NO. 25-448

IN THE
Supreme Court of the United States

MICHAEL POFFENBARGER,
Petitioner,

v.

TROY E. MEINK,
SECRETARY OF THE AIR FORCE, *ET AL.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

BRIEF OF FIRST LIBERTY INSTITUTE AND AVE MARIA SCHOOL OF LAW AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTERESTS OF AMICI CURIAE[1]

First Liberty Institute ("FLI") is a nonprofit, public interest law firm dedicated to defending religious liberty for all Americans. It provides pro bono legal representation to individuals and institutions of all faiths—Catholic, Islamic, Jewish, Native American, Protestant, the Falun Gong, and others. FLI frequently represents military members, veterans, and their families. Recently, FLI had the honor of representing thirty-five U.S. Navy Special Warfare servicemembers. *U.S. Navy SEALs 1–26 v. Biden*, 578 F. Supp. 3d 822 (N.D. Tex. 2022). This case became a class action on behalf of every U.S. Navy servicemember seeking a religious accommodation from the COVID-19 vaccine mandate. *U.S. Navy SEALs 1–26 v. Austin*, 594 F. Supp. 3d 767 (N.D. Tex. 2022).

Ave Maria School of Law is a nonprofit, ABA-accredited law school that offers a high-quality legal education rooted in the Catholic intellectual tradition and the Natural Law, as signified by its motto, *Fides et Ratio* (Faith and Reason). The law school's Veterans and Servicemembers Law Clinic defends the religious liberties of those who serve our nation.

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[1] Attorneys from First Liberty Institute and Ave Maria School of Law Veterans and Servicemembers Law Clinic authored this brief as counsel for amici curiae. No attorney for any party authored any part of this brief, and no one apart from First Liberty Institute and Ave Maria School of Law made any financial contribution toward the preparation or submission of this brief. All parties were timely notified of amici's intent to file this brief.

Because amici represent servicemembers, they have an interest in knowing whether retirement points constitute equitable relief or damages. Currently, there is no clear answer. And the answer matters.[2] This leaves servicemembers and their attorneys blind to the correct path for the desired relief.

Amici respectfully urge this Court to grant certiorari so that the Court can clarify that reservist retirement points are equitable in nature, and that they are precisely the type of relief RFRA was enacted to provide.

SUMMARY OF ARGUMENT

The Religious Freedom Restoration Act ("RFRA") authorizes "appropriate relief" to redress violations of a military reservist's religious exercise. That relief includes equitable restoration of reserve retirement points when those points are wrongfully withheld by the government merely because a servicemember follows his faith. Denying that relief under RFRA would permanently deprive reservists of the legal meaning Congress has attached to those points.

In 1948, Congress created the reserve retirement points system to correct inequities faced by reserve members and to adopt a uniform measure of readiness. The text and legislative history of the

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[2] Below, the Sixth Circuit admitted as much. *See Poffenbarger v. Kendall*, 137 F.4th 563, 567 (6th Cir. 2025) (explaining that lost retirement points are barred if considered a form of money damages but could be appropriate relief if considered a form of equitable relief).

statute creating that system demonstrate that retirement points grant a status to reserve members—a status that carries meaning for several purposes. Not only do points determine whether a year "counts" toward future retirement eligibility. They also provide a shorthand metric of a reservist's military preparedness and act as an incentive for reservists' sacrificial service to their country. When points are withheld in error, only their equitable restoration can make a reservist whole.

For decades, military records correction boards have treated lost retirement points as a loss of status and have restored those points when the government has withheld them unjustly. Federal courts recognize that such remedies by military records correction boards are equitable in nature.

Civilian retirement law also confirms that restoring retirement credit is a form of equitable relief. Under federal civil service retirement statutes and private-sector pension law, courts treat actions restoring retirement credit as equitable relief.

Treating the equitable restoration of reserve retirement points as "appropriate relief" under RFRA merely applies the same status-restoration remedy that military boards, civilian retirement systems, and federal courts have long used when government action has wiped out the retirement credit that a person would otherwise have earned.

