LAW REVIEW[1] 20052
May 2020

Important New Case on the Furlough or Leave of Absence Clause

By Captain Samuel F. Wright, JAGC, USN (Ret.)[2]
About Sam Wright

1.1.3.1—USERRA applies to voluntary service
1.3.2.10—Furlough or leave of absence clause
1.4—USERRA enforcement
1.8—Relationship between USERRA and other laws/policies

White v. United Airlines, Inc., 416 F. Supp. 3d 736 (N.D. Ill. 2019).[3]

Eric White's lawsuit

Eric White is a Lieutenant Colonel in the Air Force Reserve and a member of the Reserve Organization of America (ROA).[4] On the civilian side, he is a pilot for United Airlines (UAL). He is

---

[1] I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2000 "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 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 1800 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 44 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 38 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] This is a decision by Judge Charles R. Norgle of the United States District Court for the Northern District of Illinois. The citation means that you can find the decision in Volume 416 of *Federal Supplement, Third Series,* and the decision starts on page 736.

[4] At its September 2018 annual convention, the Reserve Officers Association amended its Constitution to make all service members (E-1 through O-10) eligible for membership and adopted a new "doing business as" (DBA) name:

represented by attorneys Robert Joseph Barton, Matthew Zachary Crotty, Peter Romer-Friedman, and Thomas Gregory Jarrard.[5] White brought the suit on behalf of himself and "all others similarly situated"—that is he asked the court to make the case a class action.[6] He claims that UAL violated his rights under the Uniformed Services Employment and Reemployment Rights Act (USERRA), and the rights of all other UAL pilots who serve in the Reserve or National Guard, by denying them their UAL pay when they are away from their civilian jobs for short tours of military duty.

USERRA's pertinent provision

As I have explained in footnote 2 and in Law Review 15067 (August 2015), Congress enacted USERRA and President Bill Clinton signed it into law on 10/13/1994, more than 25 years ago. USERRA was a long-overdue update and rewrite of the Veterans' Reemployment Rights Act (VRRA), which was originally enacted in 1940, as part of the Selective Training and Service Act, the law that led to the drafting of millions of young men (including my late father) for World War II.[7] The pertinent clause of USERRA is as follows:

> **(1)** Subject to paragraphs (2) through (6), a person who is absent from a position of employment by reason of service in the uniformed services shall be—
>
> **(A)** deemed to be on furlough or leave of absence while performing such service; and

---

Reserve Organization of America. The full name of the organization is now the Reserve Officers Association DBA the Reserve Organization of America. The point of the name change is to emphasize that our organization represents the interests of all Reserve Component members, from the most junior enlisted personnel to the most senior officers. Our nation has seven Reserve Components. In ascending order of size, they are the Coast Guard Reserve, the Marine Corps Reserve, the Navy Reserve, the Air Force Reserve, the Air National Guard, the Army Reserve, and the Army National Guard. The number of service members in these seven components is almost equal to the number of personnel in the Active Components of the armed forces, so Reserve Component personnel make up almost half of our nation's pool of trained and available military personnel. Our nation is more personnel make up almost half of our nation's pool of trained and available military personnel. Our nation is more dependent than ever before on the Reserve Components for national defense readiness. More than a million Reserve Component personnel have been called to the colors since the terrorist attacks of 9/11/2001.

[5] Like the plaintiff (White), Crotty and Jarrard are reserve officers (of the Army National Guard and the Marine Corps Reserve, respectively) and are members of ROA.

[6] A class action lawsuit is an efficient and effective way to vindicate the rights of many persons whose rights have been violated by the same defendant in essentially the same way. Courts generally approve motions for class action treatment if the case meets the standards of numerosity, commonality, and representativeness. That is, there must be so many potential plaintiffs that it makes sense to resolve the matter in a single lawsuit instead of requiring each person to bring his or her own lawsuit—numerosity. Commonality means that all the potential plaintiffs have essentially the same claim. Representativeness means that the interests of the named plaintiff (the one person who had the courage to bring the lawsuit) are representative of the interests of the class. In this case, Judge Norgle did not act on the plaintiff's motion for class action treatment, because Judge Norgle dismissed the case before trial. White has appealed. If the appellate court reverses the dismisses the dismissal, as I believe likely, the case will be heard on remand and the motion for class action treatment will likely be granted.

[7] Although the VRRA was part of the draft law from 1940 until 1974, it has applied to voluntary enlistees as well as draftees since 1941,

> **(B)** entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.[8]

Like much of USERRA, the furlough or leave of absence clause was carried over from the comparable provision of the VRRA. The prior law provided that a person away from work for military service "shall be entitled to participate in insurance or other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was inducted into such [military] forces."[9]

USERRA's legislative history addresses the purpose and effect of the furlough or leave of absence clause as follows:

> New section 4316(b)(1) would provide that, subject to new paragraphs (2) through (6) discussed below, an individual who serves in the uniformed services will be considered to be on furlough or leave of absence while in the service. That person will be entitled to the same rights and benefits not determined by seniority that are generally provided to the employer's other employees with similar seniority, status, and pay who are on furlough or leave of absence. The rights and benefits to which the person is entitled will be those under a practice, policy, agreement, or plan in force at the beginning of the period of uniformed service or which becomes effective during the period of service.
>
> Current section 4301(b)(1), which is similar to new section 4316(b)(1), provides that an individual restored to or employed in a position under chapter 43 [the reemployment statute] is considered as having been on furlough or leave of absence during the individual's period of training and service and that the individual is entitled to participate in benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time the individual was inducted into the Armed Forces.
>
> The Committee [Senate Committee on Veterans' Affairs] bill would codify court decisions that have interpreted current law [the VRRA] as providing a statutorily-mandated leave of absence for military service that entitles servicemembers to participate in benefits that are accorded other employees. *See Waltermeyer v. Aluminum Company of America,* 804 F.2d 821 (3rd Cir. 1986); *Winders v. People Express Airlines, Inc.,* 595 F. Supp. 1512, 1519 (D.N.J.

