No. __-____

In the Supreme Court of the United States

LT (JG) GREG K. PARSONS, UNITED STATES NAVY (PDRL),

Petitioner,

v.

CONNIE K. COPELAND PARSONS
AND
THE STATE OF TEXAS,

Respondents.

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

APPENDIX

CARSON J. TUCKER, JD, MSEL,
LEX FORI, PLLC
Counsel of Record for Petitioner
DPT #3020
1250 W. 14 Mile Rd.
Troy, MI 48083-1030
Phone: +17348879261
cjtucker@lexfori.org

FILE COPY

RE: Case No. 22-0032 DATE: 4/8/2022
COA #: 06-20-00067-CV TC#: 87113
STYLE: PARSONS v. PARSONS

Today the Supreme Court of Texas denied the petition for review in the above-referenced case. Petitioner's Motion for Damages and Sanctions is denied.

GREGORY K. PARSONS
* DELIVERED VIA E-MAIL *

In The
Court of Appeals
Sixth Appellate District of Texas at Texarkana

No. 06-19-00075-CV

IN THE INTEREST OF A.K.P., D.G.P., AND K.L.P., CHILDREN

On Appeal from the 62nd District Court
Lamar County, Texas
Trial Court No. 87113

Before Morriss, C.J., Burgess and Stevens, JJ.
Memorandum Opinion by Justice Burgess

MEMORANDUM OPINION

In this interlocutory appeal, Lieutenant (J.G.) Gregory K. Parsons, United States Navy, PDRL (Parsons), appeals the trial court's order granting the plea to the jurisdiction of the Office of the Attorney General of Texas (the OAG) and dismissing Parsons's claims against the OAG.[1] We affirm the trial court's order because Parsons failed to challenge all of the grounds upon which the trial court could have granted the OAG's plea to the jurisdiction.

I. Background

Parsons has received Veteran's Administration service-connected disability benefits (VA disability benefits) since 1989. He has also received Social Security (SSA) disability benefits since 1990. Parsons was married to Connie K. Copeland Parsons (Copeland) from 1993 to 2003, and the couple had three children, A.K.P., D.G.P., and K.L.P. Subsequent to their divorce, Parsons was ordered to pay child support on behalf of the children to the OAG's Texas Child Support Disbursing Unit.

In June 2009, the 196th Judicial District Court of Hunt County (the Hunt District Court) entered an order that increased Parsons's court-ordered child support. The Hunt District Court included Parsons's VA disability benefits in calculating his net resources for the purpose of determining Parsons's child support liability.[2] Apparently, in October 2009, Copeland and the

[1]Since the OAG is a state agency, we have jurisdiction to consider an interlocutory appeal of the grant of its plea to the jurisdiction. TEX. CIV. PRAC. & REM. CODE ANN. §§ 51.014(a)(8) (Supp.), 101.001(3)(A). Although the trial court's order recites that it is a "FINAL JUDGMENT," it is clear from the order that it only dismisses Parsons's claims against the OAG. Further, the record affirmatively shows that the order did not dispose of Parsons's claims against any other party. *See Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 200 (Tex. 2001).

[2]*See* TEX. FAM. CODE. ANN. § 154.062(b)(5).

OAG made a request to the VA Regional Office in Waco for an apportionment of Parsons's VA disability benefits on behalf of A.K.P., D.G.P., and K.L.P. That request was denied in April 2009.

In 2010, the case was transferred to the 395th Judicial District Court of Williamson County (the Williamson District Court), which then acquired continuing, exclusive jurisdiction.[3] After the transfer, that court entered orders in July 2010, April 2012, and June 2012 modifying Parsons's court-ordered child support. In entering each of those orders, the Williamson District Court included Parsons's VA disability benefits in calculating his net resources for the purpose of determining Parsons's child support liability. Parsons did not appeal any of the modification orders entered by the Hunt and Williamson District Courts. Also, it is undisputed that Parsons was served with notice of the petitions requesting modification and of the hearings on the petitions and that he appeared, personally and through counsel, at several of the hearings.

On December 19, 2017, Parsons filed this suit in the 62nd Judicial District Court of Lamar County (the Lamar District Court) against Copeland and the OAG. Parsons sought a declaration that the modification orders entered by the Hunt and Williamson District Courts were void, alleging that since the VA regional office had denied Copeland's apportionment request, those courts were barred from considering his VA disability benefits in determining his child support liability. Parsons also sought an injunction barring the OAG from enforcing the orders and compensatory and exemplary damages from Copeland and the OAG for their roles in seeking the modification orders and enforcing the same.

[3]*See* TEX. FAM. CODE. ANN. § 155.206(a).

On June 17, 2019,[4] the OAG filed its plea to the jurisdiction asserting three grounds: (1) sovereign immunity barred Parsons's claims against the OAG, (2) the Williamson District Court had exclusive, continuing jurisdiction since Parsons was attempting to modify that court's child support orders, and (3) Parsons's claims against the OAG were moot.[5] In response, Parsons filed his motion for leave to file an amended original petition and attached his amended original petition.[6] In addition, Parsons filed a response in opposition to the plea to the jurisdiction. After a hearing,[7] the trial court granted the OAG's plea to the jurisdiction, without stating the basis of its ruling, and dismissed all of Parsons's claims against the OAG.

II. Parsons Failed to Challenge All of the Grounds

As stated above, the OAG asserted three grounds in support of its plea to the jurisdiction, but the trial court did not state on which ground or grounds it granted the plea and dismissed the claims against the OAG. When a plea to the jurisdiction "asserts several grounds and the trial court does not specify on which ground the [plea] was granted, an appellant must show that each independent ground is insufficient to support" the order. *Alford v. Thornburg*, 113 S.W.3d 575,

[4]The VA removed this case to federal court in January 2018. After the VA was dismissed on the basis of immunity, the case was remanded to the Lamar District Court on December 21, 2018.

[5]The VA attached the declaration of the managing attorney for the Pflugerville Child Support Office showing that child support had ceased to be payable as of August 3, 2018, since all of the children were emancipated on that date, and that Parsons had made his last payment due on accumulated arrears on December 3, 2018.

[6]In his amended original petition, Parsons reasserted his claims against Copeland and the OAG, added additional claims against those parties, and asserted a number of claims against the State of Texas, Greg Abbott, Ken Paxton, several employees of the OAG, and his former attorneys. It is unclear whether these additional defendants have been served with citation.

[7]In his brief, Parsons complains that the trial court did not consider his amended petition, which he contends cured any deficiencies in his original petition. However, Parsons advised the trial court of the filing of his amended petition at the hearing on the plea to the jurisdiction, and the trial court took judicial notice of the pleadings in its file. Consequently, we find that this complaint is without merit.

582 (Tex. App.—Texarkana 2003, no pet.) (citing *FM Props. Operating Co. v. City of Austin*, 22 S.W.3d 868, 872 (Tex. 2000)); *St. John Missionary Baptist Church v. Flakes*, 547 S.W.3d 311, 314 (Tex. App.—Dallas 2018, pet. filed).

On appeal, Parsons challenged only the second ground, i.e., that the Williamson District Court had exclusive, continuing jurisdiction.[8] When an appellant fails to challenge an "alternate basis for the appealed order, any error in the challenged basis for the order is rendered harmless." *Estate of Purgason v. Good*, No. 14-14-00334-CV, 2016 WL 552149, at *2 (Tex. App.—Houston [14th Dist.] Feb. 11, 2016, pet. denied) (mem. op.) (citing *Riley v. Cohen*, No. 03-08-00285-CV, 2009 WL 416637, at *1 (Tex. App.—Austin Feb. 19, 2009, pet. denied) (mem. op.)). Consequently, "[i]f the appellant fails to challenge all possible grounds, we must accept the validity of the unchallenged grounds and affirm the adverse ruling." *Flakes*, 547 S.W.3d at 314 (citing *Malooly Bros., Inc. v. Napier*, 461 S.W.2d 119, 121 (Tex. 1970)); *Lodhi v. Haque*, No. 04-18-00917-CV, 2019 WL 5765787, at *8 (Tex. App.—San Antonio Nov. 6, 2019, no pet.) (mem. op.).[9]

[8]In his argument supporting his first issue, Parsons maintains that his submitted evidence shows that the previously unchallenged child support orders entered by the Hunt and Williamson District Courts were void and, therefore, that he could collaterally attack the orders in the Lamar District Court. The three other issues asserted in Parsons's brief either go to the merits of his claims or complain of the alleged dismissal of his claims against the other defendants. As we previously noted, the trial court's order only dismissed Parsons's claims against the OAG, so this last issue is without merit. Further, since there has been no final judgment entered on Parsons's claims against the other defendants, we do not have jurisdiction to consider these issues. *See* TEX. CIV. PRAC. & REM. CODE. ANN. § 51.012.

[9]Although Parsons is representing himself, he is held to the same standards as a party represented by counsel. *In re Estate of Taylor*, 305 S.W.3d 829, 837 (Tex. App.—Texarkana 2010, no pet.). "A pro se litigant is required to properly present its case on appeal, just as it is required to properly present its case to the trial court." *Id*. (citing *Martinez v. El Paso County*, 218 S.W.3d 841, 844 (Tex. App.—El Paso 2007, pet. struck). Were the rule otherwise, pro se litigants would have an unfair advantage over litigants represented by counsel. *Id*. Further, "[a]n appellate court has no duty to perform an independent review of the record and of the applicable law to determine whether there was

After the OAG pointed out these deficiencies in Parsons's brief, Parsons filed a reply brief in which he contended that the trial court erred in granting the plea to the jurisdiction on the grounds of mootness and sovereign immunity. However, an appellant may not raise an issue in a reply brief that was not raised in its original brief. *Tipps v. Chinn Expl. Co.*, No. 06-13-00033-CV, 2014 WL 4377813, at *4 (Tex. App.—Texarkana Sept. 5, 2014, pets. denied); (citing TEX. R. APP. P. 38.3). Issues raised for the first time in a reply brief are waived, and we need not consider them. *Id.* Since Parsons did not raise these issues in his original brief, they have been waived.

Because Parsons failed to challenge all the grounds upon which the trial court could have granted the OAG's plea to the jurisdiction, we must accept the validity of the unchallenged grounds and affirm the trial court's judgment. *See Malooly Bros.*, 461 S.W.2d at 121; *Flakes*, 547 S.W.3d at 318. Consequently, even if the trial court erred in granting the plea to the jurisdiction based on the continuing, exclusive jurisdiction of the Williamson District Court, any error was harmless. *See Estate of Purgason*, 2016 WL 552149, at *2. We overrule Parsons's sole issue.

error." *Id*. (citing *Strange v. Cont'l Cas. Co.*, 126 S.W.3d 676, 678 (Tex. App.—Dallas 2004, pet. denied)). To do so would require us to abandon our role as neutral adjudicators and become an advocate for the pro se litigant. *Id.*

III. Disposition

We affirm the trial court's order granting the OAG's plea to the jurisdiction and dismissing Parsons's claims against the OAG.

Ralph K. Burgess
Justice

Date Submitted: January 2, 2020
Date Decided: January 29, 2020

Department of
Veterans Affairs
701 CLAY AVE
WACO TX 76799

83 October 16, 2009

In Reply Refer To:

GREGORY K PARSONS
[redacted]
PARIS TX 75460

File Number:
[redacted]
PAYEE NO 00
G K PARSO

We have received your application for benefits. It is our sincere desire to decide your case promptly. However, as we have a great number of claims, action on yours may be delayed. We are now in the process of deciding whether additional evidence or information is needed. If we need anything else from you, we will contact you, so there is no need to contact us in the meantime. If you do write us, be sure to show YOUR file number and full name, or have it at hand if you call.

If your mailing address is different than that shown above, please advise us of your new mailing address. You should notify us immediately of any changes in your mailing address.

IF YOU RESIDE IN THE CONTINENTAL UNITED STATES, ALASKA, HAWAII OR PUERTO RICO, YOU MAY CONTACT VA WITH QUESTIONS AND RECEIVE FREE HELP BY CALLING OUR TOLL-FREE NUMBER 1-800-827-1000 (FOR HEARING IMPAIRED TDD 1-800-829-4833).

SANDE JONES

VETERANS SERVICE CENTER MANAGER

9a

DEPARTMENT OF VETERANS AFFAIRS
Regional Office
One Veterans Plaza
701 Clay Avenue
Waco TX 76799-0001

FEB 01 2010

GREGORY K PARSONS
[redacted]
PARIS TX 75460

In reply, refer to:
349/214C
File Number: [redacted]
Gregory K. Parsons

IMPORTANT -- reply needed

Dear Mr. Parsons:

We have received a request for an apportionment of your VA benefits on behalf of Connie for Karyn, Alisen and Davis.

To assist us in making this determination, furnish the following information on the enclosed VA Form 21-4138 and complete the VA Form 21-0788.

(1) Itemize your monthly income from all sources - identifying each source.

(2) Show the value of any property, such as stocks, bonds, bank accounts, or real estate owned by you.

(3) Provide an itemized list of your average monthly expenses for yourself and for any dependents living with you.

(4) State the average monthly amount you contribute toward the support of your spouse and/or children who do not live with you.

(5) Please be sure to furnish all family income.

(6) Explain what hardship would occur if we do pay a share of your award to your spouse and/or children not living with you.

The authority for apportionment of VA benefits is Section 5307 of Title 38, United States Code. If we grant an apportionment of your benefits, we will reduce your award by the monthly amount of any apportionment granted effective November 1, 2009. This adjustment will result in an overpayment of benefits. If the proposed decision is implemented, you will be notified of the exact amount of the overpayment and given information about repayment. In order to minimize this potential overpayment, we will withhold $500.00 monthly effective April 1, 2010. You should furnish the information we have requested within 60 days. Otherwise, we will make our decision at that time on the evidence we have received from the claimant.

CONNIE K PARSONS

File Number: [redacted]
Gregory K. Parsons

Submission of Evidence: Your payment will continue at the present rate for 60 days following the date of this notice so that you may, if you wish, submit evidence to show that the proposed action should not be taken. You may submit evidence in person, through the mail or through your accredited representative.

If you wait more than 60 days to submit evidence, we will carefully consider whatever you submit, but the adjustment of benefits described above will already have gone into effect and your benefits will continue in that status while we review the additional evidence.

Minimizing Potential Overpayment: You should be aware that if you continue to accept payments at the present rate for the next 60 days and it is then determined that the proposed adjustment must be made, you will have to repay all or a part of the benefits you have received during the 60 days. You may minimize this potential overpayment by sending us a written statement asking that, beginning with your next check, we reduce your payments while we review your case. If you make this request and at the end of 60 days our review shows that you should have received the higher rate, we will restore the full rate from the date on which it was reduced.

Personal Hearing: If you desire a personal hearing to present evidence or argument on any point of importance in your claim, notify this office and we will arrange a time and place for the hearing. You may bring witnesses if you desire and their testimony will be entered in the record. VA will furnish the hearing room and provide hearing officials. VA cannot pay any other expenses of the hearing since a personal hearing is held only on your request.

If within 30 days from the date of this notice you request a hearing, payments will continue at the present rate until the hearing is held and the testimony is reviewed. You should be aware that continuing to receive the current rate of payment until a hearing is conducted could result in the creation of an overpayment which must be repaid. If you request a hearing but wish to minimize any overpayment which could result, you should submit a statement asking that your benefits be reduced or suspended beginning with your next check.

