No. 21-731

In The

Supreme Court of the United States

JESSE PLASOLA,

Petitioner,

vs.

CALIFORNIA SUPERIOR COURT,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

(1) The Congress recognized, during passage of the 1986 FERSA, that a Thrift Savings Plan (TSP) account that has a zero balance is not subject to court orders under the terms of the legislation that specifically directed that accounts that are at a zero balance, the courts have no jurisdiction. Comparing the facts with the legal requirements under regulations prescribed by the Thrift Savings Plan (TSP) that makes it unlawful for the court to acquire jurisdiction for a "closed account" *5 CFR* § 1653.2(b)(1). The question presented is as follows: Whether the state court's 09-14-2006 TSP final judgment divorce decree violated The Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514 and *5 CFR* § 1653.2(b)(1)?

(2) When the parties divorced in 2006 and their property was divided, petitioner was not an employee but a separated non-employee who had previously resigned at the age of 40 and there was no property to divide. Due to Petitioner resignation, he was ineligible for the FERS immediate annuity and FERS annuity supplement at the time of divorce and thereafter. Separately and unpredictably, Petitioner years later, was hired post-divorce in an entirely different job and different job classification with the BOP, while a resident of a different state. The family court ordered 12 years later, petitioner's future nonmarital separate property to indemnify respondent for the amount of that reduction

QUESTIONS PRESENTED – Continued

from the previous 2006 divorce decree. The question presented is as follows: Whether the state court's 09-14-2006 final judgment divorce decree violated *5 U.S.C.* § 8412's jurisdiction, and whether *5 U.S.C.* § 8421 was also prohibited and unconstitutional under the supremacy clause at the time of the 09-14-2006 final judgment. (See The Retirement System Act of 1986)?

(3) Under the U.S. Constitution, due process, a trial court's final judgment takes effect from the day it is actually rendered by the trial court or after weeks or months when it is formally written, signed, and entered by the trial judge? Does the effects of an entry of a final judgment entered weeks or months thereafter, prejudice the petitioner? In other words, the proper credit of days doesn't vest until they are actually formally written, signed, and entered by the judge. The question presented is as follows: Does the court's "lapse of time" for petitioner's rights to receive proper credit of days from the date the decision was rendered violate petitioner's due process rights? The final judgment "start date" should be the date the final judgment was rendered, not the date signed by the judge.

(4) The State of California, County of Santa Barbara, Judge Timothy Staffel, Judge Jed Beebe, and Attorney Roger Hubbard is being sued for violations of the Federal Employees' Retirement Systems Act of 1986 ("FERSA"), Pub. L. No. 99-335, 100 Stat. 514, § 1653.2(b)(1) for the lack of jurisdiction for a zero balance and a closed account under *5 CFR* § 1653.2(b)(1). The question

QUESTIONS PRESENTED – Continued

presented is as follows: Whether all defendants have immunity and or judicial immunity under *42 U.S.C.* § 1983?

(5) Congress has provided that the federal employee retirement benefits shall be paid to another person only if expressly provided for in any court decree of divorce, annulment, or legal separation. *5 U.S.C.* § 8467(a)(1). The 09-14-2006 final judgment did not include the FERS annuity supplement because it did not exist at the time of the 09-14-2006 final judgment, because the petitioner had previously resigned, and was not an employee. The apportionment of the annuity supplement was not incident to any court decree of divorce, annulment, or legal separation. The question presented is as follows: Does the Office of Personnel Management (OPM) apportionment of Annuity Supplements absent an express court order incident to divorce requiring such apportionment inconsistent with Sections 8421 and 8467. Does the court and OPM failure to follow Sections 8421 and 8467 constitutes an action that is arbitrary, capricious, and contrary to law in violation of *5 U.S.C.* § 706(2)(A)?

(6) Congress has provided a retiree the federal employee retirement benefit, upon retirement. § 838.236 Court orders barring payment of annuities. The question presented is as follows: Whether the State court can order a federal employee, to not retire and not touch their pension?

PARTIES TO THE PROCEEDING

Petitioner Jesse Plasola was the petitioner/plaintiff in the district court proceedings and appellant in the Court of appeals proceedings. Defendants, State of California, Judge Timothy Staffel, Judge Jed Beebe, and Attorney Roger Hubbard were the defendants in the district Court proceedings and appellees/defendants in the court of appeals proceedings.