[8] 38 U.S.C. 4316(b)(1). This provision is referred to as the "furlough or leave of absence clause." It means that an employee who is away from his or her civilian job for uniformed service must be given the same benefits, during the absence from work for service, that other employees of the same employer receive while on non-military leaves of absence of comparable duration.

[9] 38 U.S.C. 4301(b)(1) (1988 version of the United States Code).

1984), *affirmed,* 770 F.2d 1078 (3rd Cir. 1985). The new provision would expand upon the current protection by clarifying that the returning employee would be entitled not only to the rights and benefits of agreements and practices in force at the time he or she left the employment, but also to rights and benefits of agreements and practices which become effective during the period of service.

Current section 4301(b)(1) also provides that an individual who is reemployed under chapter 43 must be considered as having been on furlough or leave of absence and is entitled to participate in insurance offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer when the individual was inducted into the Armed Forces.

The Committee bill would preserve the servicemember's right to retention of existing insurance if that same right would generally be extended to employees during a period of furlough or leave of absence.[10]

On the House side, the legislative history of USERRA makes clear that court decisions under the VRRA remain in effect under USERRA unless the law changed in a pertinent way in 1994:

The provisions of Federal law providing members of the uniformed services with employment and reemployment rights, protection against employment-related discrimination, and the protection of certain other rights and benefits, have been eminently successful for over fifty years. Therefore, the Committee [House Committee on Veterans' Affairs] wishes to stress that the extensive body of case law that has evolved over that period, to the extent that it is consistent with this Act [USERRA], remains in full force and effect in interpreting these provisions. This is particularly true of the basic principle established by the Supreme Court that the Act is to be "liberally construed." *See Fishgold v. Sullivan Drydock & Repair Corp.,* 328 U.S. 275, 285 (1946); *Alabama Power Co. v. Davis,* 431 U.S. 581, 584 (1977).[11]

Cases like *Waltermeyer* and *Winders,* construing the furlough or leave of absence clause of the VRRA, should be cited and relied upon in construing the similar clause in USERRA.

How this provision applies to Eric White and other UAL pilots who serve in the Reserve or National Guard

Like several hundred other UAL pilots who are actively participating in the National Guard or Reserve during their UAL employment, Lieutenant Colonel Eric White is frequently away from his

[10] 1993 Senate Committee Report, October 18, 1993 (S. Rep. 103-158, 1993 WL 432576 (Leg. History), reprinted in Appendix D-2 of *The USERRA Manual,* by Kathryn Piscitelli and Edward Still. The quoted paragraphs can be found at pages 864-65 of the 2019 edition of the *Manual.*

[11] House Committee Report, April 28, 1993, H.R. Rep. 103-65 (Part 1), reprinted in Appendix D-1 of *The USERRA Manual.* The quoted paragraph can be found at pages 759-60 of the 2019 edition of the *Manual.*

UAL job for short-term military leave periods, for inactive duty training (drills) and for annual training periods typically lasting two or three weeks. Under the collective bargaining agreement (CBA) between UAL and the Air Line Pilots Association (ALPA),[12] the union that represents UAL pilots, UAL pilots who are away from work for short periods of illness (sick leave) or for jury duty (jury leave) receive their regular UAL pay while away from work for these short sick leave and jury leave periods. But UAL pilots who are away from their jobs for short military duty periods, like drill weekends and annual training tours, do not receive UAL pay while away from work for comparable periods of absence. White argues, I believe correctly, that USERRA's furlough or leave of absence clause[13] makes it unlawful for UAL to deny pay to the pilots for short periods of military leave.

The UAL-ALPA CBA also provides for a profit-sharing plan. At the end of the year, UAL pilots receive a share of the airline's profits. The share is computed based on a formula. One element of the formula is the individual pilot's UAL compensation during the year. Thus, pilots like White, who are periodically away from their civilian jobs for drill weekends and annual training periods in the Reserve or National Guard, are doubly punished by the airline. They lose out on the money they would have received from their airline but for their short military training periods, and they lose again in the profit-sharing plan.

USERRA's definition of "benefit of employment"

Section 4303 of USERRA defines 16 terms used in this law. The term "benefit of employment" is defined as follows:

> The term "benefit", "benefit of employment", or "rights and benefits" means the terms, conditions, or privileges of employment, including any advantage, profit, privilege, gain, status, account, or interest (*including wages or salary for work performed*) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.[14]

As enacted in 1994, and until amended in 2010, USERRA's definition of "benefit of employment" did not say "including salary or wages for work performed." Rather, the definition included

---

[12] In its first case construing the VRRA, the Supreme Court held: "No practice of employers *or agreements between employers and unions* can cut down the service adjustment benefits that Congress has secured the veteran under the Act." *Fishgold v. Sullivan Drydock & Repair Corp.,* 328 U.S. 275, 285 (1946). Section 4302(b) of USERRA, 38 U.S.C. 4302(b), codifies the principle that the CBA cannot deprive the service member of statutory rights under the reemployment statute.

[13] 38 U.S.C. 4316(b)(1).

[14] 38 U.S.C. 4303(2) (emphasis supplied).

