

UPDATE—JUNE 2026
The Problem with Suing State Agency Employers
To Enforce USERRA Has Been Solved.

Torres v. Texas Department of Public Safety, 597 U.S. 580 (2022).

On 6/29/2022, the United States Supreme Court decided this extraordinarily important case and determined that Texas and the other 49 states cannot invoke sovereign immunity to prevent lawsuits in State courts against State agencies, as employers, for violating USERRA. The *Torres* Syllabus sets forth the facts and the issue as follows:

Petitioner Le Roy Torres enlisted in the Army Reserve in 1989. In 2007, he was called to active duty and deployed to Iraq. While serving, Torres was exposed to toxic burn pits, a method of garbage disposal that sets open fire to all manner of trash, human waste, and military equipment. Torres received an honorable discharge. But he returned home with constrictive bronchitis, a respiratory condition that narrowed his airways and made breathing difficult.

These ailments, Torres says, left him unable to work his old job as a state trooper. Torres asked his former employer, respondent Texas Department of Public Safety (Texas), to accommodate his condition by reemploying him in a different role. Texas refused. So, Torres sued Texas in state court to enforce his rights under USERRA. §4313(a)(3).

Texas tried to dismiss the suit by invoking sovereign immunity. The trial court denied the State's motion. An intermediate appellate court reversed, reasoning that, under this Court's case law, Congress could not authorize private suits against nonconsenting States pursuant to its Article I powers except under the Bankruptcy Clause, citing *Central Va. Community College v. Katz*, 546 U. S. 356, 126 S. Ct. 990, 163 L. Ed. 2d 945. The Supreme Court of Texas denied discretionary review.

After the decision below, this Court issued *PennEast Pipeline Co. v. New Jersey*, 594 U. S. ___, 141 S. Ct. 2244, 210 L. Ed. 2d 624. *PennEast* held that the States waived their sovereign immunity as to the federal eminent domain power pursuant to the "plan of the Convention." The Court then granted Torres' petition for certiorari to determine whether, in light of that intervening ruling, USERRA's damages remedy against state employers is constitutional.

The Supreme Court granted certiorari in *Torres* in December 2021. ROA filed a new amicus brief on the merits. The oral argument was held in March 2022. The decision came down on 6/29/2022, at the end of the Supreme Court's 2021-22 term. The Court held:

The Constitution vests in Congress the power "[t]o raise and support Armies" and "[t]o provide and maintain a Navy." Art. I, §8, cls. 1, 12-13. Pursuant to that authority, Congress enacted a federal law that gives returning veterans the right to reclaim their prior jobs with state employers and authorizes suit if those employers refuse to accommodate them. See Uniformed Services Employment and Reemployment Rights

Act of 1994 (USERRA), 38 U. S. C. §4301 *et seq.* This case asks whether States may invoke sovereign immunity as a legal defense to block such suits.

In our view, they cannot. Upon entering the Union, the States implicitly agreed that their sovereignty would yield to federal policy to build and keep a national military. States thus gave up their immunity from congressionally authorized suits pursuant to the “plan of the Convention,” as part of “the structure of the original Constitution itself.” *PennEast Pipeline Co. v. New Jersey*, 594 U. S. ___, ___, 141 S. Ct. 2244, 210 L. Ed. 2d 624, 641 (2021) (quoting *Alden v. Maine*, 527 U. S. 706, 728, 119 S. Ct. 2240, 144 L. Ed. 2d 636 (1999)).

Congress has “broad and sweeping” power “to raise and support armies.” *United States v. O’Brien*, 391 U. S. 367, 377, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968). It has long exercised that power to encourage service in the Armed Forces in a variety of ways. See, e.g., *Rumsfeld v. Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 58, 126 S. Ct. 1297, 164 L. Ed. 2d 156 (2006) (campus recruiting); *Johnson v. Robison*, 415 U. S. 361, 376, 94 S. Ct. 1160, 39 L. Ed. 2d 389 (1974) (educational benefits).

Since before the United States’ entry into World War II, Congress has sought, in particular, to smooth volunteers’ reentry into civilian life by recognizing veterans’ “right to return to civilian employment without adverse effect on . . . career progress” in the federal work force and private employment. H. R. Rep. No. 105-448, p. 2 (1998); see Selective Training and

Service Act of 1940, §§8(b)(A)-(B), (e), 54 Stat. 890, 891 (damages remedy against private employers).

The Vietnam War prompted Congress to extend these protections to employment by States. Amidst political opposition to the war, “some State and local jurisdictions ha[d] demonstrated a reluctance, and even an unwillingness, to reemploy” returning servicemembers. S. Rep. No. 93-907, p. 110 (1974). So, Congress authorized private damages suits against States to ensure that “veterans who [had] previously held jobs as schoolteachers, policemen, firemen, and other State, county, and city employees” would not be denied their old jobs as reprisal for their service. *Ibid.* The statute at issue, USERRA, embodies these protections today.¹

As a result of *Torres*, State courts in Texas and the other 49 States are now required to hear and adjudicate USERRA claims against State agencies as employers, without regard to State law or State claims of sovereign immunity. This is exceedingly important because many National Guard and Reserve part-timers have civilian jobs working for State agencies.²

Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?

¹ *Torres v. Texas Department of Public Safety*, 597 U.S. 580, 584-85 (2022).

² See

<https://www.bing.com/search?q=What+percentage+of+Reserve+and+National+Guard+service+members+have+civilian+jobs+working+for+state+governments%3F&form=ANNTH1&refig=1c6482a2e80049eaa7141d7869324718&pc=HCTS>.

A: As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an “of counsel” role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about>.

Join the Organization That Fights for You.

This article is one of more than 2,000 "Law Review" articles available at www.roa.org/lawcenter— a free legal resource that the Reserve Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do for the people we serve.

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That

charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

Beyond this library of legal resources, ROA files amicus curiae ("friend of the court") briefs in the Supreme Court and other courts, and actively educates service members, military spouses, attorneys, employers, legislators, and others about the legal rights of those who serve — and how to enforce them. We provide this information to all service members, regardless of membership. But it's ROA members — through their dues and contributions — who make it possible.

Your membership makes the mission possible.

If you are currently serving, or have ever served, in any of America's eight uniformed services, you are eligible to join ROA — and membership starts at just \$20 for a full year, or \$450 for life. Officers and enlisted personnel alike qualify, whether your service was in the Active Component, the National Guard, or the Reserve. ROA has also recently expanded eligibility to include ancestors and lineal descendants and spouses, widows, and widowers of past or present service members, so families can stand with those who serve. Join online at roa.org/memberoptions or call 800-809-9448.

If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

Reserve Organization of America
1 Constitution Ave. NE
Washington, DC 20002