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PARTIES TO THE PROCEEDING – Continued

California Supreme Court
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San Francisco, CA 94101

United States District Court
for the Central District of California
225 East Temple Street, Room 180
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United States Court of Appeals
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RELATED CASES

- *Plasola v. California*, No. CV 19-5592 JAK (PVC), U.S. District Court for the Central District of California, Judgment entered July 20, 2020
- *Plasola v. California*, 848 Fed. Appx. 729, United States Court of Appeals for the Ninth Circuit, May 18, 2021, submitted May 25, 2021, Filed
- *Plasola v. California*, 848 Fed. Appx. 729, United States Court of Appeals for the Ninth Circuit, May 18, 2021, submitted August 25, 2021, Filed

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PETITION FOR A WRIT OF CERTIORARI

Jesse Plasola petitions for a writ of certiorari to review the judgment of the State Court and United States Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The Ninth Circuit's opinion is reported at *Plasola v. California*, 848 F. App'x 729 (9th Cir. 2021) and reproduced at App. 1. The Ninth Circuit's denial of petitioner's motion for reconsideration and rehearing en banc is reproduced at App. 27.

JURISDICTION

The California Supreme Court issued a denial of review in this matter on April 10, 2019. The United States Court of Appeals, Ninth Circuit issued their opinion on May 25, 2021 and Ninth Circuit rehearing denial on August 25, 2021. This Court has jurisdiction under *28 U.S.C.* § 1257.

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

This case does involve interpretation of statutory, regulatory or constitutional provisions. Judgments of court acting outside limits of constitutional and

statutory provisions defining its subject matter jurisdiction are void.

STATEMENT OF THE CASE

This case concerns three types of federal benefits: Thrift Savings Plan, Immediate retirement pay, and annuity supplement benefits. Federal employees of the federal government who have served the requisite number of years may retire and receive an immediate retirement pay and an annuity supplement, unless you resign and are a separated non-employee. *5 CFR* 1653.2(b)(1); *5 U.S.C.* § 8412; *5 U.S.C.* § 8413; *5 U.S.C.* § 8421.

In the decision below, Petitioner's FERS immediate annuity and FERS annuity supplement arose years *after* a divorce judgment had already taken place between Petitioner and the former spouse, separately, after Petitioner was hired on 03-01-2009 in new post-divorce employment and new employment classification. The new law § 8412's effective date was 03-01-2009 (CA Family Code § 771 and § 760). The court lacked the authority to apply its new interpretation retroactively and future post-divorce nonmarital separate property, either to indemnify for post-divorce action in a 08-24-2018 QDRO. The state court reinterpreted the statutory and regulatory provisions governing the FERS immediate annuity at the time of the 09-14-2006 final judgment.

While recognizing that "domestic relations are preeminently matters of state law," and that Congress "rarely intends to displace state authority in this area," the case before it presents one of those rare instances where Congress has directly and specifically legislated in the area of a zero balance account. Under Public Law 99-335, 100 Stat. 514, plain and precise language, state courts have not been granted the authority to treat a zero balance account as community property nor a closed account either *5 CFR* 1653.2(b)(1).

A. Statutory Framework

The Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. (TSP participants may bring "[a] civil action . . . in the district courts of the United States to recover benefits of such participant . . . , to "enforce any right of such participant" or beneficiary under such provisions, or to "clarify" any such right to future benefits under such provisions . . . "). In 1986, Congress passed FERSA in order to provide federal employees with many of the retirement savings opportunities afforded by private employers. Central to enactment of FERSA was the creation of the TSP, which is administered by the Federal Retirement Thrift Investment Board ("FRTIB"). The TSP is a statutorily created defined contribution plan available to federal employees, just like the ubiquitous 401(k) plans available to employees in the private sector. Every federal employee (as defined by FERSA, § 8401) participates in the TSP. Congress' best of intentions for FERSA fell upon deaf ears and their

initial concerns materialized when the State court refused to follow Public Law 99-335, 100 Stat. 514.

Petitioner, was an employee of the Bureau of Prisons, contributed a portion of his salary to the Thrift Savings Plan under the Federal Employees' Retirement System. *5 U.S.C.* § 8472. The money a federal employee contributes to his or her TSP is held in trust by the Federal Retirement Thrift Investment Board. *5 U.S.C.* § 8437(g). The Investment Board sets the policies for the investment and management of the TSP and is authorized to issue regulations necessary to carry out the TSP program *5 U.S.C.* § 8474(b)(5). If you are separated from Federal service and no longer employed as a Federal civilian employee, the TSP 70 form is used to request a full withdrawal from a Thrift Savings Plan due to employment ending for any reason.

