

Congress of the United States
Washington, DC 20515

July 2, 2021

The Honorable Elizabeth Prelogar
Acting Solicitor General
Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, DC 20530-0001

Dear Acting Solicitor General Prelogar:

The Supreme Court has requested that the Department of Justice provide the views of the United States in *Torres v. Texas Department of Public Safety*, S.Ct. No. 20-603, a case in which a Texas court of appeals held that veterans and servicemembers are without remedy under the Uniformed Services Employment and Reemployment Rights Act (USERRA) if a State discriminates against them on the basis of their service. Even though Congress drafted USERRA specifically to prevent states from engaging in discrimination, the Texas court held that states are free to discriminate because USERRA is purportedly unconstitutional under the state sovereign immunity doctrine. There are now five states where veterans have no recourse when their State employer discriminates them on the basis of their service.

We are concerned about the impact this novel and incorrect constitutional holding will have on veterans and servicemembers. We are also concerned that it will hinder Congress's ability to ensure the national defense. We therefore request that the Department of Justice file a brief urging the Supreme Court to grant this case, reverse the decision below, and affirm Congress's broad authority to legislate in support of its War Powers.

As you know, Congress extended USERRA's cause of action to States and local governments because "some State and local jurisdictions ha[d] demonstrated a reluctance, and even an unwillingness, to reemploy the veteran. Or if they [did], they seem[ed] unwilling to grant them seniority or other benefits which would have [accrued] to them had they not served their country in the military." Rep. of Comm. on Vets' Affs., S. Rep. No. 93- 907, at 109-10 (1974). These were "school teachers, policemen, fireman, and other State, county, and city employees." *Id.* That sort of discrimination not only harms our "ability to provide for a strong national defense," H.R. Rep. No. 105-448, at 5 (1998), it diminishes the morale of our armed forces and it destroys veterans' and servicemembers' lives and livelihoods.

Congress's War Powers are its most important powers. They are the federal government's most vital sovereign authority, used to protect the Nation from foreign threats. As Professor Jonathan Seigel told a Committee of the House in 1996 shortly after the Supreme Court's decision in *Seminole Tribe v. Florida*, 517 U.S. 44 (1996), "if any of Congress' Article I powers carry with them the ability to abrogate states' sovereign immunity, certainly, the military powers should be first on the list." *Hearing on USERRA, Veterans' Preference in the VA Education Services Draft Discussion Bill: Hearing Before the Subcomm. on Educ. Training, Emp't and Hous. of the H. Comm. on Veterans' Affairs*, 104th Cong., 2d Sess. 20 (1996). The Founding Fathers agreed. As Alexander Hamilton wrote in Federalist No. 23, "[t]he circumstances that endanger the safety of

nations are infinite, and for this reason no constitutional shackles can wisely be imposed on the power to which the care of it is committed.” *The Federalist* No. 23, at 149 (Clinton Rossiter ed., 1961).

Our veterans and servicemembers are America’s most important national resource. Not only do they keep this nation safe by sacrificing their lives and bodies overseas, they teach our children the value of service, the gravity of war, and the price of freedom. We owe our veterans and servicemembers a debt we can never fully repay. We should demand that they sacrifice even more than they already have when they return from service. They deserve to keep their jobs and seniority when they return from serving our nation overseas.

We encourage you to publicly acknowledge the importance of our veterans and servicemembers and the enormity of the court of appeals’ error. Congress must have every weapon in its arsenal when it comes to preparing for and waging war.

Sincerely,



Joaquin Castro
Member of Congress

/s/

Raul Ruiz
Member of Congress

/s/

Tim Ryan
Member of Congress

/s/

Derek Kilmer
Member of Congress

/s/

Lloyd Doggett
Member of Congress

/s/

Seth Moulton
Member of Congress

/s/

James P. McGovern
Member of Congress