

IN THE SUPREME COURT OF THE UNITED STATES

No. 20-603

LE ROY TORRES, PETITIONER

v.

TEXAS DEPARTMENT OF PUBLIC SAFETY

ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS OF TEXAS,
THIRTEENTH DISTRICT

MOTION OF THE UNITED STATES FOR LEAVE TO PARTICIPATE
IN ORAL ARGUMENT AS AMICUS CURIAE, FOR DIVIDED ARGUMENT,
AND FOR ENLARGEMENT OF TIME FOR ARGUMENT

Pursuant to Rules 21 and 28.4 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as an amicus curiae supporting petitioner; that the time allotted for oral argument be enlarged to 70 minutes; and that the time for argument be allotted as follows: 20 minutes for petitioner, 15 minutes for the United States, and 35 minutes for respondent. Petitioner and respondent both consent to this motion.

This case presents the question whether Congress, acting pursuant to its powers to raise Armies and provide and maintain a Navy, may authorize private damages suits against state employers based on violations of the Uniformed Services Employment and

Reemployment Rights Act of 1994 (USERRA), 38 U.S.C. 4301 et seq. The United States has filed a brief as amicus curiae supporting petitioner, contending that the USERRA provision at issue was validly enacted pursuant to Congress's army and navy powers and that it does not violate respondent's sovereign immunity because the structure of the Constitution divests States of immunity to suits authorized by Congress pursuant to those powers.

The United States has a substantial interest in this matter. The Executive Branch typically defends the constitutionality of federal statutes, and the government's interest in this case is particularly significant because the USERRA provision at issue implicates the federal government's war powers. The government defended the constitutionality of the provision in an amicus brief filed at the Court's invitation at the petition stage of this case. The Departments of Labor and Justice also have administrative and enforcement responsibilities under USERRA. 38 U.S.C. 4321-4334.

The United States has previously presented argument in many of this Court's cases involving constitutional challenges to federal statutes based on principles of state sovereign immunity. See, e.g., PennEast Pipeline Co. v. New Jersey, 141 S. Ct. 2244 (2021) (No. 19-1039) (arguing as a party); Alden v. Maine, 527 U.S. 706 (1999) (No. 98-436) (arguing as an intervenor); Seminole Tribe v. Florida, 517 U.S. 44 (1996) (No. 94-12) (arguing as an amicus curiae); cf. Murphy v. National Collegiate Athletic Ass'n, 138 S. Ct. 1461 (2018) (Nos. 16-476, 16-477) (arguing as an amicus

curiae in defense of the constitutionality of a federal statute).

In light of the substantial federal interest in the question presented, the United States' participation at oral argument would materially assist the Court in its consideration of this case.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

MARCH 2022