No. 20-5305

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 2020

Ronnie Smith, Pro Se,
Petitioner,

ORIGINAL

-against-

New York Child Support Process Center, Tax Offset Unit; Thrift Saving Plan,
Defendants.

FILED
JUL 27 2020
OFFICE OF THE CLERK
SUPREME COURT, U.S.

On Petition For Writ Of Certiorari To The United States Supreme Court For The Second Circuit

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APPELLANT'S BRIEF

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QUESTIONS PRESENTED

1. Whether the statutes 29 UCS Section 1001 et seq., ERISA insulated Petitioner's federal pension funds in a account which is not taxable exempt from child support garnishment.
2. Whether it was Congress express intent to insulated funds described in 38 USC Section 5301[a][1], as being a protected income not only by military Veterans but to afford same protection of federal retirement and pension monies to federal civilian employees with equal force.
3. Whether the lower district courts dismissal of Petitioner's complaint conflict with established Supreme Court decisions that held 29 USC Section 1001 and 38 USC Section 5301 protects exempt monies defined in the provisions from levy, debt collectors, attachments and garnishment and child support arrears.

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OPINION AND ORDERS BELOW

The Order of Dismissal of Colleen McMahon, Chief Judge, United States Southern District of New York, Docket No. 19-cv-9266, dated November 25, 2019, lack of Order published Order by Second Circuit Court denying IPF Status only a statement IPF Status denied on November 25, 2019, $505.00 fee due by January 3, 2020 (See, Appendix "A"), Civil Docket Sheet, Document No. 13, and Mandate Order was issued on June 29, 2020.

JURISDICTION

The Court of Appeals mandate Order was filed on June 29, 2020, thus jurisdiction is invoked pursuant to 42 USC Section 1245[1], and Rule 13[1], of the United States Supreme Court.

CONTSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The U.S. Const. amend. FOURTEENTH, 29 USC Section 1001-1191[c], Employee Retirement Income Security Act of 1974 (ERISA) Protection of Employees Benefits Rights; 38 USC 5301[a][1]. Nonassignability and Exempt Status of Benefits, 42 USC Section(s) 407, 652[b], 659 and 662[f], Levy and Garnishment of Benefits, and 5 USC Section 8437, Thrift Saving Fund.

STATEMENT OF THE CASE

The United States District Court for the Southern District of New York had proper jurisdiction pursuant to 38 USC Section 5301 and 29 USC Section 1001, as for nonassigned pension, retirement or disability benefits are exempt from garnishment because these sources of income are not taxed.

I. PARTIES

Petitioner Ronnie Smith, appearing pro se, was subjected to a series of unlawful garnishments of his pension funds and deprivation of his civil rights accorded by 38 USC Section 5301 and 29 USC Section 1001, et seq., involving executions unlawful New York State Tax Warrants for Child Support arrears by Defendant New York Child Support Process Center, Tax Offset Unit [Hereinafter, "State Defendant"] which confiscated majority of Petitioner's $80,000, pension savings. Petitioner 's pension fund income is protected from garnishment and the State defendant lacks the authority to violate and challenge federal laws.

The Defendant Thrift Saving Plan [Hereinafter, "TSP"], disregarded settled clear statutes of 38 USC Section 5301, insulating Petitioner's pension fund saving because it was not in any money making scheme or Nonassignability and Exempt Status of Benefits, and that Defendant TSP legal process in regards to court orders 5 CFR Section 1653.11 Subpart B, is unconstitutional because it prohibits any review or appeal of any decisions made under this Subpart B. Petitioner challenged Defendant TSP legality of obeying State Court Order in New York State family Court and New York State Appellate Courts, which put Defendant TSP on notice they were engaging in unconstitutional in violation of 38 USC Section 5301 and other relevant statues that insulates Petitioner's pension funds child support orders.

