No. 26-437

IN THE
Supreme Court of the United States

DANIEL GEORGE,
Petitioner,

v.

PIEDMONT AIRLINES, INC.,
Respondent.

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

BRIEF OF THE MILITARY OFFICERS ASSOCIATION OF AMERICA AND THE NATIONAL GUARD ASSOCIATION OF THE UNITED STATES AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

DEREK C. REINBOLD
Counsel of Record
DONOVAN J. HICKS
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dreinbold@kellogghansen.com)

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INTEREST OF *AMICI CURIAE*[1]

The **Military Officers Association of America** (MOAA) is the country's largest association of military officers, with more than 350,000 members representing every branch of service. MOAA advocates for policies that strengthen national defense and support servicemembers and their families.

MOAA's members include officers who serve or have served in the National Guard and Reserve while pursuing civilian careers. Those careers provide the income and benefits that support their families and make continued military service possible. MOAA has a strong interest in ensuring that reservists can meet their military obligations without sacrificing the civilian jobs and benefits on which they depend.

The **National Guard Association of the United States** (NGAUS) is the nation's oldest military association, representing nearly 45,000 active and retired National Guard officers across the country.

Established in 1878, NGAUS advocates for the readiness, capabilities, and welfare of the National Guard, as well as the equitable treatment of its members in their civilian careers. The National Guard's unique dual-status framework requires frequent transitions between civilian and military roles. Robust enforcement of federal protections under the Uniformed Services Employment and Reemployment Rights Act of 1994 is therefore critical to NGAUS's membership and to the viability of the All-Volunteer Force.

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[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund its preparation or submission. No person other than *amici*, their members, or their counsel made such a contribution. Counsel of record for all parties received timely notice of *amici*'s intent to file this brief.

SUMMARY OF ARGUMENT

Most members of the National Guard and Reserve earn their livelihoods in civilian jobs. They may spend years building careers that support their families, only to receive military orders that take them away for a year or more. Those orders determine when they must leave and when they can return. National defense depends on reservists willing to accept those obligations—and on their ability to fulfill them without sacrificing the civilian careers they have built.

Congress has protected those civilian careers since 1940. Today it does so through the Uniformed Services Employment and Reemployment Rights Act of 1994, or USERRA. As the petition explains, the courts of appeals disagree over whether an employer may deny a reservist a benefit because military service kept him away from work, so long as it denies the same benefit to employees on comparable nonmilitary leave. *Amici* write to explain the demands military orders place on reservists and why protecting their careers and benefits matters to national defense.

Consider two clerks at a hometown hardware store. One takes six months off to hike the Appalachian Trail. The other, a sergeant in the Army National Guard, spends six months overseas because the Army ordered her to do so. The store pays a year-end bonus but excludes any clerk who is on extended leave on December 31. Both clerks are still away, so neither receives a bonus. Under the reasoning below, the store's treatment of the hiker supplies a complete answer to the sergeant's claim.

Yet the hiker decided when to leave and when to return, and he left for his own reasons. The Army determined the sergeant's schedule, and she left to serve her country. She could not just shorten her

assignment or postpone it to preserve her bonus. Even if the two absences count as comparable leave, treating them alike does not erase the cost of military service to the sergeant. She loses a benefit of her civilian job because the country required her to be elsewhere. Congress protected military service precisely because obligations undertaken for national defense can otherwise exact a price in civilian employment, making it difficult to recruit and retain a ready fighting force.

For reservists, that price can extend well beyond the finances of a single deployment. It bears on whether they can continue to combine military service with the civilian careers that support them and their families. Congress enacted USERRA to encourage service by reducing those disadvantages. The question presented therefore matters both to the people deciding whether to remain in uniform and to the military that needs them to stay. Reservists need dependable protection for their civilian employment, and their employers need clear rules to follow. Neither should have to plan around conflicting interpretations of federal law.

The Court should grant the petition.

