No. __-____

In the Supreme Court of the United States

DEREK SKELLCHOCK,
Petitioner,

v.

ALORA-ANN VOLZ,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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

QUESTIONS PRESENTED

1. Where the federal agency with "exclusive jurisdiction" over "all questions of law and fact" concerning a dependent's claim for a portion of a veterans' disability benefits concludes that the dependents are not entitled to any portion of said benefits, and such decision is, by federal statute, "final and conclusive" as to such claims, and "may not be reviewed by any official or by any court, whether by an action in the nature of mandamus or otherwise," can a state court contradict such a decision, and order a disabled veteran to use these restricted disability benefits for payment of a dependent's support in state domestic relations proceedings? See 38 U.S.C. § 511(a) (first and second sentence) and 38 U.S.C. § 5301(a)(1).

2. Where Congress has not affirmatively granted the state authority to treat veterans' benefits received by a permanently and totally disabled service member as income for purposes of state-imposed child support obligations, and, in fact, excludes such benefits from being considered income subject to garnishment by the Child Support Enforcement Act (CSEA), 42 U.S.C. § 659(h)(1)(B)(iii), and further affirmatively protects these benefits from "any legal or equitable process whatever, either before or after receipt" by the veteran beneficiary, see 38 U.S.C. § 5301(a)(1), is *Rose v. Rose*, 481 U.S. 619; 107 S. Ct. 2029; 95 L. Ed. 2d 599 (1987), which ruled that the state could consider such benefits as an available asset for purposes of calculating a disabled veteran's support obligations in state court divorce proceedings, a legitimate basis for the State of Colorado to usurp

the Supremacy Clause, U.S. Const., art. VI, cl. 2, and, in direct conflict with positive federal law, order Petitioner, under threat of contempt, to have included these monies as "income" available for purposes of calculating domestic support obligations in a state court divorce proceeding?

3. Because federal law absolutely preempts all state law concerning the disposition of veterans' disability benefits in state court proceedings (unless Congress provides otherwise), see *Howell v. Howell*, 581 U.S. 214; 137 S. Ct. 1400, 1401-1406; 197 L. Ed. 2d 781 (2017), and because Congress has given the VA exclusive jurisdiction to decide whether dependents are entitled to these restricted benefits, 38 USC § 511(a), and because the states have no sovereignty or jurisdiction in these premises, *Torres v. Texas Dep't of Public Safety*, 142 S. Ct. 2455; 213 L. Ed. 2d 808 (2022), can the state legitimately raise state law doctrines of judicial convenience and equity such as "waiver," "res judicata," or "collateral estoppel," to prevent an aggrieved veteran from reclaiming his rights and entitlements to his disability benefits?

PARTIES TO THE PROCEEDING

Petitioner, Derek Skellchock, was the Plaintiff-Appellant below.

Respondent, Alora-Ann Volz, in pro per, was the Defendant-Appellee below.

There are no other parties involved in these proceedings.

LIST OF PROCEEDINGS

The Colorado Supreme Court denied Petitioner's petition for a writ of certiorari on December 19, 2022, in Case No. 2022SC308. (App. 1a).[1]

The Colorado Court of Appels issued an opinion and order on February 24, 2022, in Case No. 21CA0503. The Colorado Court of Appeals denied Petitioner's motion for a rehearing on April 17, 2022. (App. 2a-23a).

On May 11, 2021, the Department of Veterans Affairs, pursuant to 38 U.S.C. § 511 denied a claim for an apportionment of Petitioner's restricted veterans' disability pay, which claim was made by Respondent on behalf of the dependent children. (App. 24a).

Justice Gorsuch denied Petitioner's Application for an extension of time to file his Petition for a Writ of Certiorari on March 14, 2023 in 22A808.

---

[1] The appendix is presented as a single document numbered *in seriatum*, 1a, etc.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

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

The Congress shall have power...

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

To provide and maintain a navy;

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

U.S. Constitution, Article VI, clause 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

38 U.S.C. § 511

(a) The Secretary [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. Subject to subsection (b) [not relevant 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.

42 U.S.C. § 659

(a) Consent to support enforcement. Notwithstanding any other provision of law (including...section 5301 of title 38, United States Code), effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to any individual, including members of the Armed Forces of the United States, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to withholding in accordance with State law...and regulations of the Secretary under such subsections, and to any other legal process brought by a State agency administering a program under a State plan approved under this part...to enforce the legal obligation of the individual to provide child support or alimony.

***

(h) Moneys subject to process.

(1) In general. Subject to paragraph (2), moneys payable to an individual which are considered to be based upon remuneration for employment, for purposes of this section –

(A) consist of...

(ii) periodic benefits...or other payments...

(V) by the Secretary of Veterans Affairs as compensation for a service connected disability paid...to a former member of the Armed Forces who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation....

(B) do not include any payment...

(iii) of periodic benefits under title 38, United States Code, except as provided in subparagraph (A)(ii)(V)....

38 U.S.C. § 5301

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

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Constitutional Provisions

Statutes

Cases

Regulations

Treatises

Other Authorities

PETITION FOR WRIT OF CERTIORARI

Petitioner, Derek Skellchock, respectfully petitions for a writ of certiorari the Supreme Court of Colorado.

OPINIONS BELOW

The Colorado Supreme Court denied Petitioner's petition for a writ of certiorari on December 19, 2022. (App. 1a).

The February 24, 2022 opinion of the Colorado Court of Appeals is attached (App. 2a-23a).

On May 11, 2021, the Department of Veterans Affairs (VA) denied Respondent's claim on behalf of Petitioner's dependent child for an apportionment of Petitioner's restricted veterans' disability benefits. (App. 24a). This was a final adjudication under 38 U.S.C. § 511(a).

