



EANGUS Testimony

House Committee on Veterans' Affairs Subcommittee on Economic Opportunity

**Hearing on
Examining the
Future of
Workforce
Protections for
Servicemembers.**

March 9, 2023

Enlisted Association of the National Guard of the United States

**1 Massachusetts Avenue N.W., Suite 880
Washington, DC 20001**

The Enlisted Association of the National Guard of the United States (EANGUS) was formally organized in 1972 to increase the voice of enlisted persons in the National Guard. As such, EANGUS is a non-profit organization dedicated to the principles of providing an adequate national defense and promoting safeguarding and improving the status, welfare, and professionalism of enlisted National Guard members, veterans, retirees, and their families through legislation, employment, education, emergency resources, and partnerships. Beginning with twenty-three states, EANGUS now represents all 50 States, Guam, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia, and has an association comprised of those who serve the National Guard on a national tour, with a constituency base of over 450,000 Soldiers and Airmen, their families, and tens of thousands of retired members.

EANGUS is a non-profit organization dedicated to promoting the status, welfare, and professionalism of Enlisted members of the National Guard by supporting legislation that provides adequate staffing, pay, benefits, entitlements, equipment, and installations for the National Guard. The Legislative Goals of EANGUS are published annually. The goals and objectives were established through the resolution process, with resolutions passed by association delegates at the annual conference. These resolutions include the issues that EANGUS will pursue in Congress and the Department of Defense. Resolutions stay in force for two years.

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The Enlisted Association of the National Guard of the United States (EANGUS) is a member-supported organization. EANGUS has not received grants, contracts, or subcontracts from the federal government in the past three years. All other activities and services of the associations are accomplished free of any direct federal funding.



Kevin Hollinger EANGUS Legislative Director

Kevin Hollinger focuses on legislation that advocates for national security and readiness of the Enlisted National Guard. Mr. Hollinger served for over 22 years in the Army and National Guard and completed multiple deployments in Iraq, Afghanistan, Kosovo, and South America. Kevin has specialized in RC legislation for over eight years. He completed his Juris Doctorate from The John Marshal Law School and is currently an LLM student. Mr. Hollinger can be reached at Kevin@eangus.org or 202-670-1826

Statement

Chairman Van Orden, Ranking Member Levin, and Members of the Committee:

Thank you for the opportunity to provide this opening statement.

I am Kevin Hollinger, the Legislative Director for the Enlisted Association of the National Guard of the United States, also known as EANGUS.

EANGUS was formally organized in 1972 to increase the voice of enlisted persons in the National Guard. As such, EANGUS is a non-profit organization dedicated to providing partnerships. Adequate national defense and promoting safeguarding and improving the status, welfare, and professionalism of enlisted National Guard members, veterans, retirees, and their families through legislation, employment, education, emergency resources and

Beginning with twenty-three states, EANGUS now represents all 50 states, Guam, Puerto Rico, the U.S. Virgin Islands, and the District of Columbia, and has an association comprised of those who serve the National Guard on a national tour, with a constituency base of over 450,000 Soldiers and Airmen, their families, and tens of thousands of retired members. EANGUS is the only Professional Military and Veteran Service Organization dedicated solely to Enlisted Members of the National Guard. As such, we are keenly focused on ensuring that current and former enlisted National Guard members and their families are provided adequate pay, benefits, entitlements, and compensation commensurate with their dedicated service and contribution to our nation. For many years, Citizen Soldiers and Airmen have answered their nation's call when asked, often standing shoulder-to-shoulder with their Active, Component Counterparts. However, these selfless heroes frequently do not receive the same comparable benefits or are afforded the same protections as the

Active Component and, in some cases, even other Reserve Component Service members, due to the duty status under which they are working. With this stated, we look forward to discussing these issues and how we can ensure that these great Americans are equally recognized for their service.

EANGUS appreciates the opportunity to discuss the Uniformed Services Employment and Reemployment Rights Act (USERRA). While we will not address every proposed act, this does not indicate EANGUS's support for or opposition to these other bills. EANGUS's focus today aligns with our By-laws, Articles of Incorporation, and the resolutions brought by our members.

I want to use my time today to discuss three issues that EANGUS has with USERRA protection affecting the National Guard.

1. An employer's ability to use Forced Arbitration as a means to settle legal issues concerning USERRA
2. Non-covered state-funded service in uniform
3. Non-covered family members

Forced Arbitration

Removing Forced Arbitration is important legislation that will empower Servicemembers and their families against the practice of Forced Arbitration. This much too standard dispute process strips our Servicemembers of their rights under the Servicemembers Civil Relief Act (SCRA) and the Uniformed Services Employment and Reemployment Rights Act (USERRA). Forced Arbitration is a one-sided, non-transparent process in which Servicemembers have very little chance of achieving a favorable outcome when their rights and protections set forth under these federal laws are violated.

