No. 21-44

In The
Supreme Court of the United States

KEVIN LEE BOUTTE,

Petitioner,

v.

YVONNE RENEA BOUTTE,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Louisiana

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER STATEMENT OF THE QUESTION PRESENTED

In his untimely Petition, Kevin Boutte attempts to frame a pure state-law question as a federal question. Specifically, he argues that any division by state courts of his military disability benefits are void because of principles of federal preemption that apply to such benefits. Thus, he challenges an opinion rendered by a Louisiana court of appeal holding that the state's law of *res judicata* bars him from collaterally attacking a consent judgment from several years ago that allegedly improperly divided his military benefits in his divorce proceedings. This Court has already ruled that this type of challenge is inappropriate for *certiorari* because it concerns only the state law of *res judicata* and doesn't raise a federal question. *Sheldon v. Sheldon*, 456 U.S. 941, 941, 102 S. Ct. 2002, 72 L.Ed.2d 462 (1982). *See also Mansell v. Mansell*, 490 U.S. 581, 586 n.5, 109 S. Ct. 2023, 104 L.Ed.2d 675 (1989) (noting that even in the context of military disability benefits where principles of federal preemption apply, the question of whether a judgment can be reopened is solely the province of state law).

Petitioner seeks to radically expand the preemption doctrine based on *Howell v. Howell*, ___ U.S. ___, 137 S. Ct. 1400, 197 L.Ed.2d 781 (2017), in which this Court held that when a veteran waives military retirement pay in order to receive disability benefits, a state may not require him to indemnify his ex-wife for the loss of her portion of his retirement pay caused by the waiver. As the Louisiana court of appeal noted,

COUNTER STATEMENT OF THE QUESTION PRESENTED—Continued

however, *Howell* does not come into play in the case at bar, because the procedural question is one of state-law *res judicata* – not substantive application of the federal statutes governing the division of military benefits.

In the four years since *Howell* was decided, only one state court of last resort has addressed the question of whether *Howell* bars state courts from enforcing their *res judicata* laws when a veteran seeks to collaterally attack an allegedly erroneous judgment concerning the division of his military benefits: the Alaska Supreme Court in *Gross v. Wilson*, 424 P.3d 390 (Alaska 2018). The *Gross* Court took precisely the same position that Respondent urges, under very similar facts, and held that *Howell* and the preemption doctrine pose no impediment to a state's enforcing its *res judicata* laws with respect to property divisions that include amounts equal to percentages of military disability benefits. This rule is nearly universally followed by state courts of appeal, both before and after *Howell*.

Even if Petitioner's view of the preemption doctrine were correct, he fails to offer the requisite "compelling reasons" necessary for this Court to grant *certiorari*. Supreme Court Rule 10. This Court only "rarely" grants *certiorari* when the asserted error consists of the misapplication of a properly stated rule of law. *Id.* Yet there is no question that the Louisiana court of appeal properly stated the rule of law that Petitioner challenges: whether the Louisiana law of *res*

COUNTER STATEMENT OF THE QUESTION PRESENTED—Continued

judicata allows him to collaterally attack an allegedly erroneous consent judgment with respect to property divisions that include amounts equal to percentages of military benefits.

Even if Petitioner had raised an actual federal question, there is hardly an urgent need for this Court to step in and provide guidance to state courts on this issue. The issue does not come up very frequently, as only one state court of last resort has considered it since *Howell* was decided four years ago. Moreover, there is no need for the Court to revisit federal preemption in the context of military disability benefits just four years after *Howell*.

Ultimately, Petitioner seems to want a preemption rule that is so expansive that any veteran who feels he or she has been aggrieved by a state court's division of military benefits is automatically entitled to collaterally attack the judgment. This would likely result in multitudes of veterans rushing to the courthouse to try to reopen divorce-related property allocations that everyone believed were settled years ago. More broadly, such a ruling would undermine state laws, upsetting many long-settled matters as well as introducing chaos into the application of state *res judicata* laws and their interplay with federal preemption. Respondent denies that Petitioner was aggrieved by the state-court judgment that he challenges, but even if he were, the remedy he seeks is far more deleterious than the alleged "problem" he claims he wants to rectify.

