No. __-____

In the Supreme Court of the United States

KEVIN LEE BOUTTE,

Petitioner,

v.

YVONNE RENEA BOUTTE,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF THE STATE OF LOUISIANA

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The Supreme Court of Louisiana denied Petitioner's appeal on purely state law grounds of estoppel and res judicata in affirming a Court of Appeals' opinion that applied these doctrines to Petitioner's divorce settlement in which he was held to have agreed to dispossess himself of his veterans' disability pay despite a federal statute, 38 U.S.C.S. § 5301(a)(1) and (3) (§ 5301), which prohibits a state court from entering any "legal or equitable" orders to enforce such an agreement and which deems them "*void from inception*."

In *Howell v. Howell*, 137 S. Ct. 1400, 1405 (2017), this Court, for the first time, ruled that § 5301 removed all authority from state courts to *vest* these statutory disability benefits in anyone other than the designated beneficiary. The Court stated it does not matter that a divorce agreement may be said to "vest" the former spouse with an immediate right to the percentage of the veteran's *disposable* military benefits, because the availability of such pay is contingent on the veteran's potential receipt of restricted disability pay in lieu of disposable retirement pay. *Id.* at 1405-1406. Not only is the state prohibited from enforcing such agreements, but too, it may not issue orders requiring the veteran to "reimburse" or "indemnify" the former spouse. *Id.* at 1406. "Regardless of their form, such reimbursement and indemnification orders displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress. All such orders are thus preempted." *Id.*

The *only* time the state has such authority is where Congress itself has spoken, and when it does give the state authority over such benefits, its grant is both "precise and limited." *Id.* at 1404, citing *Mansell v. Mansell*, 490 U.S. 581, 589 (1989).

The question presented in this petition is as follows:

Does Congress' enumerated Military Powers exercised pursuant to the Supremacy Clause bar a state court from raising res judicata to a post-judgment challenge to an agreement in which a disabled veteran is forced to part with his restricted disability pay to make up for a reduction in his disposable retirement pay, where the federal statute at issue (38 U.S.C.S. § 5301) clearly prevents state courts from issuing any legal or equitable orders to divert said monies, and in fact explicitly voids any such consent agreements from inception?

PARTIES TO THE PROCEEDING

Petitioner, Kevin Lee Boutte, was the Defendant-Appellant below. Respondent, Yvonee Renea Boutte was the Plaintiff-Appellee.

There are no corporate parties and no other parties to the proceedings.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Kevin Lee Boutte, petitions for a Writ of Certiorari to the Supreme Court of the State of Louisiana, which denied Petitioner's writ of certiorari on December 8, 2020 (App. 1a-2a) and his petition for rehearing on February 9, 2021 (App. 3a-4a).[1]

OPINIONS BELOW

The Louisiana Court of Appeals issued an opinion on July 8, 2020 (App. 5a-13a), affirming the June 24, 2019 decision of the Beauregard Parish District Court. (App. 14a-15a).

The district court dismissed Petitioner's challenge to a June 6, 2014 judgment ordering Petitioner to reimburse and indemnify Respondent for her statutory loss of a share of Petitioner's disposable military retired pay due to Petitioner's receipt of veterans' disability compensation. (App. 16a-17a).

These rulings were based on a January 19, 2012 judgment of divorce. (App. 18a-22a).

These decisions comprise the substantive rulings from which Petitioner seeks a writ of certiorari.

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[1] The appendix is presented with select documents from the record numbered in seriatum at the bottom right, 1a, etc.

JURISDICTION

The Louisiana Supreme Court denied Petitioner's writ on December 8, 2020. (App. 1a-2a). On February 9, 2020, the same court dismissed Petitioner's motion for rehearing. (App. 3a-4a).

On March 19, 2020, this Court issued a Miscellaneous Order increasing the time to file Petitions for Certiorari from 90 to 150 days from the date of the lower court's final judgment or order denying rehearing. This Petition for Certiorari is being filed on or before July 9, 2021.

The Court has jurisdiction over this Petition under 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

U.S. Constitution, Article I, § 8, clauses 11 to 14

The Congress shall have power…

To raise and support armies, but no appropriation of money to that use shall be for a longer term than two years;

To provide and maintain a navy;

To make rules for the government and regulation of the land and naval forces….

U.S. Constitution, Article VI, clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, 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.

38 U.S. § 5301

(a)(1) Payments of benefits due or 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 exempt 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 receipt by the beneficiary.

***

(a)(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case

may be…such agreement shall be deemed to be an assignment and is prohibited….

(a)(3)(C) Any agreement…that is prohibited under subparagraph (A) is…void from its inception.

STATEMENT OF THE CASE

A. Introduction

Can a state court raise the doctrine of res judicata in defiance of a federal statute that clearly protects federal benefits from all legal and equitable process and voids *from inception* any agreement on the part of the beneficiary to dispossess himself of said benefits in a state divorce proceeding?

On multiple occasions, this Court has stated that federal law preempts all state law that stands in the way of federal statutes granting benefits to former servicemembers. See, inter alia, *McCarty v. McCarty*, 453 U.S. 210, 235 (1981), *Ridgway v. Ridgway*, 454 U.S. 46, 61 (1981), *Mansell v. Mansell*, 490 U.S. 581, 589 (1989); and *Howell v. Howell*, 137 S. Ct. 1400 (2017). Congress' authority in this realm arises from its enumerated military powers. *United States v. Oregon*, 366 US 643, 649 (1961).

In *Mansell*, *supra*, this Court concluded that *unless* Congress specifically *gives* the state authority over such benefits, they remain inviolate and cannot be invaded. See also *Porter v. Aetna Cas. Co.*, 370 U.S. 159, 162 (1962) (liberally interpreting the predecessor of § 5301 and stating it "protect[s] funds granted by the Congress for the maintenance and support of the beneficiaries thereof" and they "remain *inviolate*.") (emphasis added). In *Howell*, the Court reiterated this principle of absolute federal preemption. 137 S. Ct. at 1405-1406. In doing so, the Court specifically cited and applied § 5301. Under this provision, the Court noted, the state has no authority to *vest* these

benefits in anyone other than the designated beneficiary. *Id*. at 1405.

