Reserve Organization of America

LAW REVIEW[1] 26079
November 2026
Injunctive Relief under USERRA.
By Captain Samuel F. Wright, JAGC, USN (Ret.)[2]

1.4—USERRA enforcement.

In 1997, the Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated the "Law Review" column in *The Officer,* ROA's monthly magazine. In 2000, we added the "Law Review" articles to our website, www.roa.org. Starting in September 2001, when 19 terrorists killed almost 3,000 Americans in the terrible Tuesday morning, ROA started adding new articles each month. We now have more than 2,300 articles on our website, along

[1] I invite the reader's attention to Law Center | ROA. You will find more than 2,300 "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), the title 38 chapters that provide for veterans' benefits administered by the Department of Veterans Affairs (VA), 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. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRA—the 1940 version of the federal reemployment statute) for 44 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. As of 5/1/2026, I have come out of retirement and have affiliated with Maher Legal Services in an "of counsel" role. You can reach me by e-mail at samuel@maherlegalservices.com or by telephone at (708) 468-8155.

with a detailed subject index, to facilitate finding articles about specific topics.[3]

In October 2005, we published Law Review 200. Because this is an important topic, and because 21 years have passed since we published the article, we are republishing the article now.

LAW REVIEW 200
October 2005
Is Injunctive Relief Available in a USERRA Case?
By CAPT Samuel F. Wright, JAGC, USN*

Carlos Bedrossian, M.D., is a colonel in the Air Force Reserve Medical Corps and a life member of ROA. He has spent a great deal of his own money on a lawsuit against Northwestern University (Feinberg School of Medicine), challenging his dismissal from his faculty position.

The recent decision of the United States Court of Appeals for the Seventh Circuit illustrates a deficiency in the Uniformed Services Employment and Reemployment Rights Act (USERRA) that cries out for a legislative fix. I want to make this and other legislative fixes a priority of ROA, because the effective enforcement of USERRA is of critical importance to our members and potential members. More importantly, effectively enforcing USERRA is critical to adequate national defense, and our ROA mission, as set forth in our congressional charter. Our mission is to support the development and implementation of policies that will provide adequate national defense.

[3] I am the author of more than 80% of the published "Law Review" articles, but I am 75 and will not be around forever to author and update these articles. We are always looking for "other than Sam" articles by other lawyers.

Congress enacted USERRA in 1994, as a complete rewrite of the Veterans' Reemployment Rights (VRR) law, which can be traced back to 1940. USERRA is codified in Title 38, United States Code, Sections 4301 through 4334 (38 U.S.C. 4301 4334). Congress amended USERRA in 1996, 1998, 2000, and 2004.

The VRR law served the nation reasonably well for 54 years, until Congress enacted USERRA in 1994. Because the VRR law had seen too many piecemeal amendments and had become confusing and cumbersome, a task force of Department of Labor (DOL) and Department of Defense (DOD) employees identified multiple loopholes and provisions requiring improvement.

Two DOL lawyers, Susan Webman and I, drafted USERRA with a view toward closing the loopholes and making the enforcement of the reemployment statute more than an empty promise. The recent 7th Circuit decision in Colonel Bedrossian's case illustrates one deficiency that we thought we had corrected but apparently had not.

Section 4323(e) of USERRA, 38 U.S.C. 4323(e), states: "The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of persons under this chapter." Unfortunately, there is no legislative history of this particular subsection, there is only a brief mention in a House committee report that simply restates the provision. (*See* House Report No. 103-65, 1994 United States Code Congressional & Administrative News 2449-2515.)

But I recall what I had in mind when I drafted this provision. Under both the VRR law and USERRA, DOL investigates complaints of violations and

refers the investigative files to the Department of Justice (DOJ) if unable to obtain employer compliance, and DOJ files suit against state and local governments and private employers in appropriate cases. (It is also possible, under either law, to file suit directly, with retained private counsel, as Dr. Bedrossian did in this case, unless the employer is a state. See Law Review 89.)

I recall, about 20 years ago, while I was employed at DOL, a case against a local police department in New York State. The complainant was an enlisted Reservist who sought to attend Officer Candidate School (OCS) to earn a commission in the Army Reserve. Of course, OCS is not something that you can complete during a standard two-week annual training tour. Under the VRR law, there was a long argument in the courts as to whether there was an implied limit or "rule of reason" limiting the duration of an active duty for training period for which a civilian employer was required to grant a leave of absence. The Supreme Court finally ended that argument in 1991, when it decided *King v. St. Vincent's Hospital*, 502 U.S. 215 (1991).