JURISDICTION

This Court has jurisdiction over this Petition for a Writ of Certiorari to the Supreme Court of the State of Colorado pursuant to 28 U.S.C. § 2101(c) and 28 U.S.C. § 1257.

STATEMENT OF THE CASE

In *Howell v. Howell*, 581 U.S. 214; 137 S. Ct. 1400, 1401-1406; 197 L. Ed. 2d 781 (2017), this Court ruled that federal law preempted state law based on this Court's decisions in *Mansell v. Mansell*, 490 U.S. 581, 588; 109 S. Ct. 2023 (1989), and thus, state courts could not force veterans to use their veterans' disability benefits without a specific federal authorization to do so.

In the instant case, over Petitioner's objection, the Colorado Court of Appeals ruled, without qualification, that "veteran's disability benefits are income to be included as gross income for purposes of determining child support." (App. 19a).

In his appeal to the Colorado Court of Appeals and to the Colorado Supreme Court, Petitioner argued that there is no federal statute that allows the consideration of his specific veteran's disability as "income" for purposes of calculating his state child support obligations. Petitioner further demonstrated that his disability pay is in fact excluded from consideration by federal law, particularly, 42 U.S.C. § 659(h)(1)(B)(iii), and thus, protected from any legal or equitable orders of state court process by 38 U.S.C. § 5301(a)(1).

As an alternative and additional issue, Petitioner demonstrated that the Department of Veterans Affairs (VA), the federal agency with exclusive jurisdiction over all questions of law and fact respecting a veteran's disability benefits and claims for apportionment thereof made by dependents, see 38

U.S.C. § 511(a) (first sentence), had denied Respondent's claim for an apportionment of Petitioner's disability benefits under 38 U.S.C. § 5307. (App. 24a). Petitioner argued that this decision, being one that is considered final and conclusive as to all other courts, see 38 U.S.C. § 511(a) (second sentence), precludes state courts from exercising any jurisdiction or authority to order that these federal benefits be diverted or otherwise repurposed in a manner contrary to that designated by the VA.

The Colorado Supreme Court denied Petitioner's petition for a writ of certiorari to review the opinion of the Colorado Court of Appeals. (App. 1a). Petitioner now seeks review in this Court.

REASONS FOR GRANTING THE PETITION

1. In *Rose v. Rose*, 481 U.S. 619, 641-642; 107 S. Ct. 2029; 95 L. Ed. 2d 599 (1987), the Court held that state courts could consider veterans' disability benefits to calculate a disabled veteran's state court child support obligations. Since that decision, the state courts, through their powers of contempt, can force a disabled veteran to use his restricted disability benefits to satisfy such obligations, even if the veteran is totally and permanently disabled, and even if these benefits are his only source of income.

Rose is contrary to the Supremacy Clause, contrary to Congress' Article I enumerated powers over matters concerning the national military, and in conflict with express federal statutes passed pursuant thereto.

In his concurring opinion in *Rose*, Justice Scalia stated:

> I am not persuaded that if the Administrator [now the Secretary of Veterans Affairs (VA)] makes an apportionment ruling, a state court may enter a conflicting child support order. It would be extraordinary to hold that a federal officer's authorized allocation of federally granted funds between two claimants can be overridden by a state official.
>
> ***
>
> I also disagree with the Court's construction of 38 U.S.C. § 211(a) [now § 511], which provides that "decisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans and their dependents...shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision." The Court finds this inapplicable because it does not explicitly exclude state-court jurisdiction, as it does federal.... I would find it inapplicable for a much simpler reason.
>
> Had the Administrator granted or denied an application to apportion benefits, state-court action providing a contrary disposition would arguably conflict with the language of § 211 making his decisions "final and conclusive" – and if so would in my view be pre-empted, regardless of the Court's perception that it does not conflict with the "purposes" of § 211....

> Because the Administrator can make an apportionment only upon receipt of a claim...and because no claim for apportionment of the benefits at issue here has ever been filed, the Administrator has made no "decision" to which finality and conclusiveness can attach. [*Id.* at 641-642.]

Justice Scalia was addressing what is the very circumstances now before the Court. The VA denied the dependent's claim for an apportionment of Petitioner's veterans' disability benefits. (App. 24a). That adjudication was a "final and conclusive" decision as to "any other court." See 38 U.S.C. § 511(a) (second sentence). Thus, the state court's orders forcing Petitioner to use his VA disability pay to satisfy state-imposed child support obligations to that dependent are preempted by federal law, and jurisdictionally precluded by the VA's decision.

Here, the state court specifically did what the VA forbade; the state court required an apportionment of Petitioner's disability benefits in contravention of the VA's denial of a claim therefor. The state's decision directly conflicts with 38 U.S.C. § 511, even as it existed during *Rose*, because there is a conflicting federal decision denying apportionment. To allow the states to force disabled veterans to part with these benefits *after* the federal agency with primary and exclusive jurisdiction over those appropriations has declined to do so is tantamount to ignoring the Supremacy Clause altogether.

Where it is impossible to comply with both state and federal law, e.g., where the state requires federal

disability benefits to be used to support a dependent and the federal statutes actually prohibit that, and the federal agency with exclusive and primary jurisdiction has *denied* the dependent's claim as to those benefits, the state's adjudication stands as an obstacle to Congress' will, i.e., that disabled veterans actually receive their appropriated disability funds for the purpose of their support and maintenance. See *Porter v. Aetna Cas. & Surety Co.*, 370 U.S. 159, 161-162; 82 S. Ct. 1231; 8 L. Ed. 2d 407 (1962) (38 U.S.C. § 5301 (formerly § 3101) is to be liberally construed to protect the funds granted by Congress, which are for the maintenance and support of the veteran beneficiary, and they are to remain "*inviolate*") (emphasis added). See also, *McCarty v. McCarty*, 453 U.S. 210, 229, n. 23; 101 S. Ct. 2728; 69 L. Ed. 2d 589 (1981) (stating "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).