Howell addressed a state's post-judgment decision to use equity to enter an order forcing a disabled veteran to make up the difference in the former spouse's lost property interest where the veteran's receipt of federal disability benefits caused a reduction in the former spouse's entitlement to direct payments of her share of what had previously been disposable retirement pay according to the Uniform Services Former Spouses Protection Act (USFSPA), 10 U.S.C.S. § 1408. As in *McCarty*, *Ridgway*, and *Mansell*, the Court in *Howell* addressed the equitable powers of state courts to *modify* the arrangement of the parties to a divorce to divide marital assets.

Since *Howell*, several state courts have ruled that it applies to consent agreements notwithstanding the sanctity of contracts. See, e.g., *Roberts v. Roberts*, 2018 Tenn. App. LEXIS 195, *22 (Tenn. App. 2018) ("*Howell* casts substantial doubt as to whether state courts may enter divorce decrees off any kind in which the parties seek to divide any service related benefit other than disposable retired pay); *In re Babin*, 437 P.3d 985, 991 (Kan. App. 2019) (*Howell* "abrogate[ed] several cases dealing with property settlement agreements" and "endorsed Mansell[, *supra*] and its restriction on using a property settlement agreement to divide pay" and "overruled cases relying on the sanctity of contract to escape the federal preemption."); *Berberich v. Mattson*, 903 N.W.2d 233, 241 (2017) (*Howell* "makes clear that state courts 'cannot 'vest' that which (under governing federal law) they lack the authority to give" and overruling "cases

relying on the sanctity of contract to escape federal preemption"; "[s]imply put, state laws are preempted in this specific area.").

At least one state supreme court has now ruled that principles of res judicata would not apply where the veteran entered into a federally preempted and impermissible consent agreement. *Foster v. Foster*, 949 N.W.2d 102, 112-113 (Mich. 2020) (consent agreement requiring veteran to dispossess himself of disability benefits was prohibited by § 5301 and therefore impermissible) and *Foster v. Foster (On Second Remand)*, 2020 Mich. App. LEXIS 4880, *3-4 (Mich. App. 2020) (holding principles of federal preemption deprive the state courts of subject matter jurisdiction to the extent that it requires a veteran to dispossess himself of federally restricted disability benefits in contravention of § 5301 and therefore the veteran "did not engage in an improper collateral attack on the 2008 consent judgment.").

The instant case demonstrates how state courts are once again doing exactly this and seeking to circumvent the principles of federal preemption so recently enunciated in *Howell*. These brazen attempts to encroach upon the federal realm and deprive our nation's veterans of their personal entitlements are frequently ignored. However, they restart a deleterious and seemingly endless cycle of eroding veterans' constitutional rights.

Although this Court does not ordinarily grant a petition for mere errors of law, two major factors counsel a different approach here. First, as already demonstrated, the states have shown time and again

that they will deploy all possible means to divest veterans of their federally protected benefits, and, as a result, divert and repurpose these federal appropriations. This despite federal statutes that ensure the integrity of the public fisc. These "funds of the government are specifically appropriated to certain national objects, and if such appropriations may be diverted and defeated by state process or otherwise, the functions of the government may be suspended." *McCarty*, 453 U.S. at 229, n. 23 (emphasis added), quoting *Buchanan v Alexander*, 45 U.S. 20 (1846).

In *Mansell*, *supra*, the Court noted that Congress only gave the states a "precise and limited" authority over what was defined in the USFSPA as disposable retired pay. 490 U.S. at 589. It did not give the states authority over any other type of veterans' benefits. Even after this Court's unequivocal guidance in *Mansell*, it took nearly 30 years for the Court to reiterate the principles of federal supremacy and once again reign in state courts that ignored the dictates of preemptive federal law. The Court stated:

> The principal reason the state courts have given for ordering reimbursement or indemnification is that they wish to restore the amount previously awarded as community property, i.e., to restore that portion of retirement pay lost due to the postdivorce waiver…. Regardless of their form, such reimbursement and indemnification orders displace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress. *All*

such orders are thus preempted. 137 S. Ct. at 1406 (emphasis added).

Second, but no less important, the number of disabled veterans has exponentially expanded during this 30-year period of overt state non-compliance. The current population of disabled veterans who find themselves stripped of what is in many cases their only means of subsistence do not have another three decades to wait for this Court to correct these egregious usurpations of the Supreme Law of the Land. It must be stopped now!

B. Factual Background

Petitioner (Kevin), and Respondent (Yvonne) married on July 13, 1991. (App. 23a). They divorced on January 27, 2012. (App. 18a-22a). Kevin served over 20 years in the United States Army (from 1989 to 2009) (24a-26a). He retired with an Honorable Discharge. (App. 25a).

As a direct result of his military service, Kevin suffered injuries, including traumatic brain injuries (TBI), post-traumatic stress disorder (PTSD), mood disorder, cognitive disorder, and tinnitus (App. 26a-27a). These disabilities affect him on a daily basis (App. 27a).

Because he suffered these injuries during combat, Kevin was entitled to both veterans' disability pay and Combat Related Special Compensation (CRSC) under 10 U.S.C.S. § 1413a, both of which were awarded retroactively to 2010. (App. 28a). See also 10 U.S.C. § 1413a. Although Kevin acquired sufficient years of

military service to qualify for military retired pay, a former servicemember who incurs injuries during service may be entitled to disability pay, and, in most cases, the disability pay replaces the military retired pay by operation of law. *Mansell v. Mansell*, 490 U.S. 581, 583, 594-595 (1989).

The Secretary of the servicemember's branch (i.e., Army, Navy, etc.) administers the retirement pay system and retains authority to recall the servicemember to active duty. *McCarty*, 453 U.S. at 223-232 and n. 16 (1981). These benefits are paid to the former servicemember by the Defense Finance and Accounting Service (DFAS).

However, disability pay is paid by the Secretary of Veterans Affairs (VA). *Mansell*, 490 U.S. at 583-584. Once a servicemember's combined service disability rating meets or exceeds a threshold (usually 100 percent) the former servicemember no longer receives disposable military retired pay from DFAS. Those benefits are replaced by the disability benefits.

As they are not compensation for prior services rendered, but rather intended to compensate the veteran for his or her specific disabilities, these benefits are not considered disposable military retired pay and therefore they are not considered a divisible "property" interest under the DFAS direct-pay provisions in USFSPA, 10 U.S.C. § 1408(a)(2)(B)(iii) and (C); (4)(A); (c)(1) and (e)(1). See also 10 U.S.C.S. § 1413a(g) (CRSC, which Kevin was retroactively awarded in 2012 (before his divorce judgment), is not disposable retired under the USFSPA). (App. 28a).