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SUMMARY OF REASONS TO DENY THE PETITION

The Court should deny Petitioner's application for *certiorari* because it is untimely. Petitioner does not dispute that the state court of appeal correctly applied its state law law of *res judicata* as written. Even if properly challenged, the procedural issue of collateral attack is a matter of state law. Petitioner is attempting to extend the federal preemption doctrine far beyond the limits sanctioned by this Court.

RESPONDENT'S STATEMENT OF THE FACTS AND PROCEDURAL BACKGROUND

Kevin Boutte retired from the military in 2009, and his wife Yvonne Boutte filed a petition for divorce on December 21, 2010. The parties ended their initial litigation over the divorce and ancillary matters by entering into a consent judgment on January 19, 2012 that entitled Yvonne to 43% of Kevin's "military retirement pay and/or benefit."

At the time that the parties entered the 2012 consent judgment, both Yvonne and Kevin knew that she would be able to prove that Kevin was at fault because of his multiple infidelities, which would have entitled Yvonne to permanent spousal support under Louisiana law. In order to avoid this result, Kevin agreed to pay the 43% of his retirement benefit in exchange for Yvonne's agreement to forgo permanent support.

Shortly after agreeing to the 2012 consent judgment, Kevin, who claims to suffer from PTSD, mood disorder, and cognitive disorder, applied in 2013 to have his retirement pay converted to a form of disability pay called Combat Related Special Compensation ("CRSC"). This request was granted in early 2014.[1] Because CRSC pay is generally not divisible as community property under federal law, the Defense Finance and Accounting Service, which had been issuing payments for the 43% directly to Yvonne, stopped making payments to her. Despite knowing that the 43% was the key consideration in the settlement calculus, and despite admitting that he had agreed that he would do nothing to stop Yvonne from receiving these her payments, Kevin refused to make any further payments to her.

Yvonne filed an action against Kevin to enforce the 2012 consent judgment. Kevin—who was represented by counsel—ultimately agreed to another consent judgment that was signed on June 6, 2014, and provided, *inter alia*, that Kevin **"shall resume payment to the plaintiff, YVONNE RENEA BOUTTE of her forty three percent (43%) interest in the**

[1] It was understood by the parties that Kevin's VA Disability pay was not part of the 2012 consent judgment. At the time of the April 29, 2019 hearing, Kevin was receiving $3,139 monthly in VA Disability pay, and $1,481 monthly in CRSC pay. It is only Yvonne's entitlement to part of the $1,481 monthly CRSC pay that is in dispute; she has never claimed any share of the VA Disability pay.

defendant's military retirement pay and/or benefit" as ordered by earlier 2012 Consent Judgment.

On August 22, 2018—more than four years after acquiescing to the 2014 consent judgment—Kevin sought to re-litigate the issue. The trial court denied Kevin's challenge based on *res judicata*, explaining that the issue was the same issue that was litigated in 2014, after Kevin had already converted his retirement pay to CRSC pay.

The court of appeal affirmed the trial court on grounds of *res judicata*. The court of appeal noted that in *Howell v. Howell*, ___ U.S. ___, 137 S. Ct. 1400, 197 L.Ed.2d 781 (2017), this Court held that military disability pay is not divisible as community property, but found no need to perform a *Howell* analysis because the issue was not interpretation of federal statutes; rather, it was a question of state-law *res judicata*.

The Louisiana Supreme Court denied *certiorari* on December 8, 2020. Despite the fact that rehearing of denials of *certiorari* are unavailable under Louisiana civil procedure laws, Petitioner applied for one anyway, which was denied on February 9, 2021. As such, the July 9 Petition to this Court is untimely.

REASONS FOR DENYING THE PETITION

1. The Petition is untimely.

As a threshold matter, the Court should deny Petitioner's application for *certiorari* because it is

untimely. While this Court did issue a miscellaneous Order increasing the time to file an application from 90 to 150 days after the denial of a "timely petition for rehearing," there is no such thing as a "timely petition for rehearing" of a simple denial of *certiorari* in the Louisiana Supreme Court. *See* La. S. Ct. R. IX, § 6 ("An application for rehearing will not be considered when the court has merely granted or denied an application for a writ of certiorari or a remedial or other supervisory writ. . . ."). A petition for rehearing cannot be "timely" when the applicable jurisdiction does not entertain it.