There is ample support for the subject of distribution in a deferent case law however, it's for the notion that the distribution of federal benefits upon the death of a decedent is exclusively governed by federal, not state law. The Supreme Court of the United States has held that when a soldier formally designated his parents as beneficiaries under the procedures laid out by the policy, his estranged spouse had no right to claim the benefits, even though such benefits ordinarily would have been community property under state law. *Wissner v. Wissner*, 338 U.S. 655, 70 S.Ct. 398, 94 L.Ed. 424 (1950). The Court explicitly wrote that state law cannot apply in areas where such state law "frustrates the deliberate purpose of Congress." *Id.* at 659, 70 S.Ct. 398. In a case involving a federal statute which

explicitly governed a decedent's benefits under the Railroad Retirement Act ("RRA"), the Supreme Court rejected the decedent's spouses claim for a portion of the benefits under state community property laws, saying that the RRA's provisions were designed to "prevent [] the vagaries of state law from disrupting the national scheme, and guarantee [] a national uniformity that enhances the effectiveness of congressional policy." *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 584, 99 S.Ct. 802, 59 L.Ed.2d 1 (1979). This is true "irrespective of the equities of a particular case." *Hightower v. Kirksey*, 157 F.3d 528, 531 (7th Cir. 1998). The only other district court to consider the issue has ruled that § 8424(d) preempts any claim to the decedent's property under state law. *Faris v. Long*, 2008 WL 612938 (E.D.Tenn. Mar. 4, 2008). In my case, the distribution of federal benefits upon a closed account is exclusively governed by federal, not state law. Federal law, which was acceptable to Congress, trumps the TSP judgment in dissolution because the account previously had a zero balance and was closed at the time of the 09-14-2006 final judgment.

There are few concepts that are as important to our nation's jurisprudence as that of jurisdiction. As stated by the Supreme Court of the United States, "Jurisdiction is the power to hear and determine the subject matter in controversy between parties to a suit, to adjudicate or exercise any judicial power over them. . . ." *Rhode Island v. Massachusetts*, 37 U.S. 657, 718 (1838). "The statutory and (especially) constitutional elements of jurisdiction are an essential

ingredient of separation and equilibration of powers, restraining the courts from acting at certain times, and even restraining them from acting permanently regarding certain subjects." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998). It is precisely because jurisdiction is such a fundamental and important prerequisite to a court taking action in a case that objections to subject matter jurisdiction can be raised at any time, even after a case is over and even if the party contesting jurisdiction already had acknowledged a court's jurisdiction.

CORPUS JURIS SECUNDUM 49 Judgments 1 to 498, § 18 a. A judgment rendered by a court having no jurisdiction is a mere nullity, and will be so held and treated whenever and for whatever purpose it is sought to be used or relied on as a valid judgment. Where a court is without jurisdiction, it is generally irregular to make any order in the cause except to dismiss the suit. The validity of a judgment depends on the jurisdiction of the court before rendition, not what may occur subsequently.

c. A court cannot render a valid judgment unless it has jurisdiction over the subject matter of the litigation or the cause of action. Even with full jurisdiction over the parties, no court can render a valid judgment, unless it also has jurisdiction over the subject matter of the litigation or cause of action. A judgment is wholly void in cases where the subject matter is withheld from the jurisdiction of the particular court, or is placed within the exclusive jurisdiction of another

court, or where the jurisdiction depends on a statute which was repealed before suit.

What Congress enacted in 1986 must be applied according to its terms, and not according to what the State court would deem desirable. As the court has clearly explained, "[t]he [U.S.] Supreme Court has held that the Appropriations Clause of the Constitution, *U.S. Const.* art. I, § 9, cl. 7, precludes the judiciary from ordering an award of public funds to a statutorily ineligible claimant on the basis of equitable estoppel." *OPM v. Richmond*, 496 U.S. 414, 430 (1990), aff'd sub nom. *Rosenberg v. Peake*, 296 F. App'x 53 (Fed. Cir. 2008); see *McCay v. Brown*, 106 F.3d 1577, 1581 (Fed. Cir. 1997) (holding that equitable estoppel "is not available to grant money payment where Congress has not authorized such a payment or the recipient doesn't qualify for such a payment under applicable statutes.").