After *Rose*, supra, Congress immediately responded to Justice Scalia's observations about the ambiguity in the law vis-à-vis state authority and jurisdiction over veterans' disability benefits. Congress passed the Veterans Judicial Review Act (VJRA), Pub. L. No. 100-687, 102 Stat. 4105 (1988), and changed the language in 38 U.S.C. § 511(a) to provide that the Secretary of the VA "shall decide all questions of law and fact necessary to a decision that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans" and further that the Secretary has primary and

exclusive jurisdiction over all such questions, and its decision "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."

The reference in § 211(a) to courts "of the United States" was replaced with language that now excludes review by "*any other official or by any court....*"). See 38 U.S.C. § 511(a) (emphasis added). Moreover, the first sentence was changed to make clear that the Secretary "shall decide all questions of law and fact" relative to claims made by dependents for a portion of the veterans' restricted benefits. The prior language merely referred to the "decisions of the Administrator," but contained no language making the Administrator's authority exclusive, final and conclusive. 38 U.S.C. § 511(a) (first and second sentences).

The VJRA also established a specialized Article I Court to oversee exclusive appellate review of the VA Secretary's decisions on a dependent's apportionment claim. 38 U.S.C. §§ 511(a), 7251, 7261.

These fundamental changes in the law just after *Rose* removed any doubt that Congress provided the VA with primary and exclusive jurisdiction concerning all claims concerning veterans' benefits.

Petitioner submits that allowing the state to control and otherwise repurpose these federal appropriations is a direct affront to the principles of federal preemption and forbidden by the Supremacy Clause.

2. Even without an apportionment denial, Petitioner submits that post-*Rose* statutory enactments, as well as this Court's consistent pronouncements on federal preemption over state domestic relations and family law proceedings when it comes to federal statutory benefits, veterans' disability pay is protected from all state interference without an express grant of federal authority.

Not only are the states completely preempted by federal law from diverting or otherwise repurposing federal veterans' benefits without express federal statutory authority, but they also surrendered their sovereignty and, a fortiori, their jurisdiction to determine the disposition of these benefits in any state court proceedings. See *Torres v. Tex. Dep't of Pub. Safety*, 142 S. Ct. 2455, 2460 (2022) ("Upon entering the Union, the States implicitly agreed that their sovereignty would yield to federal policy to build and keep a national military."); *Howell v. Howell*, 581 U.S. 214; 137 S. Ct. 1400, 1401-1406; 197 L. Ed. 2d 781 (2017); and 38 U.S.C. § 5301.

Thus, the state cannot divest veterans of their constitutional rights and entitlements to service-connected disability benefits.

Congress' enumerated military powers preempt *all state law* concerning disposition of military benefits. See *Ridgway v. Ridgway*, 454 U.S. 46, 60, 61; 102 S. Ct. 49; 70 L. Ed. 2d 39 (1981); *McCarty*, 453 U.S. at 229, n. 23; *Howell, supra*, *Torres, supra*. Unless federal law explicitly allows the state to exercise control and/or jurisdiction over such benefits, they have *no authority to do so*. See *Howell, supra* at 1403-

04, 1405 (holding that federal law completely preempts state law; only Congress can lift this preemption and when it does so the grant of authority to the states is both "precise and limited," citing 38 U.S.C. § 5301, and ruling that "[s]tate courts cannot 'vest' that which (under governing federal law) they lack the authority to give.").

Congress' authority over military benefits originates from its enumerated "military powers" under Article I, § 8, clauses 11 through 14 of the Constitution. U.S. Const., art. 1, § 8, cls. 11-14. In matters governing the compensation and benefits provided to veterans, the state has no sovereignty or jurisdiction without an express grant from Congress. *Howell, supra* at 1404; *Mansell v. Mansell,* 490 U.S. 581, 588; 109 S. Ct. 2023 (1989), *Torres* 142 S. Ct. at 2460. See also, *United States v. Oregon,* 366 U.S. 643, 648-49 (1961) (stating "Congress undoubtedly has the power – under its constitutional powers to raise armies and navies and to conduct wars – to pay pensions...for veterans."); *Johnson v. Robison,* 415 U.S. 361, 376, 384-85 (1974); *McCarty,* 453 U.S. at 232-33, *Ridgway,* 454 U.S. at 54-56 (applying Congress' enumerated powers to pass laws allowing servicemembers to designate beneficiaries for receipt of federal life insurance benefits, the Court ruled that "a state divorce decree, like other law governing the economic aspects of domestic relations, must give way to clearly conflicting federal enactments"), and *Howell,* 137 S. Ct. at 1405, 1406 (holding that under 38 U.S.C. § 5301 "[s]tates cannot 'vest' that which (under governing federal law) they lack the authority to give.").

Congress must *specifically authorize* the state to consider veterans' benefits as income or property for purposes of state court family law proceedings. Even where Congress has done so, the grant is precise and limited. *Howell*, 137 S. Ct. at 1404; *Mansell*, 490 U.S. at 588 (Congress must explicitly give the states jurisdiction over military benefits and when it does so the grant is precise and limited); 10 U.S.C. § 1408(a)(4) (state may consider only disposable retired pay as divisible property); 42 U.S.C. § 659(h)(1)(A)(ii)(V) (state may consider only partial *retirement* disability as "remuneration for employment", i.e., income, available for garnishment for child support and spousal support); 42 U.S.C. § 659(h)(1)(B)(iii) (excluding from the definition of income *all other* veterans' disability compensation). See also, 5 C.F.R. 581.103(b)(13) and (c)(7), respectively stating that only "[d]isability *retired pay*" is subject to state child support orders, but *only* for retirees, and only for that portion of the disability payment paid in lieu of the retired members "waived *retainer* pay." (emphasis added).

