Reserve Organization of America

LAW REVIEW UPDATE 26077
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No Time Limit to Sue Under USERRA

On 6/29/2022, at the end of the 2021-22 term, the United States Supreme 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.
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> 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. 482, 500, 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)).

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

As a result of this important United States Supreme Court precedent, Texas, Virginia, and the other 48 States can no longer rely on the hoary doctrine of sovereign immunity to avoid complying with the Uniformed Services Employment and Reemployment Rights Act (USERRA). If the Virginia Retirement System (VRS) fails or refuses to comply with USERRA with respect to giving you State retirement credit for the time that you were away from your police officer job performing service in the uniformed services, you can sue VRS and the Commonwealth of Virginia in the Virginia court of competent jurisdiction, and that court is required to hear and adjudicate your claim, without regard to State law or State claims of sovereign immunity.

USERRA provides: "If any person seeks to file a complaint or claim with the Secretary [of Labor], the Merit Systems Protection Board, or a Federal or State court under this chapter [USERRA] alleging a violation of this chapter, there shall be no limit on the period for filing the complaint or claim." 38 U.S.C. § 4327(b).

This provision means that there is **no time limit on when you can file this lawsuit. You can do so now, although years have passed and you are now retired from your police officer job.**

Please see Law Review 24054 (November 2024). The title of that article is "Enforcing USERRA Against a State Government Employer."