

# **Bond Case Briefs**

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## **SOVEREIGN IMMUNITY - ALABAMA**

### **Weaver v. Madison City Bd. of Educ.**

**United States District Court, N.D. Alabama, Northeastern Division - May 29, 2013 - F.Supp.2d - 2013 WL 2350181**

Plaintiff filed a lawsuit against the Madison City Board of Education Board under the Uniform Services Employment and Reemployment Rights Act ("USERRA"). In its motion to dismiss, the Board argued that is immune from suit under USERRA as an "arm of the state" for Eleventh Amendment purposes.

At § 4323 of the Act, the United States district courts are given jurisdiction over causes of action brought under USERRA "against a private employer by a person." When an action is brought by a private litigant against a State as an employer, however, "the action may be brought in a State court of competent jurisdiction in accordance with the laws of the state." To complicate matters further, 38 U.S.C. § 4323(i) defines the term "private employer" to include the "political subdivision[s] of a State."

The Board in this action contended that it is not a mere "political subdivision" of the State of Alabama, but a full-fledged "arm of the State" itself. Although the term "arm of the State" does not appear in the jurisdictional or definitional provisions of the statute, the Board argues that because it is not a mere political subdivision of the State of Alabama, § 4323(i) does not apply and that it is an "arm of the state," immune from suit in the United States district court under the Eleventh Amendment to the United States Constitution. Plaintiff counters that the Board is not an "arm of the state," but a "political subdivision" within the meaning of § 4323(i) and, even if the Board is an "arm of the state," the Eleventh Amendment does not bar a private suit against the State under USERRA because it was enacted pursuant to Congress's constitutional War Powers, not the Commerce Clause.

The court analyzed the status of a city school board, when performing an employment function, under the four-factor Manders analysis for assessing whether an entity is an "arm of the State" for Eleventh Amendment purpose, concluding that a local city school board is a political subdivision - comparable to counties and municipalities - not an arm of the State.