REASONS FOR GRANTING THE PETITION

The petition explains the division among the courts of appeals over USERRA's protection of benefits during military leave and why that conflict warrants this Court's review. *See* Pet. 5-10, 13-16. *Amici* write separately to offer the perspective of servicemembers who must balance military obligations with civilian careers.

I. Federal Law Protects The Civilian Careers That Make Reserve Service Possible

A. The Military Regularly Calls Reservists Away From Their Civilian Jobs

The military draws heavily on people who maintain civilian careers while serving in the National Guard and the Reserve. This brief calls members of both "reservists."[2] For many reservists, a civilian job provides a full-time livelihood and the benefits that support their families. In a 2020 Defense Department survey, 73% of reservists who were not activated reported civilian employment in the week before the survey. Of those who worked, 79% reported full-time jobs with benefits. *See* Laura Werber et al., *Understanding and Improving Civilian Employer Experiences with Guard and Reserve Duty* 16 (RAND Corp. 2024) ("Werber, *Understanding and Improving Civilian Employer Experiences*").

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[2] This brief uses "reservists" for simplicity, but the federal Reserves and the National Guard operate under distinct legal frameworks. The Reserves are a purely federal force under Title 10 of the U.S. Code, whereas the National Guard serves dual federal and state roles under Titles 10 and 32. This dual status subjects Guard members to frequent, unpredictable state activations (e.g., for natural disasters and civil emergencies) in addition to federal deployments, making USERRA all the more critical to their civilian livelihoods.

These servicemembers account for a substantial share of the military's personnel. In 2024, the Selected Reserve, which consists of units and individual reservists who train regularly, numbered more than 760,000. *See* 10 U.S.C. § 10143(a); U.S. Dep't of Def., *2024 Demographics Profile: Selected Reserve Members* (2025). Within the Defense Department, Selected Reserve members made up more than a third of all uniformed personnel. *See* U.S. Dep't of Def., *2024 Demographics Profile: Total Defense Department Military Community* (2025). Those members support more than 887,000 spouses, children, and other dependents. *See* U.S. Dep't of Def., *2024 Demographics Profile: Selected Reserve Families* (2025).

Many reservists train one weekend a month and for about two weeks each year. That familiar schedule reflects the statutory requirements for regular drills and annual training. *See* 10 U.S.C. § 10147(a)(1); 32 U.S.C. § 502(a). But it does not capture the full demands the military now places on them.

During the Cold War, the military principally held Reserve forces ready to supplement active forces in an extended conflict. But since September 11, 2001, it has increasingly relied on reservists for ongoing operations and repeated deployments. *See* U.S. Gov't Accountability Off., GAO-09-898, *Reserve Forces: Army Needs to Finalize an Implementation Plan and Funding Strategy for Sustaining an Operational Reserve Force* 1-2, 7-8 (Sept. 2009) (describing the Army's shift from a strategic to an operational reserve). By 2008, more than 650,000 Guard and Reserve members had supported operations at home and abroad since the attacks. *See* U.S. Gov't Accountability Off., GAO-08-981R, *Military Personnel: Improvements Needed to Increase Effectiveness of DOD's Programs to Promote*

Positive Working Relationships between Reservists and Their Employers 1 (Aug. 15, 2008). That reliance reaches well beyond the drill weekends and annual training around which reservists ordinarily arrange their civilian working lives.

When reservists are called to duty, military orders govern their absence. For example, during a national emergency declared by the President, federal law permits the military to order members of the Ready Reserve to active duty without their consent for up to 24 consecutive months, with as many as one million on such duty at any one time. *See* 10 U.S.C. § 12302(a), (c). The Ready Reserve includes the Selected Reserve and other reservists subject to recall. The national emergency declared after the September 11 attacks remains in effect; the President most recently continued it in September 2026. *See* Notice of Sept. 8, 2026, Continuation of the National Emergency With Respect to Certain Terrorist Attacks, 91 Fed. Reg. 57773 (Sept. 10, 2026). A reservist called up under that authority must leave his civilian job when his orders require and remain away until they end. For that reason, a benefit conditioned on "active" employment on a given date is, for a reservist, a benefit conditioned on where the military has sent him. Whether he is "active" on the qualifying date turns not on any choice he makes, but on the timing and length of his orders.

