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Why Does ROA File Amicus Curiae Briefs in the United States Supreme Court and other Appellate Courts?

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1.4—USERRA Enforcement.

9.0—Miscellaneous.

Q: I am a retired Army Reserve Colonel and a life member of the Reserve Organization of America (ROA).³ I have heard that ROA drafts

¹I invite the reader's attention to www.roa.org/lawcenter. You will find more than 2200 "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 (Wright) am the author of more than two thousand 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 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 SWright@roa.org.

³The Reserve Officers Association was founded in 1922 and recently celebrated its centennial. In 2018, ROA members amended the ROA Constitution and made all service members, enlisted as well as officers, eligible for membership. ROA adopted the "doing business as" name of Reserve Organization of America to emphasize that we represent and seek to recruit as members enlisted personnel as well as officers.

and files amicus curiae briefs in the United States Supreme Court and other appellate courts. First, what is an “amicus curiae brief?”

A: The term “amicus curiae brief” has been defined as follows:

The term is used to refer to a legal brief, called an amicus brief, that may be filed with an appellate court, including a supreme court, by a party not involved with a current case, but in support of one side or another on the legal issue at hand.⁴

Q: What does ROA seek to accomplish by filing amicus briefs?

A: We draft and file amicus briefs in cases involving the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those who serve our country in uniform. We urge the courts, including the United States Supreme Court, to interpret those laws liberally for the benefit of those who are serving or have served in our nation’s armed forces. In its first case construing the 1940 reemployment statute, the Supreme Court held:

This legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of great need. *See Boone v. Lightner*, 319 U.S. 561, 575. And no practice of employers or agreements between employers and unions can cut down the service adjustment benefits which Congress has secured the veteran under the Act. Our problem is to construe the separate parts of the Act as parts of an organic whole and give

⁴ See legaldictionary.net/amicus-brief/.

each as liberal a construction for the benefit of the veteran as a harmonious interplay of the separate provisions permits.⁵

An attorney who previously served for 17 years as an appellate judge has written:

Why File an Amicus Brief?

There are good reasons to file an amicus brief. It all depends on what you're trying to achieve. The following are some of the best reasons for employing this important tool.

1) The Outcome Sets a Precedent

In some appellate court cases, the decision can be a precedent-setting one. This means a binding ruling for future court cases. If you're currently involved in a similar case in an appellate court, you should seriously consider filing an amicus brief to share your relevant views on the matter. Taking this step may ensure a favorable ruling in your case.

Another good reason lawyers may write amicus briefs is to inform the appellate court of rulings from other states. This tactic can help keep a level of consistency in orders from state to state. It can also give the ruling state valuable knowledge about how different courts have seen this type of case.

2) The Outcome Directly Affects your Group's Members

Many entities choose to file an amicus brief when the outcome of the case directly affects their members. An amicus brief will allow you to speak to the appellate court on the subject matter at hand. You can advise the court on how a specific ruling on the case will

⁵ Id. at 285.+

affect your members and the organization that you're a part of. You can also highlight the potential legal, economic or social implications of a particular ruling, including telling the court about the impact of a possible decision on an industry, or on individuals or groups. And an amicus brief can explain why a particular holding by the court might be unworkable in other situations. You would do this to help the court understand the real-world consequences of a particular decision.

3) You Have Expert Knowledge on the Subject

Another common reason to file an amicus brief is that you have extensive knowledge of a subject, and you want everyone to share that. Your goal would also be to make the court privy to this knowledge by educating the judges. This type of brief is usually reserved for field experts and academics who can bring experience to the table.

4) You Want to Raise a Person's Profile

For those who are experts or academics in a particular field, amicus briefs are a great way to get your name out there. Filing an amicus brief lets many people know that you have expert capabilities in an area and that you're available as an expert witness on the subject. Ideally, you'd also be trying to educate the court on the subject matter while furthering your community profile on that subject matter.