The Congress recognized, during passage of the FERSA, that a TSP account that has a zero balance is not subject to court orders under the terms of the legislation that specifically directed that accounts that are at a zero balance, the courts have no jurisdiction. Comparing the facts with the legal requirements directed under regulations prescribed by the Thrift Savings Plan (TSP) that makes it unlawful for the court to acquire jurisdiction for a "closed account" § 1653.2(b)(1). Under federal regulation § 838.122, the court must verify that the account is open for jurisdiction and verify that the account is not closed by examining approved documents, e.g., TSP form 70. The court must also determine when court orders are invalid. In

addition, federal regulations only authorize settling all disputes between the employee or retiree and the former spouse or child abuse creditor. The petitioner was neither, because of his previous voluntary resignation on 03-14-2015, Petitioner and spouse requested and completed the withdrawal from his TSP account. Petitioner submitted TSP Form 70 that included his wife's notarized signed consent.

Furthermore, the distribution of TSP benefits is an area over which federal law preempts state law, and California State court would therefore not have exclusive jurisdiction over the TSP closed account or claim. As previously noted, § 1653.2(b)(1) explicitly provides that court orders are invalid if the account is closed. § 1653.2(b)(1) in question could not be more explicit about this fact. The federal doctrine of preemption applies when the application of a state law or would threaten to destabilize an area of federal interest. The area of federal employees' benefits is clearly one such area. The laws and regulations in question are unequivocal in that they prescribe the only way for jurisdiction for the state court is an open account. Judge Staffel, Judge Beebe and Attorney Hubbard's overreach and violation of FERSA caused significant losses to the petitioner for violation of the federal employee retirement systems act of 1986 (brought pursuant *5 CFR* § 1653.2(b)(1)). Thereby circumventing petitioner's constitutional right which was provided by Congress and federal regulation law.

Federal regulations concomitantly require that court orders are invalid if the account is closed. The

state court has zero role in deciding disputes over a "closed account". The TSP "closed account" is governed entirely by Federal law and cannot be affected by State court orders. Congress and regulation has directly and specifically legislated in the area of a zero balance or "closed account," because § 1653.2(b)(1) directly addresses the authority of state courts that specifically excludes from that authorization a "closed account", any court orders. The plain and precise language, state courts have not been granted the authority to treat a "closed account". The State courts 2006 TSP judgment violates the Constitution's Supremacy Clause because it conflicts with federal law and directly bypasses the federal government's operations. Under the Supremacy Clause, California must defer to the Act's statutory scheme for allocating benefits insofar as the terms of federal law require. The 2006 TSP judgment causes irreparable injury to the United States because the court is required "to remain compliant" with federal regulations, that requires court orders invalid if the account is closed. The State court does not even try to explain § 1653.2(b)(1) regulatory evidence showing that petitioner's account was not open because of the State court's conflicting conclusion that starts with inapposite requirements of § 1653.2(b)(1) that contains the exclusive regulatory authority over the relevant subject and the regulations explicit preemptive language. This case began as a challenge to a California's lack of jurisdiction, but it is now a dispute about a State's authority to adjudicate a TSP closed account because federal regulation law does not grant State courts the power to treat as property even divisible upon divorce,

a TSP account that has been previously closed *5 CFR* § 1653.2(b)(1) and post-divorce separate nonmarital property.

B. Proceedings Below

Neither the 2006 original dissolution decree nor the 2018 QDRO order purported to treat petitioners after-the fact, re-interpretation of the FERS immediate annuity and FERS annuity supplement as community property (See CA Family Code §§ 771, 772), provides that the earnings and accumulations of a spouse and the minor children living with, or in the custody of, the spouse, after the date of separation of the spouses, are the separate property of the spouse. The petitioner had custody of minor children entirely when he was hired years later post-divorce. The petitioner was discriminated because he was a man and was unlawfully excluded from CA Family Codes. The federal preemption analysis might be different if the trial court had included the annuity supplement provision as part of the original divorce decree but it didn't. The State court had issued a 09-11-2018 findings and Order, in connection with the 2006 final judgment, as set forth in that pre-existing 2006 final judgment's FERS "deferred annuity", but later found out that it was canceled and indemnified it for the FERS immediate annuity. The 08-24-2018 QDRO has the effect of switching *5 U.S.C.* § 8413 to *5 U.S.C.* § 8412. The State court enforced the changed finding and order by directing the plaintiff to pay his former spouse the monthly amount she would have received if the deferred annuity had happened.

Both the FERS immediate retirement and FERS annuity supplement benefits were withdrawn upon plaintiff's resignation in 2005. The petitioner asks Judge Staffel that if he could pay the former spouse directly for past payments received by petitioner, but he responded "no".