II. FACTS

On October 7, 2019, filed a civil complaint in the Southern District of New York against the State Defendant and Defendant TSP for unlawful garnishment of his pension funds he argued was garnished proof pursuant to 38 USC Section 5301, Nonassignability and Exempt Status of Benefits, 29 USC Section 1001 et seq., Employee Retirement Income Security Act (ERISA) entitled Ronnie Smith v. New York State Child Support Process Center, Offset Unit, Thrift Saving Plan, Case No. 19-cv-9266 (CM) dismissed on November 25, 2019 (See, Appendix "B"). Petitioner filed Notice of Appeal to Second Circuit Court of New York on December 30, 2019 (See, Appendix "A"). The Second Circuit Court on December without published opinion denied Petitioner's Appeal unless payment $505.00 filing fee before January 3, 2020, (See, Appendix "A") Civil Docket Sheet, Documents 13 and 14. The Second Circuit Court issued its Mandate Order on June 29, 2020 (See, Appendix "C").

Petitioner also, filed similar action in the New York State Family Court In the Matter of Phyllis Starks v. Ronnie Smith, Docket No. F-06907-05, arguing unlawful garnishment of his pension funds and ensuing appeal to New York State Appellate Court, First Department, Motion 1907, dismissed on may 16, 2019. Petitioner was denied his right to seek review to New York State Court of Appeals because he did not received notice of

the dismissal of that State court action until some 6 months later due negligence of that State Appellate Court.

REASONS FOR GRANTING THE WRIT

Petitioner's Writ of Certiorari should be granted for strength of laws established in 38 USC Section 5301; 29 USC Section 1001 et seq.; and 42 USC Section 407" id.; Section 659' id. Section 1983; and the United States Constitution, Article IV, Clause, and the Fourteenth Amendment of the United States Constitution, Equal Protection & Due Process of law Clauses. For the willful and blatant violation of Petitioner's due process law guarantees

I. PETITIONER HAS DEMONSTRAED BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANTS VIOLATED ESTABLISHED LAWS ON EXEMPTION OF FEEDERAL PROTECTED INCOME AS DEFINED IN 38 USC SECTION 5301.

As adequately relied on by Petitioner the statutes of 38 USC Section 5301, Nonassignability and Exempt Status of Benefits, at its core insulates Petitioner's pension funds as a federal employee in which the statute make no difference to its applicability to a civilian employee or veteran is otherwise enforceable as held below:

> Section 5301[a][1]. Nonassignability and Exempt Status of Benefits (1) Payments of benefits due to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law,, and such payments made to, or on account of, a beneficiary shall be from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after the receipt by the beneficiary.

Also, the statutes of 29 USC Section 1001 et seq., Employee retirement Income Security Act (ERISA), further provides additional insulation from garnishment of federal pension.

SEVERAL SUPREME COURT DECISIONS HAS HELD THAT IN CERTAIN SITUATIONS ERISA AND 38 USC SECTION 3501, DO EXEMPT FEDERAL INCOME FROM GARNISHMENT PROCESS PREEMPTS STATE LAWS COLLECTION ENFORCEMENT

The Supreme Court has laid firm grounds on the "Preemption and the Clarity of Federal Law Applicability" in terms of whether a state court should look to State law or Federal law in this regard, the express term of ERISA provides that they "Shall supercede any and all State laws insofar as they may now or hereinafter relate to any employee benefits plan [subject to the ERISA requirements]" The term "State law" for the purpose of Section 514 of ERISA, includes "all laws, decisions, rules, regulations, or other State action having the effect of law, of any State." ERISA Section 514[c][1]; 29 USC Section 1144[c][1]. The preemption provision of ERISA has been regarded by the United States Supreme Court as "deliberately expansive, and designed to 'establish pension plan regulation as exclusively a federal concern.'" See, Pilot Life Ins. Co. v. Dedeaux, 481 U.S. 41, 46, 107 S.Ct. 1549 (1987); Alessi v. Raybestos-Manhattan, Inc., 451 U.S. 504, 523, 101 S.Ct. 1895, 1906 (1981); Shaw v. Delta Air Lines, Inc., 463 U.S. 85, 103 S.Ct. 2890 (1983); See, also, Egelhoff v. Egelhoff, 532 U.S. 141, 121 S.Ct. 1322 (2001).