"*other than* salary or wages for work performed."[15] The sparse but instructive language of the 2010 legislative history is as follows:

> Under current law [USERRA, as it existed in 2010], section 4311(a) of title 38, U.S.C., employers may not deny any "benefit of employment" to employees or applicants on the basis of membership in the uniformed services, application for service, performance of service, or service obligation. However, the U.S. Court of Appeals for the Eighth Circuit held in 2002 USERRA does not prohibit wage discrimination because "wages or salary for work performed" are specifically excluded from the law's definition of "benefit of employment." *Gagnon v. Sprint Corp.,* 284 F.3d 839, 853 (8th Cir. 2002).
>
> **Senate Bill**
>
> Section 403 of H.R. 1037, as amended, would amend section 4303(2) of title 38, U.S.C., to make it clear that wage discrimination is not permitted under USERRA.
>
> **House Bill**
>
> The House Bills contain no comparable provision.
>
> **Compromise Agreement**
>
> Section 701 of the Compromise Agreement follows the Senate Bill.[16]

In his opinion, Judge Norgle did not mention, cite, discuss, or consider the 2010 amendment and its legislative history, probably because he was unaware of them. I contend that the 2010 amendment is pertinent and directly contradicts Judge Norgle's central holding.

UAL files a motion to dismiss, which the judge granted.

Shortly after White filed his lawsuit, UAL filed a motion to dismiss the case under Rule 12(b)(6) of the Federal Rules of Civil Procedure (FRCP). A judge should grant a Rule 12(b)(6) motion only if he or she can say that there is no relief that the court can award *even if all the facts are exactly as alleged by the plaintiff in the complaint. White* is one of those rare cases that we call a "pure question of law" case. There was no significant dispute between White and UAL about the relevant facts. The dispute is about the meaning of the law (USERRA) as applied to those facts.

In his opinion, Judge Norgle rejected the argument that short tours of military training, like drill weekends and traditional annual training tours, are comparable to jury service and that USERRA's furlough or leave of absence clause[17] requires UAL to pay pilots their regular UAL

---

[15] The amendment was made by section 701(a) of Public Law 111-275, the Veterans' Benefits Act of 2010, 124 Stat. 2864 (October 13, 2010).

[16] 2010 Amendments: Joint Explanatory Statement, September 28, 2010, 156 Cong. Rec. S7656-02, 2010 WL 3767475, reprinted in Appendix E-5 of *The USERRA Manual.* The quoted paragraphs can be found at pages 956-57 of the 2019 edition of the *Manual.*

[17] 38 U.S.C. 4316(b)(1).

compensation when they are away from work for these short military tours if it pays pilots who are away from work for jury duty. Judge Norgle held:

> To that end, and with the above in mind, the Court agrees with Defendants' textual analysis. It is contrary to the express language of the statute to hold that a business is required to pay a reservist wages for time not worked. Moreover, the Court disagrees with the contention that jury duty is comparable in nature—in the way that Congress intended—to reservist duties. Although both may be sporadic and uncontrollable in timing, all citizens (including those in reserve military roles) are subject to jury duty simply by nature of living in America, whereas military duties—which no doubt are honorable and likewise essential to our society—are *voluntarily joined* (in present times).[18]

USERRA applies to voluntary as well as involuntary service.

Like too many others, Judge Norgle wrongly conflates the reemployment statute with the draft.[19] In fact, like the VRRA,[20] USERRA applies equally to *voluntary as well as involuntary service.* USERRA's definition of "service in the uniformed services" is as follows:

> The term "service in the uniformed services" means the performance of duty *on a voluntary or involuntary basis* in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard duty, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty, a period for which a System member of the National Urban Search and Rescue Response System is absent from a position of employment due to an appointment into Federal service under section 327 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and a period for which a person is absent from employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.[21]

Of course, in today's era, all military service is essentially voluntary. No one has been drafted by our country since 1973, when Congress abolished the draft and established the All-Volunteer Military (AVM), and when Judge Norgle was 36.

Effective enforcement of USERRA is essential.

Throughout our nation's history, when the survival of liberty has been at issue, our nation has defended itself by calling up state militia forces (known as the National Guard since the early 20th

---

[18] *White,* 416 F. Supp. 3d at 739-40 (emphasis supplied).

[19] In 1955, when he was 18, Charles Norgle was drafted. Like millions of other young men of that generation, including Elvis Presley, he served on active duty for two years and was honorably discharged. It is perhaps not surprising that when he thinks of military service and reemployment Judge Norgle thinks of the two-year involuntary active duty tour that he completed 63 years ago.

[20] *See* 38 U.S.C. 4324(a) (1988 version of the United States Code).

[21] 38 U.S.C. 4303(13) (emphasis supplied).

Century) and by drafting young men into military service.[22] A century ago, in the context of World War I, the United States Supreme Court upheld the constitutionality of the draft.[23]

Almost two generations ago, in 1973, Congress abolished the draft and established the All-Volunteer Military (AVM). No one is required to serve in our country's military, but someone must defend this country. When I hear employers complain about the "burdens" imposed by laws like USERRA, I want to remind those folks that our government is not drafting you, nor is it drafting your children and grandchildren. Yes, USERRA imposes burdens on some members of our society, but those burdens are tiny in comparison to the far greater burdens (sometimes the ultimate sacrifice) voluntarily undertaken by that tiny sliver of our country's population who volunteer to serve in uniform.

As we approach the 19th anniversary of the "date which will live in infamy" for our time, when 19 terrorists commandeered four airliners and crashed them into three buildings and a field, killing almost 3,000 Americans, let us all be thankful that in that period we have avoided another major terrorist attack within our country. Freedom is not free, and it is not a coincidence that we have avoided a repetition of the tragic events of 9/11/2001. The strenuous efforts and heroic sacrifices of American military personnel have protected us all.

In a Memorial Day speech at Arlington National Cemetery on May 30, 2016, the Chairman of the Joint Chiefs of Staff (General Joseph Dunford, USMC) said:

> Some [of those we honor today] supported the birth of the revolution; more recently, others have answered the call to confront terrorism. Along the way, more than one million Americans have given the last full measure [of devotion]. Over 100,000 in World War I. Over 400,000 in World War II. Almost 40,000 in Korea. Over 58,000 in Vietnam. And over 5,000 have been killed in action since 9/11. Today is a reminder of the real cost of freedom, the real cost of security, and that's the human cost.