While these definitions and exclusions may appear convoluted, when the definition of monies subject to garnishment is compared to the definition of those monies that are excluded, it becomes clear that only monies that are considered retainer pay (for serviceable veterans) or remuneration for past employment are subject to state court withholding and garnishment. A 100-percent permanently and totally disabled veteran (whether retired or not) is *not* in receipt of federal retired or retainer pay, and cannot be considered to have any remuneration for past employment.

This is because VA disability benefits are federal appropriations to be used specifically and solely for the maintenance and support of those veterans who are disabled from service-connected injury. See, e.g., *Porter*, 370 U.S. at 161-162. These amounts cannot be considered remuneration for past services or retainer pay to maintain readiness to return to service if necessary. Cf. 42 U.S.C. § 659(h)(1)(A)(ii)(V) with (h)(1)(B)(iii).

These funds are appropriated by Congress through exercise of its enumerated military powers. Any attempt by the state to interfere with, divert, or repurpose these funds is an affront to the entire functioning of the national government. As was stated by the Court in *McCarty*, *supra* at 229, n. 23 "if such appropriations may be diverted and defeated by state process or otherwise, the functions of the government may be suspended."

In fact, *unless* otherwise allowed by *federal statutory* law, Congress affirmatively prohibits the state from using "*any* legal or equitable process whatever" to dispossess a veteran of these benefits. See 38 U.S.C. § 5301(a)(1), accord *Howell*, *supra* at 1405. Thus, not only is there no express grant of authority allowing the states to consider these monies in domestic proceedings, the latter provision *prohibits* the state from using any equitable or legal proceeding to consider these benefits for any purpose.

This principle of absolute preemption acts as an absolute bar prohibiting the state from accessing or otherwise controlling these federally appropriated funds. See, e.g., *Hillman v. Maretta*, 569 U.S. 483,

490-91, 493-95, 496; 133 S. Ct. 1943; 186 L. Ed. 2d 43 (2013) (ruling that in the area of federal benefits, Congress has preempted the entire field of state law, even where state family laws might conflict, and supporting the rationale by relying on several cases involving federal military benefits legislation, e.g., *Ridgway v. Ridgway*, 454 U.S. 46; 102 S. Ct. 49; 70 L. Ed. 2d 39 (1981) and *Wissner v. Wissner*, 338 U.S. 655; 70 S. Ct. 398; 94 L. Ed. 424 (1950)).

Even where Congress has not entirely displaced state regulation in a particular field, state law is pre-empted when it actually conflicts with federal law. Such a conflict will be found "'when it is impossible to comply with both state and federal law, see *Florida Lime & Avocado Growers, Inc. v. Paul*, 373 U.S. 132, 142-143 (1963), or where the state law stands as an obstacle to the accomplishment of the full purposes and objectives of Congress, see *Hines v. Davidowitz*, 312 U. S. 52, 67 (1941).'" See also *California Coastal Comm'n. v. Granite Rock Co.*, 480 U.S. 572, 581 (1987), quoting *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 248 (1984).

Petitioner is one-hundred percent service-connected disabled. He receives pure VA disability compensation. None of his income is remuneration for employment, nor disability pension received in lieu of military retired pay, which might be subject to garnishment by the state under the Child Support Enforcement Act (CSEA). See 42 U.S.C. § 659(a), (h)(1)(A)(ii)(V). In fact, subsection (h)(1)(B)(iii) specifically *excludes* Petitioner's benefits from state garnishment.

And, none of Petitioner's federal benefits constitute "disposable retired pay," which could be subject to division as a property asset in state family law proceedings under the USFSPA. 10 U.S.C. § 1408.

As this Court has stated time and again, if the state is to exercise any authority or control over these federal appropriations there must be an express federal grant of such authority. If there is no statute that would allow the state to sequester these appropriations and put them to a use other than that for which Congress has designated, then the states have been and are currently in direct violation of the principles of preemption embodied in the Supremacy Clause. See, e.g., *Howell*, 137 S. Ct. at 1404-1405.

The Constitution "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; 4 L. Ed. 97 (1816) (emphasis added). Of these tergiversations, Justice Story 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; 4 L. Ed. 579 (1819), the Court spoke to the exercise by Congress of its enumerated powers. Justice Marshall said: "[T]hat the government of the Union, though limited in its powers, is supreme within its sphere of action" is a "proposition" that "command[s] ... universal assent...." *Id.* at 406. There is no debate on this point because "the people, have, in express terms, decided it, by saying," under the Supremacy Clause that "'this constitution, and the laws of the United States, which shall be made in pursuance thereof,' 'shall be the supreme law of the land,'" and "by requiring that the members of the State legislatures, and the officers of the executive and judicial departments of the States, shall take the oath of fidelity to it." *Id.* 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).

There is no state law that could contradict these limitations. There are no state court orders that could require what federal law prohibits. Not only is federal law clear on defining what *is* and what *is not* available to the state in domestic relations proceedings involving military servicemembers and veterans, Congress went even further to forbid "any legal or equitable process whatever" to be used to dispossess the disabled veteran of these funds. See 38 U.S.C. § 5301(a)(1).

Petitioner's benefits are protected by this provision, and they are considered inviolate and unreachable by any legal process. *Porter v. Aetna Cas. & Surety Co.*, 370 U.S. 159, 162; 82 S. Ct. 1231; 8 L. Ed. 2d 407 (1962). Under this and similar provisions, Congress has historically protected these benefits from all legal and equitable process. See 38 U.S.C. § 5301(a)(1).

