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Can I Sue my State Government Employer for Violating my USERRA Rights?

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Update on Sam Wright

1.1.1.7—USERRA applies to state and local governments
1.4—USERRA enforcement
1.8—Relationship between USERRA and other laws/policies

As I have explained in Law Review 18070 (August 2018) and other articles, it is very difficult to enforce the Uniformed Services Employment and Reemployment Rights Act (USERRA) against a state government employer. If your employer is a state government agency and the employer has violated your USERRA rights, you cannot sue the state in federal court because of the 11th Amendment of the United States Constitution.[3] If you sue the state government employer in state court, you will likely be faced with a state defense of "we have sovereign immunity and you cannot sue us." The purpose of this article is to do a 50-state survey of state statutes and state court decisions, to determine which states permit and which states forbid state court lawsuits against state government employers for violating USERRA. I ask the readers (especially attorneys) to help me in identifying errors or omissions in this article and to help me to keep the article updated as

[1] I invite the reader's attention to www.roa.org/lawcenter. You will find more than 1600 "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 very specific topics. The Reserve Officers Association (ROA) initiated this column in 1997. I am the author of more than 1400 of the articles.

[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 42 years, I have worked 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 (VRRA—the 1940 version of the federal reemployment statute) for 36 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. You can reach me by e-mail at SWright@roa.org.

[3] *See Velasquez v. Frapwell,* 160 F.3d 389 (7th Cir. 1998).

there are new developments in the state courts and state legislatures. We will publish corrections and updates to this article as necessary.

The best way to enforce USERRA against a state government employer is to file a formal written USERRA complaint against the state with the Veterans' Employment and Training Service of the United States Department of Labor (DOL-VETS) and then to request that DOL-VETS refer your case file to the United States Department of Justice (DOJ). If DOJ finds your case to have merit, it may file suit against the state in the appropriate federal district court *in the name of the United States,* as plaintiff.[4] DOJ has used that approach successfully against the State of Alabama and the State of Nevada.[5] The limitation on this approach is that DOJ may deny your request that it become involved for any number of reasons.

If DOJ has denied your request to file suit against the state government employer in the name of the United States, or if you cannot get to DOJ because you bypassed DOL-VETS, do not waste your time and money suing the state in state court unless you have at least an arguable claim (based on a state statute or a state court decision) that the state has waived sovereign immunity to permit a suit of this nature. There is a time to "stop throwing good money after bad" as my late father used to say.

The other way to enforce USERRA against a state government employer is through 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.*"[6]

What is the meaning of the phrase "in accordance with the laws of the State?" There are two possible interpretations:

a. You can sue the state in state court if state law permits such a suit.
b. You can sue the state in state court regardless of whether the state law permits lawsuits against the state, because Congress has decided that such lawsuits are permitted. We must look to the state law only to determine *in which state court* to bring the lawsuit.[7]

If state law permits you to sue the state in state court, section 4323(b)(2) of USERRA is meaningless. If state law permits such a suit, you do not need permission from Congress to bring it. The rules of statutory construction do not favor an interpretation that renders a whole subsection meaningless.[8] Accordingly, I believe that the second interpretation is the correct one.

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[4] 38 U.S.C. 4323(a)(1) (final sentence).
[5] *United States v. Alabama Department of Mental Health and Mental Retardation,* 673 F.3d 1320 (11th Cir. 2012); *United States v. State of Nevada,* 817 F. Supp. 2d 1230 (D. Nev. 2011).
[6] 38 U.S.C. 4323(b)(2) (emphasis supplied).
[7] As *amicus curiae* (friend of the court) in the Virginia Supreme Court and the New Mexico Supreme Court, DOJ has argued for this interpretation. Please see Law Review 16124 (December 2016).
[8] If possible, each word or phrase has meaning. The law does not favor an interpretation that renders meaningless a word or a whole section or subsection. *See* https://vdocuments.site/documents/list-of-the-canons-of-statutory-interpretation.html.

