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National Guard Technicians Are Not Entitled To Receive Paid Military Leave under 5 U.S.C. § 6323(a)(1) *when they Are on AGR Duty.* They Are Entitled to Paid Military Leave when they Are on other forms of Military Duty.

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

1.2—USERRA forbids discrimination
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Q: I am a member of the Air National Guard[3] and a new member of the Reserve Organization of America (ROA).[4] When doing an Internet search to figure out my legal rights under the

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[1] I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2,000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouses' Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. I am the author of more than 90% of the articles, but we are always looking for "other than Sam" articles by other lawyers.

[2] BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 45 years, I have collaborated 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 mailto:swright@roa.org.

[3] Yes, members of the Air National Guard and Army National Guard, officers and enlisted, are eligible for full membership in our organization. We represent the interests of the 1,000,000 serving Reserve Component personnel, including the National Guard.

[4] At its 2018 annual convention, the Reserve Officers Association amended its Constitution to make all military personnel, from E-1 through O-10, eligible for full membership. The organization also adopted a new "doing business

Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws, I found your Law Review 19049 (June 2019). I contacted you by e-mail, and you were very generous with your time and expertise, helping me to understand my rights. Therefore, I joined your fine organization.

I am an Air National Guard technician, and I am currently away from my technician position on military leave for four years of Active Guard and Reserve (AGR) duty. My four-year AGR tour started on or about 10/1/2018, and it is scheduled to end soon, on 9/30/2022. I am serving on AGR duty, in exactly the same place where I had been working as a technician, but my active-duty pay is substantially greater than my technician compensation.

Last year, my four-year AGR tour was interrupted by a four-month deployment outside the United States, for a contingency operation. For that assignment, my AGR orders were amended, and for that 120-day period my orders cited section 12304(b) of Title 10 of the United States Code.[5]

After reading your Law Review 19049, I understand that I am not entitled to paid military leave under section 6323(a)(1) of Title 5 of the United States Code during my AGR duty, so I did not apply for that paid military leave. I understand that I am entitled to paid military leave under section 6323(a)(1) for periods when I am on active duty under Title 10 of the United States Code, so I applied for the paid leave for the 120 days when I was on active duty for overseas contingency service. My application was approved, and I was paid for this military leave as a technician, but only for the period that I was on overseas contingency duty.

Now, many months later, a senior officer within leadership of the National Guard in this State has asserted that I was not entitled to that paid military leave and has demanded that I pay it back. I think that I was entitled to the pay that I received, and I have refused to pay it back. What do you think?

Answer, bottom line up front

You are entitled to the pay that you received, and you should not have to pay it back. The senior officer is simply wrong in his legal interpretation.

On 12/23/2016, President Obama signed into law the National Defense Authorization Act (NDAA) for Fiscal Year 2017. One small provision of that massive act amended Title 32 of the United States Code to provide that National Guard technicians like you are not entitled (starting on 12/13/2016) to paid military leave under section 6323(a)(1) of Title 5 *while performing Active Guard and*

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as" name—the Reserve Organization of America. The point of the name change is to emphasize that the organization now represents and admits to membership all military personnel, from the most junior enlisted personnel to the most senior officers.

[5] 10 U.S.C. § 12304(b).

Reserve (AGR) duty.[6] The 2016 amendment only applies to receipt of paid military leave while performing AGR duty. Technicians are still entitled to receive paid military leave while performing other forms of full-time military duty.[7]

Explanation

As an Air National Guard technician, you have a hybrid Federal-State status.[8] You are a Federal employee for most purposes,[9] including for purposes of the right to receive paid military leave under section 6323(a)(1) of Title 5 of the United States Code.[10] But USERRA's definition of "employer" includes the following sentence: "In the case of a National Guard technician employed under section 709 of Title 32, the term 'employer' means the adjutant general of the State in which the technician is employed."[11] The Adjutant General is a State official, and thus National Guard technicians are State employees for USERRA purposes.