There is no ambiguity in this provision. It *wholly* voids attempts by the state to exercise control over these restricted benefits. *United States v. Hall*, 98 U.S. 343, 346-57; 25 L. Ed. 180 (1878) (canvassing legislation applicable to military benefits); *Ridgway v. Ridgway*, 454 U.S. 46, 56; 102 S. Ct. 49; 70 L. Ed. 2d 39 (1981). This Court construes this provision liberally in favor of the veteran and regards these funds as "inviolate" and inaccessible to all state court process. *Porter, supra.*

Most recently, in *Howell, supra* at 1405, the Court held that this provision prevents state courts from vesting these restricted benefits in anyone other than the designated beneficiary. "State courts cannot 'vest' that which (under governing federal law) they lack the authority to give. Cf. 38 U.S.C. § 5301(a)(1) (providing that disability benefits are generally nonassignable)."

Moreover, in this case, Respondent, on behalf of the dependent child, made a claim for an apportionment of Petitioner's disability benefits. The VA expressly denied that claim. (App. 24a). The state court nonetheless imposed on Petitioner the requirement that these benefits be counted as income in assessing his child support obligations and used by him to satisfy those obligations.

As noted by Justice Scalia in his concurrence in *Rose*, that decision was in direct contravention of the VA's "authorized allocation of federally granted funds." *Rose, supra* at 641. It was a decision affecting the disposition of Petitioner's personal entitlements and restricted benefits, which decision was directly contrary to the VA's determination that his benefits

are not to be apportioned. 38 USC § 511(a); 38 U.S.C. 5301(a)(1).

The state court's decision also conflicts with the VA's exclusive jurisdiction and final decision-making authority, the latter of which is "final and conclusive" and which "may not be reviewed by any other official or by any court." 38 U.S.C. 511(a) (second sentence). After *Rose*, Congress addressed whether 38 U.S.C. § 211 only excluded *federal courts*. Again, as noted by Justice Scalia in *Rose*, the majority reasoned that the statute's prior language did not "explicitly exclude state-court jurisdiction." *Rose*, *supra* at 641. This meant that at least after *Rose*, this Court had implicitly sanctioned some measure of concurrent jurisdiction, which allowed the states to make decisions affecting the disposition of these federal disability benefits, despite the inherent limitations imposed on the state by the Supremacy Clause.

After *Rose*, Congress specifically amended § 511 to make clear that *all* courts were jurisdictionally excluded from making any decision affecting the distribution of these federally appropriated benefits. Now, "the decision of the Secretary as to any such question [concerning the provision of benefits...to veterans *or the dependents* or survivors of veterans...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." 38 U.S.C. § 511(a) (emphasis added). No longer can the argument be made that this provision applies only to federal courts, as § 211 had apparently only prohibited review by "courts of the United States". See *Rose*, *supra* at 641 (quoting § 211).

This change in language went even further than anticipating a situation in which the VA makes an apportionment decision. As noted by one Court, any subsequent adjudication of a veteran's rights or entitlements to his or her disability benefits "would necessitate a consideration of issues of law and fact involving the decision *to reduce* [the veteran's] benefits, a review specifically precluded by 38 U.S.C. § 511(a)." *Veterans for Common Sense v. Shinseki*, 678 F. 3d 1013, 1023 (9th Cir. 2012) (emphasis added). Simply put, after *Rose*, Congress made it clear that "review of decisions made in the context of an individual veteran's VA benefits proceedings are beyond the jurisdiction of federal courts outside the review scheme established by the VJRA." *Id.*

If a state court can force a disabled veteran to include these benefits in calculating his or her dependent support obligations, or, alternatively, hold the veteran in contempt to effectively force him or her to use these benefits to satisfy a state-court support order that counts these benefits as "income," then § 511 and the exclusive review and apportionment process mean nothing. In such circumstance, these benefits are no longer protected and the federal appropriation process executed in furtherance of Congress' enumerated military powers is irrelevant.

This is why under this Court's long-standing principles of federal preemption where Congress exercises these powers, the state is powerless without express Congressional consent.

In *Howell*, the Court reiterated that Congress must affirmatively *grant* the state authority over such

benefits, and when it does, that grant is precise and limited. *Id.* at 1404, citing *Mansell, supra.* The Court also stated that without this express statutory grant, 38 U.S.C. § 5301(a)(1) affirmatively prohibits state courts from exercising any authority or control over these benefits. *Id.* at 1405.

Finally, the Court concluded that this prohibition applied to all disability pay because Congress's preemption in this area had never been expressly lifted by federal legislation (the *exclusive means* by which a state court could ever have authority over veterans' disability benefits). *Id.* at 1406, citing *McCarty v. McCarty*, 453 U.S. 210, 232-235; 101 S. Ct. 2728; 69 L. Ed. 2d 589 (1981). "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*" and therefore "*McCarty*, with its rule of federal pre-emption, *still applies.*" *Howell,* 137 S. Ct. at 1404, 1406 (emphasis added).

While the Court in *Howell* cited *Rose, supra,* that dicta can only be extended to what federal law currently allows, i.e., "some military *retirement pay* might be waived" and partial disability paid in lieu thereof may be used to calculate spousal support. *Id.* at 1406. This is consistent with the language in 42 U.S.C. § 659 (h)(1)(A)(ii)(V), which recognizes the availability of a limited portion of waived disposable *disability retired pay* for garnishment orders from state courts to satisfy alimony or child support awards. This is also consistent with the statute under consideration in *Howell,* the Uniformed Services Former Spouses Protection Act (USFSPA) 10 U.S.C. §

1408(e)(4), which grants the state authority over only a calculated amount of a veteran's military retirement pay as a divisible property asset – up to 50 percent of his or her "disposable retired pay" as further defined in the statute. Veteran's disability pay is excluded from this definition. Further, this Court confirmed that 38 U.S.C. § 5301 prohibits the state from exercising any authority or control over such benefits. *Howell, supra* at 1405.