Recently (December 2016), the Virginia Supreme Court agreed with the second interpretation of section 4323(b)(2) but then held:

> On appeal, Clark [the Virginia State Police (VSP) officer who claimed that the VSP had unlawfully denied him a promotion based on his USAR obligations] contends that the [state] trial court misapplied sovereign-immunity principles and thus erred in dismissing his USERRA claim. The United States, appearing as amicus, concurs with Clark and urges us to hold that the Commonwealth's sovereign immunity has been lawfully abrogated by 38 U.S.C. 4323(b)(2). The VSP responds that the trial court correctly applied sovereign-immunity principles and had no choice but to dismiss the USERRA action. We hold that the trial court properly dismissed Clark's USERRA claim based on the Commonwealth's sovereign immunity.[9]

The 11th Amendment has made it difficult or impossible to enforce the Fair Labor Standards Act (FLSA)[10] against many state governments. Accordingly, Congress amended the FLSA to require state courts to hear and adjudicate FLSA claims against state government agencies and to enforce the FLSA. The United States Supreme Court declared that FLSA amendment to be unconstitutional.[11]

Does that mean that section 4323(b)(2) of USERRA is unconstitutional if it means that the state courts *must* enforce USERRA against state government agencies? In my opinion, no. I believe that *Alden v. Maine* is distinguishable. But the Supreme Court of Virginia and several other courts have explicitly rejected this argument, holding *Alden v. Maine* to be controlling.

I appreciate that DOJ has filed *amicus curiae* (friend of the court) briefs in the Virginia Supreme Court and several other state courts arguing that section 4323(b)(2) of USERRA requires the state courts to hear and adjudicate claims that state government agencies have violated USERRA, without regard to conflicting state claims of sovereign immunity. The Reserve Officers Association (ROA) has made the same argument in *amicus* briefs that it has filed. But the fact remains that no state high court has accepted that argument. Except in a handful of states where the legislature has enacted legislation explicitly waiving sovereign immunity and permitting state court USERRA suits against state agencies that violate USERRA, the only practicable way for a USERRA plaintiff to obtain justice is by getting DOJ to file the lawsuit in federal court in the name of the United States, as plaintiff. Accordingly, DOJ needs to give priority to USERRA suits against state agencies, as employers.

A possible interpretation of *Seminole Tribe of Florida* is that a statute of Congress based on constitutional authority that pre-dates 1795 (when the 11th Amendment was ratified) cannot abrogate the 11th Amendment immunity of states. Under this interpretation, any statute that is based on one of the 18 clauses of Article I, Section 8 of the Constitution (ratified in 1789) cannot overcome the 11th Amendment (ratified in 1795). On the other hand, a federal statute that is

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[9] *Clark v. Virginia Department of State Police,* 292 Va. 725, 727, 793 S.E.2d 1 (2016), *cert. denied,* 138 S. Ct. 500 (2017).
[10] The FLSA is the federal statute that requires employers, including state governments, to pay their employees at least the federal minimum wage and to pay overtime at 150% of the regular rate when a non-exempt employee works more than 40 hours in a week.
[11] *Alden v. Maine,* 527 U.S. 706 (1999).

based on Section 5 of the 14th Amendment (ratified in 1868) can overcome the 11th Amendment, because 1868 was after 1795.

I believe that the above interpretation of *Seminole Tribe* is overly simplistic and incorrect. If a federal statute is based on a clause of Article I, Section 8 that is *central to the role of the Federal Government, rather than the states, the statute can abrogate the 11th Amendment immunity of states.*

The federal Bankruptcy Code is based on Clause 4 of Article I, Section 8, and that clause gives Congress the authority "To establish a uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States." In a case decided ten years after *Seminole Tribe,* the Supreme Court upheld, over an 11th Amendment challenge, the power of Congress, under the Bankruptcy Code, to force state government entities to respect the power of federal courts to discharge debts owed to state agencies.[12]

Nothing is more central to the role of the Federal Government, rather than the states, than national defense. Accordingly, I believe that *Velasquez v. Frapwell* was wrongly decided by the 7th Circuit. I think that Congress should reconsider the 1998 amendment. Congress should reaffirm that an individual claiming USERRA rights against a state government employer can sue the state in federal court, in his or her own name and with his or her own lawyer. This will set up a constitutional question that the Supreme Court will be forced to answer. The states must not be allowed to hide behind hoary doctrines of sovereign immunity and to escape from the obligation to comply with USERRA.