After 30 days you may request a hearing, but benefits may already have been adjusted as explained earlier in this notice.

Representation: You may be represented, without charge, by an accredited representative of a veterans organization or other service organization recognized by the Secretary of Veterans Affairs, or you may employ an attorney or secure a local Legal Aid Service counsel to assist you with your claim.

CONNIE K PARSONS

File Number: [redacted]
Gregory K. Parsons

If you desire representation, let us know and we will send you the necessary forms. If you have already designated a representative, no further action on your part is required.
If you can FAX the information, please include a copy of this letter in your transmission. Our FAX number is (254)299-9277.

Sincerely yours,

Sande Jones

SANDE JONES
Veterans Service Center Manager

Email us at: https://iris.va.gov

Enclosures: VA Form 21-4138
VA Form 21-0788

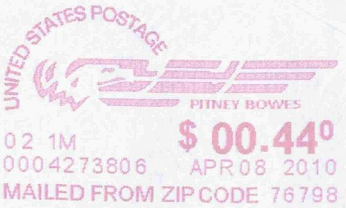
cc: DAV

214C/362 KPC:kpc

Department of Veterans Affairs
Regional Office
One Veterans Plaza
701 Clay
Waco, TX 76799

OFFICIAL BUSINESS

VA Denies Connie Appointment



GREGORY K PARSONS
2740 BRIARWOOD DR
PARIS TX 75460

75460$3385 C002

APR 0 8 2013

DEPARTMENT OF VETERANS AFFAIRS
VA Regional Office
One Veterans Plaza
701 Clay Avenue
Waco TX 76799

In Reply Refer To: 349/214C
CSS [redacted]872
PARSONS, G K

GREGORY K PARSONS
[redacted]
PARIS TX 75460

Dear Mr. Parsons:

We have carefully considered the claim for an apportionment share of your benefits. After reviewing all evidence submitted by Connie Parsons, we decided the claim for an apportionment must be denied because claimant failed to show a need for additional apportionment of your benefits.

As the apportionment claim has been denied, your benefits will continue without reduction. The claimant has the right to appeal our decision within 60 days of the date of notification. If the decision is appealed, you may be asked to furnish additional information, and your benefits may be reduced.

What You Should Do If You Disagree With Our Decision

If you do not agree with our decision, you should write and tell us why. You have *one year from the date of this letter to appeal the decision.* The enclosed *VA Form 4107, "Your Rights to Appeal Our Decision,"* explains your right to appeal.

If You Have Questions or Need Assistance

If you have any questions, you may contact us by telephone, e-mail, or letter.

If you	Here is what to do.
Telephone	Call us at 1-800-827-1000. If you use a Telecommunications Device for the Deaf (TDD), the number is 1-800-829-4833.
Use the Internet	Send electronic inquiries through the Internet at https://iris.va.gov.
Write	Put your full name and VA file number on the letter. Please send all correspondence to the address at the top of this letter.

In all cases, be sure to refer to your VA file number [redacted]872.

[redacted]

CSS [redacted]872
Parsons, G K

If you are looking for general information about benefits and eligibility, you should visit our website at https://www.va.gov, or search the Frequently Asked Questions (FAQs) at https://iris.va.gov.

A copy of this letter was sent to Disabled American Veterans, (254) 299-9932, because you appointed them as your representative. If you have questions or need assistance completing forms/claim, etc., you can also contact them.

Sincerely yours,

Darlene Jones

DARLENE JONES
Assistant Director
Acting Veterans Service Center Manager

Email us at: https://iris.va.gov

Enclosure: VA Form 4107

cc: DAV

214C/095 [redacted]872 ACS/acs

YOUR RIGHTS TO APPEAL OUR DECISION

After careful and compassionate consideration, a decision has been reached on your claim. If we were not able to grant some or all of the VA benefits you asked for, this form will explain what you can do if you disagree with our decision. If you do not agree with our decision, you may:

- appeal to the Board of Veterans' Appeals (the Board) by telling us you disagree with our decision
- give us evidence we do not already have that may lead us to change our decision

This form will tell you how to appeal to the Board and how to send us more evidence. You can do either one or both of these things.

NOTE: Please direct all new evidence to the address at the top of our letter. Do not send evidence directly to the Board until you receive written notice from the Board that they received your appeal.

WHAT IS AN APPEAL TO THE BOARD OF VETERANS' APPEALS?

An appeal is your formal request that the Board review the evidence in your VA file and review the law that applies to your appeal. The Board can either agree with our decision or change it. The Board can also send your file back to us for more processing before the Board makes its decision.

HOW CAN I APPEAL THE DECISION?

How do I start my appeal? To begin your appeal, write us a letter telling us you disagree with our decision. This letter is called your "Notice of Disagreement." If we denied more than one claim for a benefit (for example, if you claimed compensation for three disabilities and we denied two of them), please tell us in your letter which claims you are appealing. ***Send your Notice of Disagreement to the address at the top of our letter.***

What happens after VA receives my Notice of Disagreement? We will either grant your claim or send you a Statement of the Case. A Statement of the Case describes the facts, laws, regulations, and reasons that we used to make our decision. We will also send you a VA Form 9, "Appeal to Board of Veterans' Appeals," with the Statement of the Case. You must complete this VA Form 9 and return it to us if you want to continue your appeal.

How long do I have to start my appeal? You have one year to appeal our decision. ***Your*** letter saying that you disagree with our decision must be postmarked (or received by us) within one year from the date of ***our*** letter denying you the benefit. In most cases, you cannot appeal a decision after this one-year period has ended.

What happens if I do not start my appeal on time? If you do not start your appeal on time, our decision will become final. Once our decision is final, you cannot get the VA benefit we denied unless you either:

- show that we were clearly wrong to deny the benefit ***or***
- send us new evidence that relates to the reason we denied your claim

Can I get a hearing with the Board? Yes. If you decide to appeal, the Board will give you a hearing if you want one. The VA Form 9 we will send you with the Statement of the Case has complete information about the kinds of hearings the Board offers and convenient check boxes for requesting a Board hearing. The Board does not require you to have a hearing. It is your choice.

Where can I find out more about appealing to the Board?

- You can find a "plain language" booklet called "How Do I Appeal," on the Internet at: http://www.va.gov/vbs/bva/pamphlet.htm. The booklet also may be requested by writing to: Mail Processing Section (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW, Washington, DC 20420.
- You can find the formal rules for appealing to the Board in the Board's Rules of Practice at title 38, Code of Federal Regulations, Part 20. You can find the complete Code of Federal Regulations on the Internet at: http://www.gpoaccess.gov/cfr/index.html. A printed copy of the Code of Federal Regulations may be available at your local law library.

(Please continue reading on page 2)

Can I get someone to help me with my appeal to the Board? Yes. You can have a veterans' service organization representative, an attorney-at-law, or an "agent" help you with your appeal. But you are not required to have someone represent you. It is your choice.

- Representatives who work for accredited veterans' service organizations know how to prepare and present claims and will represent you. You can find a listing of these organizations on the Internet at: http://www.va.gov/vso.
- A private attorney or an "agent" can also represent you. If applicable, your local bar association may be able to refer you to an attorney with experience in veterans' law. VA only recognizes attorneys who are licensed to practice in the United States or in one of its territories or possessions. An agent is a person who is not a lawyer, but who VA recognizes as being knowledgeable about veterans' law. Contact us if you would like to know if there is a VA accredited agent in your area.

Do I have to pay someone to help me with my appeal to the Board? It depends on who helps you. The following explains the differences.

- Veterans' service organizations will represent you for free.
- Attorneys or agents can charge you for helping you under some circumstances. Paying their fees for helping you with your appeal to the Board is your responsibility. If you do hire an attorney or agent to represent you, one of you must send a copy of any fee agreement to the following address within 30 days from the date the agreement is executed: Office of the General Counsel (022D), 810 Vermont Avenue, NW, Washington, DC 20420. *See* 38 C.F.R. 14.636(g). If the fee agreement provides for the direct payment of fees out of past-due benefits, a copy of the agreement must also be filed with us at the address at the top of our letter. *See* 38 C.F.R. 14.636(h)(4).

CAN I GIVE VA ADDITIONAL EVIDENCE?

Yes. You can send us more evidence to support a claim whether or not you appeal to the Board. **If you want to appeal, though, do not forget the one-year time limit!**

If you have more evidence to support a claim, it is in your best interest to give us that evidence as soon as you can. We will consider your evidence and let you know whether it changes our decision. Please keep in mind that we can only consider new evidence that: (1) we have not already seen and (2) relates to your claim. You may give us this evidence either in writing or at a personal hearing.

In writing. To support your claim, you may send documents and written statements to us at the address on the top of our letter. Tell us in a letter how these documents and statements should change our earlier decision.

At a personal hearing. You may request a local hearing with us at any time. This hearing is separate from any Board hearing you might ask for later if you appeal. We do not require you to have one. It is your choice. At this hearing, you may speak, bring witnesses to speak on your behalf, and hand us written evidence. If you want a hearing, send us a letter asking for a hearing. Use the address at the top of our letter. We will then:

- arrange a time and place for the hearing
- provide a room for the hearing
- assign someone to hear your evidence
- make a written record of the hearing

WHAT HAPPENS AFTER I GIVE VA EVIDENCE?

We will review the record of the hearing and other new evidence, together with the evidence we already have. We will then decide if we can grant your claim. If we cannot grant your claim and you appeal, we will send the new evidence and the record of any local hearing to the Board.

REPORTER'S RECORD
VOLUME 3 OF 3 VOLUMES
TRIAL COURT CAUSE NO. 87113

LT (J.G.) GREGORY K. PARSONS U.S. NAVY, PDRL.	)	IN THE DISTRICT COURT
VS.	)	LAMAR COUNTY, TEXAS
CONNIE K. COPELAND PARSONS	)	62ND JUDICIAL DISTRICT

*****

HEARING VIA ZOOM

*** PLAINTIFF'S MOTION TO STRIKE ***

*** THE OFFICE OF THE ATTORNEY GENERAL OF TEXAS ***
*** PLEA TO THE JURISDICTION ***

*****

On the 3rd day of August, 2020, the following proceedings came on to be heard via ZOOM in the above-entitled and numbered cause before the Honorable Will Biard, Judge presiding, held in Paris, Lamar County, Texas;

Proceedings reported by machine shorthand.

A P P E A R A N C E S

LT. (J.G.) GREGORY K. PARSONS
US NAVY, PDRL
2740 Briarwood Drive
Paris, Texas 75460
Phone: (903)785-7827

APPEARING PRO SE

MS. JODY S. KOEHN
Assistant Attorney General
Child Support Division
SBOT NO. 20286550
PO Box 12017
Austin, Texas 78711-2017
Phone: (512)460-6752

ATTORNEY FOR OFFICE OF THE ATTORNEY GENERAL OF TEXAS

MS. CONNIE PARSONS
B2 Management and Consulting
1601 Rio Grande Street, Suite 348
Austin, Texas 78701-1149

APPEARING PRO SE

(August 3, 2020 - VIA ZOOM)

THE COURT: All right. Good morning. This is Cause Number 87113. I'm going to get appearances from everyone.

Mr. Parsons, if you can state your name please.

MR. PARSONS: Lieutenant, Junior Grade, Gregory K. Parsons, United States Navy, per a disability retired list, pro se.

THE COURT: Okay. And, Ms. Parsons.

MS. PARSONS: Connie Copeland Parsons.

THE COURT: Okay. And, Ms. Koehn.

MS. KOEHN: Jody Koehn, K-o-e-h-n. I'm from the Office of the Attorney General.

THE COURT: Okay. And, Ms. Koehn, I believe you have a motion on file that we set for hearing today, which is a Plea to the Jurisdiction. I believe Mr. Parsons had set a Motion to Strike that. Do we have anything else set this morning that y'all know of?

MS. KOEHN: Not that I'm aware of, Your Honor.

THE COURT: Okay. And, Mr. Parsons?

MR. PARSONS: No.

THE COURT: Okay. All right. Okay. Ms. Koehn, you may proceed with your motion when you're

ready.

MS. KOEHN: Okay. This gentleman is fully aware of the facts that got us to this place, so there was originally a -- an original petition naming several parties that was filed in this case. It was eventually -- it moved up to federal court, eventually remanded back from federal court, and initially the lead attorney Scot Graydon had filed a Plea to the Jurisdiction that this Court granted. The Court -- that decision was then appealed and was remanded back to this Court saying that it was basically an interlocutory appeal and only affected the claims of the attorney general's office; therefore, the case had not been dismissed in full.

Subsequent to that Mr. Parsons had filed a Second Amended Original Petition including additional -- and I -- I don't necessarily know if I can call them parties because he didn't name them per se, but named a host of other actors, and this is an entirely new group of claims. Many of the claims that he filed are against the Office of the Attorney General or parties associated, such as General Ken Paxton, Governor Rex -- Greg Abbott and others. Basically, the -- the thrust of the Plea to the Jurisdiction --

MR. PARSONS: Your Honor, I object. It did not name them as Defendants, Your Honor.

THE COURT: Okay. Right now she's just giving me a synopsis. I'm -- I'm going to allow her to give me her argument, and --

MR. PARSONS: All right.

THE COURT: -- then I'll allow you to give your argument, Mr. Parsons.

MS. KOEHN: Okay. The basis of the entire lawsuit that Mr. Parsons has filed is based upon this, Mr. Parsons believes that the court of continuing exclusive jurisdiction, currently the 196th in Williamson County, did not have the authority or the jurisdiction to hear any claims with respect to his child support amounts subsequent to the VA denying an apportionment in 2009, April of 2009, I believe. (Unintelligible) -- that the VA Court is the one that assumed jurisdiction of all matters regarding his child support.

We filed the Plea to the Jurisdiction because the sole basis of his lawsuit is, is that he's asking you, this Court, to void the orders of child support that were issued in one case. In other words, he's asking the Court to void actually occurred prior to April of 2009 but definitely any orders that were entered by the court of continuous exclusive jurisdiction after April of 2009.

The only way that a sister court can void

another court's order is -- or set it aside is if that order is, in fact, void. An order can only be void if one of two elements is missing. One is, is that the court that set -- the court that actually entered the order did not have personal jurisdiction or, two, did not have subject-matter jurisdiction. In this particular case, I don't think there's any question that whether or not the court that entered those orders had personal jurisdiction as Mr. Parsons appeared at each and every one of those, clearly had notice, clearly appeared, did not contest the fact that he was received notice, and so that first court did have, in fact, have personal jurisdiction.

The question then becomes are those courts of subject-matter jurisdiction. Each of those courts is a duly constituted district court. Each of them had the authority given to them by the Constitution in the state legislature to hear matters regarding child support which is what this is all about. Therefore, they had subject-matter jurisdiction. That's where that leaves the sole question as to whether or not another court had -- had jurisdiction that -- that superseded the district court. In that case Mr. Parsons has indicated that he believes that the VA Court assumes that jurisdiction.

The problem with that, Your Honor, is is that United States Supreme Court has already ruled on that issue and several years ago in the case of Rose v. Rose, which was decided in 1987. The facts of that case are very similar to the one before the Court. In that case a Tennessee Court attempted to exercise a contempt action against an individual who failed to pay his child support when he had been ordered to pay it from his VA disability. The Rose v. Rose Court came back and said under no circumstances did the -- did the federal scheme that was intended to protect the VA benefits from garnishment intended for the VA Secretary to exercise jurisdiction over child support, that the only jurisdiction that the -- that they have in those particular cases to decide whether or not an apportionment was proper under the rules that were set out in the VA Act.