Petitioner's experience shows how long military service can interrupt a civilian career. George began long-term military leave from his job as a Piedmont pilot in October 2019. More than two years later, he was still serving when American Airlines hired him. App. 8a-9a, 54a. When orders keep a reservist away that long, the protections that preserve his civilian job and its benefits matter all the more.

B. Federal Law Protects Reservists' Benefits During Military Leave And Prohibits Discrimination Because Of Their Service

Congress has long paired the demands of military service with protections for the civilian jobs servicemembers leave behind. In September 1940, as war spread across Europe and Asia, Congress enacted the nation's first peacetime draft. The Selective Training and Service Act called men away for a year of military training and service. It also required employers, subject to the Act's conditions, to restore returning servicemembers to their former positions or to positions of like seniority, status, and pay. Those restored to employment were to be treated as having been "on furlough or leave of absence" during their service. Selective Training and Service Act of 1940, ch. 720, § 8(b)-(c), 54 Stat. 885, 890.

Congress expanded those protections over the ensuing decades and revised them in 1994 through USERRA. Pub. L. No. 103-353, 108 Stat. 3149. This Court has "liberally construed" those protections "for the benefit of those who left private life to serve their country." *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946) (addressing 1940 Act). The statute makes the connection between military service and civilian employment explicit. Its first stated purpose is to encourage service "by eliminating or minimizing the disadvantages to civilian careers and employment which can result from such service." 38 U.S.C. § 4301(a)(1). Two of its protections matter here.

The first, the ***leave guarantee***, carries forward the approach Congress adopted in 1940. A reservist away on military duty is "deemed to be on furlough or leave of absence" from his civilian job. 38 U.S.C.

§ 4316(b)(1)(A). While he serves, he is entitled to the benefits not determined by seniority that his employer generally provides to employees of similar seniority, status, and pay who are on other kinds of leave. *Id.* § 4316(b)(1)(B). If those benefits vary by the kind of leave, the reservist must receive the most favorable treatment the employer gives any comparable form of leave. *See* 20 C.F.R. § 1002.150(b). So an employer that keeps paying life insurance premiums for similarly situated employees on comparable medical leave must do the same for a reservist away on duty.

The second, the ***discrimination ban***, addresses a different danger: that an employer will penalize a reservist because of his military obligations. Congress first expressly prohibited that discrimination in 1968, when it barred employers from denying reservists retention in employment, promotions, or other advantages of employment because of their reserve obligations. Act of Aug. 17, 1968, Pub. L. No. 90-491, § 1(1), 82 Stat. 790, 790. Today, USERRA forbids an employer to deny a reservist "any benefit of employment" "on the basis of" military service. 38 U.S.C. § 4311(a). Military service need only be "a motivating factor" in the denial. *Id.* § 4311(c)(1). Once the reservist makes that showing, the employer must prove that it would have denied the benefit even in the absence of his military service. *Id.*

Congress defined the benefits covered by USERRA broadly. They include "any advantage, profit, privilege, gain, status, account, or interest" that accrues under an employment contract or an employer's policy, plan, or practice. *Id.* § 4303(2). The statute specifically names insurance coverage, bonuses, severance pay, and vacations. *Id.* No employment contract or benefit plan may reduce or eliminate a right the statute grants. *Id.* § 4302(b).

An employer that pays a bonus to employees on comparable leave must therefore pay an otherwise eligible reservist as well. That is the minimum the leave guarantee secures; nothing in it purports to cap what the discrimination ban separately forbids. And even if the employer pays neither the reservist nor those employees, the discrimination ban still forbids it to deny the reservist the bonus because of his military service. When the only reason a reservist fails an "active" employee condition is that military orders took him away, his service is at least "a motivating factor" in the denial. *Id.* § 4311(c)(1).