Thus, when the Louisiana Supreme Court denied *certiorari* to Petitioner on December 8, 2020, his 150-day "clock" started from that day—not from the February 9, 2021, denial of his unsanctioned "Application for Rehearing." The deadline for applying to this Court in this matter was **May 7, 2021—not July 9, 2021**. Since his Petition to this Court was more than two months late, it should be denied. In an abundance of caution, Respondent will discuss the merits of the Writ.

2. The state court of appeal properly applied the Louisiana law of *res judicata* and found that Petitioner cannot collaterally attack the 2012 and 2014 consent judgments in which he acquiesced.

Apparently, Petitioner does not dispute that the state court of appeal correctly applied its law of *res*

judicata as written. The *res judicata* statute provides, in relevant part:

> Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:
>
> (1) *If the judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in the judgment*.
>
> (2) If the judgment is in favor of the defendant, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.
>
> (3) A judgment in favor of either the plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment

LA. REV. STAT. ANN. § 13:4231 (emphasis added).

In 2014, Yvonne Boutte filed a pleading specifically alleging that Kevin had agreed to pay 43% of his "military retirement pay and/or benefit" in a 2012 consent judgment and had promised her that he would not do anything to interfere with her future receipt of

these payments, but that he breached these obligations. Petitioner argued that he was no longer obligated to make payments to Yvonne because he had his retirement pay converted to CRSC pay, and CRSC pay is not generally subject to division as a community asset. The litigation over this issue ended in a consent judgment in which Kevin agreed that he would "resume" paying Yvonne 43% of his "military retirement pay and/or benefit." Under the *res judicata* statute, this judgment "in favor of the plaintiff" (Yvonne) is "conclusive" between Kevin and Yvonne, and the "issue" of whether Kevin is required to continue paying Yvonne an amount equal to 43% of his military benefit cannot be re-raised. *Id.* Thus, Petitioner's attempt four years later to re-litigate this exact same issue was properly rejected on *res judicata* grounds.

Petitioner's primary argument on appeal was that a consent judgment is not an "actual adjudication" in the context of property settlements upon divorce. The court of appeal properly rejected this argument, demonstrating conclusively that consent judgments in community-property settlements are certainly adjudications that are subject to the state's *res judicata* laws. Petitioner never challenged this holding in his writ application to the Louisiana Supreme Court or to this Court. Nor did Petitioner address the possible grounds for nullifying a Louisiana judgment, and for good reason: none of them are applicable to the case at bar.

In Louisiana, a judgment can be annulled for vices of form or substance. LA. CODE CIV. PROC. ANN. art. 2001. The only recognized vice of substance is when the

judgment was obtained by fraud or ill practices. LA. CODE CIV. PROC. ANN. art. 2004(A). Petitioner has never alleged fraud, much less provided evidence of such, and even if he had, his claim would be time-barred since it wasn't brought within a year of discovery of it. LA. CODE CIV. PROC. ANN. art. 2004(B).

The only possible vices of form are set forth in LA. CODE CIV. PROC. ANN. art. 2002(A):

> A. A final judgment shall be annulled if it is rendered:
>
> (1) Against an incompetent person not represented as required by law.
>
> (2) Against a defendant who has not been served with process as required by law and who has not waived objection to jurisdiction, or against whom a valid judgment by default has not been taken.
>
> (3) By a court which does not have jurisdiction over the subject matter of the suit.

While Petitioner never invoked these grounds to the Louisiana Supreme Court or to this Court, Kevin did indirectly raise the third one by implying that the state courts lacked subject-matter jurisdiction over his claim because the state courts allegedly misapplied preemptive federal law with respect to the division of military benefits upon divorce. This conflates an alleged legal error with a lack of jurisdiction. As this Court held in *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 398, 101 S. Ct. 2424, 69 L.Ed.2d 103 (1981) (citations and internal quotation marks omitted), "A

judgment merely voidable because based upon an erroneous view of the law is not open to collateral attack, but can be corrected only by a direct review and not by bringing another action upon the same cause. . . ."

