

**ACCESS TO JUSTICE FOR THOSE WHO SERVE**  
**March 27, 2014**  
**Senator Blumenthal Opening Statement**

**General Introduction**

Thank you for joining us today for a hearing on what I believe is an absolutely crucial question: whether the rights of our servicemembers are adequately protected. I want to thank Ranking Member Hatch for helping to make this hearing happen. And of course I want to thank all of the witnesses.

This will be my last hearing as the chair of the Subcommittee on Oversight, Federal Rights, and Agency Action. Over the course of this Congress, we have been able to explore a variety of issues related to the federal government's duty to protect its citizens, and I am proud of what we have accomplished. I want to particularly thank Senator Leahy, chairman of the Judiciary Committee, for working with me to make this new subcommittee a success.

**The Scope of the Problem**

Today's hearing is the product of a proud tradition and a disappointing reality. The proud tradition is Congress's bipartisan tradition of passing legislation to protect our servicemembers. The disappointing reality is that too many of the rights enshrined by Congress are effectively dead letter in the face of structural and procedural barriers to enforcement. When servicemembers cannot find lawyers to take their cases, cannot get a ruling on the merits even when they make it to court,

and cannot receive adequate compensation even when they win—in that case the laws on the books are not the strong protections they should be.

## **USERRA**

The Uniformed Services Employment and Reemployment Rights Act is a classic example. USERRA—as it is called—passed the House and the Senate by voice vote. It stands for the simple proposition that American workers should not be discriminated against because they have chosen to serve in their country’s armed forces. It is hard to imagine a less controversial principle.

Yet USERRA has some of the weakest remedies in any comparable statute. A member of the National Guard or Reserve who is fired because they get deployed stands to win only back pay, reinstatement, and maybe some compensation for lost health care or pension benefits. If they experience prolonged unemployment—if they lose their home, their car, their credit—a court award will not even come close to making them whole. Further, because servicemembers are required to mitigate damages, awards are frequently far less than a servicemember’s lost wages. Few private attorneys will take a case where the award after a long and difficult case is likely to be less than \$20,000 and may be even less than \$10,000.

And because employers know that they face such a small punishment when they violate USERRA, they have little incentive to comply with the law. The worst

that happens if they lose is that they have to pay the money they were always required to pay—so why not roll the dice and see if you can get away with it. Even when a servicemember can show that an employer willfully violated the law—a very difficult thing to show—that servicemember can only expect to collect double whatever damages they would otherwise get. In many cases, even this amount will not fully compensate the servicemember; and it rarely provides an adequate deterrent for the employer.

USERRA stands in stark contrast to other workplace protection statutes. An employee fired in violation of Title VII stands to get full compensation for any harm that results. They can also collect punitive damages. In other words, most discriminatory actions by employers come with large and powerful penalties. But if an employer discriminates against a servicemember, the penalties are negligible.

USERRA is also unusual in other ways. If the Justice Department finds a pattern or practice of discrimination under Title VII, they can file suit to vindicate everybody who has been harmed. If they find a pattern or practice of discrimination against servicemembers, they are powerless. If a state government employer violates Title VII, they are fully liable. If the same employer discriminates against servicemembers, they are not. At every step, servicemembers have weaker protections than almost any other category of litigants.

## **The Financial Marketplace**

Servicemembers also face special difficulties in the financial marketplace.

Servicemembers are taught to repay their debts, no matter how onerous. The Uniform Code of Military Justice tells them that failure to repay a debt is a punishable offense. And many servicemembers know that an unpaid debt could lead to a lost security clearance and, in turn, a lost job. Unscrupulous lenders know that where a normal consumer might refuse to pay a predatory loan or seek legal assistance to have the loan cancelled, a servicemember may not.

For all these reasons, servicemembers are uniquely vulnerable to abusive lending practices. More importantly—when abusive practices are targeted at servicemembers, we are all worse off. A soldier who is afraid that he will lose his house cannot focus on his mission. A soldier whose family is being harassed by debt collectors is less able to keep the rest of us safe.

Congress has repeatedly acted to protect servicemembers, and it has done so in a bipartisan fashion. Like USERRA, the Servicemembers Civil Relief Act—which protects servicemembers from foreclosure and default judgments while they serve—passed the Senate by voice vote. The House passed the bill 425 to 0. The Military Lending Act—better known as the Talent Amendment—was a bipartisan proposal that was rolled into the National Defense Authorization Act without controversy. It was intended to protect servicemembers from loan shark interest rates of more than 36 percent.

Yet while these statutes have made a tremendous difference, commonsense reforms are needed for them to live up to their goals. The Servicemembers Civil Relief Act—better known as the SCRA [“Sick-Ruh”]—can be waived by contract. As a result, the worst lenders can protect themselves from liability just by demanding that servicemembers give up their rights. The Military Lending Act suffers from an outdated implementing regulation that allows lenders to avoid the act’s protections with small, cosmetic tweaks to their loans.

And servicemembers saddled with unfair loans too often find that federal protections intended to protect them from debt collector harassment do not work. While it would be illegal for a third party debt collector to harass a servicemember by going to the servicemember’s commanding officer, creditors can and do call commanding officers directly, sometimes scaring servicemembers into paying debts they don’t even owe. I have called on the Consumer Financial Protection Bureau to help address this problem, and I hope that the Administration shares my view that servicemembers must be protected.

## **Conclusion**

As I said at the beginning, Congress has done great work to protect servicemembers, and we have done it on a bipartisan basis. I hope that the effort to make these protections truly work for our men and women in uniform will also be

bipartisan. I intend to listen hard today, and if there are legislative solutions needed I will work with my colleagues to get that done.

With that, I want to again thank Senator Hatch for being here and to recognize him for a statement.