National Guard technicians also have a hybrid civilian-military status. The technician is a civilian employee of the Department of the Air Force (for Air National Guard technicians) or of the Department of the Army (for Army National Guard technicians), but the technician is required, as a condition of employment, to maintain his or her membership in one of the National Guard units or organizations that he or she supports.[12] During drill weekends and annual training, the technician is usually present and participating in his or her military capacity, along with the traditional National Guard members.

Section 6323(a)(1) of Title 5 provides:

> **(a)**
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> **(1)** Subject to paragraph (2) of this subsection, an employee as defined by section 2105 of this title or an individual employed by the government of the District of Columbia, permanent or temporary indefinite, is entitled to leave without loss in pay, time, or performance or efficiency rating for *active duty*, inactive-duty training (as defined in section 101 of title 37), funeral honors duty (as described in section 12503 of title 10 and section 115 of title 32), or engaging in field or coast defense training under sections 502–505 of title 32 as a Reserve of the armed forces or member of the National Guard. Leave under this subsection accrues for an employee or individual at the rate of 15 days per fiscal

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[6] Public Law 114-328, Div. A, Subtitle B, §§ 512(a), (b), 513, 130 Stat. 2112, 2113 (Dec. 23, 2016).
[7] *See* Law Review 17013 (February 2017).
[8] *See generally* Law Review 22035 (June 2022) for a detailed discussion of the role and status of National Guard technicians.
[9] Title 32 of the United States Code, which governs the National Guard, provides: "A technician employed under subsection (a) [of section 709] is an employee of the Department of the Army or the Department of the Air Force, as the case may be, and an employee of the United States." 32 U.S.C. § 709(e).
[10] 5 U.S.C. § 6323(a)(1).
[11] 38 U.S.C. § 4303(4)(B).
[12] *See* 32 U.S.C. § 709(b)(2).

year and, to the extent that it is not used in a fiscal year, accumulates for use in the succeeding fiscal year until it totals 15 days at the beginning of a fiscal year.[13]

Section 709(g) of title 32[14] provides:

(1) Except as provided in subsection (f) [not relevant here], sections 2108, 3502, 7511, and 7512 of title 5 do not apply to a person employed under this chapter [a National Guard technician].
(2) In addition to the sections referred to in paragraph (1), section 6323(a)(1) of title 5 also does not apply to *a person who is performing active Guard and Reserve duty* (as that term is defined in section 101(d)(6) of title 10).[15]

The definitions section of Title 10 defines the term "active Guard and Reserve duty" as follows:

(A) The term "active Guard and Reserve duty" means active duty performed by a member of a reserve component of the Army, Navy, Air Force, or Marine Corps, *or full-time National Guard duty* performed by a member of the National Guard pursuant to an order to full-time National Guard duty, for a period of 180 consecutive days or more for the purpose of organizing, administering, recruiting, instructing, or training the reserve components.

(B) Such term does not include the following:

(i) Duty performed as a member of the Reserve Forces Policy Board provided for under section 10301 of this title.

(ii) Duty performed as a property and fiscal officer under section 708 of title 32.

(iii) Duty performed for the purpose of interdiction and counter-drug activities for which funds have been provided under section 112 of title 32.

(iv) Duty performed as a general or flag officer.

(v) Service as a State director of the Selective Service System under section 10(b)(2) of the Military Selective Service Act (50 U.S.C. 3809(b)(2)).[16]

The definition of "active Guard and Reserve duty" includes the term "full-time National Guard duty." That term is defined as follows:

The term "full-time National Guard duty" means training or other duty, other than inactive duty, performed by a member of the Army National Guard of the United States or the Air

[13] 5 U.S.C. § 6323(a)(1) (emphasis supplied).
[14] Title 32 applies to the National Guard.
[15] 32 U.S.C. § 709(g) (emphasis supplied). This language was added by Congress in 2016. *See* Public Law 114-328, Div. A, Subtitle B, §§ 512(a), (b), 513, 130 Stat. 2112, 2113 (Dec. 23, 2016).
[16] 10 U.S.C. § 101(d)(6) (emphasis supplied).

