase Service Credit” requires the applicant, like you, to swear, under oath, that: “I am not currently in receipt of military retirement benefits.” It is fortunate that you found our Law Review 21009 (January 2021) by doing an Internet search, and reading that article caused you to question the conclusion that the fact that you are receiving Reserve Component retirement under chapter 1223 of title 10 disqualifies you from purchasing New Hampshire retirement credit for up to three years of active military service that you performed before you began your military career. Your situation demonstrates exactly why we, the Reserve Organization of America, established this Law Review Library in 1997 and why we add to it each month.

To New Hampshire Reserve Component retirees in this situation: *Do not lie on the form.* Do not swear that you are not receiving military retirement benefits if you are in fact receiving such benefits because the NHRS will no doubt check your completed form against available records. Complete the form without the attestation that you are not currently receiving military retirement benefits and submit it, along with a letter stating that you are entitled to purchase the retirement credit even though you are receiving retirement benefits under chapter 1223 of title 10 and attach a copy of this article to your letter.

New Hampshire needs to amend this form.

Please join or support ROA

This article is one of 2,300-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. New articles are added each month.

ROA is almost a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. 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 almost 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 educate service members, military spouses, attorneys, judges, employers, DOL investigators, 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, 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 eight²² 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 20002

Update—June 2022

Here is the letter that I have sent to the Attorney General of New Hampshire. If he responds, we will post his response here.

**Samuel F. Wright
Captain, JAGC, USN (Ret.)
1202 Elmwood Dr.
Marlin, TX 76661
(254) 743-9547
Samwright50@yahoo.com**

May 27, 2022

Honorable John M. Formella
Attorney General of New Hampshire
33 Capitol St.
Concord, NH 03301

Re: Please direct the NH Retirement System to comply with federal law regarding state pension credit for military service

Dear Mr. Formella:

As we celebrate Memorial Day on Monday, let us reaffirm our commitment to ensuring that those who serve or have served our country in uniform receive all that they are entitled to under federal

²² Congress recently established the United States Space Force as the 8th uniformed service.

law and state law. I am writing to bring to your attention that in an important way your state is violating federal law, especially section 12736 of title 10 of the United States Code. That section provides:

No period of service included wholly or partly in determining a person's right to, or the amount of, retired pay *under this chapter* may be excluded in determining his eligibility for any annuity, pension, or old-age benefit *under any other law*, on account of civilian employment by the United States *or otherwise*, or in determining the amount payable under that law, if the service is otherwise properly credited under it.

10 U.S.C. § 12736 (emphasis supplied). "This chapter" refers to chapter 1223 of title 10, under which persons who serve in the National Guard or Reserve can receive retirement benefits at age 60, and in some cases earlier, based on active military service as well as service in the National Guard or Reserve.

New Hampshire law permits a state or local government employee to purchase state retirement credit for military service time, but there is one limitation in your state law that directly violates section 12736 and is void under the Supremacy Clause of the United States Constitution. That proviso is as follows: "The member is not receiving military retirement benefits at the time of the application [for state retirement credit for military service time] at the time of such credit, other than disability allowances." NHRSA § 100-A:4(VI)(a)(1).

For example, let us take the hypothetical but realistic Mary Jones. (I have heard from a New Hampshire teacher in this situation.) Mary graduated from college in 1984, and while in college she participated in the Army's Reserve Officers Training Corps (ROTC). She was commissioned upon graduation and then served on active duty for eight years, from May 1984 until May 1992. After she left active duty, she affiliated with the Army Reserve and continued her military career on a part-time basis.

Mary became a "gray-area retiree" of the Army Reserve in 2014, when she had 30 years of commissioned service. She turned 60 earlier this year and started drawing her Army Reserve retirement under chapter 1223 of title 10.

Mary began her career as a public school teacher in New Hampshire in August 1992, shortly after she left active duty. She has continued her service as a teacher and is now approaching the retirement point. She applied to the New Hampshire Retirement System (NHRS) for state retirement credit for part of her 1984-92 active duty period. The NHRS gave her forms to fill out to apply for that credit.

One of the forms requires Mary to state, under oath, that she is not receiving federal military retirement credit based on the same period of military service for which she is seeking state credit.

Of course, Mary cannot say that because she started receiving her chapter 1223 military retirement earlier this year and that retirement is based, in part, on her 1984-92 active duty period.

New Hampshire's "no double-dipping" rule directly conflicts with federal law and is void. I invite your attention to *Cantwell v. County of San Mateo*, 631 F.2d 631 (9th Cir. 1980), *cert. denied*, 450 U.S. 998 (1981) and *Almeida v. Retirement Board of Rhode Island Employees Retirement System*, 116 F. Supp. 2d 269 (D.R.I. 2000).

Accordingly, please direct the NHRS to permit persons like Mary to purchase state retirement credit for military service, and please direct the NHRS to amend its website and its application forms to make them consistent with federal law.

More broadly, I invite your 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 very specific topics. As a sample, I invite your attention to Law Review 22028 (May 2022), which explains how your law violates 10 U.S.C. § 12736.

The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this "Law Review" column in 1997, and we add new articles each month. These articles are available for free to everyone, not just ROA members. I hope that you and your staff will find these articles helpful as a legal research resource.

Through these articles, and by other means, including amicus curiae briefs that we file in the Supreme Court and other courts, ROA educates service members, military spouses, attorneys, judges, employers, ESGR volunteers, DOL investigators, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights.

Thank you for your attention, and have a great Memorial Day.

Very respectfully,

Samuel F. Wright

Enclosure (as stated)