The state court did not direct petitioner to pay any amount to respondent directly for previous payments received from petitioner. While federal law prohibits the division of the FERS immediate annuity benefit for a separated non-employee who resigns, it does not prohibit spouses from receiving the contributions. Further, the court held that the former spouse's interest in petitioner's pension, had basically vested at the time of the entry of the final judgment of divorce. The State court ordered the petitioner to pay his former spouse what would have been received had petitioner received a deferred annuity. The State court then awarded the former spouse after the fact indemnification to the former spouse on the same vested rights rationale that the trial court relied on in 2006 divorce decree. The court order was in substance on an impermissible order for distribution of the after the fact, illegal taking of the FERS immediate annuity that relied on post-divorce nonmarital separate property. This may be permissible under ERISA, but squarely conflicts with the FERS immediate annuity preemption at the time of the 09-14-2006 final judgment due to petitioner's previous resignation. The Petitioner's post-divorce employment is not incident to divorce.

In this case, petitioner's resignation occurred well before the divorce decree and division of marital

property. The parties were divorced in 2006; petitioner resigned from federal service in 2005; and upon resignation, forfeited any rights to the FERS immediate retirement pay and FERS annuity supplement in 2005. The 2006 original dissolution decree had given the former spouse a 50% of marital share of petitioner's pension, which was previously forfeited under *5 U.S.C.* § 8412, that barred assignment; separately, the petitioner in 2009 was hired in an entirely different (non-marital) job and different job classification with the BOP. The petitioner was living and was a resident of the State of Nevada and had custody of his children from 2009 thru 2015, (See, California Family Code § 760). Although, petitioner was already divorced, CA Family Code § 760 clearly only grants jurisdiction if you're married and living in their state. But under Federal regulation law, the petitioner's 2005 deferred annuity was canceled in 2009, because of post-divorce employment, so there was not a FERS deferred annuity pension. When petitioner was hired post-divorce as a resident of the state of Nevada and since they were divorced at the time of new employment arose years after divorce, the benefits are separate property not incident to divorce. Any benefits that where canceled upon an employee resignation is equally canceled for an employee's spouse. Those benefits also terminate because of the absolute divorce that previously occurred.

Under the Supremacy Clause, California must defer to the Act's statutory scheme for allocating benefits insofar as the terms of federal law require because federal law required that the petitioner was not entitled to the FERS immediate annuity at the time of the

09-14-2006 final judgment. The State court never had pre-existing authority, equitable or otherwise to divide the FERS immediate annuity because the petitioner was not covered and it didn't exist at the time of the 09-14-2006 final judgment. Such ostensible authority asserted by the State court is simply ultra vires. Specifically, the court's who claims entitlement to statutory benefits § 8412 bears the burden of proof by preponderant of evidence. There was no statutory authorization for the FERS immediate annuity § 8412. As such, the court's re-interpretation applying "after the fact" ex post facto order that affects the "substantive rights" of the petitioner, set forth in the indemnified 08-24-2018 QDRO for petitioner's future nonmarital employment. Therefore, the court may not apply its re-interpretation of the § 8412 to prior court orders, much less retroactively change the apportionment of benefits for those prior years. Also, the U.S. Government through Federal regulation § 838.122 did not authorized the court to settle disputes with a separated non-employee because the fact remains that the petitioner was not an employee at the time of the 09-14-2006 final.

This case concerns the proper treatment in divorce of a separated non-employee's, non-existent FERS immediate annuity and FERS annuity supplement because of the separated non-employee previous resignation from federal service. The 2006 original dissolution decree was not a party to and not connected to the FERS Immediate annuity and the FERS annuity supplement. If you resign, a separated non-employee is eligible for their contributions or deferred annuity, but

not both; thus, when a federal employee elects to resign, he must relinquish his right to § 8412 FERS immediate annuity and the *5 U.SC.* § 8421 FERS annuity supplement. The 09-14-2006 final judgment instant application of § 8412 and § 8421 violates the Supremacy Clause in that when federal law conflicts with state law, the federal law controls because the petitioner was a separated non-employee who had previously resigned on 03-14-2005.

In addition, the use of after-the-fact indemnification type remedies or any remedy have reserved the question whether inclusion of an indemnification provision or any remedy as part of the original divorce decree might alter the preemption analysis if the original decree contained no such provision or was contrary to federal law. The 09-14-2006 final judgment did not reserve jurisdiction.