"The preemption doctrine does not deprive state courts of subject matter jurisdiction over claims involving federal preemption unless Congress has given exclusive jurisdiction to a federal forum." 21 C.J.S. *Courts*, § 272 (2021). Nothing in the federal laws governing the division of military benefits upon divorce deprives state courts of their power to hear such matters. *Matter of Marriage of Kaufman*, 485 P.3d 991, 999 (Wash. Ct. App. 2021). A "purported violation" of preemptive federal rules governing division of military disability benefits upon divorce "does not" strip courts of subject-matter jurisdiction. *Tarver v. Reynolds*, No. 2:18-CV-1034-WKW, 2019 WL 3889721, at *6 (M.D. Ala. Aug. 16, 2019) (citing decisions of several different state courts). *See also Gross v. Wilson*, 424 P.3d 390, 397 (Alaska 2018) (state court's allegedly misapplying federal law concerning military benefits is not synonymous with acting without jurisdiction); *Edwards v. Edwards*, 132 N.E.3d 391, 395-96 (Ind. Ct. App. 2019) (same, and noting that "[t[he fact that a trial court may have erred along the course of adjudicating a dispute does not mean it lacked jurisdiction," and remonstrating against attempts "to convert a legal issue into one of 'jurisdiction' and from that point contend all actions of the court are void").

But even assuming that the Louisiana courts misapplied federal law and that this somehow stripped

them of jurisdiction, Petitioner is still barred from raising such grounds to nullify the judgment, because he undisputedly "acquiesced" in the consent judgments. LA. CODE CIV. PROC. ANN. art. 2003 (providing that a defendant "who voluntarily acquiesced in the judgment . . . may not annul the judgment on any of the grounds enumerated in Article 2002"). Kevin simply does not have a viable avenue under Louisiana law to avoid his adjudged obligation to Yvonne.

3. Federal preemption as explicated by *Howell* poses no impediment to enforcing Petitioner's agreement to "resume" paying Yvonne payments pursuant to their settlement agreement.

The nub of Petitioner's novella-length Petition is his argument that federal preemption renders state courts powerless to enforce their *res judicata* laws and prevent collateral attacks of allegedly erroneous state-court judgments involving the division of military disability benefits. This Court, however, has noted that the question of whether a state's *res judicata* laws bar the reopening of settlements involving the division of military benefits "is a matter of state law over which we have no jurisdiction." *Mansell v. Mansell*, 490 U.S. 581, 586 n.5, 109 S. Ct. 2023, 104 L.Ed.2d 675 (1989). In *Mansell*, this Court addressed a state's handling of a federal question—whether military retirement pay that the veteran waived to receive disability benefits was divisible upon divorce—*but only because the state court of appeal found it appropriate to reopen the*

settlement and reach the federal question. This Court implied that if the state court of appeal had barred the reopening of the settlement on *res judicata* grounds, it would have been improper for this Court to take up the issue. *Id.* In the case at bar, the Louisiana court of appeal declined to reach the federal question, ruling solely on *res judicata* grounds, so under the logic of *Mansell*, the Court should not address the federal question.

Moreover, in *Sheldon v. Sheldon*, 456 U.S. 941, 941, 102 S. Ct. 2002, 72 L.Ed.2d 462 (1982), the petitioner posed the following question: "Does federal preemption of state community property laws regarding division of military retirement pay render state judgments void for lack of subject matter jurisdiction where such judgments were entered after Congress had preempted area of law?" This question is essentially identical to the question Kevin poses in his Petition, yet this Court dismissed the *Sheldon* petition "for want of a substantial federal question." *Id.* A dismissal for want of a substantial federal question is a merits ruling with full precedential value. *Hicks v. Miranda*, 422 U.S. 332, 344, 95 S. Ct. 2281, 45 L.Ed.2d 223 (1975). So, Petitioner's very issue has already been deemed an inappropriate subject for review by this Court.

Sheldon, along with the *Mansell* language described above, show that state-court judgments that erroneously divide military benefits are not void for lack of subject matter jurisdiction, and that federal law does not bar state courts from enforcing such judgments on grounds of *res judicata*. 2 Brett R. Turner,

Equitable Distribution of Property (4th ed. 2019), § 6:6, at 49-50, 54-55. Petitioner's position that this Court should take up his issue without regard to Louisiana's *res judicata* law is contrary to this Court's jurisprudence.

