

July 25, 2020

The Honorable Mike Bost  
Chairman  
House Committee on Veterans' Affairs  
352 Cannon House Office Building  
Washington DC 20515

The Honorable Mark Takano  
Ranking Member  
House Committee on Veterans' Affairs  
1507 Longworth House Office Building  
Washington DC 20515

Re: Support for Ranking Member Takano's amendment to H.R. 3943, to protect service members' USERRA rights

Dear Chairman Bost and Ranking Member Takano:

We, the undersigned groups representing service members and veterans, write in support of Ranking Member Takano's amendment, which would protect a service member's right to seek full legal accountability for USERRA violations. Congress passed the Uniformed Services Employment and Reemployment Rights Act (USERRA) to ensure service members' jobs are protected when they are deployed, allowing service members to focus on protecting our country. This amendment simply ensures that any violations of the USERRA protections passed by Congress are fully enforceable, by preserving a service member's fundamental right to proceed in court, instead of being forced into private arbitration, to address USERRA violations.

Employers and companies often condition getting or keeping a job on an individual's "agreement" to be subject to forced arbitration. The result: against their will, American workers' cases involving employer violations are funneled into a secretive, one-sided process which holds little chance of achieving justice or stopping widespread and systemic violations from occurring in the future. As of 2018, the Economic Policy Institute (EPI) found that over half of private-sector, nonunion workers (60.1 million American workers) are subject to forced arbitration.<sup>1</sup> Over half of private-sector nonunion employers (53.9 percent) used forced arbitration, and well over half of large companies (65.1 percent of companies with 1,000+ employees) used forced arbitration.<sup>2</sup>

Service members forced into arbitration also have very little chance at achieving a favorable outcome when their USERRA rights and protections are violated. In 1994, Congress passed USERRA, a bipartisan law that protects service members from employment discrimination based on their military obligations. Unfortunately, due to the use of forced arbitration clauses in employment contracts, service members are required to give up their USERRA rights in order to get or keep a job. When an employer violates USERRA, service members have no ability to hold

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<sup>1</sup> A.S. Colvin, Economic Policy Institute, *The growing use of mandatory arbitration: Access to the courts is now barred for more than 60 million American workers* (Apr. 6, 2018), <https://www.epi.org/files/pdf/144131.pdf>.

<sup>2</sup> *Id.*

that employer publicly accountable, and perpetrators of illegal USERRA violations are able to continue breaking the law as they simply hide behind forced arbitration clauses. The below are just a few snapshots of service members who have been forced into arbitration for their USERRA claims:

**Kevin Ziober, California (Navy reservist)**

Kevin is a Navy reservist whose employer fired him the same day he was deployed to Afghanistan. Kevin tried to uphold his rights under USERRA, which bans companies from discriminating against employees who take time off from work to serve their country. Kevin's employer forced him into arbitration.

**Amanda Sherman, California (Air Force reservist)**

In January 2020, United States Air Force reservist Amanda Sherman<sup>3</sup> began working as a caregiver in senior living home Atria Senior Living. During her hiring interview, Ms. Sherman repeatedly mentioned that she had orders to attend a 9-week Air Force Basic Training in March. During the job interview, she notified both her shift scheduler, and her business manager, and was reassured that this would not be an issue. Ms. Sherman then followed up with a verbal notice around three weeks before training began. It came as a shock, then, that while she was away at basic training, her husband found out "through the grapevine," that she had been fired by Atria. A forced arbitration clause buried in Ms. Sherman's employment papers prevented her from going to court and holding Atria accountable for USERRA violations. The clause was buried in a 2-page document, in 8-point font, that Ms. Sherman never signed, and never even remembers seeing.