> National Guard of the United States in the member's status as a member of the National Guard of a State or territory, the Commonwealth of Puerto Rico, or the District of Columbia under section 316, 502, 503, 504, or 505 of title 32 for which the member is entitled to pay from the United States or for which the member has waived pay from the United States.[17]

Reading these provisions together, the only reasonable interpretation is that National Guard technicians are ineligible for paid military leave under section 6323(a)(1) when they are performing "active Guard and Reserve duty" or "full-time National Guard duty" as those terms are defined in section 101 of Title 10, *but National Guard technicians are eligible to receive paid military leave under section 6323(a)(1) when they perform other forms of military duty,* including active duty under section 12304(b) of title 10, as in your case.

The everyday work of courts includes the interpretation of statutes, and over the centuries the courts in the United States, Great Britain, and other common-law countries have developed *rules of statutory construction.* The definitive recent treatise on statutory construction is *Reading Law: The Interpretation of Legal Texts.*[18]

The rule of statutory construction that applies here is *expressio unius est exclusio alterius.* That is Latin for "to express one is to exclude all the others." In their treatise, Justice Scalia and Professor Garner explain this rule as follows:

> *Expressio unius,* also known as *inclusio unius,* is the Latin name for the communicative device known as negative implication. In English, it is known as the negative implication canon. We encounter this device—and recognize it—frequently in our daily lives. When a car dealer promises a low financing rate for "purchasers with good credit," it is entirely clear that the rate is not available to purchasers with spotty credit.[19]

We must apply the common-sense rules of statutory interpretation to these provisions. It is clear that you were entitled to paid military leave under section 6323(a)(1) of Title 5 during your 120-day tour of overseas contingency duty last year. You are entitled to the money, and you should not be required to repay it.

Q: In August 2018, when I learned that I would be receiving orders for a four-year AGR tour starting on or about 10/1/2018, I gave both oral and written notice to my direct supervisor and also to The Adjutant General (TAG) of the State.[20] My direct supervisor told me that I was required to "out-process" from my technician position before I entered full-time AGR duty, and he "highly suggested" (ordered) me to do that. I spoke to the Human Relations Office (HRO), and the HRO

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[17] 10 U.S.C. § 101(d)(5).

[18] By Justice Antonin Scalia and Professor Bryan A. Garner, Thomson/West Publishing Company, 2012.

[19] *Reading Law,* page 107

[20] In each State, the TAG is the State official who is in charge of the Army National Guard and Air National Guard of that State.

Director informed me that I was not legally required to out-process from my technician position provided I remained in a "Leave Without Pay—Uniformed Service" (LWOP-US) status during my full-time military duty.

I decided not to out-process from my technician status because I was not required to do so, according to the HRO Director, and also because I knew that it was possible that I would be deployed for a contingency operation at least once during my four-year AGR tour and I wanted to maintain the possibility that I might receive paid military leave under section 6323(a)(1) during such a contingency tour. Additionally, I did not want to out-process because I wanted to maintain the possibility of returning to the technician position upon completing my four-year AGR tour.

The direct supervisor who "ordered" me to out-process is the same senior officer who is now asserting that I was not entitled to paid military leave for the 120 days of overseas contingency active duty that I performed in 2021. He said that if I had complied with his order to out-process in 2018, as he claims that I was required to do, I would not have been eligible for paid military leave in 2021. What do you say about this assertion?

A: If ordering you to out-process would preclude you from receiving paid military leave under section 6323(a)(1) or from having the right to reemployment upon completing your four-year AGR tour, that was an unlawful order and you were not required to comply.

Q: When I gave notice in 2018 that I was leaving my technician position to serve on full-time AGR duty, what was supposed to happen to my technician position?