Importantly, once the compensation becomes non-disposable, non-divisible VA disability compensation, it comes under the affirmative protections of § 5301. This statute protects these benefits from "any legal or equitable process *whatever*." § 5301(a)(1) (emphasis added). It applies when the benefits are "due or to become due" and either "before or after" receipt. *Id*.

So protective is this provision that it even prohibits the veteran from agreeing or consenting to give up these benefits and it explicitly renders such agreements "void from inception". § 5301(a)(1) and (3)(A) and (C). This Court long ago recognized that the funds protected by this provision are "inviolate." *Porter*, 370 U.S. at 162. See also, *United States v. Hall*, 98 U.S. 343, 349-356 (1878); *Howell*, 137 S. Ct. at 1405. See also *Foster v. Foster*, 949 N.W.2d 102, 112-113 (Mich. 2020) (consent judgment requiring veteran to use disability pay to make up the difference in former spouse's loss of her share veteran's disposable retired pay was an impermissible agreement under § 5301(a)(3)(A) and preempted by federal law) and *Foster v Foster (On Second Remand)*, ___ Mich. App. ___; 2020 Mich. App. LEXIS 4880 (Mich. App. 2020) (state courts are deprived of subject matter jurisdiction where principles of federal preemption apply and consent judgment entered in 2008 whereby veteran agreed to pay property settlement to former spouse using disability pay if he waived retired pay was preempted by federal statute outlawing such agreements and judgment subject to collateral attack notwithstanding principles of res judicata).

Kevin's CRSC benefits were retroactively instated on June 2010. (App. 28a). As of June 2010, Kevin was "total combat disability" rated at over one-hundred percent. *Id*.

The consent judgment of divorce contained the following language pertinent to Kevin's disposable military retired pay:

> YVONNE RENEA BOUTTE is entitled to a forty-three (43%) percent share of KEVIN LEE BOUTTE's military retirement pay and/or benefits, including cost of living expenses or any other retirement system in which his military service was a significant part of the entitlement…. (App. 20a).

The judgment further provided that Kevin "assigns" his interest in his military retired pay and Yvonne was to receive payments under the "direct payment" provisions of the USFSPA, 10 U.S.C. § 1408.

Per this qualifying order, DFAS paid Yvonne her monthly share of the disposable military retired pay from March 2012 to February 2014 (App. 29a-30a, ll. 1-10). Yvonne's share was $673.68 per month (App. 29a).

When Kevin's disability and CRSC entitlement began to be paid to him, the amount of available "disposable retired pay" was reduced by operation of law. DFAS could no longer directly pay Yvonne disposable military retirement pay as contemplated in the original consent judgment of divorce because there was no such pay. (App 30a). Therefore, DFAS stopped

paying these amounts to Yvonne and sent letters informing the parties of the change (App. 31a).

C. Procedural History

Yvonne filed a motion for contempt claiming Kevin should continue making up the difference in her lost share of his previously disposable retirement pay. Kevin filed and then withdrew an exception of no cause of action. The parties entered into a "stipulated" Consent Judgment on June 6, 2014, which provided:

> IT IS ORDERD, ADJUDGED, DECREED AND STIPULATED that the parties agree that the defendant, Kevin Lee Boutte, shall resume payment to the plaintiff, Yvonne Renea Boutte of her forty-three percent (43%) interest in the defendant's military retirement pay and/or benefit including cost of living expenses as ordered by the Consent Judgment and Voluntary Partition Agreement dated January 19, 2012. (App. 16a-17a).

Subsequently, this Court decided *Howell*, in which the Court reiterated the principle that federal law preempts *all* state law concerning disposition of military benefits unless Congress says otherwise and the USFSPA only allows state courts to divide "disposable" military retired pay.

The Court overruled case law in over 32 states that had previously allowed the parties to agree or the courts to impose equitable indemnification or reimbursement whereby the former servicemember was forced to continue paying using his or her

restricted disability pay to compensate for the loss of the former spouse of his or her share of the former servicemember's "disposable" retired pay due to his or her receipt of disability pay. The Court reiterated that under § 5301 state courts have no jurisdiction or authority over *any* military benefits that are *not* explicitly divisible. *Id*. at 1405 (citing § 5301 and stating that "[s]tate courts cannot 'vest' that which (under governing federal law) they lack authority to give.").

After *Howell* was issued, Kevin filed a petition to modify the state court's order. The trial court held a hearing on April 29, 2019. The crux of the issue addressed was whether Kevin had agreed in the 2014 consent judgment to "pay privately forty-three percent of his military retirement pay. Not disposable retired pay because he has the option under the law." (App. 32a).

Trial counsel for Kevin argued that the consent agreement, like the original judgment in 2012, was confined by its language to only "military retirement pay and/or benefit[s]." Accordingly, there was no difference in the two agreements (2012 and 2014) and neither specified that Kevin was agreeing to pay Yvonne using his federally restricted disability pay.

The trial court contended that "the issue…today is the very issue that we were here about in May of 2014 is whether or not by *moving this money and calling it*[2]

[2] The state court's reasoning represents an unfortunately common mischaracterization of the transition process in which a veteran receiving military retirement benefits begins to receive to disability pay. This happens by operation of law. There is no "moving the money and calling

Combat Related Special Compensation or Concurrent Retirement Disability Pay, if it could be shielded from Ms. Boutte." (App. 32a-33a) (emphasis added). "Mr Boutte agreed to that judgment from May 22, 2014." (App. 33a).