But for the time being the only way to enforce USERRA against a state government employer is by getting DOJ to sue the state, in the name of the United States as plaintiff, unless the state has waived sovereign immunity. Accordingly, this article answers the following question for each state: **If a state agency employer violates USERRA, is it possible to sue the state in state court and get the court to hear and adjudicate the claim?**

Alabama

No. *See Larkins v. Department of Mental Health & Mental Retardation,* 806 So. 2d 358 (Alabama Supreme Court 2001).

Alaska

Probably. "A person or corporation having a contract, quasi-contract, or tort claim against the state may bring an action against the state in a state court that has jurisdiction over the claim." Alaska Statutes section 09.50.250. *See also State v. Carlson,* 270 P.3d 755 (Alaska Supreme Court 2012).

Arizona

[12] *Central Virginia Community College v. Katz,* 546 U.S. 356 (2006).

Yes. The Arizona Supreme Court abolished state sovereign immunity 55 years ago. *See Stone v. Arizona Highway Commission,* 93 Ariz. 384, 381 P.2d 107 (1963). In response, the Arizona Legislature reinstated state sovereign immunity for certain state actions that include "fundamental government policy." Arizona Revised Statutes (ARS) section 12-820-02.

The general rule is that immunity applies to policy-related duties but does not apply to duties that amount only to implementing legislative policies. *See Pima County v. State,* 174 Ariz. 402, 850 P.2d 115 (Ct. App. 1992).

We did not find a published case in Arizona involving a state employee suing a state agency for violating the employee's USERRA rights, but we believe that such a suit is permissible in Arizona. Please note that in Arizona it is necessary to give a state agency administrative notice of a claim, as a condition precedent to suing the state agency.

Arkansas

No. *See Arkansas Department of Veterans Affairs v. Mallett & Fabits,* 2018 Ark. 217 (Arkansas Supreme Court 2018); *Board of Trustees of the University of Arkansas v. Andrews,* 2018 Ark. 12, 535 S.W.3d 616 (Arkansas Supreme Court 2018).

California

Probably. *See Johnson v. State of California,* 69 Cal. 2d 782 (California Supreme Court 1968).

Colorado

Probably. *See* Colo. Rev. Stat. section 24-10-102.

Connecticut

Probably not. *See Durrant v. Board of Education of Hartford,* 284 Conn. 91 (2007).

Delaware

No. *See Janowski v. State Department of Safety and Homeland Security,* 981 A.2d 1166 (Delaware Supreme Court 2009).

Florida

Yes. *See* Fla. Stat. Ann. section 250.82.

Georgia

No. *See Anstadt v. Board of Regents of the University System of Georgia,* 303 Ga. App. 483, 693 S.E.2d 868 (2010).

Hawaii

Maybe. *See Hawaii Rev. Stat.* section 661-1.

Idaho

Yes. *See* Idaho Code section 6-903.

Illinois

Yes. *See* Illinois Constitution, Article XIII, section 4.

Indiana

Yes. A plaintiff who has been injured by the actions of the State of Indiana or a State employee, in the course of his or her State employment, can file and prosecute an action against the State under the Indiana Tort Claims Act (ITCA), Indiana Code sections 34-13-3-0.1 through 34-13-3-25. The ITCA requires certain prerequisites to suit, such as filing administrative claims, and it limits the liability of the State to maximum dollar amounts. Subject to these conditions and limitations, the Indiana courts will hear and adjudicate such claims.

The ITCA typically applies to tort claims, such as claims that State employees were negligent in the operation of State motor vehicles, but the ITCA seems to be broad enough to apply to suits by State employees, former State employees, or unsuccessful applicants for State employment that their USERRA rights were violated.

Iowa

Yes. *See Iowa Code* section 91A.8.

Kansas

Yes. *See* Kan. Stat. Ann. Section 75-6101.

Kentucky

No. State universities and other state agencies in Kentucky have sovereign immunity and cannot be sued. *See Autry v. Western Kentucky University,* 219 S.W.3d 713 (Kentucky Supreme Court 2007).