King clearly establishes that no such "rule of reason" exists. Section 4312(h) of USERRA, 38 U.S.C. 4312(h), expressly codifies the *King* holding in USERRA. [*See* Law Review 30, which discusses this issue in some detail.] Our 1985 New York case was several years before the Supreme Court decided *King,* and the "rule of reason" debate was still raging at the time.

The Reservist asked his employer, a local police department, for lengthy military leave, to attend OCS. The employer denied the request and threatened to fire the individual if he were away from work for military training for more than two weeks. The Reservist informed us that he

really wanted to attend OCS to earn a commission, but he was unwilling to bet his civilian job on the outcome of a lawsuit after he returned from OCS. He was anxious to attend OCS, but only if the U.S. government could give him some reasonable assurance that doing so would not result in the loss of his civilian job and career.

The matter was urgent, because he was nearing the maximum age for commissioning; if he did not attend that particular OCS session, he would not have another opportunity. DOJ took the position that the VRR law did not provide for injunctive relief under circumstances like these. As a result, the suit was not filed. The individual did not attend OCS, and he decided to quit the Army Reserve. I had this situation in mind when I drafted what became Section 4323(e) of USERRA. I had in mind changing the result the next time around; I regret that my effort was not successful.

In an appropriate case, a Federal District Court can, upon application of the plaintiff, enjoin the defendant from a course of action that the defendant is about to take. Such a use of the court's equity powers is within the discretion of the court. To obtain injunctive relief, it is generally necessary for the plaintiff to establish two elements: irreparable injury and a likelihood of success on the merits (when the case is eventually tried).

In employment law cases generally, it is difficult to obtain injunctive relief to stop a firing that the plaintiff claims to be unlawful. The idea is that the injury caused by the firing is not irreparable because the plaintiff can obtain, upon winning the case, backpay as a remedy for the unlawful firing. [*See Sampson v. Murray*, 415 U.S. 61 (1974).]

In the *Bedrossian* case, the Seventh Circuit held, "Unless a statute clearly mandates injunctive relief for a particular set of circumstances, the courts are to employ traditional equitable considerations (including irreparable harm) in deciding whether to grant such relief." [*Bedrossian v. Northwestern Memorial Hospital*, 409 F.3d 840 (7th Cir. 2005).]

The court further held that the language of Section 4323(e) was not sufficiently clear to overcome the presumption against injunctions in threatened firing cases. The Seventh Circuit failed to understand that, as in the case of agreements to arbitrate (Law Review 149), USERRA is different from all other federal laws that apply to the employment context. In USERRA, the focus is not only on doing justice for the individual; the focus is on the defense needs of the nation. If folks like Colonel Bedrossian and that 1985 Army Reservist I discussed cannot be given a reasonable assurance that their jobs will be protected, they will not volunteer. Without such assurance, they will not be available to protect the nation in the National Guard or Reserve. Worse, others who learn of the situation will be dissuaded from enlisting or reenlisting.

It is not sufficient to tell these folks, "If you win, probably many years from now, you may receive back pay." Now more than ever the effective enforcement of USERRA is essential to the nation in this time of war. More than 500,000 National Guard and Reserve personnel have been involuntarily mobilized (some more than once) since September 11, 2001. In accordance with our congressional charter, we (ROA) will be pressing DOL, DOJ, and the Office of Special Counsel (which enforces USERRA against federal agencies) to make USERRA more than an empty promise. And we will be pressing Congress to plug loopholes in the law, starting with rewriting Section 4323(e).

*Military title shown for purposes of identification only. The views expressed herein are the personal views of the author and not necessarily the views of the Department of the Navy, the Department of Defense, or the U.S. government.

This disclaimer was included because, at the time, in 2005, I had not yet retired from the Navy Reserve. I retired 4/1/2007.

In March 2009, ROA published an update to Law Review 200, as follows:

LAW REVIEW 200 - Update
Update, March 2009: Is Injunctive Relief Available in a USERRA Case?
By CAPT Samuel F. Wright, JAGC, USNR (Ret.)

In Law Review 200 (Oct. 2005), I discussed the implications of *Bedrossian v. Northwestern Memorial Hospital*, 409 F.3d 840 (7th Cir. 2005). Colonel Carlos Bedrossian, a physician and Air Force Reservist, worked for Northwestern Memorial Hospital. The hospital sought to fire him, because of their annoyance with him for his absences from work, necessitated by his Air Force Reserve service. Dr. Bedrossian brought suit in the United States District Court for the Northern District of Illinois, seeking a temporary injunction to prevent the employer from firing him. The District Court declined to enjoin the firing, and the Court of Appeals affirmed.

Under the general rules applicable to emergency injunctive relief, it is necessary to meet a two-part test to obtain such relief. You must show a likelihood of success on the merits when the case finally goes to trial, as well as irreparable injury if the emergency injunctive relief is denied.