Likewise, the CSEA affirmatively *excludes* veteran's disability benefits from the definition of available income that may be subjected to garnishment. 42 U.S.C. § 659(h)(1)(B)(iii). Such benefits are those which Congress appropriated for disabled veterans under its enumerated powers without any grant of authority to the states to consider them as an available asset in state court proceedings. The state does not have *any* concurrent authority to sequester these funds and divert them from their intended purpose – to provide maintenance and sustenance to the service-disabled veteran. See, e.g., *Porter v. Aetna Cas. & Surety Co.*, 370 U.S. 159, 161-162; 82 S. Ct. 1231; 8 L. Ed. 2d 407 (1962) (38 U.S.C. § 5301 (then § 3101) protects these benefits as "inviolate" and they must "remain[] subject to the demand and use as the needs of the veteran for support and maintenance require).

This Court's reiteration in *Howell* that federal law preempts all state law in this particular subject *unless* Congress says otherwise remains intact. There can be no *implied* exception to absolute federal preemption in this area. *Bennett v. Arkansas*, 485 U.S. 395, 398; 108 S. Ct. 1204; 99 L. Ed. 2d 455 (1988). See also *Hillman*

v. Maretta, 569 U.S. 483, 490-91, 493-95, 496; 133 S. Ct. 1943; 186 L. Ed. 2d 43 (2013) (noting in the area of federal benefits, Congress has preempted the entire field even in the area of state family law and relying on several cases addressing military benefits legislation to sustain its rationale, e.g., *Ridgway*, 454 U.S. at 54-56 and *Wissner v. Wissner*, 338 U.S. 655; 70 S. Ct. 398; 94 L. Ed. 424 (1950)).

Finally, this Court recently reconfirmed the absolute surrender of sovereignty by the states over all federal authority concerning legislation passed pursuant to Congress' military powers. *Torres v. Tex. Dep't of Pub. Safety*, 142 S. Ct. 2455, 2460 (2022). There, the Court reasoned that the very sovereign authority of the state over all matters pertaining to national defense and the armed forces was surrendered by the state upon its agreement to join the federal system. "Upon entering the Union, the States implicitly agreed that their sovereignty would yield to federal policy to build and keep a national military." *Id.* The Court went on to hold that in the realm of federal legislation governing military affairs, "the federal power is complete in itself, and the States consented to the exercise of that power – in its entirety – in the plan of the Convention" and "when the States entered the federal system, they renounced their right to interfere with national policy in this area." *Id.* (cleaned up). "The States ultimately ratified the Constitution knowing that their sovereignty would give way to national military policy." *Id.* at 2464.

Consistent with those preemption cases like *Howell*, *Hillman*, and *Ridgway*, *inter alia*, Congress' authority in this realm, carries with it "inherently the

power to remedy state efforts to frustrate national aims; objections sounding in ordinary federalism principles were untenable." *Id.* at 2465, citing *Stewart v. Kahn*, 11 Wall 493, 507 (1871) (cleaned up).

While the holding in *Torres* provided a long-awaited answer to the question of whether a state could assert sovereign immunity in lawsuits filed by returning servicemembers alleging employment discrimination against state employers under the federal Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. § 4301, et seq., it stands as a complementary exposition of the preemption cases, wherein this Court has consistently interpreted Congress' exercise of the same enumerated Article I powers as against state efforts to thwart national goals and objectives. *Id.* at 2460, 2463-64; citing Article I, § 8, cls. 1, 11-16.

This is no surprise. The concepts of state sovereignty over its domestic law and its freedom to legislate or adjudicate in those areas not specifically reserved, i.e., enumerated, in Article I, are two sides of the same coin. Where Congress has exercised its Article I Military Powers, inherent structural waiver prevents the state from asserting sovereign immunity because Congress must be able to provide, without state interference, a mechanism for pursuit of a statutory civil action against the state to advance the national interests of maintaining and encouraging federal military service. In *Torres*, we are instructed that the state cannot assert sovereign immunity where a returning servicemember seeks to vindicate his pre-deployment employment rights and status as against his employer (the state of Texas) under the

USERRA, an act passed pursuant to Congress' Article I Military Powers intended to protect returning servicemembers from being discriminated against or suffering undue prejudice in reintegrating into the civilian work force with their peers.

On the flip side, the Supremacy Clause prohibits, i.e., *preempts*, the state from passing and enforcing laws or issuing judicial decisions that frustrate the same national interests underlying exercise by Congress of these plenary powers. *Howell*, *supra* at 1406, citing *McCarty*, *supra*. Hence, in *Howell*, *supra*, and other cases addressing the USFSPA, the Court has instructed that state courts are prohibited from repurposing the federal benefits that Congress has provided, again under its Article I military powers, to incentivize, maintain, and support national service. *Id.* "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." *Id.* *McCarty* described "the federal interests in attracting and retaining military personnel." *Id.* As was stated in *McCarty*, 453 U.S. at 229, n. 23, quoting *Buchanan v. Alexander*, 4 How. 20 (1845), "[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."

Thus, to the extent the state cannot assert immunity if doing so interferes with a personal right conveyed by Congress' legislation under its Article I Military Powers because the state surrendered its sovereignty in this area, the state is preempted by

those same powers from passing legislation or issuing judicial decisions that interfere with a federal beneficiary's rights and entitlements. In either case, the state's resistance results in the same frustration of Congress' goals in maintaining and building a federal military force and protecting national security. *McCarty*, supra.

Structural waiver of sovereignty occurred when the states consented to join the Union in recognition of the enumerated and limited, but absolute, powers reserved by the federal government under Article I, § 8. Preemption occurs because the states cannot legislate or adjudicate in areas where Congress has acted affirmatively to pass legislation pursuant to and within the realm of those same powers. See also U.S. Const. Art. VI, cl 2 (1789) (the Supremacy Clause).