In a speech to the House of Commons on 8/21/1940, Prime Minister Winston Churchill said:

> The gratitude of every home in our island, in our Empire, and indeed throughout the world except in the abodes of the guilty goes out to the British airmen who, undaunted by odds, unweakened in their constant challenge and mortal danger, are turning the tide of world war by their prowess and their devotion. Never in the course of human conflict was so much owed by so many to so few.

---

[22] No one has been drafted by our country since 1973, but under current law young men are required to register in the Selective Service System when they reach the age of 18. In Resolution 13-03, ROA has proposed that Congress amend the law to require women as well as men to register. Please see Law Review 15028 (March 2015).

[23] *Arver v. United States,* 245 U.S. 366 (1918). The citation means that you can find this decision in Volume 245 of *United States Reports,* starting on page 366.

Churchill's paean to the Royal Air Force in the Battle of Britain applies equally to America's military personnel who have protected us from a repetition of 9/11/2001, by their prowess and their devotion.

In the last 19 years, most of the American people have made no sacrifices (beyond the payment of taxes) in support of necessary military operations. The entire U.S. military establishment amounts to just 0.75% of the U.S. population. This tiny sliver of the population bears almost all the cost of defending our country.

On January 27, 1973, more than 47 years ago, Congress abolished the draft and established the AVM. The AVM has been a great success, and when Representative Charles Rangel of New York introduced a bill to reinstate the draft he could not find a single co-sponsor. Our nation has the best-motivated, best-led, best-equipped, and most effective military in the world, and perhaps in the history of the world. I hope that we never need to return to the draft. Maintaining the AVM requires that we provide incentives and minimize disincentives to serve among the young men and women who are qualified for military service.

I have written:

> Without a law like USERRA, it would not be possible for the services to recruit and retain the necessary quality and quantity of young men and women needed to defend our country. In the All-Volunteer Military, recruiting is a constant challenge. Despite our country's current economic difficulties and the military's recent reductions in force, recruiting remains a challenge for the Army Reserve—the only component that has been unable to meet its recruiting quota for Fiscal Year 2014.
>
> Recruiting difficulties will likely increase in the next few years as the economy improves and the youth unemployment rate drops, meaning that young men and women will have more civilian opportunities competing for their interest. Recent studies show that more than 75% of young men and women in the 17-24 age group are not qualified for military service, because of medical issues (especially obesity and diabetes), the use of illegal drugs or certain prescription medicines (including medicine for conditions like attention deficit hyperactivity disorder), felony convictions, cosmetic issues, or educational deficiencies (no high school diploma).
>
> Less than half of one percent of America's population has participated in military service of any kind since the September 11 attacks. A mere 1% of young men and women between the ages of 17 and 24 are interested in military service and possess the necessary qualifications. The services will need to recruit a very high percentage of that 1%. As a nation, we cannot afford to lose any qualified and interested candidates based on their concerns that military service (especially service in the Reserve or National

Guard) will make them unemployable in civilian life. There is a compelling government interest in the enforcement of USERRA.[24]

Those who benefit from our nation's liberty should be prepared to make sacrifices to defend it. In the AVM era, no one is required to serve our nation in uniform, but our nation needs military personnel, now more than ever. Requiring employers to reemploy those who volunteer to serve is a small sacrifice to ask employers to make. All too many employers complain about the "burdens" imposed on employers by the military service of employees, and all too many employers seek to shuck those burdens through clever artifices.

I have no patience with the complaining of employers. Yes, our nation's need to defend itself puts burdens on the employers of those who volunteer to serve, but the burdens borne by employers are tiny as compared to the heavy burdens (sometimes the ultimate sacrifice) borne by those who volunteer to serve, and by their families.

To the nation's employers, especially those who complain, I say the following: Yes, USERRA puts burdens on employers. Congress fully appreciated those burdens in 1940 (when it originally enacted the reemployment statute), in 1994 (when it enacted USERRA as an update of and improvement on the 1940 statute), and at all other relevant times. We as a nation are not drafting you, nor are we drafting your children and grandchildren. You should celebrate those who serve in your place and in the place of your offspring. When you find citizen service members in your workforce or among job applicants, you should support them cheerfully by going above and beyond the requirements of USERRA.

White appealed to the 7th Circuit and ROA supports his appeal.

Through his attorneys, Lieutenant Colonel White has appealed Judge Norgle's erroneous decision to the 7th Circuit.[25] ROA has prepared and filed a friend of the court brief in support of White's appeal. You can find a copy of that brief at the end of this article.

Please join or support ROA

This article is one of 2000-plus "Law Review" articles available at www.roa.org/lawcenter. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

ROA is almost a century old—it was established in 1922 by a group of veterans of "The Great War," as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to

[24] Law Review 14080 (July 2014) (footnotes omitted). Nathan Richardson was my co-author on Law Review 14080.
[25] The 7th Circuit is the federal appellate court that sits in Chicago and hears appeals from district courts in Illinois, Indiana, and Wisconsin.

advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs. Indeed, ROA is the *only* national military organization that exclusively supports America's Reserve and National Guard.

Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

If you are now serving or have ever served in any one of our nation's seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs $20. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at www.roa.org or call ROA at 800-809-9448.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Officers Association
1 Constitution Ave. NE
Washington, DC 20002

No. 19-2546

In the United States Court of Appeals for the Seventh Circuit

ERIC WHITE,
individually and on behalf of all others similarly situated,
Plaintiff-Appellant,

v.

UNITED AIRLINES, INC. and UNITED CONTINENTAL HOLDINGS, INC.,
Defendants-Appellees.

On Appeal from the United States District Court
for the Northern District of Illinois
Case No.19-cv-00114 (The Hon. Charles R. Norgle, Sr.)