We don't deny the fact that the Court has -- or that the VA -- Secretary of the VA had the right to determine whether an apportionment was correct or not correct, and that's to the case in denying it. That's fine. We have not -- since that date we have not collected directly through garnishment a dime from his paycheck -- his VA paycheck. What we were able to do however, Your Honor, was to go ahead and enforce the

other meaning -- other methods and means, which basically meant that we were to issue a garnishment against his social security which, in fact, the Family Code and federal law gives us the authority to do.

He is attempting to claim that because there was a denial of the garnishment of the apportionment that that meant that the Secretary of the VA took over all jurisdiction and got to decide whether we even could set child support. That is a direct contravention to the findings in Rose versus -- Rose v. Rose. That case, which by the way for the Court's information, he cites as his authority for that not the majority opinion but whether a concurring part and concurring in the judgment, which means that's not controlling law. The majority opinion specifically stated there was nothing in the federal scheme regarding the issue of apportionment that in any way took away the right of the state court to issue child support orders.

In fact, it has been a long standing relief and rule in federal court that those just don't mess with state court's rights, which includes the right to determine orders regarding filed. The Rose v. Rose case has been used -- utilized by multiple other courts. And in my response to the Motion to Strike I included those courts.

But I would also like to emphasize this, even the VA Court of Appeal has followed the Rose v. Rose finding in two separate cases that we cited subsequent to Rose, one of which has been relatively recent. I think in 2010 or 2011. In which they cited Rose for the proposition that there's nothing in the federal scheme that sets up the statute allowing VA to apportion but determine the right or took over the right of the states to issue child support orders. Quite frankly, Mr. Parsons has misread the law. Whether he did it unintentionally or intentionally, it doesn't matter. He has misread the law. He has attempted to mislead this Court as to what the --

MR. PARSONS: Your Honor --

THE COURT: Yes, sir, Mr. Parsons.

MR. PARSONS: She's conflating the general statement set child support order when specifically I'm stating that the Secretary of Department of Veteran Affairs has the exclusive authority to determine the provisioning whether or not a portion goes to the dependants. He ruled that they did not; therefore, it's not personal jurisdiction that's in question but rather it's personal property that is vested now because of the Secretary's ruling.

THE COURT: Okay. I'm going to allow her

to continue and then, obviously, I'm going to give you an opportunity in a minute to give me your argument.

All right. Ms. Koehn.

MS. KOEHN: Okay. In -- in fact, Rose v. Rose in the majority opinion states we find no clear intent that Congress intended the administrator, the VA administrator, to make child support determinations contrary to the determinations of state court. The court further held that neither the Veteran's Benefit provisions of Title 38 nor the garnishment provisions of the Child Support Enforcement Act of Title 42 unequivocally -- indicate unequivocally that a veteran's disability benefits are provided solely for that veteran's support.

MR. PARSONS: Your Honor --

MS. KOEHN: We hold therefore -- excuse me. Mr. Parsons, you'll have the opportunity to respond. It's my time right now.

We hold, therefore, that as enacted these federal statutes were not in conflict with, and thus did not pre-empt -- and it then cites the section of the Tennessee law that allows the court to make and enforce child support orders. Nor did the Circuit Court's efforts to enforce its order of child support by holding appellant in contempt transgress the congressional intent

behind the federal statutes.

So the United States Supreme Court has clearly held that it was not the intent in passing the apportionment statute to do anything other than decide whether or not the VA will set aside a portion of that award to be given directly to the child. We haven't -- that doesn't say anything about the VA Secretary having exclusive authority to make a determination when someone's child support should be set and how it should be set and how it should be enforced other than enforce the garnishment of the VA disability. What --

MR. PARSONS: Your Honor --

MS. KOEHN: -- parts --

(Talking simultaneously)

THE COURT: Hold on. Hold on.

Ms. Koehn. Ms. Koehn, hold on just a second.

Mr. Parsons.

MR. PARSONS: Charlie Wayne Rose did not have an apportionment ruling. That was part of his complaint; therefore, in the Rose decision from SCOTUS they didn't decide that decision.

THE COURT: Hold on, Mr. Parsons. Mr. Parsons, if you've got a legal objection, I'll hear that; but if you're just making argument, I've got to let

her finish, and then I'll allow you to make your argument to me.

Okay. Ms. Koehn.

MS. KOEHN: Okay. And as I stated, Your Honor, there were a number of cases in which not only had Texas courts in the case of Ruffin v. Ruffin and Sandoval v. Sandoval, which is a 2019 case, and most recently In the Interest of KMB and PJB, Minor Children, which was heard -- which was decided by the courts up in Dallas just this last month, in Footnote 6 it noted this, has followed the reasoning of Rose.

Additionally, the Fifth Circuit in Griffin v. American Zurich Insurance Company, et al, determined by the Fifth Circuit in 2017, also followed the ruling in Rose. Also, two courts of appeals for the veteran's claims have also followed the findings in Rose, Rhone v. Wilkie, which was decided in 2018, and Batcher v. Wilke, decided in 2019, specifically upheld and quoted Rose v. Rose as being the law of the land.

Which means that's what -- you know, Mr. Parsons' interpretation of this is quite frankly incorrect. There's nothing in the statutory scheme of veteran's affairs that indicates that the federal government has the right to take over the state's rights, ability to determine orders that are appropriate for a

child with respect to custody, visitation, and anything else that may directly affect the child. What the -- what the VA may do is to decide whether or not that they under their rules and statutes can take a portion of the actual award directly from the check, in other words garnish it. We concede that the -- that the VA has the right to do that. We never -- we did not contest that.

The question becomes can this Court continue to make support orders for the benefit of this child. Absolutely. Therefore, the courts that made these orders had appropriate subject-matter jurisdiction, had personal jurisdiction to the exclusion of any other court based upon the Family Code. Therefore, their orders are not void. And if their orders are not void, this Court has no (unintelligible) to set -- otherwise, set that order aside and (unintelligible) -- that is a jurisdictional barrier for this Court to be able to proceed any further on this case regardless if it is against the AOG or regardless if it's against Connie. This Court has given no authority or jurisdiction to set aside what is otherwise a valid district court order from another court.

THE COURT: Thank you, Ms. Koehn.

MS. KOEHN: -- with that we're asking that the Court grant our Plea to the Jurisdiction -- Plea to

the Jurisdiction.

Wait. There is one other thing I would like to add. There -- in the previous Plea to the Jurisdiction that was filed, basically, the Court ruled the very thing we were asking for. I think the issue was the Court of Appeals rose based on the order that we submitted was not specific enough to enclose this particular argument, although this argument was raised at that time. And so, I think -- it's also the belief of the Attorney General's Office the -- the appellate court has already ruled on this and affirmed that. So we would also submit to the Court that the Court should grant our Plea to the Jurisdiction based, again, on the United States Supreme Court of Rose v. Rose and, secondly, on the prior appellate court's decision.

THE COURT: Thank you, Ms. --

MS. KOEHN: Thank you, Your Honor.

THE COURT: Thank you.

Mr. Parsons.

MR. PARSONS: Your Honor, first of all, I want to object to her even being in this hearing. She's not a Defendant.

THE COURT: Okay. That's overruled.

MR. PARSONS: Also, I wanted to address the specifics mostly on Rose since she's quoted that.

Hang on. Let me find my notes, Your Honor.

THE COURT: Yes, sir.

MR. PARSONS: Okay. So here is my stand on Rose, Your Honor. The one she cited is 488 U.S. 619, 107 S. Ct. 2029, 95 L, E -- L Edition 599 (1987). It's well pleaded in my -- my Parsons' Due Process Affidavit, my Memorandum at Law, my Second Amended Petition, which by the way, didn't name the Office of Attorney General or anybody other than Ms. Copeland as Defendants.

So my question to the Court that needs to -- that you need to clarify, Your Honor, is did Charlie Wayne Rose who was subject to that Rose ruling, did he have a VA apportionment ruling and did it unequivocally indicate that the VA award was his vested property to spend as he sees fit, which was (unintelligible) by the State of Tennessee, and has the OAG ever submitted a persuasive decided high court ruling that involves a disabled veteran with an apportionment denial ruling?

She cited a lot of cases, Your Honor, that's -- that she claims bolsters her argument, and I would submit to the Court that none of those cases involved an apportionment ruling. My request -- and you should have a copy -- a personal copy of my request for the judicial notice that I filed back in February of 2020

and my supplemental first request I just -- just filed that on Friday, and I also submitted that to Ms. Upchurch. And by the way, is this -- is this on the record, Your Honor.

THE COURT: Yes. I have a court reporter recording this, yes, sir.

MR. PARSONS: Thank you. Thank you.

MS. KOEHN: And, Your Honor, I'm -- I'm going to at this point object to Mr. Parsons referring to the item that he filed on Friday. He failed to send a copy of that to the Office of the Attorney General although I know he has my e-mail address so that he could do so.

MR. PARSONS: Your Honor --

(Talking simultaneously)

MS. KOEHN: And he --

MR. PARSONS: -- I don't --

MS. KOEHN: -- specific for this, he failed to indicate that he sent notice to me.

THE COURT: That objection will be noted. I will hold off on a ruling until I hear his argument.

Mr. Parsons.

MR. PARSONS: Regarding that objection, there is no rule that says that I have to. Plus, I'm saying she's not even a Defendant. The OAG is not a

Defendant because of my amended petition.

But anyway, back to my notes here, my request for judicial notice and my supplemental first request for judicial notice has the -- has the court take mandatory notice of the post Rose law regulations, directives, and congressional acts I assert surrounding the Rose decision in this cause number. The Secretary's decision does -- does absolutely strip the State of Texas of jurisdiction from even considering my VA award to enforce or modify my support orders in question. And Title 38 gives me the civil right at any time to collaterally attack the voided orders in question from their inception.

And I have a ruling that came down on July 30, Your Honor, that I would like to put in the record, and it's in -- it's Exhibit A in my First Supplemental Request for Judicial Notice, and it's called Foster v. Foster on the second remand, unpublished -- unpublished decision of the Michigan Court of Appeals. It's Docket Number 324853 cited by Markey, P.J., and Borrello and Ronayne Krause, JJ. That was on July 3rd, 2020.

So I would like to read briefly from that ruling. Now, this ruling which came down from the Court of Appeals is in direct order of the Michigan Supreme

Court that was decided in February of this year. And a little note from the -- from that decision from the Supreme Court in Michigan, it says the -- this Court of Appeal addresses the effect of its holdings on defendant's ability to challenge the terms of the consent judgment. That's in Foster v. Foster, Michigan NW2d, 2020, slip op at 3.

And like I said, that's a brand new ruling. And the Court of Appeals received that on remand and their brief -- their brief order was that this is -- this is the -- let me read the quote on that. Anyway, it's officially titled the -- on second remand from the Michigan Supreme Court. Can you still hear me, Your Honor?

THE COURT: Yes, sir, I can hear you.

MR. PARSONS: All right. All right. State courts are deprived of subject-matter jurisdiction when principles of federal pre-exemption are applicable. It goes on to say, an error, in the exercise of the court's subject-matter jurisdiction can be collaterally attacked. A collateral attack is allowed if the court never acquired jurisdiction over the subject matter.

And I -- I submit that also has to do with personal property jurisdiction, as well as the actors of the court when it comes to a VA disability awards. So,

there's actually three parts of the jurisdiction that the court needs to decide other than just subject matter.

Moreover, the subject-matter jurisdiction cannot be granted by implied or express stipulation of the litigants. Nor can subject-matter jurisdiction be conferred by the consent of the parties. And that's because of 38 U.S.C. 5301, Section A, Paragraph 3, Paragraph A. It has to do with assignability. Accordingly, in the instant case, the defendant did not engage in an improper -- did not engage in an improper collateral attack on the consent judgment. And the consent judgment here, Your Honor, is the divorce decree from 2008. And the trial court lacked subject-matter jurisdiction to enforce the consent judgment with respect to the offset provision due to the principle of federal pre-exemption.

And that goes to the heart of my argument for my permissible collateral attack based on the VA apportionment ruling by the Secretary given the authority of 38 U.S.C. Section 511, which basically says that the Secretary is the only person authorized by congress to determine a provisioning to the dependents or the children as to whether or not they're entitled to a portion of that award. And once he makes the ruling, it's final and conclusive and no other official, even a

Texas official or a Texas court, has any jurisdiction over that ruling. Now, that covers the Rose parts.

I would like to continue with the rest of my arguments for this Motion to Strike, Your Honor.

THE COURT: Yes, sir.

MR. PARSONS: Well, first of all, again, I wanted to object to the -- to this hearing, not the Motion to Strike but the other hearing regarding the best interest of. I do object to the fact that she's -- the OAG has filed the plea because I will remind you, in the judicial notice is the attached ruling of the Court of Appeals that said that the OAG is dismissed. They don't even -- we've already gone over this last year. You dismissed it, and it was affirmed by the Court of Appeals. I don't understand why we're going over this again, Your Honor. It was supposed to be -- we're supposed to be proceeding towards trial with the remaining Defendant which is Ms. Copeland, between her and myself. And this is a private -- now a private lawsuit between two claimants with a VA claim of the apportionment ruling.

What else (unintelligible) --

MS. CONNIE COPELAND: Excuse me, Your Honor.

THE COURT: Yes, ma'am.

MS. CONNIE COPELAND: I have never been served by him about anything. I'm really concerned about all of this. I --

(Talking simultaneously)

MR. PARSONS: Your Honor --

MR. PARSONS: -- did not receive any kind of service. I pretty much -- I don't understand all that's going on. Since everything ended on July -- August 3rd of 2018, he has not paid child support. The children are emancipated, and I don't understand why he keeps doing this other than he wants to be reimbursed for paying child support that he was court ordered to do, and he didn't do it, so he got his VA resources garnished. This is over. It is -- it's over. It's been over for two years. We're sitting here on my daughter's birthday, which is August 3rd, 2018, two years after he's already finished his last child support obligation to these children. It's really concerning that he thinks he can get a refund of his child support when he was court ordered to pay child support. He didn't pay child support. He got his wages garnished, and they got -- they received benefit from the child support, and the order is now over. And yet, he had plenty of time to object to this in the beginning. It's over with. Here --

(Talking simultaneously)
MR. PARSONS: Your Honor --
THE COURT: Hold --
MS. CONNIE PARSONS: -- should --
THE COURT: -- Mr. Parsons --
MS. CONNIE PARSONS: -- be celebrating my daughter's birthday, 20th birthday, today --
THE COURT: Okay. Ms. Copeland, hold on.
MR. PARSONS: Your --
THE COURT: Hold on. Hold on. Stop. All of you stop talking. Everybody stop talking. My court reporter cannot get it down when you talk over each other.
Is it Ms. Copeland or Ms. Parsons?
MS. CONNIE PARSONS: My name is Connie Copeland Parsons.
THE COURT: Okay. And, Ms. Parsons, I understand your argument, but I've got to limit it to the hearings that are set today, so I'm going to allow Mr. Parsons to continue his argument, and then I'm going to allow you in a minute to speak. Okay.
MS. CONNIE PARSONS: Thank you.
THE COURT: And I apologize, but I've got to keep it structured.
Okay. Mr. Parsons.