Counsel for Kevin raised *Howell*, *supra*, which overruled prior cases where state courts had approved agreements between the parties whereby the former military servicemember agreed to use his or her military disability benefits to "make up" or "reimburse" the former spouse due to the latter's loss of an interest in previously "disposable" military retired pay automatically paid to the former spouse by DFAS by operation of federal law. Nonetheless, the trial court asked whether "the parties have a right in any area of the law to create the law between themselves?" (App. 34a). Counsel for Kevin argued that the language of the May 22, 2014 agreement "does not agree to anything" but "the Military Retired Pay." (App. 35a). Kevin testified he could not

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it something else." In fact, the USFSPA *forbids* the states from requiring the veteran to make a choice to preserve his disposable retired pay; any "movement" occurs by operation of law – from a disposable benefit under USFSPA to an absolutely restricted benefit under § 5301. Yet, state courts and lawyers alike make unworthy and dastardly characterizations of disabled veterans and cast them in an unbecoming light in an effort to justify their actions in discriminating against them and wrongfully misappropriating their restricted benefits. Indeed, in response to Kevin's petition in the Supreme Court of Louisiana, opposing counsel called Kevin a "weasel" for trying to make "his way out" of his obligations. He even questioned the sincerity of Kevin's disability status, stating that Kevin "claims" to suffer from PTSD, mood disorder, and cognitive disorder. (App. 79a, App. 80a). This statement was made despite it being clear from the record Kevin's service to this country and what the Department of the Army concluded about Kevin's combat-related injuries as a result thereof. (App. 24a-25a, 28a).

remember "what was said five years ago" and he did not remember because "one thing about PTSD is memory loss." (App. 36a).

The trial court ruled that although CRSC was the separate property of Kevin under federal law, the 2014 consent judgment had reduced the parties agreement to a judgment that barred Kevin from challenging his obligations to Yvonne. (App. 37a-43a). The trial court acknowledged that Kevin was using military disability pay to satisfy the consent judgment, but that because the parties had agreed to continue the 43 percent division even after Kevin began receiving his disability pay. Therefore, his challenge to the 2014 consent judgment was barred by res judicata. (App. 42a).

The Court of Appeals affirmed. (App. 5a-13a). First, the court assessed the trial court's conclusion that the 2014 "Consent Judgment" was res judicata as to Kevin's rights to challenge the disposition of his military pay. (App. 8a). "The only issue presented to this court is whether the trial court erred in finding that res judicata applied to a consent judgment in a family law case." *Id.* The court ruled that the issue was "actually adjudicated" in 2014 because the phrase "and/or benefit" in the consent judgment could be deemed to have referred to Kevin's federal disability pay. (App. 10a-11a). The court concluded: "[T]he only logical conclusion to be reached is that the benefits referenced in the 2014 Consent Judgment are the CRSC benefits." (App. 11a).

The court further reasoned that a "consent judgment is a bilateral contract" and that the 2014

consent judgment "adjudicated the issues" including the use of Kevin's disability pay. (App. 12a).

The court further reasoned that *Howell would apply*, but that "La. Civ. Code. Ann. art. 1971 allows parties 'to contract for any object that is *lawful*, possible, and determined or determinable.'" (App. 13a) (emphasis added). The court continued: "Unless the object of the contract *is restricted by the government because it violates public policy*, a party has the freedom to contract for any object." *Id*. (emphasis added).

Kevin petitioned for review in the Supreme Court of Louisiana. On November 16, 2020, that Court denied the petition. (App. 1a). Justices Crichton, Crain, and McCallum would have granted. Justice Crichton wrote separately stating:

> I would grant and docket this writ application to examine whether an application of [*Howell*] is necessary under the facts of this matter. Specifically, this Court has not yet considered whether federal law preempts state law concerning the disposition of military disability benefits, and further, upon application of *Howell*, whether a previously executed consent judgment concerning division of benefits between ex-spouses is subject to a res judicata exception under La. R.S. 13:4231. Consequently, I find this application presents significant unresolved issues of law and I would therefore grant and docket it for this Court's thorough consideration. (App. 4a).

Kevin sought rehearing because of the narrow vote to deny and the dissenting statement. The Court denied. Once again, however, Justice Crichton, noted his disagreement, stating:

> As I have stated before, while Supreme Court Rule IX, § 6 prohibits reconsideration of a prior writ denial, an exception to this rule must exist in order to further the interest of justice in certain extraordinary circumstances where good cause is shown. Because I find good cause shown in this case, specifically, the issue of whether an application of the recent decision in [*Howell*] (the Court holding the Uniformed Services Former Spouses' Protection Act preempted States from treating as divisible community property the military retirement pay that a veteran has waived in order to receive nontaxable service-related disability benefits) is necessary under the facts presented, I would grant rehearing and docket the case for oral argument. (App. 4a) (cleaned up).

Kevin advances the following reasons in support of his petition.

REASONS FOR GRANTING THE PETITION

1. In the area of abuse of veteran's rights to their federally protected disability compensation, it took this Court nearly 30 years to correct state court usurpation of the Supremacy Clause. After this Court's 1989 decision in *Mansell*, which clarified that federal law preempts *all* state law in this area save those limited and precise exceptions granted by Congress, state courts immediately began eroding this absolute principle by taking advantage of the naturally fragile state of disabled veterans and developing "equitable" means of divesting them of their personal and constitutional entitlements. See *Howell*, 137 S. Ct. at 1403-1404. The Court's 2017 decision in *Howell* once again reiterated this rule of absolute preemption and effectively abrogated the errant rulings of over 32 state courts that had affirmed, through their own appellate courts, this abject flouting of the principles of preemption emanating from exercise by Congress of its enumerated military powers.

However, the fight for veterans' rights to their entitlements continues. While some states have correctly recognized the full scope of these protections, others, like Louisiana, continue to attempt to thwart the will of Congress and make end runs around the absolute prohibitions erected by federal law. See, e.g., *Foster v. Foster*, 949 N.W.2d 102, 112-113 (Mich. 2020) (§ 5301 bars consent agreements that force a veteran to dispossess himself of the restricted disability benefits received in lieu of disposable military retired pay and state courts can neither sanction such agreements or enter equitable orders forcing

indemnification and reimbursement), and compare with *Gross v. Wilson*, 424 P 3d 390, 397-398 (Alaska 2018) (failing to apply § 5301 and holding that a prior agreement in which the veteran consented to a division of his military disability pay was enforceable despite this Court's decision in *Howell*).

What do disabled veterans in the state of Alaska or Louisiana, or any other of the multiple states already beginning to blatantly ignore *Howell* have to do? They cannot wait another 30 years! By that time, all of their disability pay and the necessary support attendant thereto will have been depleted. They will have been robbed of their right to live the remainder of their lives in peace after having honorably fought for the nation and sacrificed the best part of their lives in doing so. All because wayward state agencies and courts are bent on taking every last penny of their personal entitlements. Will this Court rest comfortably while the cases percolate up and veterans continue to suffer? During this complacency, will the Court recognize the day-to-day consequences these dissident states have on the disabled veteran population?

