



Written by [Peter Rykowski](#) on July 6, 2022

Supreme Court Ruling Erodes State Sovereignty, Shows Futility of Relying on the Courts

This past term, the Supreme Court made multiple significant rulings that upheld a faithful interpretation of the U.S.

Constitution. These included [overturning](#) *Roe v. Wade*, [confirming](#) a right to carry firearms in public, [limiting](#) the power of executive-branch agencies, and several major pro-religious-freedom rulings ([here](#), [here](#), and [here](#)).

However, one major ruling departs from the Constitution, undermines state sovereignty, and shows how liberty-minded Americans cannot put their trust in the judiciary to save our Republic.



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In [Torres v. Texas Department of Public Safety](#), released last week, the Court ruled 5-4 that states can be forced — via lawsuits — to enforce and comply with federal laws enacted under the guise of congressional “war powers.”

The case began after Le Roy Torres, a former Texas state trooper who was injured while serving with the U.S. Army Reserve in Iraq, was allegedly refused a comparable job by the Texas Department of Public Safety (DPS) after his injuries made him unable to do his previous job.

Torres sued the DPS under the federal Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA). This act requires all employers — including state and local governments — to rehire employees after serving in the military, whether in the same job or a comparable job. The DPS countered by arguing that it was protected by “state sovereign immunity.”

Despite the heart-wrenching background of this case, it is necessary for the judiciary to abide by the Constitution. Ultimately, the DPS is correct: Nowhere does the Constitution authorize Congress to infringe upon states’ sovereign immunity. Additionally, USERRA’s provision regulating state-government employers directly violates the 10th Amendment. Ignoring the Constitution on this matter would damage state sovereignty.

Unfortunately, Chief Justice John Roberts and Justice Brett Kavanaugh joined the Court’s three leftists in ruling against the DPS. In an [opinion](#) written by Justice Stephen Breyer — his last before [resigning](#) — the Court claimed that “as part of the plan of the Convention, the States waived their immunity under Congress’ Article I power ‘[t]o raise and support Armies’ and ‘provide and maintain a Navy.’”

Of course, the Constitution says no such thing. Furthermore, USERRA is, at best, only tangentially related to raising and supporting the armed forces.

Justice Clarence Thomas, arguably the most constitutionalist sitting justice, wrote the dissent. Strongly disagreeing with Breyer’s majority opinion, he argued that “USERRA’s cause of action is uniquely offensive to the States’ dignity because it purports ‘to press a State’s own courts into federal service to



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coerce the other branches of the State,' thereby 'turn[ing] the State against itself' and 'commandeer[ing] the entire political machinery of the State against its will and at the behest of individuals.'" Continuing, Thomas stated, "That kind of 'plenary federal control of state governmental processes denigrates the separate sovereignty of the States.'"

The Supreme Court's *Torres* ruling illustrates the danger of relying on the Courts to save our Republic. Although this Supreme Court has made multiple pro-Constitution decisions, and is arguably more conservative than at any point [since 1931](#), it continues to make other decisions that contradict the Constitution.

Furthermore, there remain countless federal laws, court rulings, and regulations with no constitutional basis, and it is not likely that the Supreme Court will strike down many of them in the near future. And finally, the Supreme Court only needs two additional leftist justices to see the Court's rulings shift starkly to the left, and every constitutionalist ruling reversed.

Accordingly, liberty-minded Americans must not become complacent. Rather, they must continue working to create an informed electorate, one that understands the Constitution, along with the true nature of the threats facing our Republic. Additionally, they must continue promoting [nullification](#) as the solution to federal usurpations, urging state legislators to enact strong bills nullifying unconstitutional federal laws, regulations, and court rulings.

The Supreme Court decisions mentioned at the beginning of this article are certainly heartening and positive to see. By continuing and intensifying our educational and activist efforts, we can help ensure they will not be temporary.



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