BRIEF OF THE RESERVE OFFICERS ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PLAINTIFF-APPELLANT AND REVERSAL

SAMUEL F. WRIGHT
1513 Spring St., #52
Waco, TX 76704
(254) 743-9547

JOHN PAUL SCHNAPPER-CASTERAS
Counsel of Record
SCHNAPPER-CASTERAS PLLC
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 630-3644
jpsc@schnappercasteras.com

Counsel for Amicus Curiae

April 24, 2020

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, *amicus curiae* states that no party to this brief is a publicly held corporation, issues stock, or has a parent corporation.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Regulations

INTEREST OF *AMICUS CURIAE*[1]

The Reserve Officers Association of the United States (ROA) was founded in 1922 and chartered by Congress in 1950. The ROA is composed of over 42,000 members: military officers, former officers, enlisted personnel, and families of all the uniformed services of the United States, primarily the Reserve and National Guard. ROA provides tools, resources, support, and advocacy for reservists—in and out of uniform—and their families, and it advises Congress and the Executive branch about the strength and readiness of the Reserve force. To that end, ROA has long been involved in the implementation of the Uniformed Services Employment and Reemployment Rights Act (USERRA): it maintains a staff, law center and knowledge repository dedicated to educating its members, the public, and employers about USERRA, and the rights of military servicemembers and veterans.

ROA has filed *amicus* briefs in a variety of significant appeals. *See, e.g.*, *United States v. Alvarez*, 2011 WL 6179423 (U.S. 2011); *Staub v. Proctor Hosp.*, 2010 WL 2770106 (U.S. 2010); *McCarty v. McCarty*, 1980 WL 339736 (U.S. 1980); *Ramirez v. State Children, Youth & Families Dep't.*, 2016-NMSC-016, 372 P.3d 497

[1] No party or counsel for a party in the pending appeal authored the proposed *amicus* brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of the brief. No person or entity, other than the *amicus curiae*, its members, and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Counsel for all parties have consented to the filing of this brief.

(N.M. 2014). Given its purpose, membership, and history, ROA offers its unique perspective to assist this Court and to promote just outcomes in USERRA litigation.

SUMMARY OF ARGUMENT

When servicemembers step off a plane or ship after deploying overseas, many will move from active duty to reserve status and embark upon a challenging transition from full-time military life into the civilian workforce. Along the way, they will receive guidance from the federal government, perhaps additional training from the private sector, and regular refrains of "thank you for your service" from the public at large.

But what reservists need and deserve most of all is equality — under the law and in the eyes of their employers. That fundamental rule is the bedrock of USERRA and courts' interpretation of it since 1994. USERRA prohibits, *inter alia*, discrimination when servicemembers are working and also vis-a-vis civilian employees when taking leave. It can and should be applied faithfully to a variety of circumstances, including the meaning and scope of key statutory terminology.

In this case, the equality rule confirms that this Court should apply the plain text of 38 U.S.C. §§ 4316(b)(1) and 4303(2), which is clear insofar as it defines "rights and benefits" broadly to encompass a wide array of the terms, conditions, or privileges of employment.

Assuming *arguendo* that subsections 4316(b)(1) and 4303(2) together are ambiguous with respect to whether paid leave and profit-sharing are "rights and benefits," then longstanding canons of statutory interpretation, which the Supreme Court developed especially in the context of servicemembers' rights, direct that USERRA be interpreted liberally in favor of servicemembers. Here that means "rights and benefits" should be interpreted to include the right to receive paid leave in the same manner as civilian employees do.

At the end of the day, upholding the basic precept of equality between civilians and servicemembers is not simply an exercise in bean counting paid leave or profit-sharing benefits. It reflects a basic level of respect that we owe those who sacrifice for the country and who continue to raise their hands for duty in the Reserves, knowing the added demands, disruption, and uncertainty that may bring. Moreover, the equality rule serves the important national interest in fostering a robust military reserve, that remains prepared to activate and defend the nation, while its members continue to work full-time in the civilian economy. In recent years, the country has asked much of reservists, calling up over one million, often to Iraq and Afghanistan, sometimes for multiple deployments, and amassing nearly 1,300 fatalities. When those troops finally return home, we cannot necessarily guarantee them an easy transition – but we must at least offer them equal treatment, as USERRA commands.

ARGUMENT

I. Subsections 4316(b)(1) and 4303(2) are Clear that Employees on Military Leave and Non-Military Leave Must be Treated Equally, Including with Respect to Paid Leave

The subsections of USERRA at issue here are clear and this Court can and should rest on a straightforward reading of 38 U.S.C. §§ 4316(b)(1) and 4303(2). *Amicus* agrees with and adopts Plaintiff-Appellant's compelling analysis of the statute, including the plain meaning of § 4316(b)(1) and the broad definition of the term "rights and benefits" under the statute at 38 U.S.C. § 4303(2). *Amicus* offers its experience and perspective on three related points:

First, as a matter of statutory interpretation, section 4316(b) establishes an equality rule that undergirds USERRA. That provision requires equality between reservists and civilian "employees having similar seniority, status, and pay." 38 U.S.C. § 4316(b)(1)(B), when they take military and non-military leave. Specifically, the statute states that workers on military leave are "entitled to such other rights and benefits . . . as are generally provided by the employer of the person to employees . . . who are on furlough or leave of absence[.]" *Id*. Subsection 4316(b)(1)'s equality rule is part of USERRA's core tenet of "equal, but not preferential" treatment for reservists, which this Court and several sister circuits all recognize. *See, e.g.*, *Crews v. City of Mt. Vernon*, 567 F.3d 860, 865 (7th Cir. 2009); *Dorris v. TXD Servs., LP*, 753 F.3d 740, 745 (8th Cir. 2014) (collecting cases and

situating the equal-but-not-preferential-treatment rule within the context of Supreme Court decisions). Simply put, "USERRA requires equal treatment for veterans," *Jolley v. Dep't of Hous. & Urban Dev.*, 299 F. App'x 966, 968 (Fed. Cir. 2008) (unpublished). Likewise, executive branch regulations recognize this element of USERRA.[2]

