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Setback in Effort to Enforce USERRA against States as Employers

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1.1.1.7—USERRA applies to state and local governments
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***Ramirez v. State of New Mexico,* No. 31,820 (New Mexico Court of Appeals March 3, 2014).**

New Mexico's intermediate appellate court has set aside a trial court victory won by a member of the New Mexico Army National Guard who asserted (and established to the satisfaction of a jury) that his state government employer (the New Mexico Children, Youth and Families Department or CYFD) had violated his rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA). The State of New Mexico appealed to the state's intermediate appellate court, which has now set aside the National Guard member's trial court victory. The case is not over. The next step is for the Guard member to apply to the New Mexico Supreme Court for *certiorari* (discretionary review). The state's high court has the discretion to grant or deny such review but probably will agree to hear the case, in view of the important public policy considerations and the dissent in the Court of Appeals. The decision of the New Mexico Supreme Court could conceivably be reviewed by the United States Supreme Court.

Facts of the *Ramirez* case

In its appeal, the State of New Mexico did not claim that it had not violated USERRA. Rather, the State claimed that it had not waived its sovereign immunity and that the trial court should have dismissed the case for want of jurisdiction. The State made that same argument to District Judge Camille Martinez-Olguin, who rejected it.

Phillip G. Ramirez, Jr. joined the New Mexico Army National Guard, as a traditional part-time National Guard member, in 1991.[1] In 1997, he began working for CYFD as a community support officer. In 2005, SFC Ramirez was called to federal active duty and deployed to Iraq. He served

[1] Ramirez is now a Sergeant First Class (SFC) in the New Mexico Army National Guard. He joined ROA recently, after we amended our constitution to make noncommissioned officers eligible for membership.

honorably and was released from active duty and met the USERRA eligibility criteria for reemployment.[2]

SFC Ramirez returned to his civilian job at CYFD, but after his return he alleged (and established to the satisfaction of the jury) that his CYFD supervisors harassed him about his military service. The harassment included placing unrealistic goals on him in his CYFD position, initiating unwarranted disciplinary action against him, and leveling unfounded charges of insubordination against him. SFC Ramirez was placed on administrative leave and then terminated in the spring of 2008. He alleged (and established to the satisfaction of Judge Camille Martinez-Olguin and the jury) that he was discriminated against and wrongfully terminated because of his military service, in violation of section 4311 of USERRA, 38 U.S.C. 4311.[3]

What is sovereign immunity? What is the 11th Amendment?

Sovereign immunity or "the King can do no wrong" has been the law in Great Britain and the United States for many centuries, but in our country in the last century there have been major inroads in sovereign immunity at both the state and federal levels. If a state government employer cannot be sued either in federal court or state court, state government employees will not have enforceable USERRA rights. A right without an effective remedy is of little value. Approximately 10% of serving National Guard and Reserve members who are not currently on active duty and who are employed on a full-time basis work for state government agencies as employers.[4]

The Continental Congress won the American Revolution without any central constitution. In 1781, the 13 original states ratified the Articles of Confederation (AOC), our nation's first constitution. The AOC provided for a very weak central government and a loose confederation of sovereign states, and the weakness of the central government led to major problems. In 1787, delegates from the 13 original states met all summer in Philadelphia and drafted what

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[2] SFC Ramirez left his civilian job for the purpose of performing uniformed service and gave his employer prior oral and written notice. He did not exceed the cumulative five-year limit on the duration of his periods of uniformed service relating to his employer relationship with CYFD, and since this was an involuntary call-up it did not count toward his five-year limit. 38 U.S.C. 4312(c)(4)(A). He was released from active duty without a disqualifying bad discharge from the Army. After release, he made a timely application for reemployment with CYFD.

[3] Section 4311(a) provides: "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."

[4] I invite the reader's attention to the "National Security Report" titled "Too Much to Ask? Supporting Employers in an Operational Reserve Era." The article is by Dr. Susan Gates and is published on pages 32-40 of the November 2013 issue of *The Officer,* ROA's bi-monthly journal. In a pie-chart on page 34, Dr. Gates reports that 10% of National Guard and Reserve members not on active duty work for state governments, and another 11% work for local governments (counties, cities, school districts, etc., which are known as "political subdivisions of states.") The sovereign immunity of political subdivisions is a separate legal issue and is addressed in the next "Law Review" article, Law Review 14037.

became the United States Constitution, the greatest governing document ever produced by human beings at a single time and place.