A: Section 4331(b)(1) of USERRA[21] gives the Director of the United States Office of Personnel Management (OPM) the authority to promulgate regulations about the application of USERRA to Federal executive agencies.[22] The OPM Director exercised that authority and promulgated such regulations, and those regulations are codified in Part 353 of Title 5 of the Code of Federal Regulations.[23] The pertinent subsection of those regulations is as follows:

> An employee absent because of service in the uniformed services is to be carried on leave without pay unless the employee elects to use other leave or *freely and knowingly provides written notice of intent not to return to a position of employment with the agency*, in which case the employee can be separated. (Note: A separation under this provision affects only the employee's seniority while gone; it does not affect his or her restoration rights.)[24]

[21] 38 U.S.C. § 4331(b)(1).
[22] As I have explained, a technician is a Federal employee for most purposes.
[23] 5 C.F.R. Part 353.
[24] 5 C.F.R. § 353.106(a) (emphasis supplied).

As I have stated, above, National Guard technicians have a hybrid Federal-State status, so perhaps we should look to the Department of Labor (DOL) USERRA regulations. Section 4331(a) of USERRA[25] gives DOL the authority to promulgate regulations about the application of USERRA to State and local governments and private employers, and DOL has promulgated such regulations. The DOL USERRA regulations are codified in Title 20 of the Code of Federal Regulations, Part 1002.[26] The pertinent section of the DOL USERRA regulations is as follows:

> **What is the employee's status with his or her civilian employer while performing service in the uniformed services?**
>
> During a period of service in the uniformed services, the employee is deemed to be on furlough or leave of absence from the civilian employer. In this status, the employee is entitled to the non-seniority rights and benefits generally provided by the employer to other employees with similar seniority, status, and pay that are on furlough or leave of absence. *Entitlement to these non-seniority rights and benefits is not dependent on how the employer characterizes the employee's status during a period of service. For example, if the employer characterizes the employee as "terminated" during the period of uniformed service, this characterization cannot be used to avoid USERRA's requirement that the employee be deemed on furlough or leave of absence, and therefore entitled to the non-seniority rights and benefits generally provided to employees on furlough or leave of absence.*[27]

The DOL USERRA regulations and the OPM USERRA regulations are consistent with each other on this critical point. Regardless of which set of regulations applies, you are entitled to the paid military leave that you received in 2021 and forcing you to repay that money would violate USERRA.

You gave notice that you were leaving your position to perform "service in the uniformed services" as required by USERRA.[28] You did not "freely and knowingly provide written notice of intent not to return."[29] Accordingly, the proper action was to put you on leave without pay status, and that is exactly what the HRO did. You were not required to "out-process" or resign from your technician position.

In 2013, the United States Department of Justice (DOJ) sued the State of Missouri, the Missouri National Guard, and the Adjutant General of Missouri, contending that these defendants violated USERRA when they required dual-status technicians to resign from their technician positions as a condition of applying for AGR tours. This was a "pure question of law" case, in that the facts were not in dispute and the dispute was about the meaning of the law (USERRA) as applied to these

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[25] 38 U.S.C. § 4331(a).
[26] 20 C.F.R. Part 1002.
[27] 20 C.F.R. § 1002.149 (bold question in original, emphasis by italics supplied).
[28] 38 U.S.C. § 4312(a)(1).
[29] 38 U.S.C. § 4316(b)(2)(B).

agreed-upon facts. The case was decided on cross motions for summary judgment. The judge granted DOJ's motion for summary judgment and denied Missouri's motion for summary judgment.