The District Court held, and the Court of Appeals affirmed that emergency injunctive relief should not be granted to prevent a firing, because the injury is not irreparable.

The argument goes that the injury from a firing is not irreparable, because if it is eventually held that the firing was unlawful the court can order reinstatement and backpay. The District Court and Court of Appeals failed to appreciate that the Uniformed Services Employment and Reemployment Rights Act (USERRA) is different from other anti-discrimination laws. Congress enacted this law to address the disincentives to voluntary service in our nation's Armed Forces, especially the Reserve and National Guard.

Men and women will not join the Reserve Components, or will not reenlist, if they come to believe that doing so will endanger their civilian jobs, which constitute their principal source of support. Telling the individual, "If your employer fires you, you can sue, and maybe in about four years you will get your job back and some back pay" is not sufficient to address this disincentive to Reserve Component membership.

At the time the Court of Appeals decided *Bedrossian*, section 4323(e) of USERRA read as follows: "The court may use its full equity powers, including temporary or permanent injunctions, temporary restraining orders, and contempt orders, to vindicate fully the rights or benefits of persons under this chapter." 38 U.S.C. 4323(e) (emphasis supplied). On Oct. 10, 2008, President Bush signed into law the Veterans' Benefits Improvement Act of 2008, Public Law 110-389. Section 315 of this new law amended section 4323(e), changing "may" to "shall." It is clear that

the intent of this amendment is to overrule the harmful *Bedrossian* precedent.

End of the update to Law Review 200.

In the Update, I predicted that the 2008 amendment had solved the problem. I was wrong, but finally, in 2025, Congress amended USERRA to fix this problem.

On 1/2/2025, President Joe Biden signed into law the Senator Elizabeth Dole 21st Century Veterans Healthcare and Benefits Improvement Act (Dole Act). In addition to improving the Department of Veterans Affairs (VA) and optimizing veterans' benefits, especially in the areas of home caregiving and veteran homelessness,[4] the Dole Act modernizes and improves the Uniformed Services Employment and Reemployment Rights Act (USERRA), 30 years after that law was signed on 10/13/1994.[5]

The USERRA amendments contained in the Dole Act emerged from a predecessor bill called the "Servicemember Employment Protection Act of 2023" or H.R. 3943. That bill was introduced by Representative Scott Franklin of Florida's 18th Congressional District.

The improvements that the Dole Act made to USERRA include a provision that greatly expands the availability of preliminary injunctive relief in USERRA cases. The Dole Act expanded and improved the availability of preliminary injunctive relief in situations where an employer has violated USERRA or where a violation has been threatened or appears to be imminent. Going forward, the service

[4] *See* Law Review 24058 (December 2024). That article is by Bradley Hennings and Robert Chisholm of the Rhode Island law firm Chisholm Chisholm & Kirkpatrick (CC&K), the nation's largest law firm devoted exclusively to assisting veterans in obtaining their earned veteran benefits.
[5] *See* Law Review 24047 (October 2024).

member or veteran will be entitled to injunctive relief if he or she meets a four-part test:

a. A violation of USERRA has occurred or has been threatened or appears to be imminent.
b. The service member or veteran has shown that he or she is likely to succeed on the merits when the case goes to trial.
c. The harm to the service member or veteran outweighs the harm to the employer.
d. Granting injunctive relief is in the public interest.

Traditionally, preliminary injunctive relief has been available in civil cases generally only if the party seeking such relief can show *irreparable injury* if the preliminary injunctive relief is denied. It is not ordinarily possible to get injunctive relief to stop an employer from firing an employee. The idea is that an unlawful firing is not irreparable because if the employee wins, the court can award backpay.[6]

Let us say that Joe Smith has enlisted in the Regular Army and is in the Delayed Entry Pool, expecting to enter active duty in four months. The employer learns that Smith has enlisted and fires him, angry that Smith defied the employer's "order" not to enlist. How is Smith to pay for rent and food in the four months remaining before he enters active duty? It is of little comfort to Smith that he can sue and maybe, two or three years later, after he is already on active duty, he can get a backpay award.

The Dole Act amended USERRA to provide that preliminary injunctive relief cannot be denied on the basis of the possibility that the plaintiff who has been unlawfully fired or unlawfully denied reemployment may

[6] *See Sampson v. Murray,* 415 U.S. 61 (1974); *Bedrossian v. Northwestern Memorial Hospital,* 409 F.3rd 640 (7th Cir. 2005). *See generally* Law Review 200 (published in 2005).

receive back pay months or years later. This is a most welcome improvement.

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?

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.

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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. Spouses, widows, widowers, ancestors (parents or grandparents), and lineal

descendants of past or present service members are also eligible to join, so families can stand with those who serve. Join online at Reserve Organization of America - ROA 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:

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