The Constitution was presented to the states for ratification and was quickly ratified, but during the ratification debates it was suggested that a "Bill of Rights" should be added. The first President and first Congress were elected and set up shop in 1789. The First Congress proposed 12 constitutional amendments, and ten of them were quickly ratified by the states and became the Bill of Rights.

Sovereign immunity of the states was not discussed in the Bill of Rights, but the issue arose in one of the very earliest decisions of the United States Supreme Court: *Chisholm v. Georgia,* 2 U.S. 419 (1793).[5] The Supreme Court held that Mr. Chisholm (a citizen of South Carolina) could sue the State of Georgia in federal court, in a dispute involving the sale of state land to private parties. There was an immediate and vehement backlash. On March 4, 1794, Congress proposed the 11th Amendment to the states, and they ratified it on February 7, 1795.[6]

The 11th Amendment provides: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens of Subjects of any Foreign State."[7]

Although the 11th Amendment speaks to a suit against a state by a citizen of another state, or a foreign state, the Supreme Court has held that 11th Amendment immunity also precludes a suit against a state by a citizen of that same state. *Hans v. Louisiana*, 134 U.S. 1 (1890).

Article III of the United States Constitution establishes the Judicial Branch of the Federal Government, including the Supreme Court and such inferior courts as Congress may later establish by statute.[8] Article III, Section 2 sets forth the classes of cases for which the federal courts are to have jurisdiction. As originally ratified in 1789, Article III, Section 2 included controversies "between a State and Citizens of another State" among the kinds of cases as to which the federal courts are to have jurisdiction. The 11th Amendment deleted this clause.

As I explained in Law Review 104[9] and other laws, Congress enacted USERRA (Public Law 103-353) and President Bill Clinton signed it into law on October 13, 1994. USERRA was a long-overdue rewrite of the Veterans' Reemployment Rights Act (VRRA), which was originally

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[5] The citation means that you can find this case in Volume 2 of *United States Reports,* starting on page 419.
[6] That was very rapid action at a time before there were railroads, much less telegraphs.
[7] Yes, it is capitalized just that way, in the style of the late 18th Century.
[8] Currently, Congress has established 93 federal district courts (including at least one in each state) and 13 Courts of Appeals.
[9] I invite the reader's attention to www.servicemembers-lawcenter.org. You will find 1,027 articles about USERRA and other laws that are especially pertinent to those who serve our nation in uniform, along with a detailed Subject Index and a search function, to facilitate finding articles about very specific topics. I initiated this column in 1997, and we add new articles each week. We added 169 new articles in 2013 and another six last week.

enacted in 1940, as part of the Selective Training and Service Act, which led to the drafting of millions of young men for World War II.

As many readers are aware, I had a hand in drafting USERRA while employed as an attorney for the U.S. Department of Labor (DOL). Susan M. Webman (another DOL attorney) and I drafted the interagency task force work product that President George H.W. Bush presented to Congress, as his proposal, in early 1991. What Congress enacted and President Clinton signed on October 13, 1994 was about 85% the same as the Webman-Wright draft.

Ms. Webman and I were under the impression (when we drafted the pertinent USERRA language) that Congress could abrogate the 11th Amendment immunity of states, so long as Congress was explicit that it intended to abrogate such immunity. Our understanding of the 11th Amendment was based on *Reopell v. Commonwealth of Massachusetts*, 936 F.2d 12 (1st Cir. 1991). Ms. Webman and I both participated in drafting the successful appellate brief for Mr. Reopell in the United States Court of Appeals for the First Circuit.[10]

Mr. Reopell was a Massachusetts state police trooper. State Police Regulation 10.83, then in effect, stated that state police officers were not permitted to join any federal or state military organization, other than the Massachusetts National Guard, without the prior written permission of the state police commissioner. Reopell applied for permission and was denied and then joined the Army Reserve anyway. When his supervisor learned that Reopell had joined the Army Reserve, he brought him up on state police charges. Reopell received a one-month suspension without pay; as a result, he lost pay, vacation time, sick leave, and seniority.