The case was decided by Judge Nanette K. Laughrey of the United States District Court for the Western District of Missouri. In her scholarly opinion, Judge Laughrey wrote:

> The United States contends that it is entitled to summary judgment because the [Missouri] Guard's policy of refusing to allow dual status technicians entering the AGR program to assume LWOP-US status and denying them the fifteen days of [paid] military leave afforded to LWOP-US status-holders violates USERRA. Defendants argue that the Guard's policy is permissible in that it does not affect any USERRA-protected rights. The Court holds that the Defendants' failure to provide [paid] military leave to Plaintiffs violates USERRA. Military leave is a benefit mandated by USERRA and the AGR Checklist and Statement of Understanding are not sufficient to waive that right.[30]

Judge Laughrey also wrote:

> Sections 4311(a) and 4316(b)(1) explicitly protect benefits of employment, which USERRA broadly defines as including "any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed)[31] that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice. *Dorris v. TXD Services LP,* 753 F.3d 740, 745 (8th Cir. 2014). Federal law is well settled that "military leave afforded by 5 U.S.C. § 6323(a) is a benefit of employment." *Pucilowski v. Department of Justice,* 498 F.3d 1341, 1344 (Fed. Cir. 2007), citing *Butterbaugh v. Department of Justice,* 336 F.3d 1332, 1336 (Fed. Cir. 2003). Therefore, eligible military personnel are entitled to military leave from their civilian employer as a USERRA-protected benefit. *See* 38 U.S.C. § 4316(b)(1).
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> The United States argues that Defendants violate 38 U.S.C. § 4316(b)(1)(A) when they classify dual status technicians taking full-time positions in the AGR program as Separation-US rather than LWOP-US. The United States argues that all absent civilian employees must be "deemed to be on furlough or leave of absence" and any classification to the contrary violates USERRA. However, the Code of Federal Regulations, as cited by the 8th Circuit, makes clear that an employer's classification scheme is "of no effect" in the ultimate determination of whether the employer's actions violated USERRA. *Dorris v. TXD Services LP,* 753 F.3d 740, 744 (8th Cir. 2014). *Individuals on leave to perform military service are*

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[30] *United States v. Missouri,* 67 F. Supp. 3d 1047, 1050 (W.D. Mo. 2014).

[31] In 2010, Congress amended USERRA, and the phrase "including wages or salary for work performed" was substituted for "other than wages or salary for work performed." Public Law 111-275, Title VII, §§ 701(a), 702(a), October 13, 2010, 124 Stat. 2887.

entitled to benefits of employment regardless of how an employer classifies the servicemember's absence.[32]

Judge Laughrey's holding directly contradicts the senior officer's principal argument—that if you had "out-processed" as he "strongly suggested" that you do, you would not have been entitled to and would not have received the paid military leave that you received for 120 days of overseas contingency duty that you performed in 2021. Your rights under USERRA are determined by applying USERRA to the facts of the situation, not by the label that you or the employer assigned to your status.

Several State Adjutants General (TAGs) tried to deprive National Guard technicians of paid military leave under section 6323(a)(1) of the United States Code by forcing them to resign or "out-process" from their technician positions if they wanted to be considered for AGR tours, but Judge Laughrey forcefully rejected that effort. When that effort did not work, they changed their strategy, and they persuaded Congress to amend section 709(g) of Title 32 and provide that National Guard technicians are not entitled to paid military leave under section 6323(a)(1) *when they are on AGR duty.*[33] As I have explained above, you are not entitled to paid military leave under section 6323(a)(1) for your AGR period, *but you are entitled to paid military leave for the 120 days of overseas contingency service that you performed in 2021.*

Q: Thank you for giving me the legal arguments and citations to use in explaining to the TAG of my State that I am entitled to the paid military leave that I received in 2021 for the 120 days that I was outside the United States on contingency duty and that I should not have to repay that money. I think that I can persuade the TAG, but what if he agrees with the senior officer who is arguing that I should be required to repay that money? If the National Guard collects that money from me by docking my AGR pay, or my technician pay after I return to work, what remedy do I have?

A: For USERRA purposes, your employer is the TAG of the State, and the TAG is a State official. You can sue the State, the National Guard of your State, and the TAG, as was done in *United States v. Missouri,* the case that I discussed in detail and quoted from extensively above. There are two ways that you can initiate and prosecute such a lawsuit. You can rely on DOL and DOJ, as the individual plaintiffs did in *United States v. Missouri,* or you can retain your own lawyer and sue the TAG, the National Guard of your State, and your State in Federal District Court.