REASONS FOR GRANTING THE PETITION

The U.S. Court of Appeals for The Ninth Circuit applied an erroneous standard of review because it ignored the presumption against federal pre-emption of state law or State court order that focuses on the wrong legal question. In support of its refusal to deal with federal law, the Majority provides too simple of a justification, relying merely on the 09-14-2006 final judgment adopted in an entirely different context. The Majority does not rely on positive (existing and binding) law applicable vis-à-vis the question of a "closed account" relating to *5 CFR* § 1653.2(b)(1) which is

likely due to the scarcity or absence of such jurisdiction. Instead, the Majority refers to statements from judicial immunity which is certainly favorable to Judges Timothy Staffel and Jed Beebe but is nevertheless non-binding because of the lack of jurisdiction to make an order because it is preempted under the Supremacy Clause of the U.S. Constitution. The presented legal picture seems to belong largely to the realm of judicial immunity and judges should not base their decision on rules of such a nature. Moreover, judges cannot ignore *5 CFR* § 1653.2(b)(1) to which the Petitioner refers too. Of course, the Majority does not state that *5 CFR* § 1653.2(b)(1) is binding and the State court lacked jurisdiction. Under *Sessions v. Dimaya*, 584 U.S. ___ (2018), Justice Gorsuch stated when the law runs out and the judges cannot say what the law is, they don't make it up (Transcripts Page 19, Line 14-17). The very reason for the court's jurisdiction being theorized dictates that it existed for an open account and possibly for the closed account too. Therefore, all claims that it existed for the closed account ignore the original premise and can likely be dismissed.

Rule 60(b)(4) states: "On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons: . . . (4) the judgment is void. . . ."

This case presents the precise circumstances in which a jurisdictional error and total want of jurisdiction render a judgment "void" because the State court's error was jurisdictional. Rule 60(b)(4), Petitioner argues that the district court erroneously determined

that the case fell within the jurisdictional grant alleged. Thus, State court's "plain usurpation of power, wrongfully extended its jurisdiction beyond the scope of its authority". The underlying TSP State court **judgment** is clearly and unquestionably "**void** *ab initio*", it is an abuse of discretion for a district court to deny Petitioner's motion to vacate the judgment under Rule 60(b)(4). The judgment of the Family Court did encroach upon exclusive federal jurisdiction on a "closed account" that resulted in a null and void order. The 09-14-2006 TSP final judgment is void only when a court lacks subject-matter jurisdiction under federal regulation law. If the court determines subject-matter jurisdiction does not exist, "the court *must* dismiss the 09-14-2006 TSP judgment complaint in its entirety." Petitioner urges dismissal of the TSP judgment that cannot be adjudicated in state court for lack of subject matter jurisdiction over a closed account because federal law doesn't allow it. This area of law is ripe for reform and the Supreme Court could settle the law in this area.

OPM agency found that the petitioner was not eligible for enhanced retirement benefits for his service between 07-31-1989 thru 03-14-2005 and was not creditable because of the break in service (resignation) exceeding 3 days for the FERS Immediate retirement was not continuous. Despite the documented OPM's agency detailed letter dated 09-29-2016 that contains OPM's interpretation of its own regulation accurately recognizing petitioner's voluntary resignation is entitled to deference. The courts simply

ignored that evidence and refused to recognize it. The State court did not use OPM's letter to correct the record for the petitioner. Instead, they did just the opposite: They chose to expand their "jurisdiction", thereafter. Further, under the plain language of the statute and regulation, OPM determined that the petitioner's separation was voluntary with regard to § 8412 thus, under the regulation, petitioner was not entitled to the unrelated statutory provision for the FERS Immediate retirement because it was excluded by statute but recognized that the petitioner would be eligible for a FERS deferred annuity, once petitioner reaches the age of 56 years, 2 months. According to OPM, the petitioner's only available option at the time of the 09-14-2006 final judgment was the employee contributions.

I. This Court's decision in *City of New York v. FCC*, 486 U.S. 57 (1988)

Consider the fact that the Supreme Court's explicit legal decision setting the appropriate precedent to be applied here is inapposite to the U.S. Court of Appeals decision that is not in accordance with regulation. In its opinion, the Court of Appeals, the majority tried to avoid U.S. Supreme Court precedent holding that federal regulations that are properly adopted is federal law and took a position which put it at odds with and proves directly contrary to the Supreme Court in *City of New York v. FCC*, 486 U.S. 57 (1988). The Court of Appeals repeated the errors of the trial court. Even when the *City of New York v. FCC*, 486 U.S.

