STARS AND STRIPES

OPINION

Federal court educates Texas Education Agency on military families' rights

By JON RICHES AND BRANDON GRABLE
SPECIAL TO STARS AND STRIPES • December 7, 2023

A military spouse learns about employment opportunities at a job fair held at Ramstein Air Base on March 3, 2023. (Jordan Lazaro/U.S. Air Force)

No one debates whether Hannah Portèe, a military spouse who lives in Del Rio, Texas, is good at what she does. Hannah has been a licensed school counselor since 2021, and she's previously worked as a guidance counselor in both Ohio and Missouri.

Despite her obvious qualifications, state government bureaucrats wouldn't let her work in her field of expertise. But a federal court in Texas just issued a crucial decision that will help ensure military spouses like Hannah aren't frozen out of their careers because of their family's military duties.

When Hannah's husband — an active-duty Air Force officer — received permanent change-of-station orders to Texas, she applied to the state for a license to continue her career. Rather than grant this clearly qualified professional a license, the Texas Education Agency — the licensing authority for educators in the state — told her no. And it did so in violation of federal law.

Licensing laws are government permission slips to work. Despite the fact that less than 5% of jobs required a license 50 years ago, nearly a third of all jobs in the country now require a license, depending on the state. These government mandates don't just apply to doctors and lawyers, but to a huge range of occupations, including hairstylists, plumbers, real estate agents, and amazingly, in at least one state, florists.

And each state has different requirements for each license. So, a person can be a licensed nurse or barber in one state, but once she crosses state lines, she can't practice that profession unless she applies for a new license in her state, regardless of how long she has been doing it. This can mean hundreds of hours of extra training and thousands of additional dollars — just to keep doing the same job.

But, of course, a person doesn't forget how to cut hair or care for patients merely because they move across state lines.

And the sad reality is that these regulations frequently fall hardest on members of the military and their families, who, with each military move every two to three years, must apply for a new license or exit the workforce.

As a result, military spouses face an unemployment rate that is nearly six times higher than the general population — even though they often have high levels of education and job skills that are in high demand.

Led by Sen. Mike Lee, Congress recognized this problem and passed the Military Spouse Licensing Relief Act to fix it. The new law amended the Servicemembers' Civil Relief Act to require state licensing entities to recognize out-of-state licenses for military spouses who have held their license in good standing and who have worked in their chosen occupation in the two years prior to their family's move. It builds on work done by the Goldwater Institute (where one of your authors, Jon Riches, serves as vice president for litigation) at the state level to allow for universal recognition of all out-of-state licenses.

Despite the new law, and even though Hannah met all of its criteria, the Texas Education Agency denied her application for an educator certificate.

Hannah was faced with three difficult choices: remain unemployed, attempt to get a Texas license before moving to a new state, or file a lawsuit to correct this injustice.

That's when another of your authors, Brandon Grable, sued the TEA on Hannah's behalf, asking a federal court to declare that the agency was violating federal law by denying Hannah her right to earn a living.

The TEA first argued that the new amendment to the SCRA required two years of continuous employment in another state before military spouses can apply for a Texas educator license, even though the statute has no such requirement. Then, the TEA simply stopped trying to defend its unreasonable interpretation altogether.

On Nov. 20, the court declared that the TEA violated federal law with respect to Hannah's application and permanently stopped the agency from enforcing its licensing requirements against Hannah.

While Hannah's career was stalled by the agency's conduct, she proudly took this fight recognizing that she was helping military spouses across the country.

States should not be in the business of raising up indiscriminate barriers to those who simply want to earn a living. This is especially true for our military families, who bear the burden of constant mobility.

The Military Spouse Licensing Relief Act guarantees that military families can enjoy the very rights they sacrifice so much for — including the right to earn a living. And Hannah's case will go a long way toward ensuring that state licensing boards comply with the law, so our military spouses don't have to choose between their family's service or their employment.

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