Indeed, the USERRA, like the USFSPA, and other statutes providing pre- and post-service benefits, is legislation designed to promote, maintain, and incentivize service to the nation and to ensure reintegration into civilian life; the former preserves a servicemember's right to return to his pre-service employment without penalty or discrimination, and the latter provides him or her (and family) benefits if he or she becomes disabled in the service of the country. *Torres, supra* at 2464-65 (explaining the importance of federal control and maintenance of national military); *Howell, supra* at 1406 ("the basic reasons *McCarty, supra,* 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).").

Of course, if the state has no sovereign authority to assert immunity, *a fortiori*, it has no jurisdiction to render judicial decisions that conflict with prevailing federal legislation in the occupied field. See also, *Hillman v. Maretta*, 569 U.S. 483, 490-91, 493-95, 496; 133 S. Ct. 1943; 186 L .Ed. 2d 43 (2013) (noting that in the area of federal benefits Congress has preempted the entire field even in the area of state family law and relying on the cases addressing military benefits legislation to sustain its rationale, e.g., *Ridgway*, 454 U.S. at 54-56 and *Wissner v. Wissner*, 338 U.S. 655; 70 S. Ct. 398; 94 L. Ed. 424 (1950)).

Ridgway, supra, provides the most succinct yet comprehensive summary of Congress' authority on the scope and breadth of legislation concerning military affairs vis-à-vis state family law. Citing, inter alia, *McCarty, supra* and *Wissner, supra,* the Court stated:

> Notwithstanding the limited application of federal law in the field of domestic relations generally this Court, even in that area, has not hesitated to protect, under the Supremacy Clause, rights and expectancies established by federal law against the operation of state law, or to prevent the frustration and erosion of the congressional policy embodied in the federal rights. 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. And, specifically, a state divorce decree, like other law 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 our National Constitution. *Ridgway*, 454 U.S. at 54-55 (cleaned up) (emphasis added).

This confirms the broad reach of the Supremacy Clause in the narrow areas of the Constitution wherein Congress retained absolute power to act. U.S. Const., Art. VI, cl. 2 (1789).

In this particular case, the mechanism that Congress established to ensure disabled veterans *keep* the benefits they need for their own support and maintenance is put into direct conflict with the state courts' insistence that they may exercise jurisdiction and authority over these monies even *after* the federal agency with exclusive jurisdiction and final decision-making authority has denied the dependents' claim for a portion of these benefits.

As noted, after *Rose*, Congress quickly acted to remove any speculation that authority had been ceded to state courts over these veteran's benefits. The post-*Rose* legislation along with the plenary statutory and regulatory programs already in place concerning veterans' compensation and benefits, leave no doubt that veterans' benefits decisions are primarily and exclusively within the jurisdiction of the VA.

Any decision by a state court that forces a disabled veteran to pay these funds over to another is unquestionably a "decision...that affects the provision of benefits...to veterans" even before a statutory "apportionment" is made. 38 U.S.C. § 511; 38 U.S.C. § 5307. When such a decision is made prior to a state court's effort to sequester or otherwise divert or repurpose these funds, whether directly or indirectly, the latter constitutes an *extra-jurisdictional act that is for all intents and purposes ultra vires.*

The states have ignored these developments in the law and have instead relied on *Rose* despite the explicit statutory changes that exclude most veterans' benefits from consideration and affirmatively protect them from all legal and equitable process *whatever.* 42 U.S.C. § 659(h)(1)(B)(iii) (veterans' disability benefits are not considered remuneration for employment and therefore are not available to be garnished (while in the hands of the government) for satisfaction of state child support obligations); 38 U.S.C. § 5301(a)(1) (veterans' disability benefits are not subject to "any legal or equitable process *whatever*, either *before* or *after* receipt" by the beneficiary, that is, either while still in the hands of the government or in the hands of the veteran beneficiary) (emphasis added).

Federal law provides the exclusive means by which dependents may seek a portion of these disability benefits for support where they demonstrate a 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 VA, 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.

For decades, disabled veterans have suffered immeasurably under this Court's *wholly judicial* (and immediately abrogated) creation in *Rose* of an exception to the absolute protections afforded them by Congress' exercise of its enumerated Military Powers. Self-interested lawyers and state machinations have raised 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.

This Court has recently expressed this sentiment in overturning more than a century of reliance on erroneous legal principles. *McGirt v. Oklahoma*, 140 S. Ct. 2452; 207 L. Ed. 2d 98 (2020). There, Justice Gorsuch, writing for the majority 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.

Moreover, the Court in *Torres*, *supra*, more recently reconfirmed that the states have no jurisdiction or authority in this area; indeed, no sovereignty, to contravene Congress' will.

CONCLUSION

The federal statutes and regulations passed pursuant to Congress's enumerated military powers contain no allowance to the states to sequester veterans' disability benefits 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. See, respectively, 42 U.S.C. § 659(h)(1)(B)(iii), and 38 U.S.C. § 5301(a)(1).

Logically, the only allowance from these benefits for support of dependents lies within the primary and exclusive jurisdiction over such claims exercised by the Secretary of Veterans Affairs, to whom Congress has given final, conclusive, and exclusive decision-making authority over these particular benefits. 38 U.S.C. § 511(a). Acknowledging that dependents may be entitled to and need support from a veterans' restricted disability pay, Congress also provided the process of "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 a portion of these otherwise restricted benefits. 38 U.S.C. § 5307.

In this case, the state court acted in direct conflict with the VA's decision that Petitioner's benefits could not be divided for support of his dependents. Its decision must be reversed if this Court is to restore to veterans their benefits and entitlements, and reorient the states to follow the Constitution.

The protection of veterans' disability pay is an issue of significant national interest because of the number of disabled veterans that depend on such pay. There is a substantial and growing population of disabled veterans, many of whom have had their careers cut short by injuries they incurred while serving and which have rendered them totally and permanently disabled. These veterans need and deserve every protection federal law affords.