MR. PARSONS: Thank you, Your Honor. I'll briefly address her complaint about not getting served is because she's refused service, and I have proof of all that that I'll file in future pleadings that has a picture of the --

MS. CONNIE PARSONS: Because you harass me, Greg --

THE COURT: Ms. -- hold on. Stop. Stop. Both of you. I'm going to have to mute you if you keep interrupting each other.

Mr. Parsons, you may continue.

MR. PARSONS: Yes, Your Honor. As I was saying, I was trying to explain why she's complaining about not receiving any service is because --

THE COURT: Mr. Parsons, that issue is not set before me today so you can just focus on --

MR. PARSONS: All right. Well, I want to move on to my Motion to Strike then, Your Honor.

THE COURT: Yes, sir.

MR. PARSONS: Thank you. Okay. Your Honor, the heart of my strike -- Motion to Strike is that -- I have several assertions. And, again, I'm stating -- asserting that Cause No. 87113 is not a family lawsuit brought under the authority of Chapter 231 of the Texas Family Code Title 5 as I pled on page 6 and 7 in my

Motion to Strike. It's strictly a lawsuit between two private VA claimants, myself and Ms. Copeland or Ms. Parsons, whatever she's going by, surrounding their final and conclusive 2009 federal decision made under the authority of the Secretary of the VA pursuant to Title 38 U.S.C. Section 511. And, again, I -- I urge the Court to go back and look at the judicial notice that's been properly filed.

Chapter 235 has explicit exclusionary guidance language that denies the OAG from assignment of the right, inability to represent Ms. Copeland or the interest of the state, which is what I'm alleging is going on here today. Texas Family Code Title 5, Section C, judicial resources and services Chapter 201, Subchapter A, Section 201.001, prohibits this Court from hearing this private civil lawsuit with a Cause Number 87113 under the authority of Title 5 because it was not brought by myself under Title 5.

The U.S. Congress has expressly granted me the civil right to collaterally attack any, all -- and all alleged void support orders going back to 2009 from their inception as averred in my Second Amended Original Petition. Texas district courts possess the jurisdiction to hear this case in part provided by Article V, Section 8, of the Texas Constitution and the Texas

Government Code 24.007. And I ask the Court to study County Appraisal District v. Coastal Liquids Part, 165 S.W.3d 329, and that's Texas 2005. My preponderance of the evidence, which is intertwined with the merits of the case, must now be adequately examined by the interposed 62nd Judicial District Court that has been assigned by keeping with the precedential case of Texas Department of Parks and Wildlife v. Miranda. That's 133 S.W.3d 217, Texas 2004.

And I also refer the court to look at the judicial notice. I have two cases that are attached as exhibits that the court must take mandatory notice of, and I can't recall the cases but they're in the exhibits. It has to do with the ability for a person to go in and collaterally attack a family law case in another court or in another district, another county, which is my case. And the other one is what I've eluded to just now is that when -- when the preponderance of the evidence is intertwined with the -- with the merits of the case the court must take a look at it, and that's what I'm saying is going on with my VA apportionment ruling.

All right. So I'm alleging that the attorney of record for the OAG, Ms. AAG Koehn here, before us today has signed a pleading that's groundless, served in bad faith, and brought for the purpose of

harassment. I'm -- I'm alleging that it's an attempt to reverse the current and existing law without authority, and I've already eluded to some of that law with the -- with the brand new court case cited. The Attorney of Record AAG Koehn pleads groundless, counter arguments that have no basis of current law or fact in an apparent attempt to reverse the current, existing law while covertly prejudicing the court in favor of unrepresented Defendant Ms. Copeland. She has a financial modus operandi to downplay the Secretary's authority.

For the record, the effective November 2009 VA apportionment denial ruling was based upon the Hunt County child support order dating back to November of 2004 in between the two private VA claimants, myself and Ms. Copeland, and the alleged arrears that accrued from January 2005 through May of 2009. The Secretary made a ruling on that. She's saying in her arguments that not only it goes back to November 2009 when, in fact, I've just stated that the Secretary asked me for proof that I have paid -- that the Social Security Administration had both paid the children direct through the payments beginning in January 2005 through May 2004 -- 2009, and I did that fact, and so that alleged arrears which was well over 20,000 was found by the Secretary to be false. And, again, I would like to say that that --

the VA Sec- -- the Secretary's decision has effectively and unequivocally indicated that my VA disability benefits award has been provisioned solely to my subsistence to spend as I see fit.

And, again, I say for the court to notice 38 U.S.C. Section 511. That is, no portion of my award was provisioned to claimant Ms. Copeland Parsons on behalf of the dependents residing in her custody, and that -- that ruling was effective November 2009. Even though it came out in April of 2010, it clearly stated on the -- on the notice of award -- the notification for me to respond it said it was going back to November 2009. Again, as I've just eluded to, I had to submit proof all the way back to 2004 actually, so it goes back and covers that initial -- that 2004 ruling handed down from Judge Leonard in the Hunt County District Court.

AAG Koehn, desperately wants to convince the court that the Secretary's authority does not apply to any State of Texas official or court, especially this one. She also wants the Court to not carefully examine the differences between 38 U.S.C. Section 211 admitted in 1970 which is what -- that was a version that the Supreme Court examined in 1987. It was the amended version from -- from 1970. And that -- that -- that is Exhibit 2, that Section 211 I submitted to the court. It is

Exhibit 2 in my -- in my Motion to Strike. And the current version discussed in my judicial notice is available for you to also compare and contrast those two versions, 211 versus the 511.

In light of the VA ruling, the AAG Koehn cannot overcome the absolute pre-emptive power of Section 511 without contemptuously ignoring all the amended post 1987 federal laws, regulations, directives and congressional acts, all which I have asked you, the Court, to take judicial notice, mandatory judicial notice in my request for judicial notice filed in February 2010. There is no authority for the OAG to come in under Texas Family Code Section 231.104 because the OAG never had privity of contract or assignment of the right when it came to the provisioning of the VA disability compensation benefits award between the two claimants.

AAG Koehn never acquired -- never acquired authority to file her Plea to the Jurisdiction or her response to the Petitioner's Motion to Strike or to even apply to the Court for the hearing on the matters presented in the pleading on the file in this case due to the limited language within assignment of right to support Section 231.104, Subsection A, and, I quote, to the extent authorized by federal law. She can't get around that, Your Honor; therefore, she -- she will never

possess the authority under Section 231.104 to make a filing or present application for hearing to this Court surrounding this private cause.

There's no authority for the OAG under Texas Family Code Section 231.109. The stipulations engrossed in Subsection A of Section 231.109 and is already asserted, the attorney of record Koehn is barred from representing the state in this cause of action because it specifically was not brought under this chapter, didn't file this lawsuit under the chapter of family law, Title IV-D. She's particularly prohibited from representing the Defendant Ms. Copeland. She's prohibited from representing the interest of the children, who have long ago aged out, and even the interest of the state in this particular cause as spelled out in Subsection D of Section 231.109.

Dismissed Defendant the OAG acting in bad faith hopes to prejudice the Court in favor of covert defenses that will in reality bolster non-responding Defendant Ms. Copeland. However, Defendant Ms. Copeland alone must be free to defend her rights herein in this lawsuit -- private lawsuit.

Under Subsection E, AAG Koehn is also not to be misconstrued by the Court as an amicus attorney for sole Defendant Ms. Copeland nor attorney ad litem for the

children. In fact, there's a disqualification for the OAG under Texas Family Code Section 231.111 -- point -- that's 231.11 -- 111 -- 231.111. As this cause is purely a civil lawsuit between the two private VA claimants surrounding the final and conclusive federal decision made under the exclusive authority of the Secretary of the VA, the Court must disqualify the OAG in this cause that is not filed under any Chapter 231 or part D of Title IV-D of the federal Social Security Act. Dismissed OAG, Defendant OAG, has not -- has no authority to proceed in this cause as it has presumed jurisdiction of a suit under the explicitly exclusionary cited guidance of Texas Family Code Title 5, Subtitle D, Administrative Services Chapter 231, Title IV-D Services, Chapter B, Services -- entitled Services Provided by Title IV-D Programs, Section 231.111.

There's -- there's no authority -- also, Your Honor, there's no authority for the Texas Office of Attorney General Child Support Division to -- to defend the Petitioner's challenge to the constitutionality of the state statute, which she's presumptuously trying to do here. I filed my Supplemental Petition to Challenge the Constitutionality of a State Statute and the required challenge form in December 2017, along with the original petition and memorandum of law, and my due process

affidavit.

Pursuant to Texas Family Code, Section 402.010, Subsection (a), as well as Chapter 27 of the Texas Civil Practices and Remedies Code, it is now incumbent upon this Court to properly notify Attorney General Ken Paxton of my challenge of the Texas Family Code Section 154.062, Subsection B, Paragraph 5. It's regarding my Second Amended Petition, claim 10, the declaratory judgment for unconstitutional Texas statute. Dismissed Defendant the OAG is not authorized to defend any challenge to the constitutionality of the state statute. Only (unintelligible) AG Paxton is the proper State of Texas official who satisfies the requirements of Ex Parte Young, and that was noted by the -- by the U.S. District Judge, Judge Mazzant in that remanded order that he sent back in early 2018 to the Court. AAG Koehn's plea in response is, again, made in bad faith surrounding this particular issue.

Let me take a drink of water, Your Honor. Bear with me. Thank you.

I wanted to address her allegations and complaints regarding my use to bad state actor or bad state entity in my Second Amended Original Petition for suit, and that was for descriptive purposes to better communicate my -- describe my statement of facts,

strictly. In other words, that doesn't make them a defendant, Your Honor.

The OAG has deemed itself as a -- as a necessary -- it deemed itself a necessary party since 2010 after Ms. Copeland committed ID theft -- I'm alleging committed ID theft and submitted my social security number to her 2000 -- with her 2009 application for services to the OAG. As -- in my Motion to Strike the OAG's assignment of the right was controverted in Paragraph 7.9 of Section 7 in my Second Amended Petition.

In light of the 2009 VA apportionment decision from the Secretary in 38 U.S.C. Section 511 the reference to Exhibit B in the OAG's response -- it's entitled May 20, 2010, notice of attorney general as necessary party and change of payee -- that indicates that the Attorney General of Texas -- and at the time that was Greg Abbott -- he became the de facto fiduciary as defined in Sections 5506 of Title 38. Therefore, there's a strong indication that Greg Abbott violated 38 U.S.C. Section 6101, entitled misappropriation by fiduciaries.

Subsection A reads they're going to be in a fiduciary as defined in Section 5506 of this title, Title 38, for the benefit of a minor, incompetent, or other beneficiary under laws administrated by its

Secretary shall then borrow, pledge, hypothecate, use, or exchange for other funds or property except as authorized by law or embezzled or in any manner misappropriate any such money or property derived therefrom in whole or in part in coming into each fiduciary's control in each manner whatsoever in the execution of such fiduciary's trust or under color of such fiduciary's office or service as such fiduciary shall be fined in accordance with Title 38 or imprisoned not more than five years or both.

And I'm alleging that when that change of payee came down that made (unintelligible) -- change of payee that was signed then by the head of the child support Alecia G. Key. That was the crime. Because I had already had the 2009 VA apportionment ruling that said no portion goes to the children. He was trying to take over, become the fiduciary for Ms. Copeland when he, in fact, had no basis in law of doing that without violating this reference to Title 38 Section 6101 -- violated 6101 is what I'm alleging.

Therefore, when the deputy attorney general of child support Alecia G. Key signed on behalf of the then Secretary -- General of Texas Greg Abbott proclaiming that he was fiduciary or denied VA apportionment payment in the mother of C.K. Parsons he

was now engaged in the misappropriation of my vested VA properties -- personal property award under color of his office where no assignment of right existed --

MS. KOEHN: Your --

THE COURT: Yes, ma'am.

MS. KOEHN: I'm going to object because we are getting way past the basis of the motions that were set today. We're getting into --

THE COURT: That will be sustained.

And, Mr. Parsons, I need you to limit it to the motion -- your Motion to Strike and her Plea in Abatement. That's all that's set today.

MR. PARSONS: I'll move on, Your Honor. Let me find my notes. Let's get back to the assignment of right, Your Honor, which I have already brought up and she didn't object.

Regarding the claim 9, paragraph 19.1 that she alleged in my Second Amended Petition and in light of the future void orders, the court shall inform the Office of General Counsel of the State of Texas or take appropriate action of any of the named bad actors of his choosing. And that's in light of void orders that may come down in the future. And you know what you ruled, Your Honor.

My stand on Rose -- well, I've already

gone over this. Let me move on, Your Honor. We've covered that.

So, again, in my Motion to Strike I had brought out the violations -- alleged violations of Texas Civil Rules of Procedure Rule thir- -- one -- Rule 13. So my Motion to Strike demonstrates the attorney of record AAG Koehn purposely acted in bad faith when she failed to controvert my Request for Judicial Notice, Memorandum of Law, Due Process Affidavit, and Second Amended Original Petition, which correctly contravenes all her averments. In doing so her pleadings are groundless for purposes of invoking Rule 13, Texas Rule Civil Procedure because she offers counter arguments that have no basis in law or fact in an attempt to reverse existing law that the court has been requested to take mandatory notice. And I'm just -- laid some of that out to the court, Your Honor.

Her signed documents are proof of an attempted hijacking of private civil lawsuit with Cause Number 87113 including myself -- exclusively between myself and Defendant Ms. Copeland. District Clerk Golden stood up long ago and struck the OAG as -- as a listed defendant in the case of the registry. Via her July 17 order setting hearing, AAG Koehn is still trying to contemptuously issue requests to me in the OAG case

number, November -- N, as in November, 008518431. And if the -- if the OAG has pending legal matters such as the other hearing that's pending, if it wishes to take up with me or Ms. Copeland surrounding that case number, then it needs to properly initiate that proceeding in an appropriately acquired cause number.

According to the OAG's past arguments, that summon should be issued in Williamson County, not Lamar County, because she's arguing that Lamar County has no jurisdiction. Texas Rule of Civil Procedure Rule 215-2b specifically authorizes a court to issue an order to the attorney of record, signee, striking out pleadings or parts thereof or staying further proceedings until the order is obeyed, or dismissing with or without prejudice the action or proceedings or any part thereof, or rendering a judgment by default against disobedient signee, in this case AAG Koehn.

Now, regarding my Claim 1 in my Motion to Strike, Your Honor, I'm alleging sanctions for frivolous pleadings against -- against the AAG Jody S -- Jody S. Koehn, 20 -- her state bar number is 20286550. So I'm now -- I would now respectfully ask the Court grant my Motion to Strike, immediately hold the attorney of record of the Office of Attorney General Child Support Division, Assistant Attorney General Jody S. Koehn, guilty of

contempt for her signed, filed pleadings entitled Plea to the Jurisdiction and Response to the Petitioner's Motion to Strike, as well as her order setting hearing on an alleged -- supposedly we're about to hear, for her being groundless, filed in bad faith, and brought for harassment.

Noteworthy is the last sentence in Rule 13, Your Honor, and I hope the Court will take notice of that. The amount requested, and I quote, the amount requested for damages does not constitute a violation of this rule. And my specific damages was for $25,000.

Your Honor, I pray to the Court to strike the OAG's Plea to the Jurisdiction from this cause, grant the sanctions and claim requested, and award the Plaintiff all such other relief, general and special, at law and in equity, which I may even show myself justly entitled.

That is all, Your Honor.

THE COURT: Thank you, Mr. Parsons.

Ms. Parsons, anything that you want me to know or --

MS. CONNIE PARSONS: I'm sorry. Did you say Connie Parsons?