ARGUMENT

When retirement points are wrongly withheld under a government policy that punishes a military reservist for his faith, that harm is not undone merely by revoking the policy. Without restoration of points, the government's violation of the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1(c), would leave a reserve member with a diminished status under a system Congress designed to reward military service and measure preparedness. That result would render RFRA's promise of "appropriate relief" illusory for the entire reserve component, whose status and retirement eligibility are defined by the number of those points.

Military records correction boards and federal courts agree that restoration of retirement credit is an equitable remedy when the government has wrongly deprived a member of retirement points. In some military cases, failure to restore retirement points will prevent a reservist from attaining statutory point thresholds, thereby depriving that reservist of years of qualifying service, along with accompanying status. Recognizing that the equitable restoration of reserve retirement points is "appropriate relief" under RFRA comports with the history of the reserve retirement system, as well as the practice of military records corrections boards and civilian courts.

I. Congress Created the Reserve Retirement Points System to Reward Military Service and to Provide a Standard for Measuring Preparedness.

For members of the United States Armed Forces Reserves, the deprivation of reserve retirement points is more than just a lost opportunity for additional retirement pay. It is also the diminution of a status that Congress created in 1948 to recognize the sacrifice of military service and to measure a reservist's preparedness for mobilization.

Congress designed the points system to reward a reservist's sacrifice in serving this nation and to measure that reservist's training and readiness. These dual purposes guided enactment of the *Army and Air Force Vitalization and Retirement Equalization Act of 1948* ("the 1948 Act"), which remains the foundation of the current reserve retirement points system. *See* Cong. Rsch. Serv., R42087, *Military Retirement Reform: A Review of Proposals and Options for Congress*, at 5 (2011). Congress passed the 1948 Act to create a more effective and better-trained reserve component in response to deficiencies revealed during World War II, including the absence of a retirement system for reserve members. *See generally Army and Air Force Vitalization and Retirement Equalization Act of 1948: Hearings on H.R. 2744 Before the Comm. on Armed Services*, 80th Cong. (1948) ("the 1948 Hearings").

In passing the 1948 Act, Congress relied on testimony from military experts about deficiencies in the reserve system. Prior to World War II, the reserve

system proved ineffective. It offered reservists no long-term incentive to remain in service, merely providing daily pay for drills instead of a retirement plan. *Id.* at 13 (testimony of Major General John Dahlquist). This lack of recognition for the sacrifices of reservists worked an injustice to those who had mobilized with "no security whatsoever" except what they received "on a day-to-day basis." *Id.* These deficiencies resulted in various problems, making the reserve component "grossly inadequate" and giving "no inducement" for expiring reservists to reenlist. *Id.* at 22–23 (testimony of Colonel Melvin J. Maas).

To remedy these shortcomings, the 1948 Act strove to create an incentive-based system to measure the adequacy and effectiveness of the reserve component. As proposed and enacted, the retirement points system sought to ensure that reservists were well-equipped with the skills needed in times of war or national emergency. *Id.* at 23–24. Each retirement point represented a portion of a reservist's faithful service to the nation, marked by the sacrifice of spending time away from business and family. *Id.* at 22. Prior to World War II, reserve units had experienced a high rate of annual turnover due to "business or family pressure." *Id.* at 23. Thus, to induce young recruits to join the reserves, the new point system sought to compete with civilian businesses and offer more than just monetary pay. *Id.* In short, the new system aimed to treat reservists "more equitably than in the past." 80th Cong. Rec. H2481, 2484 (Mar. 10, 1948) (statement of Rep. William J. Miller (CT)).

The 1948 Act's system awards reservists one retirement point for each day of active federal service, one point for each drill or equivalent, and fifteen points for each year of membership in a reserve component. *See Army and Air Force Vitalization and Retirement Equalization Act of 1948*, ch. 708, 62 Stat. 1081, 1088 (1948) (Sec. 302). A reservist must amass at least fifty points each year to obtain a year of "satisfactory Federal service," indicating that the reservist is well-trained and possesses the skills required if mobilization were necessary. *Id.* Further, a reservist must obtain at least twenty years of "satisfactory Federal service" to be eligible for retirement benefits. *Id.*

Notably, the system treats retirement points as an indicator of a reservist's preparedness. Each point brings a reservist closer to twenty years of satisfactory service, which is the standard for demonstrating that reservists are "key officers and enlisted men." *1948 Hearings* at 17 (testimony of Maj. Gen. Dahlquist). The system requires more than a reservist "merely staying on the list for [twenty] years." *Id.* at 21 (testimony of Col. Maas). Rather, it is structured so that a member "who is active in the Reserve will have every chance to qualify [for retirement]. The man who does not remain active over a period of 20 years will have very little chance to qualify." *Id.* at 28 (testimony of Justice M. Chambers). Therefore, the more retirement points that reservists acquire during their careers, the greater status they achieve in their military preparedness and advancement toward retirement as a reward for their sacrifice and service.