In 1994, Congress passed USERRA, a bipartisan law protecting Servicemembers from employment discrimination based on their military obligations. Unfortunately, due to forced arbitration clauses in employment contracts, Servicemembers must relinquish their USERRA rights to get or keep a job. Thus, when an employer violates USERRA, Servicemembers cannot hold the employer publicly accountable.

Servicemembers need their legal protections restored without delay, not another study to show what they already know-that Forced Arbitration hurts them and their families and renders rights granted by SCRA and USERRA virtually meaningless. H.R. 2196, Justice for Servicemembers Act, introduced during the 117th Congress, would have restored their ability to enforce USERRA and SCRA and hold wrongdoers accountable. EANGUS supported this bill and strongly advocated for it to be lawfully re-introduced and passed.

As EANGUS has advocated for this issue for many years, we have heard the opposition to this legislation state, "it will cost businesses millions of dollars if legislation prevents them from using forced arbitration." I'm here to tell you it will not cost any law-abiding business a dollar. It will only hold accountable those who choose not to follow the law.

Non-covered state-funded service in uniform

State Active Duty is a status available for the Governor or the Adjutant General to use for various state concerns like state environmental disasters, civil unrest, or to fill community needs. If the servicemembers do not fall under one of the following categories, they will not be protected by USERRA;

1. State Active Duty for 14 Days or more
2. State Active duty in support of a National Emergency
3. State Active Duty in support of a Major Disaster declared by the President

Since March 2020, the National Guard has activated over 320,000 servicemembers to support many overseas and domestic activities, from combat missions in places like Afghanistan to running COVID testing and vaccine sites in the US. We have even seen National Guard Servicemembers used as substitute teachers and bus drivers. I can assure you that their sacrifice and dedication are no different if they are driving a bus or fighting for our freedom overseas. Our dedicated Servicemembers of the National Guard must know that their job is safe and available when they return.

In the past, EANGUS has heard statements like, "this is a state issue," or "They knew what they were signing up for." I don't believe this could be further from the truth. Young National Guard Servicemembers rarely understand what type of order they are on and how that affects their rights. They wear their uniform and go to work, unaware of their duty status. A piece of paper does not determine their dedication.

In *Torres v. Texas Department of Public Safety*, the Supreme Court considered whether the states, by ratifying the Constitution, gave Congress the power to authorize suits against states using its constitutional war powers. In the opinion authored by Justice Stephen Breyer, he stated, "Congress's ability to build and maintain the Armed Forces fits the test outlined in *PennEast's* test. Thus, in joining together to form a Union, the States agreed to sacrifice their sovereign immunity for the good of the common defense." With that opinion, we now know it is something to be considered by the US Congress. Therein EANGUS would urge the 118th Congress to ensure USERRA protection for all Reservist and National Guardsmen duties.

USERRA Protection For Spouses

It is easy to see the sacrifice of the Servicemember. Unless you have lived under a rock for the last 20 + years, everyone knows the sacrifice of the Reservist and National Guard personnel. They know how they are pulled from their everyday lives and thrust into service of our country. The Reserves and National Guard have proven to be a critical part of our nation's defense. But imagine if you were removed from your spouse at a moment's notice and if you still have or have had small children. How hard would it be for your spouse to make up for your absence? Well, that's how being a National Guard spouse works. Civil unrest, natural disasters, filling in for teachers in your local area, or combatting these issues are never convenient for families.

Spouses often must take time away from their employment to figure out new schedules. At a

moment's notice, they become the sole head of the house. Handling time off is often the only way for spouses to get acclimated. Their dedication to our national defense is more critical and complex than their National Guard spouse.

Army Gen. Raymond Odierno often said, "our country is great because of our military, our military is great because of our Servicemembers, and our Servicemembers are great because of our families." I think putting these things together is the correct answer.

EANGUS would urge the 118th Congress to legislate USERRA protection to spouses of activated Reserve and National Guard Servicemembers.

CONCLUSION

EANGUS appreciates the opportunity to offer thoughts regarding these critical legislative issues. Military and veterans' laws and policies are often developed without an understanding of or appreciation for the essential distinctions between the reserve and active-duty service. The members of the National Guard invariably lose out. And so do their families.

These past three years have shown America how important the National Guard is to everyday life. The National Guard has activated over 320,000 Servicemembers since 2020 for missions including but not limited to, Pandemic assistance, Civil unrest, overseas direct combat assistance, and Capitol security. These activations were often at a moment's notice, and the National Guard did not hesitate; they accomplished the mission.

Ensuring that our National Guard veterans are adequately cared for after service is critical to the National Guard recruiting and retention problem. As stated above, "the National Guard does not hesitate; they accomplish the mission." We are now asking the same from Congress; please do not hesitate. Ensure our nation's heroes are adequately cared for during and after their service. Thank you for your time, and I look forward to your questions.