The DOL-DOJ option

Like any service member or veteran, you can file a formal, written USERRA complaint against your employer (Federal, State, local, or private sector) with the Veterans' Employment and Training

[32] *Id.,* at 1050-51 (emphasis supplied).
[33] *See* Public Law 114-328, Div. A, Title V, Subtitle B, §§ 512(a), (b), 513, 130 Stat. 2112, 2113 (Dec. 23, 2016).

Service of DOL (DOL-VETS).[34] That agency, DOL-VETS, is then required to investigate your complaint.[35] DOL-VETS has subpoena authority and can force the employer and other persons or entities to provide testimony and documentary evidence.[36] DOL-VETS is expected to complete its investigation within 90 days after receiving your complaint.[37]

After completing its investigation, DOL-VETS is required to notify you, in writing, of the results of the investigation and of your right to request referral to DOJ.[38] If you request referral, DOL-VETS must refer the case file to DOJ within 60 days after receiving your referral request.[39] If DOJ is reasonably satisfied that you are entitled to the USERRA benefits that you seek, it may act as your attorney in filing and prosecuting the civil action.[40] If, as in your case, the defendant-employer is a State government, DOJ files the lawsuit in the name of the United States, as plaintiff.[41] When DOJ receives a USERRA referral from DOL-VETS, it must decide within 60 days whether it will represent you and notify you in writing of that decision.[42]

The option of proceeding with your own attorney

If DOJ notifies you that it has decided not to represent you, you can then retain an attorney[43] and sue the State, its National Guard, and its TAG in the appropriate United States District Court.[44] When DOL-VETS notifies you of the results of its investigation, you can decide not to request referral to DOJ, and you can retain private counsel and sue.[45] You can also choose to bypass DOL-VETS and DOJ altogether. You can retain private counsel and sue without ever having filed a complaint with DOL-VETS.[46] If you proceed with private counsel and prevail, the court may (in its discretion) order the employer-defendant to pay your "reasonable attorney fees, expert witness fees, and other litigation expenses."[47]

Complication because the defendant-employer is a State

"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."[48] Very recently

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[34] 38 U.S.C. § 4322(a).
[35] 38 U.S.C. § 4322(d).
[36] 38 U.S.C. § 4326.
[37] 38 U.S.C. § 4322(f).
[38] 38 U.S.C. § 4322(e).
[39] 38 U.S.C. § 4323(a)(1).
[40] Id.
[41] Id. (final sentence).
[42] 38 U.S.C. § 4323(a)(2).
[43] You can also represent yourself, but I do not recommend that you do so. Abraham Lincoln said: "A man who represents himself has a fool for a client."
[44] 38 U.S.C. § 4323(a)(3)(C).
[45] 38 U.S.C. § 4323(a)(3)(B).
[46] 38 U.S.C. § 4323(a)(3)(A).
[47] 38 U.S.C. § 4323(h)(2).
[48] 38 U.S.C. § 4323(b)(2).

(6/29/2022), the Supreme Court decided that this section means that an individual who claims that a State government agency (as employer) has violated his or her USERRA rights can sue the State agency in State court, and the State court must hear and adjudicate the claim, without regard to State law and State claims of sovereign immunity.[49]

Please join or support ROA

This article is one of 2,000-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 on 10/1/1922 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 advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

Through these articles, and by other means, including amicus curiae ("friend of the court") briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members 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 eight[50] uniformed services, you are eligible for membership in ROA, and a one-year membership only costs $20 or $450 for a life membership. 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. 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 contribute to ROA. [51]

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[49] *Torres v. Texas Department of Public Safety,* 142 S. Ct. 2455 (2022). *See generally* Law Review 22001 (January 2022) and Law Review 22046 (July 2022) concerning the implications of *Torres.*

[50] Congress recently established the United States Space Force as the 8th uniformed service.

[51] You can contribute on-line at www.roa.org.