In sum, the text and legislative history of the 1948 Act demonstrate that reserve retirement points serve as more than a basis for monetary compensation. Rather, they are a metric of a reservist's military preparedness and a non-monetary incentive to justify the sacrifices reservists make in leaving their families and businesses to serve their country.

II. Restoring Retirement Points is a Form of Equitable Relief in Both Military Reserve and Civilian Retirement Systems.

The petition for writ of certiorari in the instant case provides this Court with the chance to clarify the types of equitable relief available in military RFRA cases. The Air Force's denial of Poffenbarger's religious accommodation request violated RFRA and wrongfully placed Petitioner in a "no points, no pay" status, preventing him from participating in reserve duty or accruing retirement points. *See Poffenbarger v. Kendall*, 137 F.4th 563, 565–66 (6th Cir. 2025). Recognizing that the equitable restoration of those points is "appropriate relief" under RFRA is consistent with the regular practice of military corrections boards, as well as with the practice in civilian retirement cases.

A. Restoring Reserve Retirement Points is an Established Form of Equitable Relief in the Military System.

In the U.S. Armed Forces, Boards for Correction of Military Records ("BCMRs") are given statutory authority to amend records "to correct an error or remove an injustice." 10 U.S.C. § 1552(a)(1). These

military correction boards routinely add or reallocate reserve retirement points to correct injustices when government action prevents a servicemember from earning those points. In practice, the restoration of those points has been understood as an equitable remedy. It is not compensatory damages—it restores a reservist's proper status and corrects their record.

1. Military Correction Boards Restore Reserve Retirement Points.

Correction boards across the military services have often added or reallocated "non-paid" points when a reserve member was unable to participate in training or duty due to a government action or error that prevented the reservist from earning those points. "Non-paid" points count toward a qualifying year when determining retirement status but are not compensated because they were not earned through paid duty, such as drills or annual training.

A recent decision from the Air Force BCMR illustrates this principle. *See* AFBCMR No. BC-2022-02021 (2024). There, an Air Force reserve officer sought relief after being placed in a "no points, no pay" status for nearly five years due to a medical misdiagnosis, preventing him from participating in training or duty. *Id.* As a result, the officer was unable to earn retirement credit for that period. *Id.* Upon review, the Air Force BCMR determined that the officer was "fit for duty" approximately six months after the diagnosis and that his continued exclusion from participation for the next four years was an injustice. *Id.* To repair this inequity, the board ordered a correction of the officer's records, adding

five years of constructive non-paid retirement points and designating each year as "satisfactory Federal service." *Id.*

The equitable remedy provided in that decision is not isolated. The Air Force BCMR has also granted reserve retirement points as a form of relief in other recent cases. *See*, *e.g.*, AFBCMR No. BC-2021-03668 (2022) (finding that a unit practice limiting flight-drill participation made attendance impossible, and granting thirteen non-paid points to correct the record); AFBCMR No. BC-2024-00414 (2024) (finding that COVID movement restrictions eliminated participation opportunities, and awarding thirty-five non-paid points for each of two years); AFBCMR No. BC-2024-01231 (2025) (finding that COVID movement restrictions and the command's refusal to schedule flight physicals barred duty, and restoring thirty-five non-paid points for the affected year).

