

20-603 TORRES V. TEXAS DEPARTMENT OF PUBLIC SAFETY

DECISION BELOW: 583 S.W.3d 221

LOWER COURT CASE NUMBER: 13-17-00659-CV

QUESTION PRESENTED:

In the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Congress gave the over 19 million military servicemembers—including over 800,000 who work for state and local government employers—a cause of action to remedy adverse employment actions taken because of their military service. It enacted USERRA pursuant to its constitutional War Powers, U.S. Const. art. I, § 8, cls. 11-16, recognizing that unremedied employment discrimination by state employers based on military service could interfere with the nation’s “ability to provide for a strong national defense.” H.R. Rep. No. 105-448, at 5 (1998). USERRA’s cause of action against state employers may be pursued *only* in state courts.

In a sharply divided decision that conflicts with the Constitution’s text, structure, and history, the court below, a Texas intermediate appellate court with jurisdiction over more than 2 million Texas citizens, held that USERRA’s cause of action is unconstitutional because Congress lacks the power to authorize lawsuits against nonconsenting states pursuant to its War Powers.

The question presented is whether Congress has the power to authorize suits against nonconsenting states pursuant to its War Powers.

CERT. GRANTED 12/15/2021