THE COURT: Yes. Ms. Connie Parsons, yes ma'am.

MS. CONNIE PARSONS: Yes, I -- I did respond to the hearing notice of -- that I received I believe on July 16, and I would like to make a brief opening remark.

THE COURT: Yes, ma'am.

MS. CONNIE PARSONS: Since I'm named along with several other Defendants in Cause Number 87113 I did go ahead and (unintelligible) -- plea to -- or request for some items in order to defend myself against the Plaintiff's alleged allegations.

One, I have requested to have witnesses. I also had a Counter-Petition for Motion for an Order of Dismissal of this entire case, a Counter-Petition for a Motion -- for a Motion for an Order to Determine the Plaintiff as Vexatious Litigant with Monetary Remedy and Relief, and the Request for Enforcement. I also put in a Counter-Petition for a Motion for an Order of Citation to Gregory Keith Parsons to cease and desist with Permanent Restraining Order and Enforcement.

MR. PARSONS: Your Honor --

(Talking simultaneously)

MS. CONNIE PARSONS: I would like to --

THE COURT: Hold on. Hold on. Do you have a -- hold on.

MS. CONNIE PARSONS: -- my -- my time,

please, sir.

THE COURT: Yes, you may continue.

MS. CONNIE PARSONS: Thank you. Again, I'm coming forward as a Defendant. I am pro se. I would like to assert that I did not receive any type of service other than this hearing notice. I did put that as my Exhibit A for Order to Appear today. I was also asked to provide the Court with information on providing health and dental insurance for the children, and I did say in there that I'm not obligated. I'm under no court order. These children are emancipated adults. And I did provide them with from my own resources them with health and dental, as well as vision insurance. And in order -- I just do not want to go forward with any type of -- more information than that because I feel like it's a violation of their -- mine and their Health Insurance Portability and Accountability Act of rights to confidentiality. And then I did request to the court for me to call witnesses and hoping that will be granted.

I also want to, in part and in full, object to all allegations as asserted by the Plaintiff. And those also are on the grounds of their justification. There's been plenty of time for this to have been brought to a court to object to; so under res judicata and the mootness, the children are emancipated adults.

Again, I would like to have the opportunity to prove some other pieces of what I've asked the Court to rule on, but more -- more importantly, I would like to have this case dismissed in its entirety by this Court. And I appreciate your time in allowing me to have that opportunity to bring in witnesses and prove my positions on this.

THE COURT: Thank you.

MR. PARSONS: Your Honor.

THE COURT: Yes, sir.

MR. PARSONS: Yes, regarding that long list of pleadings that she rattled off, I just got that last week, Your Honor. Under Texas Civil Rules of Procedure I haven't even had time to read it, much less formulate a response; therefore, any hearing on that would be highly inappropriate at this time.

THE COURT: And it's not set for hearing today, so.

MR. PARSONS: Thank you.

THE COURT: Okay.

MR. PARSONS: And also, I wanted to object and -- well, strike it. I can't remember what I was going to object to, whatever she -- whatever else she was saying.

THE COURT: Okay. This Court is going to

take judicial notice of the Court's file, including all the pleadings, and the Court after hearing argument of counsel is going to find that the motion -- Plaintiff's Motion to Strike should be denied. The Court is going to find that the Plea to the Jurisdiction filed by the OAG is well taken. The Court is going to grant it.

The Court on its own motion is going to find that this Court does not have subject-matter jurisdiction over any of the claims alleged in the amended petition currently on file. And all claims and parties are dismissed completely from this case, and that is a final and appealable order.

Anything else, Mr. Parsons?

MR. PARSONS: Final appealable order, I will appeal it, Your Honor. Thank you.

THE COURT: Thank you.

MS. KOEHN: Do you want me to file the order, Your Honor?

THE COURT: If you will file an order reflecting that ruling, I would appreciate that, Ms. Koehn.

MS. KOEHN: I will (unintelligible) in the next couple of days, Your Honor. Thank you.

THE COURT: And thank you, Ms. Copeland Parsons. I appreciate your time.

MS. CONNIE PARSONS: Thank you, sir. I appreciate your time, too.

THE COURT: Thank you.

(End of proceedings)

REPORTER'S CERTIFICATE

THE STATE OF TEXAS)
COUNTY OF LAMAR)

I, Anna M. Upchurch, Official Court Reporter in and for the 62nd District Court of Lamar County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription to be the best of my ability of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in this volume of the Reporter's Record, in the above-styled and numbered cause, all of which occurred via ZOOM in open court or in chambers and were reported by me.

I further certify that this Reporter's Record of the proceedings truly and correctly reflects the exhibits, if any, admitted by the respective parties.

I further certify that the total cost for the preparation of this Reporter's Record is $364.25 and was not paid (Plaintiff's Motion to Proceed as Pauper was granted on May 2, 2019).

WITNESS MY OFFICIAL HAND this the 11th day of December, 2020.

/s/Anna M. Upchurch_____
Anna M. Upchurch, Texas CSR 3965
Expiration Date: 10-31-2021
Official Court Reporter
62nd District Court
Serving Delta, Franklin, Hopkins and Lamar Counties
119 North Main Street
Paris, Texas 75460
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STATE OF TEXAS

COURT OF APPEALS
Sixth Appellate District

LT (J.G.) GREGORY K. PARSONS,
U.S. NAVY, PDRL,

Petitioner / Appellant,

v.

CONNIE K. COPELAND PARSONS,

Defendant / Appellee.

Case No. 06-20-00067-CV

Trial Court No. 87113

APPELLANT'S BRIEF ON APPEAL

ORAL ARGUMENT REQUESTED

Respectfully submitted:

LT (JG) Gregory K. Parsons
U.S. Navy, PDRL
2740 Briarwood Drive
Paris, TX 75460

IDENTITY OF PARTIES AND COUNSEL

Lieutenant J.G., Gregory K. Parsons appears pro se as Plaintiff-Appellant.

The Office of the Attorney General of the State of Texas (Child Support Division) intervened and submitted a plea to the jurisdiction via Assistant Attorney General Jody S. Koehn.

Connie K. Copeland Parsons appears pro se as Defendant-Appellee.

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STATEMENT OF THE CASE AND JURISDICTION

This case is an appeal of the August 11, 2020 order of the trial court in Cause Number 87113. (R. 10, pp. 1338-1339; App. 1a-2a).[1] The trial court granted the state's plea to jurisdiction dismissing the case on the basis that it lacked subject matter jurisdiction to hear the case and to entertain Appellant's collateral attack on the prior judgments rendered by the State of Texas concerning the disposition of Appellant's federal benefits. *Id*. The trial court denied Appellant's request to render void ab initio the state court's orders dated August 19, 2009, November 7, 2009, July 7, 2010, April 20, 2012, and September 24, 2012 and dismissed Appellant's Second Amended Original Petition filed in the underlying case. *Id*.

[1] The record was submitted in 10 volumes with the pages numbered at the bottom right for each volume. Reference to the record is by volume number and then page number, e.g., R. 1, p. 1, etc. Where applicable, record entries are attached in the Appendix and referred to as App. 1a, etc.

STATEMENT REGARDING ORAL ARGUMENT

Appellant requests oral argument.

ISSUES PRESENTED

Whether the trial court erred in dismissing Appellant's case for lack of jurisdiction, where Appellant challenged the original judgment, which was void from its inception as a result of the principle of absolute federal preemption, and where the State of Texas had no authority or jurisdiction to have ever entered or enforced said judgment, entitling Appellant to a declaratory judgment, injunctive relief, and any other remedy in accordance with law in the instant action?

STATE OF TEXAS

COURT OF APPEALS
Sixth Appellate District

LT (J.G.) GREGORY K. PARSONS, U.S. NAVY, PDRL,

Petitioner / Appellant,

v.

CONNIE K. COPELAND PARSONS,

Defendant / Appellee.

Case No. 06-20-00067-CV

Trial Court No. 87113

APPELLANT'S BRIEF ON APPEAL

TO THE HONORABLE COURT OF APPEALS:

Disabled Naval Officer and Appellant, LT (J.G.) Gregory K. Parson, United States Navy, PDRL, respectfully submits his brief in support of his appeal of the judgment granting dismissal on the plead of jurisdiction.

STATEMENT OF FACTS

A. Background Facts

Appellant is a disabled veteran who served as an officer in the United States Navy. He was placed on the Permanent Disability Retired List (PDRL) in 1989, and was subsequently ruled as unemployable at 100%, totally and

permanently service-connected disabled. On April 8, 2010, the Department of Veterans Affairs issued an apportionment ruling denying an apportionment of Appellant's VA disability pay to his then dependents for support. (R. 4, pp. 139-147; App. 3a-4a). The denial constituted an exclusive jurisdictional determination by the VA under 38 U.S.C. § 511 and 38 U.S.C. § 5307, respectively, that the dependents were not entitled to any of Appellant's VA disability pay and an adjudicated fact that the state was precluded from reviewing or otherwise contradicting.

On September 4, 2012, in direct contravention of the exclusive and final decision of the VA with respect to division of Appellant's VA benefits, the Williamson County District Court issued an order to pay child support against Appellant in Cause No. 10-1396-F395. The Office of Attorney General (OAG) assigned case number N00851843.

The OAG admitted to disbursing funds taken from Appellant for purposes of the Williamson County order. Therefore, the OAG did receive monies pursuant to the district court's extra-jurisdictional act ordering Appellant to pay child support based, in part, on his receipt of restrict Veterans Administration (VA) benefits. As explained herein, the Williamson County District Court lacked subject-matter jurisdiction and had no authority to calculate Appellant's child support obligation using his restricted VA

disability pay and thus its orders were void ab initio and never enforceable by the state of Texas against Appellant.

B. Procedural History

In 2017, Appellant filed suit against the OAG and his former spouse seeking an order voiding the prior judgments rendered by the state court and for recoupment concerning payments made to the state of Texas and his former spouse for child support, part of which was taken from Appellant's veteran's disability pay. (R 1, pp. 3-95). A second amended petition was filed on June 26, 2020, which led to the state's filing of a plea to the jurisdiction of the trial court, which was heard on August 3, 2020. (Tr. 3, August 3, 2020; App. 10a-52a).

Appellant filed a motion to strike, in which he argued that the original court in Williamson County did not have the authority or jurisdiction to hear any claims with respect to Appellant's military benefits (VA benefits) because the VA had denied an apportionment of those benefits in 2009 to be used in satisfaction of a support obligation.

On the state's motion on the Plea to the Jurisdiction, the attorney for the state acknowledged Appellant's argument was that the original court in Williamson County "did not have the authority or the jurisdiction to hear any claims with respect to his child support amounts subsequent to the VA

denying an apportionment in 2009[sic], April of 2009[sic]…[and] that the VA Court is the one that assumed jurisdiction of all matters regarding his child support." (TR 3, August 3, 2020; App. 14a).[2] The attorney further acknowledged that what Appellant was requesting of the trial court was to "void…any orders that were entered by the court of continuous exclusive jurisdiction after April of 2009[sic]." *Id*.

The state's attorney continued, further acknowledging that "[t]he only way that a sister court can void another court's order…or set it aside is if that order is, in fact, void" and "[a]n order can only be void if one of two elements is missing." (App. 14a-15a). The state's attorney then noted that where a court lacks subject matter jurisdiction an order that it enters will be void. (App. 15a).

Addressing Appellant's argument that the VA Secretary had exclusive jurisdiction over the disposition of his benefits for purposes of supporting dependents, and that the 2010 decision by the Secretary denying apportionment of those benefits for the support of Appellant's dependents was final and exclusive, the state's attorney argued that the 1987 case of *Rose v. Rose*, 481 U.S. 619 (1987) the Supreme Court of the United States approved the state of Tennessee's use of its contempt powers to force a 100 percent

[2] As noted the apportionment denial was April 8, 2010. See App. 3a-4a.

disabled veteran to pay child support. (App. 16a). The state's attorney continued to rely on *Rose* in arguing that the Court in that case held that the "neither the Veteran's Benefit provisions of Title 38 nor the garnishment provisions of the Child Support Enforcement Act of Title 42 unequivocally – indicate unequivocally that a veteran's disability benefits are provided solely for that veteran's support." (App. 18a -19a). The state's attorney concluded that the trial court "had appropriate subject-matter jurisdiction" and its orders were not void. (App. 22a).

As he had presented in his pleadings in support of his petition, Appellant argued that in *Rose* the Court was not addressing a situation in which the VA had actually denied an apportionment request. (App. 24a). Appellant further argued that subsequent to *Rose* Congress changed the law through acts that confirmed that state courts have no jurisdiction to consider or calculate or count veteran's disability income in making a support award. (App. 26a). Appellant further argued that state courts are deprived of subject-matter jurisdiction when principles of federal preemption are applicable and collateral attack is allowed if the state court never acquired jurisdiction over the issue. (App. 27a). Once the VA issued an order under 38 U.S.C. § 511 denying apportionment of Appellant's benefits, that ruling is final and

conclusive and no other official "has any jurisdiction over that ruling." (App. 28a-29a).

The Lamar County District Court entered an order on the State's Plea to Jurisdiction on August 11, 2020. (R. 10, p. 1338; App. 1a-2a). Appellant files this appeal from that order.

SUMMARY OF THE ARGUMENT

The Constitution absolutely protects veterans' benefits because Congress appropriates the money to pay such benefits pursuant to the enumerated military powers under Article I, § 8, cls. 11 – 14. See also *United States v. Oregon*, 366 U.S. 643, 648-49 (1961); *McCarty v McCarty*, 453 U.S. 210, 232-233 (1981) (citing *Rostker v Goldberg*, 453 U.S. 57, 65-65 (1981) for the proposition that these cases arise "in the context of Congress' authority over national defense and military affairs, and perhaps in no other area has the Court accorded Congress greater deference"). As a result, unless Congress says that the states can exercise jurisdiction or control over these benefits for any purpose, i.e., to pay over to a former spouse as property or to pay over to a dependent as support (child support), the states are barred from including these monies and counting them as income for purposes of calculating a support award. The Supremacy Clause of the Constitution provides that federal law preempts all state law that stands in its way. U.S. Const. Art VI, cl. 2. Any state court order that disposes of these benefits in a manner not authorized by Congress is void ab initio and may be challenged at any time.

If Congress does not say that the state can count veterans' benefits, then it simply cannot. If Congress prohibits it by statute, the prohibition is to be liberally construed in favor of the veteran and the funds are held to be

inviolate. That was established by the Supreme Court of the United States when it interpreted 38 U.S.C. § 3101 (predecessor to 38 U.S.C. § 5301) in the case *Porter v. Aetna Casualty & Surety Co.*, 370 U.S. 159, 162 (1962). Congress has only allowed the states to exercise jurisdiction over veterans' benefits in limited and precise circumstances. *Mansell v. Mansell*, 490 U.S. 581, 588-592 (1989).

First, up to 50 percent of a veteran's "disposable retired pay" can be counted towards a property division in divorce – disposable retired pay is specifically defined. It does not include veterans' disability pay. That is 10 U.S.C. § 1408 (the Uniform Services Former Spouses Protection Act (USFSPA). Since Appellant is 100 percent permanently disabled, he is not a recipient of any disposable retired pay.