Nor is the granting of non-paid retirement points by the Air Force BCMR a recent innovation. *See, e.g.*, AFBCMR No. BC-1998-03156 (1999) (finding that a commander prevented participation by administrative restriction, and awarding retirement points so that two affected years counted as satisfactory service); AFBCMR No. BC-2004-01047 (2004) (finding that an erroneous counseling stopped the member from achieving a qualifying year, and granting retirement points to convert a partial year into one of satisfactory service); AFBCMR No. BC-2008-00282 (2008) (finding that an injured reservist was prevented from participating in drills while awaiting medical processing, and adding retirement points for multiple years); AFBCMR No. BC-2010-

01200 (2011) (finding that the mishandling of a reservist's release left him unable to participate, and crediting the member with retirement points that yielded multiple years of satisfactory service).

Nor is this remedy confined to the Air Force. The Navy's Board for Correction of Naval Records ("BCNR") has likewise amended records by awarding retirement points when the government or command action has prevented a reserve member's participation or timely service credit. *See*, *e.g.*, Navy BCNR No. 04356-00 (2001) (finding that a missing fitness report and reenlistment error impeded participation by the member, and awarding thirty-five points to ensure a qualifying year); Navy BCNR No. NR20250007552 (2025) (finding that a separation was unlawful, and crediting retirement points to bring three consecutive years to fifty points). And the Army's BCMR has granted similar relief. *See, e.g.*, Army BCMR No. AR20150001599 (2015) (finding that a discharge was erroneous, and granting fifty retirement points per year for six years); Army BCMR No. AR20230009366 (2024) (finding that a member's separation prevented her from having a good year, and adding fifteen retirement points to make it so).

The reserve retirement points awarded by military correction boards are equitable remedies in nature, rather than compensatory damages awards. This is so because the Secretary of a military department, through the actions of the BCMR, has a duty "to take steps to grant thorough and fitting relief" when correcting errors or removing injustices. *Caddington v. United States*, 147 Ct. Cl. 629, 634 (1959) (relying on maxims such as "equity regards that as done which

ought to be done," "equity will not suffer a wrong to be without a remedy," "equity regards substance rather than form," and "equity delights to do justice and not by halves"); *see also Roth v. United States*, 378 F.3d 1371, 1381 (Fed. Cir. 2004) (reaffirming that correction boards must "take steps to grant thorough and fitting relief").

Moreover, where BCMRs have failed to supply military members with appropriate equitable relief, courts have intervened. *See, e.g.*, *Doyle v. United States*, 220 Ct. Cl. 285, 317–18 (1979) (granting constructive service and retirement credit where the BCMR failed to return officers to the status they would have held absent the injustice); *Sanders v. United States*, 219 Ct. Cl. 285, 314–15 (1979) (reviewing an Air Force BCMR denial of relief and ordering reinstatement with back pay after finding that the board had failed to remedy an injustice). This principle is consistent with the constructive-service doctrine, which returns a servicemember "to the position that [he] would have occupied 'but for'" the government's unlawful action. *Dilley v. Alexander*, 627 F.2d 407, 413 (D.C. Cir 1980); *see also Barnick v. United States*, 591 F.3d 1372, 1379 (Fed. Cir. 2010) (explaining the constructive-service doctrine).

In sum—as in the instant petition before this Court—where the government has wrongfully prevented a reserve member from participating in military duty, a common equitable remedy has been to award retirement points to that reservist. Such relief restores the reservist to the status intended by Congress in creating the reserve retirement system,

and it returns the reservist's record to what it would have reflected but for the government's error.

2. Military Correction Boards Are Ill-Suited to Grant RFRA Relief.

The remedial nature of military corrections boards makes them a valid reference point for determining what constitutes equitable relief in cases involving reserve retirement points. BCMRs are not, however, a good forum to litigate cases involving individual constitutional rights, such as the free exercise of religion protected by the First Amendment and RFRA. For that reason, the petition for writ of certiorari in the instant case is not barred by the doctrine of military exhaustion.

As the Fifth Circuit has explained, the federal judiciary retains the authority to review claims alleging constitutional violations notwithstanding prior resort to military correction boards. *See Mindes v. Seaman*, 453 F.2d 197, 201–02 (5th Cir. 1971). That conclusion is consistent with modern practice, where military RFRA claims have been brought against the government without first seeking recourse at a BCMR. *See, e.g.*, *U.S. Navy SEALs 1-26 v. Biden*, 27 F.4th 336, 347–49 (5th Cir. 2022) (affirming preliminary injunction on servicemembers' RFRA claim). Thus, nothing in *Mindes* or the military corrections board framework displaces the federal judiciary's ability to provide the "appropriate relief" that Congress authorized under RFRA. Judicial review remains essential here.