Louisiana

Yes. “Neither the state, a state agency, nor a political subdivision shall be immune from suit and liability in contract or for injury to person or property.” Louisiana Constitution, Article VII, section 10(A).

Maine

No. *See Perry v. Dean,* 2017 ME 35 (Maine Supreme Judicial Court 2017).

Maryland

Yes. Maryland law provides:

> Except as otherwise provided by State law, this State, its officers, and its units may not raise the defense of sovereign immunity in any administrative, arbitration, or judicial proceeding involving an employee grievance or hearing that is held under:
>
> (1) This Division I or a regulation adopted under it; or
> (2) A personnel policy or regulation that governs classified employees of the University System of Maryland or Morgan State University.

Maryland State Personnel & Pensions Code Annotated section 14-103.

Massachusetts

Probably not, because such a claim is outside the scope of the Massachusetts Tort Claims Act (MTCA), and it has been held that the MTCA is the only waiver of sovereign immunity of the Commonwealth of Massachusetts. *See Green v. Commonwealth,* 13 Mass. App. 524 (1982).

Michigan

Yes. *See Zynda v. Aeronautics Commission,* 372 Mich. 285, 287 (1964).

Minnesota

Yes. *See* Minn. Stat. Ann. section 1.05. *See also Breaker v. Bemidji State University,* 899 N.W.2d 515 (Minn. Court of Appeals 2017).

Mississippi

Probably not, because such a claim is outside the scope of the Mississippi Tort Claims Act, and that statute appears to be the only waiver of sovereign immunity of the State of Mississippi.

Missouri

No. Missouri law provides:

> Such sovereign or governmental tort immunity as existed at common law in this state prior to September 12, 1977, except to the extent waived, abrogated or modified by statutes in effect prior to that date, shall remain in full force and effect; except that the immunity of the

> public entity from liability and suit for compensatory damages for negligent acts or omissions is hereby expressly waived in the following instances [injuries arising out of the operation of motor vehicles by public employees in the course of their employment and injuries caused by the condition of a public entity's property].

Missouri Revised Statutes section 537.600.

Montana

Yes. *See* Mont. Stat. Ann. Sections 10-1-1003(3)(a), 10-1-1004, 10-1-1021.

Nevada

No. *See Martinez v. Maruszczak,* 123 Nev. Adv. Op. No. 43 (October 11, 2007).

New Hampshire

Yes. *See Mahan v. New Hampshire Department of Administrative Services,* 693 A.2d 79 (N.H. 1997).

New Jersey

Yes. New Jersey's common law doctrine of sovereign immunity has been replaced by the New Jersey Tort Claims Act, New Jersey Statutes Annotated (NJSA) sections 59:4-1 through 59:12-3. We have not found a published case in New Jersey involving a suit by a state employee accusing the state of violating the employee's USERRA rights, but we believe that such a suit is permissible in New Jersey.

New Mexico

Yes, but only for *National Guard* members. New Mexico law provides: "The rights, benefits, and protections of the federal Uniformed Services Employment and Reemployment Rights Act shall apply to a *member of the National Guard* ordered to federal or state active duty." N.M. Stat. section 20-4-7.1 (emphasis supplied).

Phillip Ramirez was a member of the New Mexico Army National Guard and a civilian employee of the New Mexico Department of Children, Youth & Families. He left his civilian job when he was called to active duty and deployed to Iraq, where he was wounded in action. He returned to New Mexico when he was released from active duty, and he made a timely application for reemployment. He was reemployed only briefly and then fired, in violation of USERRA.

Ramirez retained private counsel and sued in state court. In the trial court, he prevailed on jurisdiction and on the merits. The trial judge held that section 20-4-7.1 amounted to an effective waiver of sovereign immunity and, reaching the merits, held for Ramirez. The State of New Mexico appealed.