Reopell sued the Commonwealth of Massachusetts in federal court, with the help of DOL and the Department of Justice (DOJ). We won in Federal District Court on all issues except one. The District Court held that State Police Regulation 10.83 was invalid because it conflicted with the VRR law. The court ordered the commonwealth to reimburse Reopell for $3,260.41 in lost wages, from the one-month suspension, and the court ordered Massachusetts to restore Reopell's lost vacation, sick leave, and seniority. The court ordered Massachusetts to rescind the order requiring Reopell to resign from the Army Reserve and to publish a comprehensive order explaining to state police officers that the court had found the policy embodied in Rule 10.83 to be unlawful under the VRR law and had enjoined its enforcement.

The one remaining issue was the awarding of interest on the back pay. As of February 1990, that interest amounted to $1,788.01, with further interest accruing at the rate of 8 percent. The District Court held that it could not, consistently with the 11th Amendment, award interest on the back pay. The District Court held that there must be a separate congressional abrogation of 11th Amendment immunity, specifically mentioning interest. We appealed and won this one remaining issue in the First Circuit, which held that the VRR law's abrogation of 11th Amendment immunity was sufficiently clear, even as to interest.

[10] The 1st Circuit is the federal appellate court that sits in Boston and hears appeals from district courts in Maine, Massachusetts, New Hampshire, Puerto Rico, and Rhode Island.

Ms. Webman and I had *Reopell* in mind when we drafted the language now codified at 38 U.S.C. 4323(d)(3): "A State shall be subject to the same remedies, *including prejudgment interest*, as may be imposed upon any private employer under this section." (Emphasis supplied.) We thought that this language, with an accompanying explanation in the legislative history, was sufficient to solve the 11th Amendment problem, even if the District Court, not the First Circuit, had been correct about there being a special rule as to interest. I confess that we did not anticipate the holding of the Supreme Court in *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996).

Seminole Tribe dealt with a federal statute (enacted pursuant to Article I, Section 8, Clause 3[11]) that permitted an Indian tribe (like the Seminole Tribe of Florida) to sue a state in federal court. The Supreme Court held that statute to be unconstitutional under the 11th Amendment. A federal statute enacted pursuant to Article I, Section 8, Clause 3 (ratified along with the rest of the Constitution in 1789) cannot override the 11th Amendment, which was ratified in 1795.

Article I, Section 8 contains 18 clauses enumerating the powers of Congress, including the final clause, which is referred to as the "Necessary and Proper clause."[12] Clauses 11-16 refer to the powers of Congress with respect to national defense and the armed forces.[13]

When Congress acts under constitutional authority that was created *after* the ratification of the 11th Amendment (1795), Congress can abrogate the 11th Amendment immunity of states and authorize suits against states in federal court. For example, Section 5 of the 14th Amendment (ratified in 1867) provides: "The Congress shall have power to enforce, by appropriate legislation, the provisions of this article." Several civil rights laws are based on the 14th Amendment and authorize federal court lawsuits against states, and those laws are not unconstitutional.

Article I, Section 8 has 18 separate clauses enumerating the broad but not unlimited powers of Congress. In the years, following *Seminole Tribe,* a common interpretation of the Court's holding was that any federal statute based on any of the 18 clauses of Article I, Section 8 cannot override the 11th Amendment and permit lawsuits in federal court against the states, because

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[11] Clause 3 gives the Congress the authority "To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

[12] Article I, Section 18, Clause 18 gives the Congress the authority "To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

[13] Clause 11 gives the Congress authority "To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water." Clause 12 is: "To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer period than two Years." Clause 13 is: "To provide and maintain a Navy." Clause 14 is: "To make Rules for the Government and Regulation of the land and naval forces." Clause 15 is: "To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions." Clause 16 is: "To provide for the organizing, arming, and disciplining the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively the Appointment of the Officers and the Authority of training the Militia, according to the discipline prescribed by Congress."

all of those clauses predate the 11th Amendment by six years. A more recent Supreme Court case seems to indicate that this is too broad a reading of *Seminole Tribe,* focusing solely on the 1789 ratification of the Constitution and the 1795 ratification of the 11th Amendment.