**Rajesh Gupta, Illinois (Navy Commander)**

When Navy Commander Rajesh Gupta received active-duty orders in March 2017,<sup>4</sup> Morgan Stanley had recently paid him a large bonus for his outstanding performance as a financial advisor. To encourage employee retention, bonuses are awarded up front, and employees may keep them as long as they stay with the company until they vest. A very large portion of the bonus would have vested while Commander Gupta was on leave. From the beginning of Commander Gupta's military leave announcement, his supervisor expressed frustration at the orders. Instead of honoring USERRA, Commander Gupta was fired shortly before he was supposed to report to active duty. He was even sued by Morgan Stanley to return the bonus that would have vested. A pretextual reason was given, but a forced arbitration clause stopped Commander Gupta from the ability to properly defend himself in court. With no recourse, and the subsequent damage to his reputation, not only was he forced to pay back the bonus he earned, Commander Gupta has not been able to seek employment as a financial advisor. As an attorney, Commander Gupta would never have agreed to forced arbitration. Nor does he ever remember receiving an email from his employer containing the arbitration clause. Yet in this situation, Commander Gupta was still forced into arbitration that he ultimately could not appeal or even speak about going forward.

**Michael Ohlfs, Colorado (Navy Commander and Flight Officer)**

Commander and Naval Flight Officer Michael Ohlfs<sup>5</sup> was such a successful Charles Schwab financial advisor, that he received six promotions and six merit and pay raises in the six years

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<sup>3</sup> <https://casetext.com/case/sherman-v-atria-senior-living-inc>

<sup>4</sup> <https://law.justia.com/cases/federal/appellate-courts/ca7/18-3584/18-3584-2019-08-19.html>

<sup>5</sup> <https://casetext.com/case/ohlfs-v-charles-schwab-co-2>

before his call back to active duty. He began as a registered representative, and quickly scaled the corporate ladder, eventually serving as branch manager for two Charles Schwab locations, and tasked with giving investment advice to affluent clients. Unfortunately, soon after being deployed to Iraq, and while still on active duty, Commander Ohlfs was suddenly notified by his employer that his position was no longer available. Instead of maintaining the pay, seniority, and position at Charles Schwab as required by USERRA, Commander Ohlfs continued to get demoted post deployment. The forced arbitration clause in Commander Ohlfs employment contract prevented him from being allowed to seek justice in the federal court system, and he ultimately lost his arbitration.

**Nicole Mitchell, Georgia (Air Force reservist)**

In July 2004, Air Force reservist Nicole Mitchell was hired as an On-Air Meteorologist with the Weather Channel.<sup>6</sup> Captain Mitchell served as a member of the “Hurricane Hunters”, an aircrew that flies into tropical cyclones to gather weather data. However, her supervisors were not thrilled about her military service and complained about having to accommodate her military schedule, scheduled her for shifts which conflicted with known military obligations, and eventually moved her to a less prestigious show after she missed a makeup consultation because of a military obligation. Her supervisors also asked Captain Mitchell to comment on military affairs, which she was not allowed to do while serving on active duty.

As these stories illustrate, service members need their legal protections restored without delay and Ranking Member Takano’s amendment would restore these critical protections, allowing service members to enforce USERRA violations and hold wrongdoers accountable. Members of the military fight to protect our rights, and we need to protect theirs. We urge this committee to pass Representative Takano’s amendment and protect these rights for America’s servicemembers and veterans.

Sincerely,

**American Legion**

**Armed Forces Retirees Association**

**AMSUS, The Society of Federal Health Professionals**

**Association of the United States Navy**

**Blinded Veterans Association**

**Chief Warrant and Warrant Officers Association of the United States Coast  
Guard**

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<sup>6</sup> <https://www.mediaite.com/tv/meteorologist-suing-weather-channel-for-discrimination-against-soldiers-tells-oreilly-her-story/>

**Enlisted Association of the National Guard of the United States**

**Fleet Reserve Association**

**Jewish War Veterans**

**Military Chaplains Association**

**Military Order of the Purple Heart of the U.S.A.**

**National Guard Association of the United States**

**Naval Enlisted Reserve Association**

**Non Commissioned Officers Association**

**Reserve Organization of America**

**Service Women's Action Network**

**The Military Order of the World Wars**

**United States Army Warrant Officers Association**

**U.S. Coast Guard Chief Petty Officers Association**

**Veterans of Foreign Wars**