Collectively, BCMR decisions and judicial review demonstrate that the loss of reserve retirement points is remedied by restoring the legal status the servicemember would have held had the government acted lawfully. That is the hallmark of equitable relief: it returns the individual to the position he would have held but for the injustice.

Here, because RFRA authorizes courts to award "appropriate relief" against the government, and the established remedy for this kind of injury is equitable restoration of the member's status, the relief sought falls squarely within RFRA's remedial grant.

B. Restoring Retirement Credit is a Form of Equitable Relief in Civilian Retirement Systems.

Civilian retirement law affirms the same equitable principles encountered in the military system. When unlawful conduct by government or private employers deprive civilian employees of retirement credit, courts can restore those credits as an equitable status correction rather than as an award of compensatory damages. This principle has been applied for decades in both government and private retirement systems without introducing instability or vexatious litigation. Recognizing the same remedy for military reservists under RFRA would mirror what civilian systems have long accommodated.

Under the older federal Civil Service Retirement System ("CSRS"), some courts treated actions seeking retirement credit as equitable in nature. For instance, a district court concluded that a federal civilian

employee who had been denied retirement credit for time he worked at the United Nations "could be made whole if he were now granted retirement credit" for the period at issue. *Oppenheim v. Campbell*, 571 F.2d 660, 662 (D.C. Cir. 1978). On appeal, the D.C. Circuit acknowledged that the employee's suit was "equitable in nature" even though the requested remedy would have altered his retirement benefits. *Id.*

Similar results occur in the current federal system. Under the Federal Employees' Retirement System ("FERS"), monetary effects from correcting retirement records are treated as administrative implementation of the statute rather than as a damages award. In one such case, the Federal Circuit explained that "the reduction in [the employee's] annuity payments was merely the mechanism for recovering funds . . . the reduction was not based on any decision regarding a substantive right or interest under FERS." *Miller v. Office of Personnel Management*, 449 F.3d 1374, 1378 (Fed. Cir. 2006).

In addition, private pension law, as outlined in the Employee Retirement Income Security Act ("ERISA"), reflects the same principle when it authorizes courts to grant "appropriate equitable relief." 29 U.S.C. § 1132(a)(3)—similar language to that used in RFRA.

In *Varity Corp. v. Howe*, this Court interpreted ERISA's "appropriate relief" language to include the restoration of pension status, holding that pension participants could obtain equitable reinstatement into the plan after they were misled into forfeiting their benefits. 516 U.S. 489, 491 (1996). Fifteen years later, this Court confirmed that relief aimed at restoring

pension rights can qualify as equitable under ERISA even when it results in monetary compensation. *See CIGNA Corp. v. Amara*, 563 U.S. 421, 441 (2011). This Court explained that "the fact that this relief takes the form of a money payment does not remove it from the category of traditionally equitable relief." *Id.* Circuit courts have applied the same principle in cases where retirement credits themselves were restored. *See, e.g.*, *Downie v. Indep. Drivers Ass'n Pension Plan*, 934 F.2d 1168, 1170–71 (10th Cir. 1991) (approving an equitable order requiring the plan to "restore to Plaintiff's pension records prior service credits that he had accrued" after they were revoked).

Viewed as a whole, these authorities confirm that civilian retirement frameworks have long accepted restoration of retirement credit as a form of equitable relief. Thus military reservists should not be placed in a worse remedial position under RFRA than their civilian counterparts, especially where Congress designed the reserve retirement system to compete with civilian businesses.

In sum, recognizing the equitable restoration of retirement points under RFRA would not create a new form of relief for reserve servicemembers; it would apply the same remedial approach that civilian retirement systems have used for decades.

CONCLUSION

This petition presents an excellent vehicle for this Court to clarify the scope of equitable relief in military RFRA cases. Restoring reserve retirement points as "appropriate relief" under RFRA is consistent with the

broad aims of RFRA, the text and legislative history of the reserve retirement system, and the current practice of military correction boards and federal courts granting relief in civilian retirement systems.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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