It may be impossible to quantify the impact that these delinquent states have by intentionally going after the restricted funds of disabled veterans. We can be sure, however, that it is a target rich environment.

The nation has been at war for the better part of three decades (the same three decades during which state courts ignored federal law). Trauschweizer, 32 International Bibliography of Military History 1 (2012), pp. 48-49 (describing the intensity of military

operations commencing in 1990 culminating in full-scale military involvement in Iraq and Afghanistan). As of March 2016, the number of veterans receiving disability benefits had increased from 3.9 million to 4.5 million. *Id*. See also VA, National Center for Veterans Analysis and Statistics, What's New at: https://www.va.gov/vetdata/veteran_population.asp.

During this period, there has been a remarkable increase in veterans with disability ratings of 50 percent or higher, with approximately 900,000 in 2011. That same year, 1.1 million of the 3.3 million total disabled veterans had a disability rating of 70 percent or higher. *Id*. Finally, the disability numbers and ratings for younger veterans has markedly inclined. Conducting an adjusted data search, 570,400 out of 2,198,300 non-institutionalized civilian veterans aged 21 to 64 had a VA service-connected disability at 70 percent or higher in the United States in 2014. See Erickson, W., Lee, C., von Schrader, S. Disability Statistics from the American Community Survey (ACS) (2017). Data retrieved from Cornell University Disability Statistics website: www.disabilitystatistics.org. Thus, according to this data analysis, half of the total number of veterans with a disability rating greater than 70 percent are between 21 and 64 years of age.

These numbers are due to a combination of the types of wounds received in military operations, modern medicine's ability to treat the wounded, and modern transportation's ability to bring those most severely wounded to the most technologically advanced medical facilities in a matter of hours. Fazal, Dead Wrong? Battle Deaths, Military

Medicine, and Exaggerated Reports of War's Demise, 39:1 International Security 95 (2014), pp. 95-96, 107-113. However, progress comes with a price.

The physical injuries suffered by servicemembers are horrific. *Id*. See also Kriner & Shen, Invisible Inequality: The Two Americas of Military Sacrifice, 46 Univ. of Memphis L. Rev. 545, 570 (2016). However, many also suffer severe psychological injuries attendant to witnessing war's violence. Zeber, Noel, Pugh, Copeland & Parchman, Family perceptions of post-deployment healthcare needs of Iraq/Afghanistan military personnel, 7(3) Mental Health in Family Medicine 135-143 (2010). Combat-related post-traumatic stress symptoms (PTSS), with or without a diagnosis of post-traumatic stress disorder (PTSD) can negatively impact soldiers and their families. These conditions have been linked to increased domestic violence, divorce, and suicides. Melvin, Couple Functioning and Posttraumatic Stress in Operation Iraqi Freedom and Operation Enduring Freedom – Veterans and Spouses, available from PILOTS: Published International Literature On Traumatic Stress. (914613931; 93193). See also Schwab, et al., War and the Family, 11(2) Stress Medicine 131-137 (1995).

Such conditions are exacerbated when returning veterans must face stress in their families caused by their absence. Despite the amazing cohesion of the military community and the best efforts of the larger military family support network, separations and divorces are common. Families, already stretched by this extraordinary burden, are often pushed beyond their limits causing relationships to break down.

Long deployments, the daily uncertainty of not knowing whether the family will ever be reunited, and the everyday travails of military and civilian life are difficult enough. A physical disability coupled with mental and emotional scars incurred in wartime environments make the veteran's reintegration even more challenging. Finley, Fields of Combat: Understanding PTSD Among Veterans of Iraq and Afghanistan (Cornell Univ. Press 2011). Disabled veterans face numerous post-deployment health concerns, sharing substantial burdens with their families.

The stressors faced by the disabled veteran are only exacerbated when they are engaged in state court proceedings involving the disposition of their benefits, which are supposed to be used to compensate them for service-connected disabilities and which are too often their only means of subsistence. An estimated 17 to 22 veterans commit suicide every single day![3]

2. There is a reason that these unfortunate consequences of military service have historically been recognized and attended to under exclusive and preemptive federal law. Congress has exercised exclusive authority in these premises since the earliest days of the Republic. See, e.g., *Hayburn's Case*, 2 U.S. 409 (1792) (discussing the Invalid Pensions Act of 1792). See also Rombauer, Marital Status and Eligibility for Federal Statutory Income Benefits: A Historical Survey, 52 Wash. L. Rev.

[3] www.militarytimes.com/news/pentagon-congress/2019/10/09/new-veteran-suicide-numbers-raise-concerns-among-experts-hoping-for-positive-news/

227, 228 (1977); Waterstone, Returning Veterans and Disability Law, 85:3 Notre Dame L. Rev. 1081, 1084 (2010).

Congress exercises its enumerated military powers when it passes legislation providing veterans with benefits. U.S. Const., art. I, § 8, cls 12-14. See, e.g., *United States v. Oregon*, 366 US 643, 649 (1961) ("Congress undoubtedly has the power – under its constitutional powers to raise armies and navies and to conduct wars – to pay pensions…[to] veterans."). Where Congress explicitly relies on this power, the Supreme Court has perhaps nowhere else accorded Congress greater deference". *McCarty v. McCarty*, 453 U.S. 231, 236 (1981), citing *Rostker v. Goldberg*, 453 U.S. 57, 64-65 (1981).

The solicitude of Congress for veterans is of longstanding. *United States v Oregon*, 366 US 643, 647 (1961). President Lincoln's second inaugural address challenged a divided nation "to bind up the nation's wounds, to care for him who shall have borne the battle and for his widow and his orphan." Abraham Lincoln, Second Inaugural Address (March 14, 1865). "The Constitution gives Congress the power, but it does not prescribe the mode, or expressly declare who shall prescribe it. In such case Congress must prescribe the mode, or relinquish the power. There is no alternative… The power is given fully, completely, unconditionally. It is not a power to raise armies if State authorities consent; nor if the men to compose the armies are entirely willing; but it is a power to raise and support armies given to Congress by the Constitution, without an 'if.'" 9 Nicolay and Hay, Works of Abraham Lincoln 75-77 (1894). See

also *Lichter v. United States*, 334 U.S. 742, 756, n. 4 (1948). "It must also be remembered that it is of the essence of national power that where it exists, it dominates." Charles Evans Hughes, War Powers Under the Constitution, Marquette Law Review, volume 2 , issue 1, p. 10 (1917). "There is no room in our scheme of government for the assertion of state power in hostility to the authorized exercise of federal power." *Id.* "The power…is explicit and supreme…." *Id.*

When Congress exercises this power, it is "complete to the extent of its exertion and dominant." Harner, The Soldier and the State*:* Whether Abrogation of State Sovereign Immunity in USERRA Enforcement Action is a Valid Exercise of the Congressional War Powers, 195 MIL. L. REV. 91, 112, 146 (2008), citing *Tarble's Case*, 80 U.S. 397, 401-402 (1872). First uttered in defense of the exercise by Congress of the War Powers to smite the institution of slavery, John Quincy Adams stated: "This power is tremendous; it is strictly constitutional; but it breaks down every barrier so anxiously erected for the protection of liberty, property and of life." Reed, et al., Modern Eloquence, Political Oratory (vol. IX, 1903), p. 17 (speech of Hon. J.Q. Adams in the House of Representatives, on the State of the Union, May 25, 1836).