Second, the equality rule was a central feature of the law governing servicemembers even before USERRA, namely through the Veterans Reemployment Rights Act ("VRRA"), which was expressly re-codified and expanded by Congress when it passed USERRA. When Congress enacted § 4316(b), it stressed that it "would codify court decisions that have interpreted current law [VRRA] as providing a statutorily-mandated leave of absence for military service that entitles servicemembers to participate in benefits that are accorded other employees." S. Rep. No. 103-158, at 58 (1993) ("Senate Rpt.") (citing *Waltermyer v. Aluminum Co. of America*, 804 F.2d 821 (3d Cir. 1986)).[3]

In enacting USERRA in 1994, Congress embraced a well-reasoned Third Circuit decision that upheld the rule of equality. The House of Representatives explained that § 4316(b) would "affirm the decision in *Waltermyer*" that reservists

[2] For example, the Department of Labor's implementing regulations reiterate that workers on military leave "must be given the most favorable treatment accorded to any comparable form of leave." 20 C.F.R. § 1002.150(b).

[3] *See generally* H.R. Rep. No. 103-65, at 33-34 (1993) ("House Rpt.").

on military leave must receive "the most favorable treatment accorded any particular leave." House Rpt. at 33-34. The Third Circuit in *Waltermyer* had acknowledged "equality as the test" for workers on military leave as compared to other workers on similar types of leave, holding that an employee who took military leave on a holiday was entitled to receive pay for that time on equal terms as workers who took jury duty that day and received pay. 804 F.2d at 824-26.[4] Congress invoked the equality rule in explaining its codification of *Waltermyer*: reservists on military leave must receive "the most favorable treatment accorded any particular leave" that other workers take, House Rpt. at 33-34, *i.e.*, they must receive the broadest range of "rights and benefits" offered to other workers on leave, including paid leave or pay.

Third, as a matter of administrability, the experience of *amicus* and its members illustrates why Plaintiff-Appellant's understanding of §§ 4316(b)(1) and

[4] This equality rule "merely establishe[d] equality for . . . reservists, not preferential treatment." *Waltermyer,* 804 F.2d at 825; *see Scanlan v. Am. Airlines Grp., Inc*., 384 F. Supp. 3d 520, 525 (E.D. Pa. 2019) (stating that *Waltermyer* held that "[p]aying plaintiff for those holidays" when he was on military leave "established 'equality . . . not preferential treatment'"). Because the plaintiff in *Waltermyer* "was not suing for compensation for other days not worked" other than holidays, the Third Circuit "limited its holding to the question of what it described as 'holiday pay.'" *American Airlines*, 384 F. Supp. 3d at 525. Still, *Waltermyer's* equality test naturally mandates reservists to receive paid leave in situation whether civilian workers would. "If a reservist and [a] juror are equal, *then the reservist is not entitled to just holiday pay but to full pay for all days not worked*, since employees absent for jury duty receive full pay." *Waltermyer*, 804 F.2d at 827 (Hunter, J., dissenting) (emphasis added).

4303(2) is reasonable and would have a modest impact on employers. When servicemembers transition from active duty to reserve life and enter (or re-enter) the civilian workforce, they often apply to a variety of employers that have different policies, some of which might provide certain types of paid leave and some of which might not. For example, federal law does not require employers to compensate employees for jury duty[5] – but should they elect to, then the paid leave they provide must be given equally to those on short-term military leave. Practically speaking, once an employer has opted to offer a right or benefit to civilian employees widely (who likely comprise the super-majority of most companies' workforces), there is simply no basis – in the experience of *amicus* – to suggest that applying it even-handedly to reservist employees would be burdensome or complicated. Indeed, many employers already provide reservists with paid leave for short-term military leave and, in some instances, for long-term military leave as well.

II. Even if Subsections 4316(b)(1) and 4303(2) are Ambiguous, Supreme Court Precedent Requires USERRA be Liberally Construed in Favor of Servicemembers

Assuming *arguendo* that §§ 4316(b)(1) and 4303(2) are somehow unclear, they must be liberally interpreted in favor of servicemembers. For over half a century, the Supreme Court has held that the federal law on reemployment rights for

[5] *See generally* U.S. Department of Labor, Jury Duty, https://www.dol.gov/general/topic/benefits-leave/juryduty (last accessed Apr. 22, 2020).

veterans and reservists (which now is USERRA) "is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need." *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946). *Accord Boone v. Lightner*, 319 U.S. 561, 575 (1943) (adopting statutory interpretations that "liberally construe" veterans' laws "to protect those who have been obliged to drop their own affairs to take up the burdens of the nation."). The Court subsequently reaffirmed that this "guiding principle" of liberal construction "govern[s] all subsequent interpretations of the re-employment rights of veterans." *Alabama Power Co. v. Davis*, 431 U.S. 581, 584 (1977). Similarly, *King v. St. Vincent's Hosp.* stressed that when a court is presented with two plausible readings of the reemployment rights law, it should "read the provision in [the servicemember's] favor under the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor." 502 U.S. 215, 221 n.9 (1991) (citing *Fishgold*, 328 U.S. at 285).