II. The Decision Below Wrongly Equates Military Leave With Other Long-Term Absences

In holding that George had to arbitrate his claim, the Third Circuit measured his rights against those of workers on "long-term leave or furlough." App. 4a-5a. If the bonus excluded those workers, the court reasoned, it excluded George too. App. 5a. That comparison treats military service as interchangeable with any other long absence from work. But a reservist's absence differs from other extended leave because he does not control it, and he is away to serve his country.

First, military orders, not the reservist, determine when he leaves and when he returns. During a national emergency, the military may order reservists to active duty without their consent for up to 24 consecutive months. *See* 10 U.S.C. § 12302(a); *supra* Part I.A. An employee on personal leave stands in a different position. The hiker in the hardware store could weigh the bonus he would lose against the trip he wanted to take, and he could change his plans if the cost proved too high. A reservist cannot postpone his deployment until a bonus is paid, or come home early to collect it. A furlough differs as well: the employer decides when it begins and when it ends.

Second, a reservist leaves work to perform a public duty. Other absences, including those caused by illness or family emergencies, can also leave employees with little control over their time away. Those absences deserve protection too, and other statutes provide it. *See*, *e.g.*, 29 U.S.C. § 2612(a)(1). But an employee on medical or family leave is away because of his own health or his family's needs. A reservist is away because the nation needs him. That is why Congress has protected servicemembers' civilian jobs since 1940, *see supra* Part I.B, and why USERRA's first stated purpose is to encourage military service by minimizing the disadvantages it can impose on civilian careers, *see* 38 U.S.C. § 4301(a)(1).

The Department of Labor's regulations recognize both differences. In deciding whether another kind of leave is comparable to military leave, duration may be the most significant factor. But courts should also consider "the purpose of the leave and the ability of the employee to choose when to take the leave." 20 C.F.R. § 1002.150(b). The Third Circuit considered neither. By grouping military service with all "long-term leave or furlough," it set aside the very features that led Congress to protect military leave in the first place.

Even when military leave and another absence are comparable, the discrimination ban still applies. An employer that treats military leave like other leave shows only that it did not single out military leave among absences. It does not show that military service played no part in the denial. The discrimination ban asks that question directly: whether the employer denied a benefit "on the basis of" military service. 38 U.S.C. § 4311(a), (c)(1). Here, the answer is apparent: but for his orders, George would have been an active

Piedmont pilot when American hired him. The panel nevertheless reasoned that George could not recover if the contract excluded everyone on long-term leave, and on that basis required arbitration of his claim. App. 3a-5a. The hiker's loss of a bonus does not by itself answer whether the store discriminated against the sergeant because she obeyed military orders.

III. The Question Presented Recurs And Bears Directly On The Military's Ability To Retain Reservists

A reservist's family continues to rely on his civilian job while military duty keeps him away from it. A lost bonus takes away income on which the family may have counted. The loss of life or disability insurance can leave the family without protection the employer ordinarily provides. Congress wrote specific rules for seniority, health coverage, and pensions. *See* 38 U.S.C. §§ 4316(a), 4317, 4318. But many other important benefits, including bonuses, paid leave, and other insurance, depend on the two provisions at issue here. Whether an employer may withhold those benefits because of military service therefore has consequences well beyond George's claim.