In attempting to extend the preemption doctrine far beyond the limits sanctioned by this Court, Petitioner relies primarily on *Howell v. Howell*, ___ U.S. ___, 137 S. Ct. 1400, 197 L.Ed.2d 781 (2017). In *Howell*, this Court held that a state court may not order a veteran to indemnify a divorced spouse for the loss of the divorced spouse's portion of the veteran's retirement pay caused by the veteran's waiver of such retirement pay to receive service-related disability benefits. *Howell*, 137 S. Ct. at 1402. Rather, the recipient spouse has no "vested interest" in receiving an amount equal to her original share of the retirement pay, because the retirement pay was always subject to the "contingency" that it could be waived and converted to CRSC pay. *Id.* at 1404-06. Contrary to Kevin's narrative, however, *Howell* does not shed new light on the *res judicata* issue: "*Howell* does not hold that a state court cannot enforce a property division by ordering a service member who unilaterally stops making payments the service member was legally obligated to make to resume those payments and pay arrearages." *Gross v. Wilson*, 424 P.3d 390, 401 (Alaska 2018).

Since *Howell* was decided, *Gross* appears to be the only state court of last resort that has ruled on whether states, through *res judicata* laws, can prevent collateral attacks on allegedly erroneous state-court

judgments involving the division of military disability benefits. *Gross* is remarkably on point. In *Gross*, the parties entered a court-mediated settlement agreement whereby the veteran agreed to pay his ex-wife 50% of all of his military pay. *Id*. at 401. The agreement provided that the payments would continue throughout the veteran's life, and that if the veteran or the military did anything that would reduce the ex-wife's share of the retirement pay, the veteran would reimburse his ex-wife for the reduction. *Id*. at 393. Just like Kevin, the veteran in *Gross* subsequently "stopped paying [his ex-wife] the amount she was entitled to pursuant to the property division" on grounds that he had waived retirement pay in favor of disability pay. *Id*. at 401. The ex-wife filed a motion to enforce the settlement, and the lower courts ordered the veteran to "resume" paying his ex-wife pursuant to their agreement. *Id*.

On appeal, the *Gross* court began by considering whether there was a procedural basis under Alaska law for the veteran to attack the enforcement of the divorce settlement—an analysis that is very similar to the discussion *supra* part 1 regarding the Louisiana bases for nullifying a final judgment (including consent judgments in a divorce proceeding). Just as Petitioner has not asserted a valid basis under Louisiana law for nullifying the 2014 Consent Judgment, *supra* part 1, the *Gross* court found that the veteran "has asserted no valid basis under [Alaska law] for bringing a collateral attack on the property division more than a year after he voluntarily agreed to it." *Id*. at 399.

Notably, the *Gross* court found that even if the divorce decree erroneously applied federal law by dividing the veteran's disability pay, this did not mean that the lower court lacked subject-matter jurisdiction or that the decree was void. *Id*. at 397.

The *Gross* court next considered whether the lower court impermissibly required the veteran to "indemnify" his ex-spouse. *Id*. During the pendency of the appeal, *Howell* was decided. *Id*. at 400. The *Gross* court recognized that *Howell* prevents a state court from ordering a veteran to "indemnify" his spouse for retirement benefits waived to receive disability pay. But the *Gross* court found that *Howell* does *not* prevent a court from ordering a veteran to "resume monthly payments" as ordered pursuant to a settlement agreement. *Id.* Thus, under the reasoning of *Gross*, *Howell* does not extend so far as to interfere with the 2014 consent judgment that ordered Kevin to "resume payment" to Yvonne pursuant to their agreement that he pay her an amount equal to 43% of his entire "military . . . benefit" including CRSC pay.

State appellate courts have rarely addressed whether an allegedly erroneous division of military disability benefits can be collaterally attacked. When they do, they generally agree with the *Gross* court's (and Respondent's) position. In *Mansell*, on remand, the California court of appeal found that even though this Court held that state courts do not have the power to divide veterans' disability benefits, *res judicata* barred attacking the settlement. *In re Marriage of Mansell*, 217 Cal. App. 3d 219, 227, 265 Cal. Rptr. 227

(1989). This Court denied a second petition for *certiorari*. *Mansell v. Mansell*, 498 U.S. 806, 111 S. Ct. 237, 112 L.Ed.2d 197 (1990).

