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## U.S. Supreme Court Holds USERRA Damages Claims Viable Against Arms of the State in Federal Court

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Earlier this year, in *Torres v. Texas Department of Public Safety* (June 29, 2022) \_\_\_ U.S. \_\_\_ [142 S.Ct. 2455], the United States Supreme Court held that claims for damages under the federally enacted Uniformed Services Employment and Reemployment Right Act (USERRA) are permissible in federal court against states and arms of the state, such as California universities, community college districts, and school districts, thereby superseding Ninth Circuit precedent which concluded differently.

**Background**

Leroy Torres, the plaintiff, enlisted in the U.S. Army Reserve in 1989. In 1998, he began working for the Texas Department of Public Safety (DPS) as a trooper, where he remained employed until his deployment to Iraq in 2007. In 2008, he was honorably discharged and sought to be rehired by the Texas DPS. However, due to a lung condition he acquired in Iraq, Torres requested employment with DPS in a different position from the one he held before his deployment. Instead, DPS offered Torres only a “temporary duty offer,” which he declined. Torres sued DPS in 2017, alleging that the agency’s failure to offer him a job that would accommodate his disability violated the USERRA.

The USERRA establishes rights for servicemembers, largely in relation to their return to employment following service time. The statute’s purpose is to protect servicemembers’ and veterans’ civilian employment rights from discrimination based on their military service or affiliation.

Prior to the Supreme Court’s opinion in *Torres*, the Ninth Circuit Court of Appeals had issued two opinions regarding the USERRA: *Townsend v. University of Alaska* (9th Cir. 2008) 543 F.3d 478, and *Rimando v. Alum Rock Union Elementary School* (9th Cir. 2009) 356 F. App’x 989 (unpublished) (in which Lozano Smith represented the district). In those cases, the Court of Appeals held actions for damages by individuals in federal court under the USERRA against the state or arms of the state (such as California school and community college districts) were barred due to the Eleventh Amendment. The Eleventh Amendment generally bars federal jurisdiction over private actions between a state and its own citizens, unless Congress has explicitly abrogated state sovereignty in its valid creation of a cause of action.

The *Torres* opinion fundamentally changes the scope of the USERRA and now supersedes these decisions.

## The *Torres* Opinion

Under our system of government, Congress does not have plenary power to act, nor does it have general police powers; rather, Congress only has those powers enumerated in the U.S. Constitution. Article 1 of the U.S. Constitution has been interpreted to give Congress broad “War Powers,” including under the “Army and Navy Clauses.” The question in *Torres* centered around whether these powers include the power of Congress to override state sovereignty in cases such as this one. The Court extensively discussed Congress’s ability to approve legal actions for damages against states in some circumstances. Under other recent Supreme Court precedent, the *Torres* Court analyzed whether the states had sacrificed sovereign immunity against lawsuits for private damages in the area of laws relating to the armed forces. Answering this question, the Court held that the states had sacrificed their sovereign immunity in this subject area via the states’ ratification of the U.S. Constitution.

As a result, state sovereignty yields to the federal power to raise and support armed forces. The USERRA falls within the category of laws under Article 1 of the Constitution’s War Powers created to uphold a national military, thereby superseding the states’ interest in sovereignty. Based upon that conclusion, private individuals may bring suits for damages under the USERRA in federal court against a state or its political subdivisions (again, including California school and community college districts, cities, counties, and some other public agencies), and the Eleventh Amendment will not bar such suits.

## Critical Takeaways

The *Torres* opinion permits servicemembers to file damages actions in federal (and State) court against California community college and school districts. The Ninth Circuit’s *Townsend* and *Rimando* opinions no longer bar such suits via Eleventh Amendment immunity. California employers should be aware of their obligations to comply with servicemembers’ rights when returning from periods of service and otherwise, under both the USERRA and parallel provisions of the California Veterans Code.

If you have any questions about the *Torres* decision, the USERRA, or labor and employment questions in general, please contact the authors of this Client News Brief or an attorney at one of our [eight offices](#) located statewide. You can also subscribe to our [podcasts](#), follow us on [Facebook](#), [Twitter](#) and [LinkedIn](#) or download our [mobile app](#).

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