Reservists have repeatedly gone to court over benefits lost to military service. In *Huhmann*, military duty kept a FedEx pilot from beginning training for the crew position that carried a larger signing bonus. When he returned, FedEx paid him the $7,400 bonus for his old position rather than the $17,700 bonus for the new one. *Huhmann v. Federal Express Corp.*, 874 F.3d 1102, 1105 (9th Cir. 2017). Pilots at United and American have invoked the leave guarantee to seek pay for short military absences, alleging that their employers paid pilots during other short absences, such as jury duty. *See White v. United Airlines, Inc.*,

987 F.3d 616, 619 (7th Cir. 2021); *Scanlan v. American Airlines Grp., Inc.*, 102 F.4th 164, 167-68 (3d Cir. 2024). Under the decision below, an employer could deny any such benefit—a signing or retention bonus, profit sharing, paid leave, or insurance—to a reservist on active duty, so long as it also denies the benefit to employees on other long-term leave. And a reservist need not be away for years to face a dispute over what his civilian employer owes him. Many disputes over reservists' civilian jobs never reach a courtroom. The Defense Department's Employer Support of the Guard and Reserve program provides volunteer mediators who help reservists and employers resolve USERRA disputes informally. In fiscal year 2025, the program was assigned 2,085 cases and resolved 1,394. *See* Emp. Support of the Guard & Rsrv., *Fiscal Year 2025 Annual Review*, https://www.esgr.mil/About-ESGR/Year-in-Review (last visited Oct. 21, 2026). Those figures cover USERRA disputes generally, but they show how often military duty and civilian employment conflict.

The military can order a reservist to report for duty. It cannot take his willingness to remain in uniform for granted. When his service obligation ends, he must decide whether to take on another, knowing what future absences may cost his family. A reservist may be prepared to spend months away from home yet find it increasingly difficult to absorb losses in the civilian career that supports him between deployments. Those losses can accumulate over years of service.

Employer support therefore matters to the military's ability to retain the people it has trained. As RAND explained in its 2024 report, the Reserve depends both on members who can maintain military and civilian careers and on employers that support

them in doing so. *See* Werber, *Understanding and Improving Civilian Employer Experiences* at 17. An employer writing a bonus plan or arranging insurance coverage needs to know what USERRA requires when an employee leaves to serve. The employee needs to know on which benefits his family can continue to rely.

Nowhere is that dependence clearer than in military aviation. Commercial airlines are a principal civilian employer of military-trained pilots: of the 1,237 pilots Delta hired in 2016, for example, 47% had prior military experience. *See* Tara L. Terry et al., *Projecting Air Force Rated Officer Inventory Across the Total Force* (RR-2796) 72 (RAND Corp. 2019). The Air National Guard and Air Force Reserve, in turn, retain experienced pilots who leave active duty, often until retirement, because those pilots can combine part-time service with civilian flying careers. *See* Heather R. Penney, Mitchell Inst. for Aerospace Stud., *Want Combat Airpower? Then Fix the Air Force Pilot Crisis* 3 (Jan. 2025). The Government Accountability Office has likewise identified a correlation between commercial airline hiring and military pilot retention. *See* U.S. Gov't Accountability Off., GAO-18-439, *Military Personnel: Collecting Additional Data Could Enhance Pilot Retention Efforts* 22 (June 2018). A rule that lets an airline withhold benefits whenever orders take a pilot away gives that pilot a reason to leave the Reserve rather than his airline.

Yet the courts of appeals disagree over whether denying a benefit to employees on comparable leave is a complete answer to a reservist's claim that he lost it because of his military service. *See* Pet. 5-10. That disagreement leaves reservists invoking the same federal statute with different protections, depending

on which circuit hears their claims. The same reservist, subject to the same employer policy, would prevail in the Ninth Circuit and lose in the Third. That result is especially untenable for airline pilots, who may be based in one circuit, fly out of another, and receive orders from a unit in a third. It also leaves employers that operate across the country without a single rule for administering their benefit plans.

The military asks reservists throughout the country to leave their civilian jobs when called. They should be able to rely on the same federal protections wherever they live and work. Reservists deciding whether to serve another term, and employers preparing for a reservist's next absence, need to know whether an employer may withhold a reservist's benefits because military service took him away. This Court should grant review and settle that question.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DEREK C. REINBOLD
Counsel of Record
DONOVAN J. HICKS
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dreinbold@kellogghansen.com)

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