57 (1988) opinion was issued, a majority failed to recognize those errors. Such ruling undermines this Honorable Court's authority and effectively nullifies its holding and reason in *City of New York v. FCC*, 486 U.S. 57 (1988). It interferes with sovereign authority and establishes an erroneous nationwide precedent that ignores U.S. Supreme Court decisions and federal regulations under *5 CFR* § 1653.2(b)(1), and opens the backdoor that doesn't exist which could be exploited by less scrupulous judges to bypass regulations.

City of New York v. FCC, 486 U.S. 57 (1988) U.S. Supreme Court: Under the Supremacy Clause, "the laws of the United States . . . shall be the supreme Law of the Land." *U.S. Const.* Art. VI, cl. 2. "The phrase 'Laws of the Land' encompasses . . . federal regulations that are properly adopted in accordance with statutory authorization." (See *City of New York v. FCC*, 486 U.S. 57, 63 (1988).) As discuss above, the Board's regulation at *5 C.F.R.* § 1631.34, was properly adopted in accordance with statutory authorization." The regulation, therefore, is the Supreme Law of the Land and preempts inconsistent state law. The majority decision is a total denial of federal law, which jurisdiction does not exist for the State court and any resulting single split from any court with the Supreme Court will require resolution. The State court's overstepping their authority and interfering exclusively under federal regulations for a "closed account." The Constitution gives limited powers to the federal

government and its courts, and jurisdiction for a "closed account" is definitely not one of them.

The court should reject the State court and majority ruling for violating the Supreme Court's precedent and basically inapposite of *City of New York v. FCC*, 486 U.S. 57 (1988), the 1988 decision that "established federal regulations that are properly adopted in accordance with statutory authorization" therefore, is the Supreme Law of the Land and preempts inconsistent state law. This issue could impact any civil case and presents the opportunity for State courts to abuse federal regulations, severely prejudicing federal employees, former employees, separated employees, military members, members and former members without an effective cure. Given the number of divorces, addressing this issue, and the different standards applied by these courts, it is evident that this abuse of federal law in State court procedures is not uncommon, and, as in this case, can have an opposite ruling of the statute and regulation and that the ruling is now a condition precedent for accession to the Statute and regulation. When there exists a manifest discrepancy between the legal qualifications of commonly known facts on the one hand and their presentation in the ruling on the other, judges cannot decline the responsibility of examining the reliability and adequacy of the legal constructions.

A. Congress and regulation law have restricted jurisdiction on a TSP zero balance account and TSP closed account

The plain language of the applicable federal regulation does not authorize court orders that specifically preclude a "closed account". The fundamental precondition to the State court's jurisdiction cannot be met because the account was previously closed on 04-2005 with a zero balance because *5 CFR* § 1653.2(b)(1) is governed exclusively by federal regulation. For the reasons, specified above, the State court manifestly lacks jurisdiction over a TSP "closed account". As has been demonstrated, the necessary precondition to the State court's jurisdiction under *5 CFR* § 1653.2(b)(1) of the regulation, which requires that court orders are invalid if the account is closed, cannot be met by virtue of the simple fact that the account was previously closed and there was no "open account" in existence. There is no equivalent federal regulation setting forth the procedure to follow when a TSP account is closed. Under the Supremacy Clause, Congress has the power to preempt state law expressly (See *Brown v. Hotel Employees*, 468 U.S. 491, 500-501 (1984)). Under Public Law, Congress has spoken with force and clarity that establishes a clear and predictable procedure for a" zero balance account". The State court may not create rights for a "closed account" that doesn't exist under federal law. The 09-14-2006 TSP judgment runs contrary to the language and purpose of *5 CFR* § 1653.2(b)(1) and would deprive clearly established federal rights granted by Congress and *5 CFR* § 1653.2(b)(1),

indicated the lack of jurisdiction for a "closed account". It pre-empts all state law that stands in its way. It protects the "closed account" and zero balance account from legal process "notwithstanding any other law . . . of any State." The choice Congress made was deliberate on a "zero-balance" account. *5 CFR* § 1653.2(b)(1), shields the "closed account" from State decisions that would actually reverse the requirement established by Congress and are not subject to disposition upon the dissolution of a marriage because it was previously closed.

The Regulation provides no authority for the State court to adopt a method to define the term for a "closed account" under *5 CFR* § 1653.2(b)(1) which would be different from an "open account" that was established for the State court jurisdiction. As a consequence of its refusal to take into consideration the relevant U.S. Public Law and Federal regulation law. The Majority not only based its reasoning on irrefutable presumptions presented by the State court, but went even further by on one's own initiative creating a legal fiction, particularly as it relates to jurisdiction for a "closed account". Federal law does not support their story in the slightest, when in fact, their story was just the opposite because federal regulations "direct courts" that court orders are invalid if the account is closed, which the petitioner's account was closed.