This of course includes barriers erected by state courts to dispossess veterans of funds that were specifically authorized and provided for under these enumerated powers. See *McCarty*, 453 U.S. at 223; *Ridgway*, 454 U.S. at 54 (1981). Therefore, in the premises of Congressional authority over matters

relating to the armed forces, the Constitution leaves no discretion to the states.

Deference to Congress' enumerated Military Powers is at its "apogee" when interpreting statutes passed thereunder. *Rostker*, 453 U.S. at 70. The Constitution granted the judiciary "no influence over either the sword or the purse." O'Connor, The Origins and Application of the Military Deference Doctrine, 35 Ga. L. Rev. 161, 166-67 (2000), quoting Hamilton, The Federalist, No. 78 at 465 (Rossiter ed., 1961). Thus, courts have long recognized that Congressional acts under the authority of the Military Powers Clauses are "qualitatively different" than those passed pursuant to its other powers. *Harner*, *supra* at 112.

As a result of this deference, statutes providing for and protecting veterans' benefits are liberally construed. *Porter v. Aetna*, 370 U.S. 159, 162 (1962). The Supreme Court has never wavered from this principle. *Henderson v. Shinseki*, 562 U.S. 428, 440 (2011) (stating "the canon that provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor.") (emphasis added) (citing cases). This principle of statutory construction has been directly applied to 38 U.S.C.S. § 3101 (now § 5301), the statute at issue in the instant case which void any agreement by the veteran to dispossess himself of his federal entitlements. *Porter*, supra.

Thus, while state law in domestic relations is usually deferred to, it must yield when addressing the disposition of Congressionally purposed military benefits. While "the whole subject of domestic relations between husband and wife belongs to the

laws of the States and not to the laws of the United States," and "state family and family-property law must do 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden," but "the application of community property law conflicts with the federal military retirement scheme" and is *completely preempted*." *McCarty*, supra at 223 (emphasis added); U.S. Const. art. VI, cl. 2. See also *Ridgway*, 454 U.S. 46, 54 (1981) (stating "[n]otwithstanding the limited application of federal law in the field of domestic relations generally…this Court, even in that area, has not hesitated to protect, under the Supremacy Clause, rights and expectancies established by federal law against the operation of state law, or to prevent the frustration and erosion of the congressional policy embodied in the federal rights.").

The Supreme Court has reiterated this principle time and again. *Wissner v. Wissner*, 338 U.S. 655, 660-661 (1950); *Free v. Bland*, 369 U.S. 663, 666 (1962); *McCarty*, *supra*; *Ridgway*, *supra*; *Mansell*, *supra*, and, most recently, in *Howell*, *supra* at 1406, citing *McCarty*, *supra* at 232-235. In all such cases, the Supremacy Clause requires state law to yield where it conflicts with disposition of these federal benefits. *Ridgway*, supra at 54-55 (citing *Free*, *supra* at 665 and stating "[the] relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail.").

A state court that rules incorrectly on a matter preempted by federal law acts in excess of its jurisdiction. Such rulings, and the judgments they spring from, are void ab initio and exposed to collateral attack. This Court has said as much: "That a state court before which a proceeding is competently initiated may – by operation of supreme federal law – lose jurisdiction to proceed to a judgment unassailable on collateral attack is not a concept unknown to our federal system." *Kalb v. Feurstein*, 308 U.S. 433, 440, n. 12 (1940), citing *Davis v. Wechsler*, 263 U.S. 22, 24-25 (1923); and *Hines v. Lowrey*, 305 U.S. 85, 90, 91 (1938) (applying the same principles to the predecessor provision applicable in this case, § 5301 which prohibits prohibiting veterans from entering into agreements to dispossess themselves of their benefits). "The States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land." *Id.* at 439, citing *Hines*, supra. Interpreting the USFSPA and § 5301, which are directly applicable to the case sub judice, the Court in *Howell* stated simply that "[s]tate courts cannot 'vest' that which (under governing federal law) they lack the authority to give." 137 S. Ct. at 1405 (emphasis added), citing § 5301.

3. Here, the question is whether the state court's ruling that Kevin is forever barred by res judicata from challenging the ongoing order in which he is be forced by way of the 2014 "consent agreement" to continue use his restricted, non-disposable disability pay as a substitute for the share of previously "disposable" retired pay Yvonne had received by operation of federal law.

The USFSPA, § 5301, and this Court's cases interpreting these provisions, dictates the answer. The USFSPA provides state courts with a "precise and limited" authority over "disposable" retired pay as defined in the statute. *Howell*, 137 S. Ct. at 1404, quoting *Mansell*, 490 U.S. at 589. What is not "disposable retired pay" is simply off limits to state courts.

The USFSPA gives states discretionary authority to treat as a divisible property asset up to 50 percent of a retired servicemember's "disposable" military retirement pay, only. See 10 U.S.C. § 1408(a)(4) (defining what is and what is not "disposable retired pay"); (c)(1) (the actuating provision of USFSPA giving the state court jurisdiction to order a division of such defined "disposable" retired pay); and (e)(1) (expressly limiting the state court's jurisdiction to a maximum of 50 percent of the "disposable retired pay", if any, as available to the former spouse in a state court divorce proceeding) and 10 U.S.C. § 1413a(g) (explaining that CRSC, a special form of disability pay awarded for combat-incurred injuries is "not retired pay"). See also Department of Defense Financial Regulations on CRSC, October 2017, Volume 7B, Chapter 63, § 630101(C)(1) (stating "CRSC is not retired pay, and it is not subject to the provisions of 10 U.S.C.S. § 1408 relating to payment of retired or retainer pay in compliance with court orders.").