Second, a portion of disability *pension* can be counted as income if it is received in lieu of retired pay that is waived in order to receive such disability pay. That is 42 U.S.C. § 659(h)(1)(A)(ii)(V). However, 100 percent pure VA disability pay paid to a retiree and to those non-retirees who are permanently disabled (the majority of disabled veterans) cannot be counted as "income" by the states, because it is specifically excluded. That is provided under 42 U.S.C. § 659(h)(1)(B)(iii). Moreover, since the 1820's federal statutes have prohibited states from using any legal or equitable process to dispossess

disabled veterans of their disability. Today, that statutory prohibition is found in 38 U.S.C. § 5301. It is a positive statute that voids from inception any state court "legal or equitable" orders forcing the veteran to use his or her disability benefits to satisfy a state court award.

As the state's attorney noted, for the better part of 30 years state courts have ruled that the state can count veterans' disability pay for support income. This misunderstanding arose from the 1987 Supreme Court case, *Rose v. Rose*, 481 U.S. 619 (1987), which the state relied on here. Ignoring the absolute preemption of federal law in the area of veterans' disability benefits and compensation, *Rose* held that because veterans had an obligation to support "dependents", which few veterans would take issue with, the states could automatically count 100 percent of that disabled veterans disability pay as "income" for purposes of imposing child support obligations.

However, critical to this Court's understanding of the law is that after *Rose*, and in direct response thereto, Congress abrogated the Court's ruling by *removing* the notion of concurrent state court jurisdiction from the process of considering a veterans' obligations to his or her dependents. 38 U.S.C. § 511 (amended and renumbered from former 38 U.S.C. § 211 (which was considered by the Court in *Rose*)) was specifically *changed* to remove concurrent state court jurisdiction over all claims for benefits by veterans and

their dependents. The new provision gave *exclusive* and *final* jurisdiction to the Veterans Administration (Secretary) over all questions of law and fact with respect to claims for benefits by both veterans and their dependents. It removed the limitation of review to only federal courts and replaced the language and extended the prohibition of review of any such decision on a claim by dependents to "any other official or by any court, whether in the nature of mandamus or otherwise." Moreover, Congress passed the Veterans Judicial Review Act, Pub. L. No. 100-687, 102 Stat. 4105, which created an Article I court to provide for an exclusive tribunal for appeals of any decisions on claims for benefits by dependents to the Board of Veterans Appeals (BVA), to the Court of Appeals of Veterans Claims (CAVC), the DC Circuit Court of Appeals, and then, discretionary review to the US Supreme Court. See 38 U.S.C. §§ 7251, 7261; See also *Veterans for Common Sense v. Shinseki*, 678 F. 3d 1013, 1021 (9th Cir. 2012).

The only jurisdictional avenue for dependents to seek disability benefits from a veteran after passage of the VJRA and the changes to 38 U.S.C. § 511 is the apportionment process under 38 U.S.C. § 5307. This process is governed exclusively (as it should be) under the jurisdiction and administration of federal law. This is why 38 U.S.C. § 511 gives exclusive jurisdiction to the VA Secretary over *all* questions of law and fact pertaining

to the division of a veteran's disability benefits for dependents. According to the process, the VA Secretary determines whether the veteran will not be prejudiced by the requested apportionment, whether the dependents are qualified (e.g., former spouses are not dependents under federal law), and whether or not the dependents are being adequately cared for under the existing custodial and home environment. The process requires an examination of the relative position and income of the parties.

Once an apportionment decision is made by the Secretary, as it was in this case, the only review mechanism is as provided in the VJRA. The state has no jurisdiction to enter an order respecting or otherwise disposing of the disability benefits that have been appropriated by Congress for the purposes of supporting the veteran. Even a state court order that counts or calculates this income as an available asset for inclusion in a support award would violate the principle of federal preemption. In this regard, as the Supreme Court said long ago in *Alexander v. Buchanan*, 45 U.S. 20, 20 (1846), "[t]he 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." (emphasis added).

In *Howell v. Howell*, 137 S. Ct. 1400 (2017), the Court recently reestablished that federal law preempts all state law in this area unless Congress says otherwise. The Court also reiterated that 38 U.S.C. § 5301 removes authority from state courts to vest veterans' disability in anyone other than the beneficiary as allowed by federal law. 137 S. Ct. at 1405-1406. The Court reaffirmed that only Congress can lift the preemption and that when it does so, it is limited and precise. *Id*. at 1404. If Congress does not allow it, it is forbidden by the states. *Id*. at 1405. Any judgment rendered by a state court in contravention of this principle of absolute preemption would be void and of no effect. *Id*., see also *McCulloch v. Maryland*, 17 U.S 316, 429 (1819). See also *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981).

An order or judgment that is void ab initio is one that is entered beyond the jurisdiction of the rendering court – it is in excess of the deciding court's authority. Therefore it may be challenged at any time, even after an appeal, because it has no effect.

In the instant case, the Secretary of Veterans Affairs denied an apportionment request of Appellant's disability benefits in 2010. That decision was not appealed. It was a final and conclusive decision and is jurisdictionally binding on all other courts. See 38 U.S.C. § 511. The trial court in the instant case had the authority to void the underlying judgments

because the State of Texas acted in excess of its jurisdiction and in contravention of the only federal entity with exclusive jurisdiction and authority to render a decision concerning the disposition of Appellant's veteran's benefits, and which had in fact been rendered.

ARGUMENT AND ANALYSIS

A. Introduction

Federal veterans' benefits and their disposition, in any context (administrative, federal or state), are governed exclusively by federal constitutional law because they consist of appropriations by Congress pursuant to the enumerated "Military Powers" of Article I, § 8, cls. 11-14 of the United States Constitution. See, e.g., *United States v. Oregon*, 366 U.S. 643, 648-49 (1961); *McCarty v McCarty*, 453 U.S. 210, 232-233 (1981) (citing *Rostker v Goldberg*, 453 U.S. 57, 65-65 (1981) for the proposition that these cases arise "in the context of Congress' authority over national defense and military affairs, and perhaps in no other area has the Court accorded Congress greater deference"). The Military Powers Clauses comprise the enumerated source of power for this case. U.S. Const. Art. I, § 8, cls. 11-14. See also *Oregon*, 366 US at 648-649 ("Congress undoubtedly has the power – under its constitutional powers to raise armies and navies to conduct wars – to pay pensions"). Congress's control over the subject is "plenary and exclusive" and "[i]t can determine, without question from any State authority, how the armies shall be raised,…the compensation…allowed, and the service…assigned." *Tarble's Case*, 80 U.S. 397, 405 (1871). In this particular subject matter, "[w]henever…any conflict arises between the

enactments of the two sovereignties [the state and national government], or in the enforcement of their asserted authorities, those of the National government must have supremacy…." *Id*. The Supreme Court has said Congress's powers in military affairs is "broad and sweeping." *United States v. O'Brien*, 391 U.S. 367, 377 (1968). No state authority will be assumed in general matters of the common defense, unless Congress itself cedes such authority, or exceeds its constitutional limitations in exercising it. *Rumsfeld v. Forum for Adad. & Inst'l Rights, Inc.*, 547 U.S. 47, 58 (2006).

Congress has been given no "greater deference than in the conduct and control of military affairs." *McCarty*, *supra* at 236, citing *Rostker*, *supra* at 64-65. These powers authorize Congress to pass all laws "Necessary and Proper" to fulfill the policy objectives of the national government. See U.S. Const., Art. I, § cl. 18; *United States v. Hall*, 98 U.S. 343, 349-355 (1878). Congress has "express" and "implied" powers under the Military Powers Clauses "to pass all laws which shall be necessary and proper for carrying into execution the foregoing powers" and thus "[p]ower to grant pensions is not controverted". *Hall*, *supra* at 351. See also *United States v. Comstock*, 560 U.S. 126, 147 (2010). From these powers, the Supreme Court has inferred that any entity that seeks to divert these funds away from the beneficiary in a manner contrary to federal law commits a wrongful appropriation. *Comstock*,

supra at 147. See also 38 U.S.C. § 5301(a)(1); *Howell v. Howell*, 137 S. Ct. 1400, 1405 (2017) (under 38 U.S.C. § 5301(a)(1) state courts do not have authority to direct or otherwise order benefits to be paid to anyone other than the federally designated beneficiary).

Therefore, in cases where there are conflicts between state family law and the disposition of military benefits, the Supreme Court has repeatedly stated: "While '[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…[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." *Ridgway v. Ridgway*, 454 U.S. 46, 54-55 (1981), citing *Free v. Bland*, 369 U.S. 663, 666 (1962) and *Gibbons v. Ogden*, 9 Wheat. 1, 210-211 (1824). "And, *specifically*, a state divorce decree, like other laws governing the economic aspects of domestic relations, must give way to clearly conflicting federal enactments. That principle is but the necessary consequence of the Supremacy Clause of the National Constitution." *Id*. at 55 (emphasis added).

Where federal law preempts state law, state courts simply lack subject matter jurisdiction to rule in a manner contrary to that preemptive law.

McCulloch v. Maryland, 17 U.S 316, 429 (1819). Justice Marshall confirmed that the "[t]he sovereignty of a state" does not "extend to those means which are employed by congress to carry into execution powers conferred on that body by the people of the United States." *Id*. Sovereignty conveys jurisdiction. Where the former does not exist, the latter it is lacking. Where the former is usurped, the latter is exceeded. Accord *McCarty*, *supra* at 223-234 and nn. 22 and 23; *Gibbons*, *supra* at 211. Therefore, state judgments or orders are simply "without effect" when contrary to preemptive federal law. *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). See also *McCulloch*, *supra* at 427 and *Hines v. Davidowitz*, 312 U.S. 52, 62-63 (1941). State law "is *void to the extent it conflicts with a federal statute*" where "the law 'stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Maryland*, *supra* at 747, citing *McCulloch*, *supra*; *Hines*, *supra*.

The Tenth Amendment offers no immunity to the state in these circumstances. *United States v. Oregon*, 366 U.S. 643, 648-649; (1961) ("the fact that [veterans' benefits] law pertains to the devolution of property does not render it invalid…[a]lthough it is true that this in an area normally left to the States, it is not immune under the Tenth Amendment from laws passed by the Federal Government which are, as is the law here, necessary and proper

to the exercise of a delegated power."). Therefore, Federal laws that relate to the disposition of federally designated veterans' benefits are beyond state control. *Oregon*, *supra* at 647. See also *Labine v. Vincent*, 401 U.S. 532, 548, n. 16 (1971).

As a result of this total and absolute federal preemption of state law in the area of veterans' benefits, state courts are *deprived* of subject matter jurisdiction unless *Congress* provides otherwise. In fact, Congress has acted affirmatively to exclude subject matter jurisdiction of state courts over the distribution of all veterans' benefits unless otherwise authorized by federal statutory law. First, the Veterans Administration has exclusive, final, and conclusive jurisdiction over all questions concerning the distribution of veterans' benefits to both beneficiaries and dependents. 38 U.S.C. § 511. The latter statute provides, in pertinent part, that the "[s]ecretary [of Veterans Affairs] *shall decide all questions of law and fact* necessary to a decision by the Secretary under a law that *affects the provision of benefits* by the Secretary to veterans or the dependents or survivors of veterans; and [s]ubject to subsection (b) [not applicable here], the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise." *Id*. (emphasis added).

Also evidencing the exclusive jurisdiction of federal courts over matters concerning the distribution of veterans' benefits is the Veterans Judicial Review Act (VJRA), Pub. L. No. 100-687, 102 Stat. 4105, which *created* a separate Article I Court exclusively dedicated to the processing and appeals of claims for benefits by veterans and the dependents of veterans. *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1021 (9th Cir. 2012).

Finally, a federal statute affirmatively protects veterans' disability benefits, once they are awarded by the VA, from *any* equitable or legal process from being paid over to anyone other than a beneficiary. 38 U.S.C. § 5301(a)(1). This provision applies to such benefits that are *due* or *to become due*, and *before* or *after* their receipt. *Id*. Finally, any state court order that purports to divest the veteran beneficiary of these moneys in contravention of *federal preemptive law*, is "void from its inception". 38 U.S.C. § 5301(a)(3).

Thus, that state courts have no *prima facie* subject matter jurisdiction or exceed their constitutional jurisdiction and authority concerning veterans' benefits and attempt to dispose of them in a manner that is expressly contrary to federal law, is not a surprising concept when the full scope of federal preemption in this area is considered.

It is well settled that if a judgment or order "is void, *i.e.*, a judicial nullity, it is subject to collateral attack *at any time* and *in any proceeding*." 1B

Moore's Federal Practice para. 0.405 [4.–1], at 196 (2d ed. 1988) (emphasis added). See also *Windsor v. McVeigh*, 93 U.S. 274, 282-283 (1876). Thus, a federal court judgment or order that "transcend[s]" the power of a court "conferred by the law" is invalid and may be collaterally attacked, even in state court. *Windsor*, *supra*. "Where a court, after acquiring jurisdiction, has assumed to enter a decree…which goes beyond the limits of the jurisdiction and transgresses the law the decree is void, and the sale based thereon is likewise an absolute nullity." *Cardunal Sav. & Loan Ass'n v. Kramer*, 459 N.E.2d 929, 933 (Ill. 1984). Another court stated that "[w]here it is clear that a court has no power under the law, to render a particular judgment under any circumstances, the judgment is doubtless void…." *In re TRG*, 665 P.2d 491, 498 (Wy. 1983). "Though the Court may possess jurisdiction of a cause, of the subject-matter and of the parties, *it is still limited in its modes of procedure and in the extent and character of its judgments*.'" *State ex rel. Yohe v. District Court of Eighth Judicial District in and for Natrona County,* 238 P. 545, 548 (Wy. 1925) (quoting *Windsor*, *supra*) (emphasis added.).

Thus, in 1 Freeman on Judgments (5th Ed.), § 354, entitled "Judgments in Excess of Jurisdiction," the author says at page 733, "[i]t is well settled by the authorities that a judgment may be void for want of authority in a court to render the particular judgment rendered though the court may have had

jurisdiction over the subject matter and the parties." (quoting *Pyeatt v. Estus,* 179 P. 42, 45 (1919)).

> The court must remain within its jurisdiction and powers. For it is the power or authority behind a judgment, rather than the mere result reached, which determines its validity and immunity from collateral attack. A wrong decision made within the limits of the court's authority is error correctable on appeal or other direct review, but a wrong, or for that matter a correct, decision where the court in rendering it oversteps its jurisdiction and power is void and may be set aside either directly or collaterally. *Id*. at 733-734:

At page 735, the author continues: "If the court is exercising special statutory powers, the measure of its authority is the statute itself, and a judgment in excess thereof is null and void." "If the measure of a court's authority depends upon and is limited by statute, a judgment that, by the face of the record proper, is shown not to be in substantial compliance with mandatory provisions of the statute, or contrary to the limitations or conditions precedent therein expressed, is void." *In re TRG*, 665 P.2d 491, 498 (Wy. 1983). "Where it is clear that a court has no power under the law, to render a particular judgment under any circumstances, the judgment is doubtless void." *Id*. It is further elaborated in 46 Am Jur 2d, Judgments, § 49 at pp. 347-349, as follows:

> A void judgment is not entitled to the respect accorded to, and is attended by none of the consequences of, a valid adjudication. Indeed, a void judgment need not be recognized by anyone, but may be entirely disregarded or declared inoperative *by any*

> *tribunal* in which effect is sought to be given to it. It has no legal or binding force or efficacy for any purpose or at any place. It cannot affect, impair, or create rights, nor can any rights be based thereon.
>
> ***
>
> Although it is not necessary to take any steps to have a void judgment reversed or vacated, *it is open to attack or impeachment in any proceeding, direct or collateral*, and at any time or place, at least where the invalidity appears upon the face of the record. It is not entitled to enforcement and is, ordinarily, no protection to those who seek to enforce it. All proceedings founded on the void judgment are themselves regarded as invalid and ineffective for any purpose.
>
> In short, a void judgment is regarded as a nullity, and the situation is the same as it would be if there were no judgment. It accordingly leaves the parties litigant in the same position they were in before the trial.