It appears in my case, that the language was changed from "federal law" to "their redesigned law" in order to provide a self-imposed jurisdiction for the State court. It is much nuanced and might seem like a

small insignificant change, but it is important in terms of an "open account" opposed to a "closed account". It appears, the Majority resoundingly supported the language change to help both State court judges who lacked complete jurisdiction. It appears that the Majority built its reasoning on a perception of judicial immunity and State court jurisdiction that is very far from the real, well-known and well-documented position of U.S. Public Law and *5 CFR* § 1653.2(b)(1). Moreover, it appears and seems to me that the Majority goes considerably beyond federal court cases on judicial immunity and now has taken the position that State courts have judicial immunity when they are without jurisdiction, as it stands at the time of this Ruling. The majority suggest the State court judges have immunity that extends beyond the scope of any action taken in an official judicial capacity.

An analysis of the distinction between a "closed account" and an "open account" is missing and even the potential impact of *5 CFR* § 1653.2(b)(1) – as interpreted by federal regulations is not addressed in regards to the 09-14-2006 final judgment, from the point of view of the complete lack of jurisdiction for the State court. The legality of assessing the specificities of a "closed account" is therefore not *ab ovo* contested by the Majority. Rather, Majority only contests the State court's competence to issue a decision on the validity of a State's accession to *5 CFR* § 1653.2(b)(1). This means that the Majority Decision seems to go beyond what is argued in the Response when it denies *ab ovo* its competence to conduct an examination, by assimilating the

analysis of "open account" specificities with that of the validity of a State's accession to the regulation. Additionally, the *ratione temporis* criterion regarding the Court's jurisdiction, when the account was previously closed and a zero balance must also be evaluated. Similarly, as to the jurisdiction of the State court, formulated in *5 CFR* § 1653.2(b)(1) of the Regulation, the assessment of whether there exists a legal relationship between the State court and a "closed account" and of whether the State court acted *ultra vires* for a "closed account".

The complexity of the issue, as evidenced by the opposing positions of numerous filings and responses, supports that some examination is without a doubt necessary. To conclude, the crucial issue raised in the Request relates to the existence or non-existence of the "closed account" or more precisely, the jurisdiction of the State court' as understood under current federal law. The Supreme Court has the competence to rule on this issue after an in-depth examination, and within the limits of what is necessary to answer the question raised in the petition. On this basis, I do not share the Majority's view, which de facto rejects the "closed account" regulation and bases its reasoning on its purported lack of competence due to the regulation's alleged silence as to a Majority's assessment of a State's court's accession. The Majority follows more or less the State court's approach as expressed in their primary position which seems to accept that the validity of the accession is at the heart of the present question and that any *posteriori* assessment of a "closed

account" would equate to challenging the validity of such accession. Rather, I think that these two issues can be separated and be treated independently. But although the Majority assumes that it follows the rules of interpretation of the regulation, I cannot say that its interpretation indeed conforms to *5 CFR* § 1653.2(b)(1) of the regulation for a "closed account".

Finally, the 09-14-2006 final judgment divorce decree did not include an apportionment of Annuity Supplement because it did not exist. But absent an express court order requiring such apportionment is thus inconsistent with Sections 8421 and 8467. The courts failure to recognize that the plaintiff was not an employee at the time of the 09-14-2006 final judgment but a separated non-employee that previously resigned resulted in the annuity supplement being apportioned by OPM that was not incident to divorce as required by statute. Apportioning the Annuity Supplement absent a court order expressly directing that it be divided is contrary to law because the relevant statutes require OPM to implement division orders pursuant to divorce in a purely ministerial fashion. The court and OPM's failure to follow §§ 8421 and 8467 constitutes an action that is arbitrary, capricious, and contrary to law in violation of *5 U.S.C.* § 706(2)(A).

CONCLUSION

This case can set a uniform standard in thousands of cases for every State court that exceeds their

jurisdiction and would shut down the backdoors to the State court to sidestep federal law. It would also set a national uniform standard of due process for trial court's final judgment to take effect from the day it is actually rendered by the trial court. In addition to State court decisions emphasizing the need for finality of ending a judgment for separate nonmarital property because a decision from the U.S. Supreme Court is binding upon all State courts.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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