The Supreme Court recent decision of Howell v. Howell, 581 U.S. __(2017), held that a State court may not order a veteran to indemnify a divorce spouse

for the loss in the spouse's portion of the veteran's retirement pay caused by the veteran's waiver of retirement pay to receive service related disability benefits the Supreme Court reasoned that Mansell v. Mansell, 490 U.S. 581 (1981), the Uniformed Services Former Spouses Protection Act (USFSPA) and pre-existing federal law completely pre-empted the sates from treating waived military retirement pay as divisible community property. Second, the Supreme Court relying on 38 USC Section 5301, specifically stated that: "State courts cannot 'vest' that whish (under governing federal law – again citing 38 USC Section 5301) they lack authority to give."

A. SUPREME COURT HAS HELD STATE TAXATION OF FEDERAL EMPLOYEES PENSION VIOLATES THE INTERGOVERNMENTAL TAX IMMUNITY DOCTRINE UNDER 4 UCS SECTION 11.

The Supreme Court in Dawson v. Steager, 586 U.S. ___(2019), held that A state violates 4 USC Section 111, when it treats retired state employees more favorably than retired federal employees and no significant differences between the two classes justify the differential treatment. And, the Court cited Davis v. Michigan Dept. of Treasury, 489 U.S. 803, 814-16 (1989), as discriminatory treatment of income disputes differential treatment between state and federal employees.

These cases illustrate a preferential treatment and the State governments willingness and frequent violations implementing discriminatory laws to run afoul of the Tax Immunity Doctrine and other income protection statutes

such as 29 USC Section 1001 et seq. (ERISA), and 38 USC Section 5301, Nonassignability and Exempt Status of Benefits.

B. NEW YORK STATE GARNISHMENT STATUES AS IT APPLIES TO CHILD SUPPORT COURT ORDERS AGAINST EXEMPT FEDERAL PROTECTED INCOME IS UNCONSTITUTIONAL AS U.S. ART. VI, Cl. 2, SUPREMACY CLAUSE PROVIDES

The Supremacy Clause Const., Article VI, Clause 2, invalidates state laws that interfere with or contrary to federal law. Petitioner correctly argues that his claims of 29 USC Section 1001 et seq., and 38 USC Section 5301 insulates his federal funds which are not taxable from garnishment procedure that the State defendant and defendant TSP has willfully violated.

Petitioner further contends, the "Supremacy Clause" provides that Federal laws "shall be the supreme law of the land; and the Judges in every state shall be bound thereby, any thing in the Constitution or Laws of any State to the contrary notwithstanding." U.S. Const.. Art. VI, Cl. 2.

The expressed intent to displace state law altogether can be inferred from a framework of regulations 'so pervasive that Congress left no room for the States to supplement it' or where these is a 'federal interest so dominant that the Federal system will assume to preclude enforcement of State laws on the same subject. See, Rice v. Santa Fe Elevator Corp., 331 U.S. 218, 230 (1941). Furthermore, the Article VI, Clause 2, of the United States Constitution, "Supremacy Clause" makes it a trump card to defeat any State claim. See, Ex Parte Boilman, 8 U.S. (4 Cranch) 75 (1807); Ponzi v. Fesseden, 258 U.S. 254

(1922); State laws are preempted when they conflict with Federal laws. See, Hines v. Dvidowitz, 312 U.S. 52 (1941) at page 67.

C. THE LOWER DISTRICT COURT AND SECOND CIRCUIT COURT HAS ABUSED ITS DISCRETION AND MADE SUBSTANTIAL ERRORS OF LAW WHEN IN DISMISSING CLAIMS AS LACKING FACT OR ARGUMENTS OF LAW ON HIS FEDERAL PENSION BEING EXEMPT FROM GARNISHMENT, 38 USC SECTION 5301

The lower Courts in dismissing Petitioner's complaint pursuant 28 USC Section 1915 and Federal Rule Civil Practice, 12(h)(3), as the Courts lacking subject matter jurisdiction is patently erroneous based on the case cites mentioned here in Petitioner's brief to this Supreme Court.