B. Analysis

In the instant case, while the state of Texas takes the position that there was no jurisdiction to provide relief, the state is the original, ostensible authority that entered a void judgment against Appellant. This was an extra-jurisdictional act at the time of the rendering of the original judgment and void ab initio. As Appellant may challenge such a void judgment at any time, he had legal standing to do so in the instant case and may seek declaratory, injunctive and other relief from the courts of the state of Texas.

As already explained, where a statute passed by Congress pursuant to its enumerated military powers preempts state law, as it did in the underlying case that gave rise to the subject judgment, the state's sovereign authority to

act is absent. *McCulloch*, 17 U.S. at 429; *Howell*, 137 S. Ct. at 1406, citing 38 U.S.C. § 5301(a)(1). This applies equally to state domestic relations and family law, just as with any other subject matter that is fully covered by Congress' enumerated powers. *Ridgway*, 454 U.S. at 54-55.

In the instant case, the preemption is even more stark, because a statutory apportionment denial was issued by the Veterans Administration pursuant to its authority under 38 U.S.C. § 511 and 38 U.S.C. § 5307. (App. 3a-4a). That apportionment denial – which amounts to a declaration by the Secretary of the VA on a claim for benefits by dependents, see 38 U.S.C. § 511(a) – preexisted the entry by the state of a judgment which ostensibly required the disposition of Appellant's benefits in a manner other than that as directed by the authority with final authority and exclusive jurisdiction over that determination. See 38 U.S.C. § 511(a). This provision, which was amended in 1988, removed any notion of concurrent state authority or jurisdiction over the authority vested by Congress in the matter of veterans' compensation and benefits. The plain language of this provision states that "[t]he Secretary [of Veterans Affairs] shall decide *all questions of law and fact* necessary to a decision…that affects the provision of benefits…to veterans *or the dependents* or survivors of veterans." Therefore, the VA has the absolute authority to decide all questions of law and fact concerning a veteran's disability pay – including any

disposition of these funds to support dependents. The second sentence of this provision states, in relevant part: "[T]he decision of the Secretary as to any such question *shall be final and conclusive* and *may not be reviewed* by any other official *or by any court*, whether by an action *in the nature of mandamus or otherwise*." *Id*. (emphasis added).

When the Williamson County Circuit Court entered judgment diverting or otherwise counting or implicating Appellant's veterans' disability pay, over which it had no sovereign authority or jurisdiction, to Appellant's former spouse, it acted *in excess* of its jurisdiction and authority. The funds Appellant subsequently paid, which also went through the state of Texas, were unlawfully sequestered by the state in contravention of the absolute principle of federal preemption.

As reiterated by the United States Supreme Court most recently in *Howell v. Howell*, 137 S. Ct. 1400, 1404 (2017), the absolute rule of federal preemption over all matters concerning veteran's benefits articulated by the Court in 1981 in *McCarty*, "still applies". The solicitude of Congress for veterans is of long standing. *United States v Oregon*, 366 US 643, 647 (1961). See also *Labine v Vincent*, 401 US 532, 548, n. 16 (1971). As a result, statutes providing for and protecting veterans' benefits are to be liberally construed,

and the funds protected by those provisions are inviolate. *Porter v. Aetna Cas. & Surety Co.*, 370 U.S. 159, 162 (1962).

In *Howell*, the Court reconfirmed that federal law preempts all state law concerning the disposition of veterans' disability benefits in state court proceedings. *Howell v. Howell*, 137 S. Ct. at 1404, 1406. In doing so, the Court reiterated Congress must affirmatively grant the state authority over such benefits, and when it does, that grant is precise and limited. *Id*. at 1404. The Court also stated that without this express statutory grant, 38 U.S.C. § 5301(a)(1), affirmatively prohibits state courts from exercising control over disability benefits. *Id*. at 1405.

While the Court in *Howell*, cites to *Rose v. Rose*, 481 U.S. 619 (1987), which the state of Texas relied on here, the Court only confirmed what federal law currently allows, i.e., "some military *retirement* pay might be *waived*" and partial disability may be paid in lieu may be used to calculate spousal support. *Id*. at 1406. That is not what happened here, because the VA already made the determination that there was no disposable pay to be subjected to division by or among Appellant's dependents. Yet, the state court allowed the inclusion of Appellant's benefits. When it did this, it acted in direct contravention of the United States Constitution, the Supremacy Clause, and, as well, positive statutory law passed by Congress pursuant to its military

powers concerning exclusive jurisdiction and protection of these benefits. See 38 U.S.C. § 511(a) and 38 U.S.C. § 5301(a)(1) and (3), respectively.

The Supreme Court's reiteration in *Howell* that federal law preempts all state law in this particular subject *unless* Congress says otherwise remains. There is no *implied* exception to absolute federal preemption in this area. See *Bennett v. Arkansas*, 485 U.S. 395, 398 (1988). After *Rose*, Congress quickly acted to remove any speculation that it had ceded jurisdiction to state courts over these historically restricted benefits. *Rose*, 481 U.S. at 630 (citing congressional testimony that veterans' disability benefits are "intended to 'provide reasonable and adequate compensation for disabled veterans and *their families*.'") (emphasis in original). In direct response to the Court's conclusion that states have concurrent authority and jurisdiction over these disability benefits despite the lack of a federal grant of such authority and affirmative federal protection, see 481 U.S. at 629, Congress amended 38 U.S.C. § 211 and also enacted the Veterans Judicial Review Act (VJRA) leaving no doubt that primary jurisdiction lies exclusively with the Secretary of Veterans Affairs who "*shall decide all questions of law and fact* necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans *or the dependents* or survivors of veterans." (emphasis added). Whereas § 211 only provided that "decisions of the

Administrator on any question of law or fact under any law administered by the Veterans Administration" would be "final and conclusive", § 511 provides that it is the Secretary that shall first decide any such question. Second, Congress went a step further and created an Article I Court (the United States Court of Appeals for Veterans Claims) to exclusively review such decisions. 38 U.S.C. §§ 7251, and 7261, respectively. Congress also removed the limitation from § 211 suggested in *Rose* that only federal courts not state courts, were excluded from concurrently reviewing veterans' benefits decisions by replacing the phrase "any court of the United States" with the broader reference to "any court". See *Henderson v. Shinseki*, 562 U.S. 428, 440-441 (2011) (discussing the VJRA's singular and comprehensive review scheme for veterans' benefits determinations and Congress's longstanding solicitude for veterans and this Court's established "canon" of liberal construction of statutes providing *and* protecting these benefits).

These post-*Rose* events, along with the plenary statutory and regulatory scheme already in place concerning veterans' compensation and benefits, leaves no doubt that veterans' benefits decisions are primarily and exclusively within the jurisdiction of the Department of Veterans Affairs. *Any* decision by a state court that forces a disabled veteran to pay these funds over to another (or even allows the counting or calculation of these benefits as "available" or

"disposable" income) is unquestionably a "decision…that affects the provision of benefits…to veterans" even before a statutory "apportionment" is made at the request of the dependent or the guardian of a dependent. See 38 U.S.C. § 511; 38 U.S.C. § 5307. The state cannot do indirectly what it cannot do directly. See *McCarty v. McCarty*, 453 U.S. 210, 228, n. 22 (1981), citing *Free v. Bland*, 369 U.S. 663, 669 (1962) and stating that the state cannot circumvent the prohibition by the "simple expedient" of offsetting awards.

This is especially true where, as here, the exclusive jurisdiction of the VA has already been invoked by its apportionment decision, something that was not at issue in *Rose*, and even more where it has made a positive determination that the veteran's dependents are not entitled to his benefits. Here, the VA denied the apportionment request – it made a determination that the dependents were not entitled to support payments out of Appellant's VA compensation. (App. 3a-4a). Under the federal statute, its decision "on *all* questions of law or fact" were "final and conclusive". 38 U.S.C. § 511(a) (first and second sentence). No other court or authority may make a contrary determination. See 38 U.S.C. § 511(a) (second sentence) (explicitly stating that "the decision of the Secretary as to any such question *shall be final and conclusive* and may not be reviewed by any other official *or by any court*, whether by an action *in the nature of mandamus or otherwise*."). Section 5301

prohibits "*any* legal or equitable" process from being issued by the state courts. 38 U.S.C. § 5301.

Federal law provides the exclusive means by which dependents may seek a portion of these disability benefits for support, if they demonstrate need through the process of apportionment. 38 U.S.C. § 5307; 38 C.F.R. § 3.450–3.458 (regulations governing apportionment). Jurisdiction to do this also lies primarily and exclusively with the Secretary of Veterans Affairs, and all decisions on any benefit determination (whether an initial determination or on a request for apportionment) is final and conclusive as to *all other courts*. 38 U.S.C. § 511(a). Review can only be sought in the Article I court established by Congress after *Rose*. See 38 U.S.C. §§ 511(a), 7251, 7261.

Appellant is among those permanently disabled veterans who are receiving only veteran's disability pay for injuries received serving the nation. Congress has never authorized states to count these monies as income for the benefit of others, but that is what states do on a routine and daily basis across the country. This must end and justice requires the Court to vacate the judgment of the state of Texas and declare it null and void.

In *Howell*, the Supreme Court was addressing state attempts to encroach on military benefits for a third time in as many decades. *McCarty v. McCarty*, 453 U.S. 210 (1981) and *Mansell v. Mansell*, 490 U.S. 581, 588-592 (1989)

clearly expressed the absolute federal preemption of state law in this subject. The travesty lies in the fact that disabled veterans, who have limited resources and capacity, must consistently seek recourse in appellate courts because 50 states have seemingly devised as many ways of defining out or getting around the limitations imposed upon them by the Supremacy Clause. But, the Constitution "has presumed (whether rightly or wrongly [this 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 347-48.

> Judges of equal learning and integrity, in different states, might differently interpret a statute, or a treaty of the United States, or even the constitution itself: 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; and it cannot be believed that they could have escaped the enlightened convention which formed the constitution…. *Id*. at 348.

In *McCulloch v. Maryland*, 17 U.S. 316 (1819), the Court spoke to the exercise by Congress of its enumerated powers. Justice Marshall, writing for the

majority, 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*. Marshall finished the point by citing to the last sentence of the Supremacy Clause:

> The government of the United States, then, 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 the latter clause, Justice Story wrote that it was "but an expression of the necessary meaning of the former [that the Constitution and laws made in pursuance thereof shall be supreme], 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) (emphasis added).

For decades, disabled veterans have suffered immeasurably under state court's *wholly judicial* recognition of an exception to the explicit protections afforded them by Congress's exercise of its enumerated military powers. Self-interested lawyers and state machinations have collaborated to raise a clamor to prevent the self-evident and explicit preemptive law from taking effect. But the swell of defiance does not make these parties any more correct, nor can it insulate state courts from those who seek to regain and restore to themselves their constitutional entitlements. The passage of time and the din of dissension cannot erode the underlying structure guaranteeing the rights bestowed. The Supreme Court recently expressed this sentiment in overturning more than a century of reliance on erroneous legal principles. *McGirt v. Oklahoma*, 140 S. Ct. 2452 (2020). There, Justice Gorsuch, writing for a majority of this Court stated:

> Unlawful acts, performed long enough and with sufficient vigor, are never enough to amend the law. To hold otherwise would be to elevate the most brazen and longstanding injustices over the law, both rewarding wrong and failing those in the right. *Id*. at 2482.

The federal statutes and regulations passed pursuant to Congress' enumerated military powers contain no allowance to the states to sequester the veterans' disability benefits at issue in this case and force them to be paid over to any other individual, including children, for state-imposed support obligations.

Rather, these benefits are (and always have been) explicitly excluded from state jurisdiction and control, *before* and *after* their receipt by the beneficiary. 38 U.S.C. § 5301(a)(1).

Logically, then, the only allowance for support of dependents lies within the primary and exclusive jurisdiction of the Department of Veterans Affairs, where Congress provides the Secretary of Veterans Affairs with the primary authority and exclusive jurisdiction to make decisions affecting the provision of all benefits to veterans and their dependents, 38 U.S.C. § 511(a), and also allows for an "apportionment" of disability benefits for the dependents of veterans *if* the Secretary determines that the veteran will not suffer undue hardship and the dependent is in need of any portion of these otherwise restricted benefits. 38 U.S.C. § 5307. That is exactly what occurred in this case. The state court's order was an extra-jurisdictional act and therefore void from its inception.

In 1988, after *Rose*, Congress overhauled both the internal review mechanism and § 211 in the Veterans Judicial Review Act (VJRA). Pub. L. No. 100-687, 102 Stat. 4105. See also *Veterans for Common Sense v. Shinseki*, 678 F. 3d 1013, 1021 (9th Cir. 2012). In doing this, Congress "made three fundamental changes to the procedures and statutes affecting review of VA decisions." *Id*.

First, the VJRA created an Article I Court, the United States Court of Appeals for Veterans Claims, to review decisions of the VA Regional Offices and the Board of Veterans' Appeals. 38 U.S.C. §§ 7251, 7261. *Veterans for Common Sense*, *supra*. Congress explained it "intended to provide a more independent review by a body…which has as its sole function deciding claims in accordance with the Constitution and laws of the United States." H.R. Rep. No. 100-963, at 26, 1988 U.S.C.C.A.N. at 5808. Congress also noted that the Veterans Court's authority extended to "*all* questions involving benefits under laws administered by the VA. H.R. Rep. No. 100-963, at 5, 1988, U.S.C.C.A.N. at 5786." *Id*. (emphasis in original). Congress conferred the Veterans Court with "*exclusive* jurisdiction" and "the authority to decide any question of law *relevant to benefits proceedings*." 38 U.S.C. § 7252(a); 38 U.S.C. § 7261(a)(1), respectively (emphasis added).

Second, the VJRA vested the Federal Circuit with "exclusive jurisdiction" over challenges to VA rules, regulations and policies. 38 U.S.C. § 502; 38 U.S.C. § 7292. Decisions of the Veterans Court are now reviewed exclusively by the Federal Circuit which "shall decide all relevant questions of law, including interpreting constitutional and statutory provisions." 38 U.S.C. § 7292(a), (c), (d)(1).

Third, as already alluded to, Congress *expanded* the provision precluding judicial review in former § 211. Under the new provision, eventually codified at 38 U.S.C. § 511,[3] the VA "shall decide *all questions of law and fact* necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans." 38 U.S.C. § 511(a) (emphasis added). Whereas § 211(a) had only prohibited review of "decisions on any question of law or fact…under any law…providing benefits to veterans," 38 U.S.C. § 211(a) (1970), § 511(a) now prohibits review of the Secretary's decision on "*all questions of law and fact necessary to a decision*…that affects the provision of benefits," 38 U.S.C. § 511(a) (2006). This change places primary and exclusive authority over the initial benefits determination in the VA Secretary.