I invite the reader's attention to *Central Virginia Community College v. Katz,* 546 U.S. 356 (2006). The Supreme Court held that a federal statute enacted pursuant to Article I, Section 8, Clause 4 (the bankruptcy clause) could abrogate the 11th Amendment immunity of states and permit lawsuits against states in federal court.[14]

Applying *Seminole Tribe* (and without the benefit of *Katz* which was not decided until eight years later), the United States Court of Appeals for the Seventh Circuit[15] held USERRA to be unconstitutional insofar as it permitted an individual to sue a state in federal court. *Velasquez v. Frapwell,* 160 F.3d 389 (7th Cir. 1998). Later in 1998, Congress amended USERRA to address the *Velasquez* problem.

As amended in 1998, USERRA provides for two ways to enforce USERRA against a state government employer. The first way is to file a formal complaint with the Veterans' Employment and Training Service of the United States Department of Labor (DOL-VETS).[16] That agency will investigate the complaint and (if it is not resolved) will refer the case file to the United States Department of Justice (DOJ). If DOJ agrees that the case has merit, it may file suit against the state government employer in the appropriate federal district court *in the name of the United States as plaintiff.*[17]

Filing suit in the name of the United States solves the 11th Amendment problem because that amendment does not preclude a suit against a state by the United States.[18] The problem with this approach is that most of the DOL-VETS investigators are not well trained and well motivated. All too often, they simply accept the employer's assertions about the facts and the law and close the case as "without merit" even when it does have merit.

The alternative way to enforce USERRA against a state government employer is provided by section 4323(b)(2) of USERRA, which provides: "In the case of an action against a State (as an employer) by a person, the action may be brought in a State court of competent jurisdiction *in accordance with the laws of the State."* 38 U.S.C. 4323(b)(2) (emphasis supplied).

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[14] Clause 4 gives the Congress the authority "To establish an [sic] uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States."

[15] The 7th Circuit is the federal appellate court that sits in Chicago and hears appeals from district courts in Illinois, Indiana, and Wisconsin.

[16] SFC Ramirez has reported that after he was fired he contacted the New Mexico Director of DOL-VETS, and the New Mexico Director told him "this is too complicated, and we cannot help you." DOL-VETS denies that Ramirez ever contacted that agency.

[17] 38 U.S.C. 4323(a)(1) (final sentence, added in 1998).

[18] Please see *United States v. Alabama Department of Mental Health,* 673 F.3d 1320 (11th Cir. 2012) (discussed in detail in Law Review 13056 in April 2013) and *United States v. Nevada,* 817 F. Supp. 2d 1230 (D. Nev. 2011) (discussed in detail in Law Review 13031 in February 2013).

What does the phrase "in accordance with the laws of the State" mean in this context? Until recently, I believed that we must look to state law to determine whether a suit against the state in state court to enforce USERRA is permissible. As I explained in Law Review 13028 (February 2013), DOJ filed an excellent *amicus curiae* brief in the New Mexico Court of Appeals in this case, arguing that section 4323(b)(2) means that state courts have jurisdiction to hear and must hear USERRA claims against state government employers *regardless of what the state law may provide.*

As a result of the DOJ brief and the legal authority cited therein, I reconsidered my position about the meaning and effect of section 4323(b)(2) and revised it. I now believe that every state must permit USERRA lawsuits against state government agencies, in state court, *regardless of what the state law may provide.* Under Article VI, Clause 2 of the Constitution (commonly called the "Supremacy Clause"), a federal statute like USERRA trumps conflicting state statutes and state constitutions.

The West Publishing Company recently published *Reading Law: The Interpretation of Legal Texts,* by Supreme Court Justice Antonin Scalia and law professor Bryan A. Garner. This impressive new book lays out in great detail the canons of statutory interpretation that courts in Great Britain and the United States and other Common Law countries have developed over the centuries. On page 174, Justice Scalia and Professor Garner set forth the "surplusage canon" as follows: "If possible, every word and every provision [of a statute] is to be given effect. None should be ignored. None should needlessly be given an interpretation that causes it to duplicate another provision or to have no consequence."