The fact that Petitioner was not afforded an appearance in court or an evidentiary hearing is a blatant abuse of discretion and bias towards pro se litigants in an apolitical lens favorable to the governmental agencies that benefited the State Defendant and Defendant TSP. In denying Petitioner IPF status in he Second Circuit Court give some insight into hoe unfairly differential Petitioner was treated in light of the valid argument put forth to this Supreme Court in his brief certainly, does border on the frivolous or being void of any factual disputes on Constitutional grounds as the issue presents to this Supreme Court for review suggests.

Chief Judge Colleen McMahon, of the S.D.N.Y. Order of Dismissal, at page 7, acknowledges that they are exceptions to garnishment of TSP accounts and cited ERISA 5 USC Section 8437[c][1], while at the same time the district court cites erroneously exceptions to these protections to obligation to pay

child support citing a misplaced case of Rasooly v. Long, No. 15-cv-4540 (JD), 2017 WL 6539650, *1(N.D. Ca. Dec. 21, 2017), in the Court in Rasooly, dealt with a totally different policy issue irrelevant of the argument Petitioner raises about whether his Pension fund account under the conditions of 38 USC Section 5301, is exempt due to non taxation of his funds not the fiduciary issues the Court in Rasooly ruled on.

Petitioner brought a similar claim against the State Defendant entitled Ronnie Smith v. New York City Human Resources Administration, Office of Child Support Enforcement Processing Center, No, 15-cv-5061 (LAP) dismissed November 15, 2015, appealed to Second Circuit Court, Docket No. 15-4109, dismissed January 5, 2016. Which demonstrates that Petitioner is certainly aware of when he sustains a civil rights violation and how to seek substantial remedy to address any such violation. Therefore, finds the lower district courts actions in the manner in dismissing his complaint an abuse of discretion.

D. THE NARROW INTERPRETATION OF FEDERAL INCOME EXEPMTION STATUES BY NEW YORK DISTRICT COURTS RUNS COUNTER TO ESTABLISHED SUPREME COURT RULINGS ON 29 USC SECTION 1001 AND 38 USC SECTION 5301, FEDARAL LAWS AND LACK OF COURT RULINGS FROM THE SECOND CIRCUIT MAKE IT RIPE FOR REVIEW OF PETITIONER'S CASE ON EXEMPT FEDERAL PENSION FUNDS UNDER EXPEMPT TAXATION STATUTES

Petitioner has set forth meritorious reasons why the New York district courts have ruled in disregard of a majority of supreme Court and other circuit courts decisions on pre-existing Federal laws that pre-empted by State

laws to offset the garnishment of certain categories of Federally protected income in violation of 29 USC Section 1001 et seq., and 38 USC Section 5301 exemption doctrines on federal pensions and income.

Petitioner has abundantly demonstrated that the district courts have abused their discretions in making a clear error of law here and failure to address unsettled genuine material triable issues of facts Petitioner has well pleaded to those courts below. See, Sims v. Blot, 534 F.3d 117, 132 (2d Cir. 2008), the Court held quoting "[a] district court has abused its discretion when it makes a clear error of law." See, e.g., United States v. Legros, 529 F.3d 470, 473 (2d Cir. 2008); Swieerkwicz v. Sorenana, 534 U.S. 506, 513 (2002)(quoiting, Scheuer v. Rhodes, 416 U.S. 232, 235 (1974).

Note 1. Petitioner's nephew Derry Sykes has prevail on similar arguments of income not subjected to taxation is exempt from garnishment process in Sykes v. Bank of America,723 F.3d 399 (2013), 136 S.Ct. 48, 193 L. Ed. 2d 53, although the Court in Sykes dealt with a very different policy issue, it address the legal conclusion that all monies not subjected to taxation is except from levy, debt collectors and garnishment process.