New Mexico's intermediate appellate court held that waivers of sovereign immunity must be strictly construed and that section 20-4-7.1 did not clearly and unambiguously waive sovereign immunity. The intermediate appellate court also considered and rejected the argument that federal law (USERRA) commanded the state courts to hear and adjudicate USERRA claims against state agencies as employers. The intermediate appellate court held that USERRA was unconstitutional insofar as it commanded the state courts to hear and adjudicate these claims. *See Ramirez v. State ex rel. Children, Youth & Families Department,* 2014-NMCA-057, 326 P.3d 474 (N.M. Court of Appeals 2014).

Ramirez applied to the New Mexico Supreme Court for certiorari (discretionary review), which the high court granted. The state Supreme Court reversed the intermediate appellate court on the question of the alleged ambiguity of section 20-4-7.1. The high court held that the legislative intent to waive sovereign immunity was expressed clearly enough and that section 20-4-7.1 effectively waived the sovereign immunity of the state. Having so held, the state Supreme Court did not reach the question of whether USERRA constitutionally required state courts to hear and adjudicate USERRA claims against state agencies.

It should be noted that Ramirez is a member of the Army National Guard (now retired). If he had been a member of the Army Reserve, the Air Force Reserve, the Navy Reserve, the Marine Corps Reserve, or the Coast Guard Reserve the outcome likely would have been different.

New York

Yes. Such a claim can be considered and adjudicated by the New York Court of Claims. *See* New York Consolidated Laws Service, Court of Claims Act, section 8.

North Carolina

Probably not. It has been held that sovereign immunity can be waived, but waiver of immunity is not to be lightly inferred, and statutes waiving sovereign immunity are to be strictly construed. *See Guthrie v. North Carolina Ports Authority,* 307 N.C. 522, 299 S.E.2d 618 (1983).

North Carolina has waived sovereign immunity for tort claims. It seems unlikely that this waiver can be construed broadly enough to include claims by state employees that their federal USERRA rights were violated.

North Dakota

Yes. *See Bulman v. Hulstrand Construction Co., Inc.,* 521 N.W.2d 632 (N.D. 1994).

Ohio

Yes. *See* Ohio Rev. Code Ann. Section 5903.02.

Oklahoma

Yes. *See Vanderpool v. State,* 672 N.W.2d 1153 (Okla. 1983).

Oregon

No. The Oregon Tort Claims Act waives sovereign immunity in only three instances:

a. Personal injury or death was caused by negligence where the governmental entity was at fault.
b. Injury or death in a vehicle accident due to the actions of a government employee in the course of his or her employment.
c. Actions of a government agency or employee damaged or destroyed the plaintiff's property.

For other kinds of claims (including claims by state employees, former state employees, or unsuccessful applicants for state employment that their USERRA rights have been violated), there has been no waiver of sovereign immunity.

Pennsylvania

Yes. *See Mayle v. Pennsylvania Department of Highways,* 479 Pa. 384, 388 A.2d 709 (1978).

Rhode Island

Yes. *See Panarello v. State Department of Corrections,* 88 A.3d 350 (RI 2014). Panarello lost his case *on the merits.* Nothing in the state Supreme Court decision discusses or indicates that his suit was barred by sovereign immunity.

South Carolina

Yes. *See Copeland v. South Carolina Department of Corrections,* 2014 WL 1978165 (S.C.C.P. 2014).

South Dakota

No. *See Long v. South Dakota,* 2017 S.D. 78, 904 N.W. 2d 358 (2017).

Tennessee

Yes. *See* Tenn. Code Ann. Section 29-20-208. *See also Smith v. Tennessee National Guard,* 2018 Tenn. LEXIS 318 (Tennessee Supreme Court June 22, 2018).[13]

Texas

No. Texas "has long recognized that sovereign immunity, unless waived, protects the State of Texas, its agencies, and its officials from lawsuits for damages, absent legislative consent to sue

[13] I discuss *Smith* in detail in Law Review 18078 (August 2018), the very next article in this series.