Under the interpretation of section 4323(b)(2) that I followed until recently, this subsection *permits* but does not require a state (through its own laws) to authorize a suit in state court against a state government agency as employer to enforce USERRA rights. Rethinking the issue, I now see that this interpretation causes section 4323(b)(2) to have no consequence. If state law permits such a suit in state court, a federal law permitting such suits makes no difference, because it is clearly within the power of the state to permit such suits. Under the surplusage canon, an interpretation that causes a subsection to have no consequence is to be disfavored.

What, then, is the meaning of "in accordance with the laws of the State" in section 4323(b)(2)? This language means that a private party seeking to sue a state government agency in state court must look to state law to determine *in which state court* to file the suit and to determine the proper drafting of the complaint in state court. But federal law gives state courts jurisdiction and state law cannot deprive them of that jurisdiction.

If this issue is left up to the states, most state government employers will hide behind hoary doctrines of sovereign immunity and avoid accountability for violating USERRA. State supreme courts and intermediate appellate courts in four states have found that the state (as employer) is immune from being sued for violating USERRA. ALABAMA: *Larkins v. Alabama Department of Mental Health & Mental Retardation,* 806 So.2d 358 (Alabama Supreme Court 2001); DELAWARE: *Janowski v. Division of State Police, Department of Safety & Homeland Security,*

State of Delaware, 981 A.2d 1166 (Delaware Supreme Court 2009); GEORGIA: *Anstadt v. Board of Regents of the University System of Georgia,* 303 Ga. App. 483, 693 S.E.2d 868 (Georgia Court of Appeals 2010); and TENNESSEE: *Smith v. Tennessee National Guard,* No. M2012-00160-CAO-R3-CV (Tennessee Court of Appeals August 8, 2012).

In Rhode Island, the state trial court held that the state department of corrections is not immune from being sued in state court for violating USERRA. *Panarello v. State of Rhode Island Department of Corrections,* 185 L.R.R.M. 3225 (Rhode Island Superior Court January 22, 2009).[19] In New York, a state court remedy is available for USERRA violations by state agency employers. *Wang v. New York State Department of Health,* 2013 NY Slip Op. 23143 (New York Supreme Court, Albany County, Feb. 19, 2013).

In a very recent decision, the Vermont Supreme Court held (or at least assumed) that jurisdiction exists in Vermont's state courts to enforce USERRA against state agencies, as employers. *Brown v. State of Vermont,* 2013 VT 112 (Vermont Supreme Court Dec. 13, 2013).[20] The state's high court affirmed the granting of the state's summary judgment motion, on the merits rather than jurisdiction. The state apparently did not assert sovereign immunity in the state trial court, but since sovereign immunity is a jurisdictional issue the state's high court had a duty to consider the issue *sua sponte* (on the court's own motion) but did not deem the issue worthy of mention.

How did the New Mexico Court of Appeals rule?

In a long-awaited decision that was released on March 3, 2014, New Mexico's intermediate appellate court apparently agreed with the DOJ *amicus* brief that section 4323(b)(2) of USERRA[21] should be interpreted as conferring jurisdiction on state courts to hear USERRA cases against state agency employers *whether the state agrees or not.* The majority decision then addressed the question of whether Congress has the constitutional power to confer jurisdiction on state courts to hear such cases, over a state's objections, and held that Congress has no such power, citing *Alden v. Maine,* 527 U.S. 706 (1999).[22]

The *Ramirez* majority decision mentioned *Katz* and indicated that this 2006 Supreme Court decision gave them pause, but the majority decision distinguished *Katz* on the ground that bankruptcy cases are *in rem* actions (pertaining to "the thing"—the corpus of the bankrupt's estate when the claims against the individual or corporation greatly exceed the value of the estate itself) and that bankruptcy proceedings do not impinge on state sovereignty to the degree that lawsuits like *Ramirez* impinge on state sovereignty.

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[19] The State of Rhode Island could have appealed but did not appeal to the Rhode Island Supreme Court.

[20] I discuss *Brown* in detail in Law Review 14002 (January 2014).

[21] "In the case of an action against a State (as an employer) by a person, the action may be brought in a State court of competent jurisdiction in accordance with the laws of the State." 38 U.S.C. 4323(b)(2).