Likewise, the Seventh Circuit held that "USERRA is to be liberally construed in favor of those who served their country." *McGuire v. United Parcel Serv.*, 152 F.3d 673, 676 (7th Cir. 1998). This canon of construction does not simply serve as a tie breaker between a pair of plausible arguments, rather, the Supreme Court has made clear, any "interpretive doubt is to be resolved in the veteran's favor." *Brown v. Gardner*, 513 U.S. 115, 118 (1994). The canon applies broadly, including to the

interpretation and reconciliation of separate subsections of veterans' rights statutes,[6] and it "remains in full force and effect" under USERRA, as Congress explicitly stated in enacting the law, House Rpt. at 19; *see* Senate Rpt. at 40.[7]

To the extent §§ 4316(b)(1) and 4303(2) might be seen as ambiguous, they should be construed liberally in light of the *Fishgold* canon to reflect a broad definition of "rights and benefits." Specifically, that means that paid leave is one of the rights and benefits that must be provided equally under § 4316(b)(1), and that short-term military leave is considered comparable to jury duty leave. The district court, by contrast, seemed to go out of its way to effectively require a narrow and specific textual statement that paid leave is one of the "rights and benefit" under 4303(2), without adhering to *Fishgold*'s command to construe the statute broadly.

A liberal construction of §§ 4316(b)(1) and 4303(2) also aligns with Congress' expansive purpose in passing USERRA in order to strengthen, improve, and clarify servicemembers' rights. *See, e.g.*, 137 Cong. Rec. H2977 (May 14, 1991)

---

[6] The Supreme Court mandated that courts "construe the separate provisions of the Act as parts of an organic whole and give each as liberal a construction for the benefit of the veteran as a harmonious interplay of the separate provisions permits." *Fishgold*, 328 U.S. at 285; *accord King*, 502 U.S. at 221 (holding, in interpreting USERRA's predecessor statute, that a court must "follow the cardinal rule that a statute is to be read as a whole, since the meaning of statutory language, plain or not, depends on context") (citations omitted).

[7] *Amicus* endorses Plaintiff-Appellant's more detailed survey of the legislative history, *see* Br. of Appellant at 4-10, 14, 25-27.

(Congress's "primary goals" for USERRA were "to clarify and, where necessary, strengthen the existing veterans' employment and reemployment rights provisions."); *see also id*. (observing that the purpose was to "assure a smooth transition from military service to the civilian work force"). *Accord Leisek v. Brightwood Corp*., 278 F.3d 895, 898 (9th Cir. 2002) ("Congress enacted USERRA in order to 'clarify, simplify, and, where necessary, strengthen the existing veterans' employment and reemployment rights provisions.'") (quoting *Gummo v. Vill. of Depew*, 75 F.3d 98, 105 (2d Cir. 1996) (quoting House Rpt. at 18)); *accord* USERRA of 1994, Pub. L. No. 103-353, 108 Stat. 3149, 3150 (1994) (stating USERRA's purpose is "to improve reemployment rights and benefits of veterans and other benefits of employment of certain members of the uniformed services").

III. The Outcome of this Case is Important to Reservists Nationwide

The appeal at bar is significant to *amicus*, the tens of thousands of members of the ROA, and the hundreds of thousands more reservists across the Army, Navy, Marine Corps, Air Force, and Coast Guard for three core reasons:

First, safeguarding the fair and equal hiring and reemployment opportunities of servicemembers – including their benefits packages and terms of leave – is essential to maintaining a top-tier Reserve force. Recruiting and retaining the best personnel to serve in the Reserves requires protecting reservists as they engage in full-time work and obtain periodic re-employment in the civilian workforce. Indeed,

the Supreme Court recognized that servicemembers' reemployment rights "provide[] the mechanism for manning the Armed Forces of the United States." *Alabama Power*, 431 U.S. at 583. The plain text of USERRA confirms as much, since the statute aims:

> (1) to encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service;
>
> (2) to minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and
>
> (3) to prohibit discrimination against persons because of their service in the uniformed services.

38 U.S.C. § 4301(a). Likewise, "Congress has long recognized that the support of civilian employers is necessary if the uniformed services are to be able to recruit and retain noncareer personnel." 140 Cong. Rec. S13626–42, S13634 (Sept. 28, 1994) (Statement of Sen. Rockefeller).

It is also worth underscoring that the Reserve Component, undergirded by USERRA, is vital to the national interest. In the last two decades, the Reserves have been the backbone of the United States Armed Forces, deploying in a range of critical missions at home and abroad. The demands placed on reservists are weighty:

calling up over one million members,[8] on average for nine months per deployment,[9] often to active warzones like Iraq and Afghanistan.[10] Multiple reserve deployments per servicemember are common: for instance, between 2001 and 2015, 59,000 reservists had two deployments and 39,000 reservists had three or more.[11] The losses have been heavy too: "[n]early 1,300 of their number have made the ultimate sacrifice" since September 11th.[12] To be clear, in this case, Plaintiff-Appellant is only asserting that short-term military leave[13] is comparable to jury duty, and neither he nor *amicus* are asking the Court to hold that civilian employers must compensate employees for all long-term military leave.

---

[8] Associated Press, *Reserve and National Guard Activations Top One Million Since 9/11* (Feb. 8, 2020), https://www.military.com/daily-news/2020/02/08/reserve-and-national-guard-activations-top-one-million-9-11.html.

[9] Jennie W. Wenger et al., *Examination of Recent Deployment Experience Across the Services and Components*, RAND Corporation at 3 (2018), https://www.rand.org/pubs/research_reports/RR1928.html?adbsc=social_20180320_2212921&adbid=975928167633334272&adbpl=tw&adbpr=22545453.

[10] *See, e.g.*, Mark F. Cancian, *U.S. Military Forces in FY 2020: Army*, Center for Strategic and International Studies (Oct. 15, 2019), https://www.csis.org/analysis/us-military-forces-fy-2020-army ("On average, about 25,000 Army Reservists and Guardsmen are mobilized at any time, mainly supporting operations in Iraq and Afghanistan").

[11] Wenger, *supra*, at 9.

[12] The Associate Press, *supra* (quoting ROA's Executive Director).