the State." *Fed. Sign v. Tex. S. Univ.,* 951 S.W.2d 401, 405 (Tex. 1997), superseded by statute, Act of May 30, 1999, 76th Leg., R.S., ch. 1352, § 9, 1999 Tex. Gen. Laws 4578, 4583-87, as recognized in *Gen. Servs. Comm'n v. Little-Tex Insulation Co.,* 39 S.W.3d 591 (Tex. 2001*); see also Dir. of Dep't of Agric. & Env't v. Printing Indus. Ass'n of Tex.,* 600 S.W.2d 264, 265 (Tex. 1980) (confirming that "a suit brought to control State actions or to subject the State to liability is not maintainable without legislative consent or statutory authorization"); *Hosner v. DeYoung,* 1 Tex. 764, 769 (1847) (establishing that the State cannot be sued without the State's consent "and then only in the manner indicated by that consent"). In *Texas Department of Parks & Wildlife v. Miranda,* 133 S.W.3d 217 (Tex. 2004), the Texas Supreme Court illustrated that a statute can waive immunity from suit, immunity from liability, or both. See *id. at 224* (reasoning that the Texas Tort Claims Act "creates a unique statutory scheme in which the two immunities are co-extensive"). While section 431.017 of Title 4, Subtitle C of the Texas Government Code states that members of the Texas National Guard and other state military forces who are called to active state duty by the Governor are entitled to the same benefits and protections as USERRA provides to national servicemembers, this is not an explicit waiver of state sovereign immunity.

Utah

No. *See* Utah Code Annotated section 63G-7-101(3).

Vermont

Yes. *See Brown v. State of Vermont,* 195 Vt. 342, 2013 VT 112, 88 A.3d 402 (2013). Brown lost his case *on the merits.* Nothing in the state Supreme Court decision discusses or indicates that Brown's claim was barred by sovereign immunity. I discuss this case in detail in Law Review 14002 (January 2014).

Virginia

No. *See Clark v. Virginia Department of State Police,* 292 Va. 725, 793 S.E.2d 1 (Virginia Supreme Court 2016), *cert. denied,* 138 S. Ct. 500 (2017).

Washington

Yes. RCW (Revised Code of Washington) section 73.16.070 provides that the Federal Act (USERRA) applies in state courts, and states:

> The federal uniformed services employment and reemployment rights act, P.L. 103-353, as amended, is hereby specifically declared to apply in proper cases in all the courts of this state.

Further, the State of Washington has waived immunity from suit by its citizens under RCW 4.92.090. The statute provides that "[t]he state of Washington, whether acting in its governmental or proprietary capacity, shall be liable for damages arising out of its tortious conduct to the same extent as if it were a private person or corporation." This statute makes the State presumptively liable for its tortious conduct in all instances for which the legislature has not stated otherwise. *See Savage v. State*, 127 Wn.2d 434, 445, 899 P.2d 1270 (1995). The statute does not

limit the State's liability to a particular area of law; rather, it covers any remedy for the State's tortious conduct. *See Maziar v. Dep't of Corr*., 151 Wn. App. 850, 860 (Wash. Ct. App. 2009)

West Virginia

No. "The State of West Virginia shall never be made a defendant in any court of law or equity, except the State of West Virginia, including any subdivision thereof, any municipality therein, or any officer, agent, or employee thereof may be made defendant in any garnishment or attachment proceeding, as garnishee or suggestee." West Virginia Constitution, Article VI, section 35.

Wisconsin

Yes. *See Scocos v. State Department of Veterans Affairs,* 2012 WI App. 81, 343 Wis. 2d 648, 819 N.W.2d 360 (Ct. App. 2012).

Wyoming

No. *See Utah Construction Co. v. State Highway Commission,* 19 P.2d 951 (1933).

Readers (especially lawyers): Please let me know if any of these state answers are wrong or incomplete or if there are developments in your state in the legislature or the state courts.

UPDATE—OCTOBER 2018

California

On 9/28/2018, Judge Robert A. O'Farrell of the California Superior Court (Monterey County) declined to order the dismissal of a USERRA lawsuit against the California Military Department on sovereign immunity grounds. We are attaching a link to Judge O'Farrell's decision. We will keep the readers informed of developments in this important case.

file:///C:/Users/Sam%20Wright/Downloads/Order%20Overruling%20Ds%20Demurrer%20(1).pdf

UPDATE—DECEMBER 2021

Please see Law Review 21079 (December 2021) for an updated, expanded, and corrected version of this article.