[22] In *Alden,* the Supreme Court struck down as unconstitutional a provision in the federal Fair Labor Standards Act (FLSA—federal minimum wage and overtime law) that conferred jurisdiction on the state courts to make state agency employers comply with federal minimum wage and overtime rules.

In an eloquent dissent, Judge Michael D. Bustamante wrote: "Comparing the interests and history at work in *Katz* with those at work here leads me to conclude that the War Powers Clause [of Article I, Section 8 of the United States Constitution] presents the more compelling case. The commercial interests addressed by the Bankruptcy Clause are important. But national defense stands on a higher ground and provides a stronger basis to disallow state interference with Congress' will than that found in *Katz.* Similarly, the state's historical lack of sovereignty over the conduct of war argues against its resurrection here. In asserting this, I am not ignoring the difference between the power to conduct war and the power to refuse to allow suits seeking monetary compensation. But the distance between the two is not so vast that it cannot be spanned. The Court in *Katz* faced the same issue—as the dissent in *Katz* points out—yet found it necessary to resolve it in favor of Congressional power. The points made by the dissent in *Katz* simply cannot be made with equal force in connection with the War Powers Act."

Judge Bustamante concluded his dissent with the following very interesting paragraph: "To a great degree, the Majority and I are simply prognosticating. A full debate with regard to the War Powers Clause as a source of power for USERRA has not yet been held before the United States Supreme Court. When it is, I believe the Court will hold that this is another Article I provision which should not be controlled by the dicta in *Seminole Tribe* and *Alden.* The matter is hardly without doubt. But I believe that Appellant's arguments and those of the United States in its amicus brief are closer to the mark."

Does New Mexico state law waive sovereign immunity and permit lawsuits like this in state court?

Some states have waived sovereign immunity and have permitted state court lawsuits like this. If New Mexico law waives sovereign immunity with regard to cases of this kind, we need not reach the question of whether the federal statute (USERRA) waives such immunity or whether Congress has the constitutional power to waive state court sovereign immunity of the states, as employers. Judge Camille Martinez-Olguin (the trial judge) held that several statutes enacted by the New Mexico Legislature had effectively waived sovereign immunity and that her court had the jurisdiction to hear and decide the *Ramirez* case. The New Mexico Court of Appeals reversed her on this point.

The majority decision of the Court of Appeals held that a waiver of sovereign immunity must be "unequivocally expressed" and that the statutes cited by the plaintiff (SFC Ramirez) were not clear enough to waive sovereign immunity. Footnote 4 of the majority decision helpfully provides an example of a state statute, in another state, that is absolutely unequivocal about waiving sovereign immunity: "Minnesota provides an example of an explicit waiver of sovereign immunity for USERRA claims. *See, e.g.,* Minn. Stat. Ann. Section 1.05(5) (West 2012) ('An employee … of the state who is aggrieved by the state's violation of [USERRA], may bring a civil action against the state in federal court or another court of competent jurisdiction for legal or equitable relief that will effectuate the purposes of this act.')"

Where do we go from here?

The March 3, 2014 decision by New Mexico's intermediate appellate court is Round 2 of what may end up as a four-round fight. Round 1 was the trial in the New Mexico trial court. Round 3 will very likely be in the New Mexico Supreme Court. There could be a Round 4 in the United States Supreme Court. This issue is immensely important, because about 10% of National Guard and Reserve personnel have civilian jobs for state government agencies.

We (ROA) will urge the Adjutant General of New Mexico (a life member of ROA) and our own Department of New Mexico to push for legislation along the lines of the Minnesota law cited by the *Ramirez* majority decision, so that National Guard and Reserve members who work for the State of New Mexico will have *enforceable* USERRA rights against state agencies as employers.[23] We filed an *amicus curiae* brief in the New Mexico Court of Appeals.[24] We will file a new *amicus* brief in the New Mexico Supreme Court, and maybe eventually in the United States Supreme Court. We will keep the readers informed of developments in this extraordinarily important and fascinating case.

[23] Such a new law probably would not help SFC Ramirez because new laws and amendments do not ordinarily apply retroactively.

[24] Thank you to life members Thomas Jarrard and Matthew Crotty (attorneys in the State of Washington) for drafting and filing that brief.