In keeping with this removal of state court jurisdiction over decisions affecting veterans' benefits, whereas § 211 precluded any other "official or court *of the United States*" from reviewing a decision, § 511 now precludes review "by *any court*…." (emphasis added). This of course, would apply to preclude state courts from making any initial or subsequent disposition of veteran's disability benefits, which are considered off-limits by existing

[3] Section 211 was recodified as § 511 by the Department of Veterans Affairs Codification Act, Pub. L. No. 102-83, 105 Stat. 378 (1991).

federal statutes, particularly, 42 U.S.C. § 659(h)(1)(B)(iii) and 38 U.S.C. § 5301. Any other court or entity making a decision that disturbs the calculated benefits determination would be an usurpation of the Secretary's exclusive authority and an extra-jurisdictional act.

Finally, as Appellant pointed out in his arguments in the lower court, there is (and always has been) a process for the VA to pay disability benefits to a dependent in need. 38 U.S.C. § 5307. Consistent with 38 U.S.C. § 511 and the VJRA, the post-*Rose* process for a dependent to seek these benefits is through the apportionment procedures outlined in 38 U.S.C. § 5307 and as described in the memorandum. *Id*.

These changes to federal law were not insignificant. They came immediately after the Court in *Rose* struggled to create law out of whole cloth that had not before that decision or after ever existed. Clarifying that the VA has exclusive, final and conclusive jurisdiction over all questions of law and fact with respect to a veteran's benefits and that any such decision could only be appealed to an exclusive Article I federal court, was a monumental pronouncement as to what Congress thought of the Court's giving concurrent jurisdiction to state courts over these appropriations.

There are also significant policy reasons that the Court should revisit this issue and adjudicate Appellant's rights vis-à-vis the state. The protection of

veterans' disability pay and its disposition in state court proceedings is an issue of significant national interest at present because of the large number of disabled veterans that depend on such pay. There is a large and growing population of disabled veterans, many of whom have had their careers cut short and who are 100 percent disabled, like the veteran in the instant case. They need every protection that federal law already affords them.

The country is no longer only faced with the waning population of disabled veterans from the post-Vietnam era. *Rose* was a 1987 case, and it necessarily addressed an entirely different population of aging and disabled veterans. Since that decision in which the court gratuitously allowed state courts to exercise authority and control over these funds that are (and always have been) explicitly protected by federal law, the nation has been at war in one theater or another for the better part of three decades. Trauschweizer, 32 International Bibliography of Military History 1 (2012), pp. 48-49 (describing the intensity of military operations commencing in the 1990's culminating in full-scale military involvement in Iraq and Afghanistan during the past three decades). See also VA, Trends in Veterans with a Service-Connected Disability: 1985 to 2011, Slide 4.[4]

[4] www.va.gov/vetdata/docs/QuickFacts/SCD_trends_FINAL.pdf.

Since 1990, there has been a 46 percent increase in disabled veterans, placing the total number of veterans with service-connected disabilities above 3.3 million as of 2011. VA, Trends, supra. By 2014, the number of veterans with a service-connected disability was 3.8 million. See U.S. Census Bureau, Facts for Features.[5] 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.[6] The number was well above 4.5 million as of May 2019 and the percentage is increasing by 117 percent.[7]

Also, since 1990, there has been a remarkable increase in veterans with disability ratings of 50 percent or higher, with approximately 900,000 in 2011. VA, Trends, supra at slide 6. 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

[5] www.census.gov/newsroom/facts-for-features/2015/cb15-ff23.html
[6] www.va.gov/vetdata/veteran_population.asp
[7] www.va.gov/vetdata/docs/QuickFacts/SCD_trends_FINAL_2018.PDF

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.

The National Veterans Foundation also conducted a study and found that over 2.5 million Marines, Sailors, Soldiers, Airmen and National Guardsmen served in Iraq and Afghanistan. Of those, nearly 6,600 were killed, and over 770,000 have filed disability claims.[8] Yet another study shows nearly 40,000 service members returning from Iraq and Afghanistan have suffered traumatic injuries, with over 300,000 at risk for PTSD or other psychiatric problems.

These staggering numbers are, in part, a reflection of the nature of wounds received in modern military operations, modern medicine's ability to aggressively treat the wounded, and modern transportation's ability to get those most severely wounded to the most technologically advanced medical treatment 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.

This progress comes with a price. Physical injuries in these situations are understandably horrific. *Id*. See also Kriner & Shen, Invisible Inequality: The

[8] www.nvf.org/staggering-number-of-disabled-veterans/

Two Americas of Military Sacrifice, 46 Univ. of Memphis L. Rev. 545, 570 (2016). However, many veterans also suffer severe psychological injuries attendant to witnessing the sudden arbitrariness and indiscretion of 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. See DeBaun, The Effects of Combat Exposure on the Military Divorce Rate, Naval Postgraduate School, California (2012). Families, already stretched by the extraordinary burdens

and sacrifices of national service, 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 civilian life are difficult enough. A physical disability coupled with mental and emotional scars brought on by wartime environments make the veteran's reintegration with his family even more challenging. See Finley, Fields of Combat: Understanding PTSD Among Veterans of Iraq and Afghanistan (Cornell Univ. Press 2011).

Finally, it cannot go without mention that an estimated 17 to 22 veterans commit suicide every day and the number may actually be much higher.[9] The stressors faced by the disabled veteran and his or her family are only exacerbated when they are involved in a state court proceeding involving whether or not and to what extent the state court may actually control the disposition of that veteran's benefits, which are supposed to be used to compensate that veteran for his or her service-connected disabilities and which are all too often his or her only means of subsistence. While the subset of the total disabled veteran population that faces state court proceedings of this nature might be a small percentage of the total disabled veteran population,

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

the consequences of these situations are inevitably magnified and extremely stressful upon these particular veterans.

This is why the Supreme Court has stressed again and again that the judiciary does not have to pain itself with the consequence of an application of clearly expressed federal law. *Mansell v. Mansell*, 490 U.S. 581, 588-592 (1989). It does not have to inquire into the policies of Congress when the law is clear. This is precisely why the unfortunate consequences of military service have historically been recognized and attended to under exclusive and preemptive federal law. Congress has exercised exclusive legislative 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. 227, 228 (1977); Waterstone, Returning Veterans and Disability Law, 85:3 Notre Dame L. Rev. 1081, 1084 (2010). For an excellent discussion of the nature of these benefits and the importance of protecting them see *United States v. Hall*, 98 U.S. 343, 349-355, 25 L Ed 180 (1878).

Rose was and still is contrary to the overarching principle that where Congress acts in the exercise of an enumerated power state law is preempted *unless* Congress says otherwise. Further, *Rose* rejected express federal laws

excluding veterans' disability benefits from state jurisdiction and ignored affirmative statutory law explicitly protecting them from "any legal or equitable" process. Finally, after *Rose* Congress removed any doubt that state courts have *any* jurisdiction to make decisions concerning the disposition of these restricted benefits by creating an Article I Court with exclusive appellate jurisdiction over all benefits determinations as to "any court" and by giving the Secretary of Veterans Affairs exclusive authority to make decisions on *all questions of law and fact* necessary to the disposition and division of these benefits in the first instance. 38 U.S.C. §§ 7251, 7261. See also *Henderson v. Shinseki*, 562 U.S. 428, 440-441 (2011).

Stripped of its veneer, the *only* remaining rationale provided by *Rose* as justification to ignore express federal law is based on congressional testimony and the notion that state law is primary in the area of domestic relations. Both of these concepts have since been soundly rejected by the Court as a legitimate means of suppressing the expressed and plain language of Congress in the exercise of an enumerated power. *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581 (1979); *McCarty*, 453 U.S. at 220; *Ridgway*, 454 U.S. at 55; *Mansell*, 490 U.S. at 592-596; *Hillman v. Maretta*, 569 U.S. 483, 490-91 (2013); and *Howell*, 137 S. Ct. at 1401-1407 (2017).

Speculating on congressional intent does not substitute for the plain language of federal law protecting disabled veterans and insulating their benefits from being repurposed for unauthorized use. Appellant's federal disability benefits were specifically excluded from being considered by any other court for division by the preexisting apportionment denial made by the VA in 2010. Therefore, the state could not have subsequently considered them as income and they were jurisdictionally protected from *any legal or equitable process* whatever by 38 U.S.C. § 5301. Federal law, and only federal law, authorizes the Secretary of Veterans Affairs to decide whether these restricted benefits may be used to support dependents. 38 U.S.C. § 5307. Absent such a determination, the decision of the Secretary on the question of a veterans' entitlement to these benefits is absolute and review may only be sought through the Article I Court expressly created by Congress *after Rose* for that purpose. 38 U.S.C. § 38 U.S.C. §§ 7251, 7261. *Henderson*, *supra*.

Federal law exclusively, comprehensively and completely addresses this issue. Yet, state courts across the country continue to blindly cite *Rose* for the proposition that states have unfettered access to these disability benefits. This has caused a systemic destruction of the ability of disabled veterans to sustain themselves and their families. The greatest tragedy, of course, is the effect that this has had on the disabled veteran community as a whole.

Homelessness, destitution, alcoholism, drug abuse, criminality, incarceration and, in too many cases, suicide, are an all too frequent and direct result of blind adherence to an anomalous decision rendered over 30 years ago. That decision ignores current realities of the disabled veteran community, was not even based on the applicable principles of federal supremacy, and has since been abrogated by positive federal law.

CONCLUSION

State courts lack authority to invade federal veterans' benefits because they originate from Congress's enumerated powers over military affairs. U.S. Const. Art. I, § 8, cls. 11–14. See *Oregon*, 366 U.S. at 648-649; *McCarty*, 453 U.S. at 232; *Howell*, 137 S. Ct. at 1404, 1406 (*McCarty* with its rule of federal preemption, "still applies" and "the basic reasons *McCarty* gave for believing that Congress intended to exempt military retirement pay from state community property laws apply a fortiori to disability pay (describing the federal interests in attracting and retaining military personnel.")). If the state could invade the benefits designated by Congress for the express purpose of support and maintenance of the armed forces, the function of government would cease. See *McCarty*, *supra* at 229, n. 23, citing *Buchanan v. Alexander*, 45 U.S. 20, 20 (1846) ("The 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.") (emphasis added).

Congress has only given state courts jurisdiction and authority over veterans' benefits in two specific circumstances. First, as to "disposable" retired pay, a former servicemember may be compelled to part with up to 50 percent of his or her disposable military retired pay as a divisible property asset. 10 U.S.C. § 1408. Second, Congress allows the federal government to abide by state court support orders when a former servicemember receives retired pay and waives only a portion of that retired pay for disability. 42 U.S.C. § 659(h)(1)(A)(ii)(V). Such portion of disability benefits, along with the remaining retirement pay are defined as "remuneration for employment" and thus, as "income" subject to legal process. That is it, however.

Consistent with the absolute preemption of state law over *all* military benefits, excluded from the amounts which Congress has given states jurisdiction over, are benefits paid to retirees who have become totally disabled (the retiree is no longer among the rolls of the serviceable military retirees) and those disabled veterans who never attained the time in service to quality for retirement, but who have become disabled in the service of the nation. 42 U.S.C. § 659(h)(1)(B)(iii). As to all veterans' benefits that are *not* specifically allowed by *Congress* to be diverted, 38 U.S.C. § 5301(a)(1)

prohibits a state court from using "any legal or equitable process whatever" to divert these funds through any type of court order, whether *before* (that is in the hands of the government) or *after* receipt.

In the instant case, the state of Texas ignored these significant developments in the law, and, like many other states across the country, ruled that states have authority and jurisdiction to include a veteran's disability benefits as income for purposes of child support obligations.

It should also be pointed out that as with all federal statutes protecting veterans' benefits, 38 U.S.C. § 511(a) and 38 U.S.C. § 5301 are to be liberally construed in favor of protecting the beneficiary and the funds he or she receives as compensation for his or her service-connected disabilities. *Porter v. Aetna Casualty & Surety Co.*, 370 U.S. 159, 162 (1962) (interpreting 38 U.S.C. § 3101 (renumbered as § 5301) and stating the provision was to be "liberally construed to protect funds granted by Congress for the maintenance and support of the beneficiaries thereof" and that the funds "should remain inviolate."). See also *Henderson v. Shinseki*, 562 U.S. 428, 441 (2011) ("provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor"); *Fishgold v. Sullivan Drydock & Repair Corp.*, 328 U.S. 275, 285 (1946) ("legislation is to be liberally construed for the benefit of those who left private life to serve their country in its hour of

great need"); *Boone v. Lightner*, 319 U.S. 561, 575 (1943) (federal statutes protecting servicemembers from discrimination by employers is to be "liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation"); *United States v. Oregon*, 366 U.S. 643, 647 (1961) (stating "[t]he solicitude of Congress for veterans is of long standing.").

Moreover, 38 U.S.C. § 5301, by its plain language applies to more than just "attachments" or "garnishments". It specifically applies to "any legal or equitable process whatever, either before or after receipt." See *Wissner v. Wissner*, 338 U.S. 655, 659 (1950) (state court judgment ordering a "diversion of future payments as soon as they are paid by the Government" was a seizure in "flat conflict" with the identical provision protecting military life insurance benefits paid to the veteran's designated beneficiary). In countering this oft-repeated, but ill-conceived notion, the Supreme Court in *Ridgway* stated that it "fails to give effect to the unqualified sweep of the federal statute." 454 U.S. at 60-61. The statute "prohibits, 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.'" *Id*. at 61. Relating the statute back to the Supremacy Clause, the Court concluded that the statute:

> [E]nsures that the benefits actually reach the beneficiary. It pre-empts all state law that stands in its way. It protects the benefits from legal process "[notwithstanding] any other law. . .of any State'. . . . It prevents the vagaries of state law from disrupting the national scheme, and guarantees a national uniformity that enhances the effectiveness of congressional policy…. *Id*.

Congress has full, plenary and exclusive authority over the disposition of military disability pay. *Tarble's Case*, 80 U.S. 397, 408 (1871). The Supreme Court has since recognized this absolute rule of federal preemption still applies. *Howell*, 137 S. Ct. at 1404, 1406. The Court has also recognized that Congress *may* give states authority over military benefits, but when it does, the grant is "precise and limited." *Id*. at 1404. "Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied in the absence of evidence of a contrary legislative intent." *Andrus v. Glover Constr. Co.*, 446 U.S. 608, 616-17 (1980).

Moreover, when the veterans' benefits statutes discussed herein are construed under the Supreme Court's pronounced "canon" that they are to be "construed in the beneficiaries' favor," there simply is no room for the state to have asserted jurisdiction or authority over the disability benefits at issue in this case.

PRAYER FOR RELIEF

The state court must recognize and declare Appellant's rights under a judgment entered by the state of Texas that was, from its inception, *void ab initio*. Appellant respectfully requests the Court to summarily reverse the lower court's ruling, and remand for a positive declaration that the state's prior judgment and all orders stemming therefrom are null and void, and that Appellant is and shall be entitled to any remedy that such a conclusion and justice must provide.

Respectfully submitted,

/s/ Gregory K. Parsons

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CERTIFICATE OF COMPLIANCE

In accordance with Tex. R. App. P. 9.4, Appellant's Brief is presented in 14-point typeface (12-point typeface for footnotes) and contains 10,836 words in the relevant parts.

PROOF OF SERVICE

On March 23, 2021, Appellant has served a copy of the Appellant's Brief upon the parties of record in this case via first class mail and/or via email and/or efiling.

Respectfully submitted,

/s/ Gregory K. Parsons

_____

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