Howell did not change the way state courts apply *res judicata* with respect to divided military disability pay. For example, in *Edwards v. Edwards*, 132 N.E.3d 391, 394 (Ind. Ct. App. 2019), the parties agreed that the ex-wife would receive 50% of her ex-husband's military pension benefit. Soon thereafter, the veteran waived his retirement pay in order to receive CRSC pay, and then refused to make any further payments to his ex-wife, just like Kevin did in the case at bar. *Id.* The ex-wife then filed contempt proceedings (like Yvonne did in the case at bar). *Id.* In 2015, the trial court ordered the veteran to pay his ex-wife the amount she lost as a result of the conversion to CRSC pay, and the veteran did not appeal. *Id.* at 394-95. Like Kevin, after *Howell* was decided in 2017, the veteran sought to reopen the issue. *Id.* at 395. The court of appeal rejected the same argument that Petitioner now puts forth: the idea that the consent agreement was "void *ab initio*" because it allegedly divided his CRSC benefits in contravention of federal law. *Id.* at 395-97. The court applied Indiana's *res judicata* law to bar the veteran's challenge to the judgment concerning the division of military benefits. *Id.*

Another instructive case is *Matter of Marriage of Kaufman*, 485 P.3d 991, 996-1003 (Wash. Ct. App. 2021), where the veteran converted his retirement pay to disability benefits and then stopped paying his ex-wife her share under the property settlement. Like in

Gross and *Edwards*, the court found that the property settlement was not void for lack of subject-matter jurisdiction (even if it was contrary to federal law) and held that the state's *res judicata* laws barred the veteran from collaterally attacking it. Another Washington court of appeal held similarly in *In Re Marriage of Weiser*, 475 P.3d 237 (Wash. Ct. App. 2020).

On the other side of the ledger, in 8,950 words, Petitioner can only cite a single case where a state appellate court allowed a collateral attack on a judgment involving the allocation of military disability benefits: the unreported case of *Foster v. Foster*, 2020 WL 4382784 (Mich. App. 2020).[2] In that tersely worded and deficiently reasoned opinion, however, the court clearly fell into the error that some courts occasionally make by finding that state courts are deprived of subject-matter jurisdiction when principles of federal preemption apply. *Id.* at *2. As explained *supra*, the nearly universal rule (which is supported by this Court's decisions) is that when a state court errs in applying preemptive federal law, it does not thereby act without subject-matter jurisdiction. *Foster* is woefully thin support for the notion that *Howell* requires states to always allow collateral attacks on judgments involving allocation of military disability benefits.

When Kevin promised to pay Yvonne an amount equal to 43% of his military retirement pay "and/or

[2] Petitioner incorrectly ascribes this holding to the Michigan Supreme Court. That court, however, did not address the *res judicata* issue, instead remanding the case to the court of appeal. *Foster v. Foster*, 949 N.W.2d 102, 114 (Mich. 2020).

benefit," he did so with eyes wide open, after he had already converted his military retirement pay to disability pay. Regardless of whether the consent judgment was in error, it is now a valid final judgment, and as the *Gross* court pointed out, *Howell* does not bar state courts from enforcing such a judgment by requiring a veteran who unilaterally stops making payments he was required to make under that judgment to resume making those payments. Any other rule would "result in creating elements of uncertainty and confusion and in undermining the conclusive character of judgments, consequences which it was the very purpose of the doctrine of *res judicata* to avert." *Reed v. Allen*, 286 U.S. 191, 201, 52 S. Ct. 532, 76 L.Ed. 1054 (1932).

CONCLUSION

This Court has recognized, in the context of a judgment dividing military benefits upon divorce, that the question of whether such judgment can be collaterally attacked is the province of state law. There is no dispute that Louisiana law prohibits Petitioner from reopening the 2012 and 2014 consent judgments. As the Alaska Supreme Court held when faced with similar facts, *Howell* and the doctrine of federal preemption do not reach so far as to invalidate state *res judicata* laws in the context of judgments involving the division of military disability benefits. Even if that were not so, there are no "compelling circumstances" for granting

this writ application. Accordingly, Kevin's Petition for *certiorari* should be denied.

Respectfully submitted,

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