5) You Want to Educate the Court

Non-profits also find amicus briefs are a great way to educate the court about specific issues. These organizations tend to have particular world views on certain subjects that they've studied extensively. When a court's decision may end up affecting a non-

profit institution, or their goals, for example, the organization may file an amicus brief.

6) It's a Great Marketing Tool

I can't talk about filing amicus briefs without sharing their excellent marketing potential. When utilized correctly, this type of brief can display you and your organization in light of how much you care about a specific issue. It can also demonstrate your ability to take action. These briefs are perfect for those looking to receive some positive press coverage, particularly from a high-profile case.⁶

I believe that the amicus curiae briefs that we have filed have served all of these important purposes.

Q: I know that lawyers are expensive. How has ROA been able to afford filing drafting and filing these briefs?

A: When appropriate, ROA drafts and files amicus briefs in the Supreme Court and other courts, advocating for the rights and interests of those who serve our country in uniform. The last five ROA amicus briefs have been done for us by Wiley Rein LLP, a top law firm in our nation's capital. The work is done *pro bono publico*, or for the good of the public. That means that ROA does not pay any money for this excellent service, which is worth millions of dollars cumulatively. Bravo Zulu to Theodore A. Howard, Scott Felder, and the other lawyers at Wiley Rein LLP.

⁶ <https://www.sgrlaw.com/ttl-articles/why-and-when-to-file-an-amicus-brief/#.>

Over the past three years, Wiley Rein has drafted and filed five amicus briefs on behalf of ROA. At the end of this article, we have placed a link to two of those briefs.

Please join or support ROA

This article is one of 2,100-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. We add new articles each month.

ROA is the nation’s only national military organization that exclusively and solely supports the nation’s reserve components, including the Coast Guard Reserve (6,179 members), the Marine Corps Reserve (32,599 members), the Navy Reserve (55,224 members), the Air Force Reserve (68,048 members), the Air National Guard (104,984 members), the Army Reserve (176,171 members), and the Army National Guard (329,705 members).⁷

ROA is more than a century old—on 10/2/1922 a group of veterans of “The Great War,” as World War I was then known, founded our organization at a meeting in Washington’s historic Willard Hotel. The meeting was called by General of the Armies John J. Pershing, who had commanded American troops in the recently concluded “Great War.” 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 more than a century, we have

⁷ See <https://crsreports.congress.gov/product/pdf/IF/IF10540/>. These are the authorized figures as of 9/30/2022.

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 advocate for the rights and interests of service members and educate service members, military spouses, attorneys, judges, employers, Department of Labor (DOL) investigators, Employer Support of the Guard and Reserve (ESGR) volunteers, congressional and state legislators and 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 eight⁸ 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 <https://www.roa.org/page/memberoptions>

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:

⁸ Congress recently established the United States Space Force as the eighth uniformed service.

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On 12/23/2020, Wiley Rein LLP filed this amicus curiae brief in the United States Supreme Court, on behalf of the Reserve Organization of America, urging the Court to grant certiorari in *Torres v. Texas Department of Public Safety*:

https://www.supremecourt.gov/DocketPDF/20/20-603/164584/20201223114222796_Amicus%20Brief.pdf

On 2/7/2022, after the Supreme Court granted certiorari (agreed to hear and decide the case), Wiley Rein LLP filed this amicus brief on behalf of ROA:

https://www.supremecourt.gov/DocketPDF/20/20-603/213536/20220207162553666_20-603%20Amicus%20Brief.pdf

On 6/29/2022, the United States Supreme Court agreed with Captain Torres' position and ROA's position that USERRA has validly abrogated the sovereign immunity of Texas and the other 49 states with respect to complying with USERRA. See *Torres v. Texas Department of Public Safety*, 142 S.Ct. 2455 (2022). This precedent is exceedingly important because 10% of National Guard and Reserve part-timers (77,000 of 770,000) have civilian jobs working for state government agencies.

⁹ You can also contribute on-line at www.roa.org.

I discuss the important ramifications of *Torres* in Law Review 22001 (January 2022), Law Review 22061 (October 2022), Law Review 23013 (March 2023), and Law Review 23061 (November 2023).