Following its decision in *Howell*, the Court vacated two other decisions (one from Arizona, *Merrill v. Merrill*, 238 Ariz. 467, 468 (Az. 2015), vacated 581 U.S. ___; 137 S. Ct. 2156 (2017) and one from

California, *In re Cassinelli*, 4 Cal. App. 5th 1285, 1291, 1297; 210 Cal. Rptr. 311 (Cal. App. 2016), vacated sub nom *Cassinelli v. Cassinelli*, 583 U.S. ___; 138 S. Ct. 69 (2017)), and remanded to the respective state courts for consideration of *Howell's* application to the additional disability benefit, CRSC. In both cases, the state courts applied the prohibition against forced indemnification and erased the veteran's obligations. See also *Foster v. Foster*, 949 N.W.2d 102 (Mich. 2020) (same).

Moreover, and most pertinent to the *qualification* expressed by the Louisiana Court of Appeals, affirmative and plain federal law does, as a matter of public policy expressed through the exercise of Congress's enumerated military powers, prohibit state courts from using "any legal or equitable process" – which would include rules of estoppel and res judicata – to force the veteran to use non-disposable military benefits to make up the difference in a former spouse's lost share of disposable retired pay. § 5301(a)(1). These monies are "inviolate" and thus, they are protected "before and after receipt" when "due or to become due." *Id*.

Finally, and most pertinent to Kevin's situation, the statute prohibits the beneficiary from agreeing or consenting to a depletion of these benefits. § 5301(a)(3)(A). The statute "voids from inception" any agreements or assignments based on such agreements. § 5301(a)(3)(C). The purpose of these provisions is to protect not only the benefit, but the disabled veteran. See, e.g., *Yake v. Yake*, 183 A. 555 (Md. 1936) (noting the anti-attachment provision in the World War Veterans' Act of 1924, 38 U.S.C.S. §

454 (identical to § 5301) was to guard those unfortunates who had been disabled in the service of their country from imposition of others or the depletion of their maintenance and support by their own improvidence and to assure them a subsistence). Compare *Hines v Lowrey*, 305 U.S. 85, 90, 91 (1938) (noting the same applies to protect against excessive attorney fees charged against the veterans' benefits) and *Porter v. Aetna*, 370 U.S. 159, 162 (1962), where the Court ruled that § 3101 (the predecessor of § 5301) was to be "liberally construed to protect funds granted by the Congress for the maintenance and support of the beneficiaries" and that these benefits "should remain inviolate." (emphasis added). Finally, this Court confirmed in *Howell* that under this provision state courts have *no authority* by way of this provision to vest an future interest in these personal entitlements in anyone other than the veteran beneficiary. *Howell*, 137 S. Ct. at 1405.

The fact that these federal statutes protect military benefits and treat them as inviolate has removed any necessity of debating their wisdom or fairness when addressing their application to individual cases. Congress, in the exercise of its enumerated powers, is not "required to build a record in the legislative history to defend its policy choices." *Mansell*, 490 U.S. at 592. Any state court attempt to divert federally protected disability benefits is impermissible and contrary to the sweeping jurisdictional prohibitions in § 5301. See also *Howell*, *supra*.

Veterans' benefits have been protected by federal law from all legal and equitable process since at least

the 1870's. *United States v Hall*, 98 US 343, 349-355 (1878). Agreements to pay these benefits to a non-beneficiary have also been deemed by the federal statutes that preceded § 5301 to be "*wholly void*" and subject to recovery in assumpsit. *Id*. (citing cases). The Court, in 1878, stated of canvassing the anti-attachment provisions in veterans' benefit legislation that "[t]hese diverse selections from the almost innumerable list of acts passed granting pensions are sufficient to prove that throughout the whole period since the Constitution was adopted it has been the policy of Congress to enact such regulations as will secure to the beneficiaries of the pensions granted the *exclusive use and benefit of the money appropriated and paid for that purpose*." *Id*. at 352 (emphasis added). Exclusive use and benefit cannot occur if the veteran is forever bound by an agreement which the statute says is void from inception.

Interpretation of these provisions has been consistently in favor of protecting the defined benefits *and* the beneficiary against all state authority and control. The United States Supreme Court has ruled that § 5301 is to be interpreted liberally in favor of the beneficiary's rights and the benefits covered by this statute are "*inviolate*." In *Porter v. Aetna*, 370 U.S. 159, 162 (1962), the Court reasoned that 38 U.S.C.S. § 3101 (the predecessor of § 5301) was to be "liberally construed to protect funds granted by the Congress for the maintenance and support of the beneficiaries" and that these benefits "should remain inviolate" and thus diversion by "*any legal or equitable process*" is forbidden. *Id* (emphasis added). Accord, *Ridgway*, *supra*, 454 U.S. at 54-56, 60-61 and *Howell*, 137 S. Ct. at 1405-1406. A comprehensive discussion of these

provisions is found in both *Hall*, 98 U.S. at 349-356 (1878) and *Ridgway*, *supra* at 60-61 (1981). In the latter case, the Court emphasized that these provisions:

> [E]nsure[] that the benefits actually reach the beneficiary…[and they] pre-empt[] all state law that stands in [their] way. [They] protect[] the benefits from legal process 'notwithstanding any other law of any State' [and] prevent[] the vagaries of state law from disrupting the national scheme, and guarantees a national uniformity that enhances the effectiveness of congressional policy." *Ridgway*, 454 U.S. at 61 (cleaned up).

Noting the "unqualified sweep" of this provision, the Court continued that its language is presented "in the broadest of terms, any 'attachment, levy, or seizure by or under any legal or equitable process whatever,' whether accomplished 'either before or after receipt by the beneficiary'" is prohibited. *Id*. (emphasis added). Any "diversion, as directed by the state court, of future payments to be received by the beneficiary would be a 'seizure' prohibited by the anti-attachment provision." *Id*. at 55.

As noted by the Court in *Ridgway*, the same absolute preemption principle was followed in *McCarty*, supra, and finally in *Howell*, *supra*, in which the Court confirmed that § 5301(a)(1) actually divests state courts of authority to divert these benefits at any time in the future.