Note 2. Definition of NonAssignability. No right, benefit, or interest hereunder shall be subject to anticipation, alienation, sale, assignment, encumbrance, charge, pledge, hypothecation, or setoff in respect in respect of any claim, debt or obligation, or to execution, attachment, levy or similar process, or assignment by operation of law. Any attempt, voluntary or involuntary, to effect any action specified in the immediately preceding sentence shall, to the full extent permitted by law, be null, void and no effect. Any of the foregoing to the contrary withstanding, the provision shall not preclude the Executive from designating one or more beneficiaries to receive any amount that may be payable after his death, and shall not preclude the legal representative of the Executive's estate from assigning any right hereunder to the person or persons entitled thereto under his will or, in the case of intestacy, applicable to his estate.

There appears to be a conflict with Federal laws involving Veterans benefits and child support discussed in, Rose v. Rose, 481 U.S. 619 (1987), the Court weighed the legal distinction between "remunerated" and "disability benefits" a State or obligee can garnish one but not the other. In examining how a veteran's disability benefits will be affected by a child support order, one must find first clarify what type of veteran's Disability Benefits the veteran has, Title 42 USC Section 659(a) allows for the collection and garnishment of moneys....based upon remuneration for employment...to enforce the legal obligations of the individual to provide child support or alimony." This initial paragraph seems straight forward. However, contained within the law in subsection (h) which create two classifications of Veterans' Disability benefits-one type may be garnished and the other may not.

Section (h)(1)(A)(ii)(V), of Title 42 USC Section 659 specifically includes Veterans' Disability Benefits as "remunerated," if the former service member has waived a portion of his or her retired or retainer pay to receive disability benefits. This situation occurs when a former service member has 20 years or service and is also disable. Since the disability pay is not taxable, there is an advantage to waiving retirement pay. After 20 years of service, many veterans qualify as disabled through the VA's disability claims process. Section (h)(1)(B)(iii), complements Section (h)(1)(A)(ii)(V), by specifically excluding Veterans Disability Benefits from garnishment for child support or

alimony where a former service member is not entitled to retired or retainer pay.

A different Federal law, 38 USC Section 5301[a][1], specifically protects Veterans from most forms of garnishment. Before the Supreme Court's 1987 decision in Rose v. Rose, 481 U.S. 619 (1987), veterans argued that Section 5301 (formerly 38 USC Section 301[a]) prevented state courts from having any jurisdiction to satisfy a child support obligation based upon the receipt of Veterans' Disability Benefits. Rose at 629-630. They argue that this Section of the law made veterans' Disability Benefits essentially untouchable by the States.

The erosion of 38 USC Section 5301, was born out of Rose v. Rose, where as the States can decide how to treat Veterans' Disability Benefits in establishing child support enforcing child support orders. The legal doctrine that States have exclusive authority in the area of domestic relations is over 100 years old. The gold subject of the domestic relations of husband and wife, parents and child, belongs to the laws of the States and not the laws of the United States. In re Burns, 136 U.S. 586, 593-94 (1890). A number of United States Supreme Court cases have dealt with the scope of the supremacy of the Federal law with regard to family law. Rose v. Rose, is a very import case because it dealt directly with child support and not property division

The Rose v. Rose, Court carved out a an exception to the general provisions of 38 USC Section 5301[a][1], upon different aspects of the intersection

State and federal law regarding child support enforcement orders which have gutted other veterans due process of law as defined in recent case In re Marriage of Stanton, 190 Cal. App. 4th 547 (2010), relying on Rose v. Rose, found that military housing and food allotments are not counted as gross income.

CONCLUSION

For the foregoing reasons this Court must reverse, vacate, modify, or remand this petition back to the district court with instruction to review the unsettled issues of law described in this Writ of Certiorari petition of law as justice so requires.

Dated: July 27th, 2020.
New York, New York

Respectfully Submitted,

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