[13] *Miller v. City of Indianapolis*, 281 F.3d 648, 649 (7th Cir. 2002) ("The obligation of military reservists and the National Guard members consists generally of one 2–week period during the year and one weekend day per month.").

Public national security documents confirm the centrality of the Reserves. *See, e.g.*, Department of Defense Instruction, 1235.12, *Accessing the Reserve Components (RC)* at 2 (updated Feb. 28, 2017) ("It is [Department of Defense] policy that [the] [Reserve Component] provides an operational capability and strategic depth in support of the national defense strategy."). National security scholars likewise stress that "[t]oday the United States is relying on its National Guard and Reserves to an almost unprecedented degree," utilizing them for "the full range of military missions," including: "[t]he earliest days of major combat; [s]tability and reconstruction; [h]omeland defense and civil support; [p]artner capacity building; [and] [c]oordination with militaries all over the world."[14]

Second, were employers able to chip away at the equality rule, by carving out certain "rights and benefits" on the basis of parsimonious statutory interpretations, it would be problematic for reservists, potentially distracting on an individual level and detracting from retention writ large. Servicemembers juggling a civilian career, family, and reserve duties need not be nickeled and dimed for brief leave benefits, while their civilian counterparts use them breezily. Not only would that be unfair and unwarranted, but moreover, "[i]t would be a tragedy if the men and women who

[14] *See* Center for Strategic and International Studies, *Future of the National Guard and Reserves in the 21st Century*, https://www.csis.org/programs/international-security-program/isp-archives/defense-and-national-security-group/future (last accessed Apr. 22, 2020).

have risked their lives for their fellow Americans were penalized as a result of their services in our Armed Forces." 137 Cong. Rec. H2980 (May 14, 1991) (Statement of Rep. Smith). In the long run, degrading the equality rule – today in the form of paid leave, tomorrow perhaps by some other right or benefit – would undermine recruiting and retention.

Third, the Supreme Court has long recognized the "special solicitude" that Congress has "for the veterans' cause." *Shinseki v. Sanders*, 556 U.S. 396, 412 (2009); *accord United States v. Oregon,* 366 U.S. 643, 647 (1961) ("[t]he solicitude of Congress for veterans is of long standing."). This stems from a deep civic bond between servicemembers and the democratic government they serve. Expanded rights for reservists were enacted out of a "sense of obligation"—a solemn recognition of the need "to compensate for the disruption of careers and the financial setback that military service meant for many veterans." 140 Cong. Rec. S7670–71 (June 27, 1994) (Statement of Sen. Rockefeller). USERRA "reflect[ed]" the "great debt of gratitude" owed to those who served, and "signif[ied]" Congress's "respect" for "the people who served us so well." 137 Cong. Rec. H2965 (May 14, 1991) (Statement of Rep. Mazzoli). *Accord Sanders*, 556 U.S. at 412 (interpreting a veterans claims statute in light of the fact that a veteran "has performed an especially important service for the Nation, often at the risk of his or her own life.").

In this case, the district court in no way analyzed the text of the law or its legislative history. Rather, the district court's two-sentence rejection of Lieutenant Colonel White's claim and comparison to jury duty was rather unsolicitous, in addition to legally erroneous. In another context, the Supreme Court made just such a comparison, examining how "services in the army [and] on the jury, etc." were both "duties which individuals owe to the state. . . ." *Butler v. Perry*, 240 U.S. 328, 333 (1916).

In addition, reservists generally do not have a choice as to when to perform their short-term military training. When the district court sought to distinguish jury duty as something "all citizens . . . are subject to" – in contrast with military duties, which "are voluntarily joined" Appx95 – it skirted close to suggesting that servicemembers brought upon disfavored employment status upon themselves because they chose to join the armed forces in the first place. That cannot be right.[15]

In the end, this case matters to ROA because it speaks to the most basic of obligations to servicemembers. When our troops finally return home, after long deployments overseas, and perhaps multiple interruptions to their family life and

[15] The district court also noted, parenthetically, that military service is voluntary "in present times." Appx95. It is true that the U.S. military has been an all-volunteer force since the end of the Vietnam War, but the district court seemed to overlook of the applicability of the Selective Service System and overstate the uniformity of jury requirements in the fifty states, without citation or briefing on either issue.

career, we cannot guarantee them an easy transition back or wipe away what they have seen and sacrificed. But we can and must offer them at least the dignity of equal treatment in the workplace, on behalf of a grateful nation and as required by USERRA.

CONCLUSION

The district court's judgment should be reversed.

Respectfully submitted,

JOHN PAUL SCHNAPPER-CASTERAS
Counsel of Record
SCHNAPPER-CASTERAS PLLC
1717 K Street NW, Suite 900
Washington, DC 20006
(202) 630-3644
jpsc@schnappercasteras.com

SAMUEL F. WRIGHT
1513 Spring St., #52
Waco, TX 76704
(254) 743-9547

Counsel for Amicus Curiae

April 24, 2020

CERTIFICATE OF COMPLIANCE

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 3,751 words excluding the parts of the brief exempted by Rule 32(f). This brief complies with the typeface requirements of Rule 32(a)(5) and the type-style requirements of Rule 32(a)(6) because this brief has been prepared in proportionally spaced typeface using Microsoft Word in 14-point Times font.

/s/ John Paul Schnapper-Casteras
John Paul Schnapper-Casteras
Counsel for Amicus Curiae

CERTIFICATE OF SERVICE

I hereby certify that on April 24, 2020, I electronically filed the foregoing brief with the Clerk of the Court for the U.S. Court of Appeals for the Seventh Circuit by using the CM/ECF system. All participants are registered CM/ECF users and will be served by the CM/ECF system.

/s/ John Paul Schnapper-Casteras
John Paul Schnapper-Casteras
Counsel for Amicus Curiae