4. As the statute applies to any benefits administered by the Secretary of Veterans Affairs, it applies to Kevin's VA and CRSC benefits, which were retroactively awarded in 2009 and 2010, a date prior even to the judgment of divorce (App. 16a). CRSC is a retroactive award of what is considered non-disposable disability pay. See 10 USC § 1413a(g) (CRSC is not considered disposable retired pay under USFSPA). See also *Adams v. United States*, 126 Fed Cl 645, 647-648 (2016) (CRSC benefits are "compensable under the laws administered by the Secretary of Veterans Affairs" and therefore protected under § 5301).

Kevin was suffering from his disabilities during his divorce proceedings, and he continues to suffer from them today. In other words, as of 2012 and 2014, when the "consent judgments" of divorce were entered on the record in this case, the disabilities suffered by Kevin had already manifested due to his combat-related injuries. The fact that he began receiving these protected benefits only after the divorce was a consequence of the time it took for him to complete the application and eligibility process. The reductions in Yvonne's portion of disposable pay occurred by operation of federal law, not by any intentional action on the part of Kevin.

Under the *void* state court order, Kevin continues to pay these restricted funds to his former spouse in contravention of § 5301(a)(1) and (a)(3)(A). Since the latter statute considers such arrangements prohibited and therefore "void from inception" there would be no bar to challenge his ongoing obligation in this regard. It is, in fact, an obligation contrary to policy and law.

> [I]n any case where a beneficiary [the veteran] entitled to compensation…enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation…such agreement shall be deemed an assignment and is prohibited [and] "[a]ny agreement or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also prohibited and is void from its inception."

38 U.S.C. § 5301(a)(3)(A) and (C).

A court has a duty to determine whether a contract violates federal law before enforcing it. And the power of a court to enforce the terms of any agreement is at all times exercised subject to the restrictions and limitations of the public policy of the United States as manifested in federal statute. This Court has directed that "[w]here the enforcement of private agreements would be violative of that policy, it is the obligation of courts to refrain from such exertions of judicial power." *Kaiser Steel Corp v. Mullins*, 455 U.S. 72, 83-84 (1982) (federal statute *voiding from inception* contracts that facilitated unfair labor practices could not be enforced by any court).

CONCLUSION

Doctrines such as res judicata and collateral estoppel, or, for that matter, any statutory or equitable powers a state court may assert, cannot override a federal statute, which not only preempts the state from exercising *any* legal or equitable process over federally appropriated funds, but which actually voids from inception voluntary or forced agreements to do so.

In *Howell*, this Court addressed state attempts to encroach on restricted military benefits for a third time in four decades. The Court clearly expressed absolute federal preemption of state law in these cases. The states continue to thumb their collective noses at this Court's consistent instruction.

The greater travesty lies in the fact that disabled veterans, who have limited resources and capacity, must consistently seek recourse in this Court because 50 different states have seemingly devised as many ways of getting around the limitations imposed upon them by the Supremacy Clause. But, the Constitution "has presumed (whether rightly or wrongly [the Court] does not inquire) that state attachments, state prejudices, state jealousies, and state interests, might sometimes obstruct, or control…the regular administration of justice." *Martin v. Hunter's Lessee*, 14 U.S. 304, 347 (1816) (emphasis added). Of these inevitable tergiversations, Justice Story there spoke of the "necessity of uniformity of decisions throughout the whole United States, upon all subjects within the purview of the constitution." *Id.* at 347-348.

> If there were no revising authority to control these jarring and discordant judgments, and harmonize them into uniformity, the laws, the treaties, and the constitution of the United States would be different in different states, and might, perhaps, never have precisely the same construction, obligation, or efficacy, in any two states. The public mischiefs that would attend such a state of things would be *truly deplorable*. *Id.* at 348 (emphasis added).

In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Court addressed the scope of Congress' enumerated powers. Writing for the majority, Justice Marshall said: "[T]hat the government of the Union, though limited in its powers, is supreme within its sphere of action" is a "proposition" that "command[s]...universal assent…." *Id.* at 406. There is no debate on this point because "the people, have, in express terms, decided it, by saying," under the Supremacy Clause that "'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,'" and "by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States, *shall take the oath of fidelity to it*." *Id.* (emphasis added). Marshall finished the point by referring to the last sentence of the Supremacy Clause:

> The government of the United States…though limited in its powers, is supreme; and its laws, when made in pursuance of the constitution, form the supreme law of the land, "any thing in the constitution or laws of any State to the contrary notwithstanding." *Id.*

Of this latter clause, Justice Story wrote that it was "but an expression of the necessary meaning of the former, introduced from abundant caution, to make its obligation more strongly felt by the state judges" and "it removed every pretence, under which ingenuity could, by its miserable subterfuges, escape from the controlling power of the constitution." Story, Commentaries on the Constitution, vol II, § 1839, p 642 (3d ed 1858).

For decades, disabled veterans have suffered immeasurably under wholly judicial creations developed as exceptions to the explicit protections afforded them by Congress. State common-law rules of res judicata, estoppel and equity are raised with a resounding clamor to prevent the self-evident and explicit preemptive laws from being enforced. But the swell of defiance does not make the proponents of these contrived state-law conventions any more correct, nor can it insulate state courts from the constitutional rights of those who seek to regain and restore to themselves their earned entitlements. The passage of time and the din of dissension cannot erode the underlying structure guaranteeing the rights bestowed.

The wielding of the sword is no more important to the nation than caring for those whose bravery and courage to do so were met with injuries commensurate with the risks they voluntarily assumed. Why should it be? If anything, the protections afforded to our nation's wounded veterans should reflect in equal measure the sacrifices they made in defending the nation.

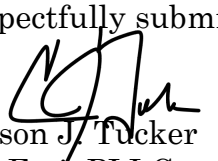
A failure by the Court to address the renewed efforts by the states to once again unlawfully encroach into the federal realm will lead to unchecked abuses of a group of our nation's most vulnerable and forgotten citizens, those who walked into the face of death without question or concern but for the safety and welfare of the citizens of this nation.

"The Nation which forgets its defenders, will itself be forgotten." Calvin Coolidge, Acceptance Speech, July 27th, 1920.

RELIEF REQUESTED

Petitioner respectfully requests the Court to grant his petition or remand this case to the Louisiana Supreme Court and direct to summarily reverse the Court of Appeals' or remand to that Court for the proper application of federal law.

Respectfully submitted,



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