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 by the Court concerning the nature of these benefits and the importance of protecting them see *United States v Hall*, 98 US 343, 349-355, 25 L Ed 180 (1878).

As explained herein, *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 federal law excluding veterans' disability benefits from state consideration and ignored the law protecting them from "any legal or equitable process whatever." See, respectively, 42 U.S.C. § 659(h)(1)(B)(iii) and 38 U.S.C. § 5301(a)(1). Finally, just after *Rose*, Congress acted to remove all doubts that state courts have *any* jurisdiction or authority to consider 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; 38 U.S.C. § 511. See also *Henderson v. Shinseki*, 562 U.S. 428, 440-441; 131 S. Ct. 1197; 179 L. Ed. 2d 159 (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 have been rejected. See, e.g., *McCarty*, 453 U.S. at 220; *Ridgway*, 454 U.S. at 55; *Mansell*, 490 U.S. at 592-596; *Hillman*, 569 U.S. at 490-91; and *Howell*, 137 S. Ct. at 1401-1407.

It is time for this Court to reconcile *Rose's* unjustified reliance on speculative congressional intent with the plain language of federal law protecting disabled veterans and insulating their benefits from being repurposed for unauthorized use. Petitioner's federal disability benefits are specifically excluded from consideration as income by federal law, 42 U.S.C. § 659(a); (h)(1)(A)(ii)(V) and (h)(1)(B)(iii). As

such, they are jurisdictionally protected from *any legal process* whatever by 38 U.S.C. § 5301(a)(1). Moreover, *the only* entity that has jurisdiction to consider whether these already restricted benefits may be apportioned and paid to a dependent has denied the latter's claim. (App. 24a). This decision was "final and conclusive" as to *all other courts*. See 38 U.S.C. § 511(a).

Federal law exclusively, comprehensively, and completely addresses this issue. Yet, state courts 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 a blind adherence to an outdated and anomalous decision by this Court which was not grounded on the absolute principle of federal supremacy in this particular subject.

Veterans benefits originate from Congress's enumerated "military powers". U.S. Const. Art. I, § 8, cls. 11-14. *United States v. Oregon*, 366 U.S. 643, 648-649; 81 S. Ct. 1278; 6 L. Ed. 2d 575 (1961); *McCarty*, *supra* at 232-33; *United States v. Comstock*, 560 U.S. 126, 147; 130 S. Ct. 1949; 176 L. Ed. 2d 878 (2010), citing *Hall*, 98 U.S. at 351 and stating that "the Necessary and Proper Clause, grants Congress the power, in furtherance of Art. I, § 8, cls. 11-14, to award 'pensions to the wounded and disabled' soldiers of the

armed forces and their dependents." 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; 20 L. Ed. 597 (1871). See also *Torres*, 142 S. Ct. at 2459. In this particular area, "[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.* Congress's powers in military affairs are "broad and sweeping. *United States v. O'Brien*, 391 U.S. 367, 377; 88 S. Ct. 1673; 20 L. Ed. 2d 672 (1968). No state authority will be assumed in these matters 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; 126 S. Ct. 1297; 164 L. Ed. 2d 156 (2006). Congress has been given no "greater deference than in the conduct and control of military affairs." *McCarty*, *supra* at 236, citing *Rostker v. Goldberg*, 453 U.S. 57, 64-65; 101 S. Ct. 2646; 69 L. Ed. 2d 478 (1981).

Here, the state court ignored these significant developments, and, like many other states, ruled that this Court's decision in *Rose* allows the state to include Petitioner's disability benefits as income for purposes of his child support obligations. Yet, nowhere has Congress given the states the "precise and limited" authority required to exercise jurisdiction and control over these benefits. *Howell*, 137 S. Ct. at 1404; *Mansell*, 490 U.S. at 588. In fact, by way of 42 U.S.C. § 659(h)(1)(B)(iii) and 38 U.S.C. § 5301(a)(1), Congress

excluded such benefits from state court jurisdiction and control. Despite a continuous line of cases from this Court declaring that federal law preempts all state law governing the economic and domestic relations of the parties, see, e.g., *McCarty, supra; Ridgway, supra; Mansell, supra, Hillman, supra,* and *Howell, supra,* state courts continue to ignore the requirement that Congress must give it explicit authority to dispossess the veteran of these benefits.

Ridgway addressed a provision identical to § 5301, and ruled that it prohibited the state from using any legal or equitable process to frustrate the veteran's designated beneficiary from receiving military benefits (life insurance). Citing that part of *Gibbons v. Ogden*, 22. U.S. 1, 210-211 (1824), in which this Court declared the absolute nullity of any state action contrary to an enactment passed pursuant to Congress's delegated powers and *Free v. Bland*, 369 U.S. 663, 666; 82 S. Ct. 1089 ; 8 L. Ed. 2d 180 (1962), the Court said: "[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, supra* at 55 (emphasis added). The Court continued: "[A] state divorce decree, like other law governing the economic aspects of domestic relations, must give way to clearly conflicting federal enactments." *Id.*, citing *McCarty, supra.* "That principle is but the necessary consequence of the Supremacy Clause of the National Constitution." *Id.* In *McCarty* the Court quite plainly said that 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." *McCarty*, 453 U.S. at 229, n. 23 (emphasis added), quoting *Buchanan v. Alexander*, 45 U.S. 20 (1846).

As with all federal statutes addressing veterans, 38 U.S.C. § 5301 is liberally construed in favor of protecting the beneficiary and the funds received as compensation for service-connected disabilities. *Porter v. Aetna Casualty & Surety Co.*, 370 U.S. at 162 (interpreting 38 U.S.C. § 3101 (now § 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. at 441 ("provisions for benefits to members of the Armed Services are to be construed in the beneficiaries' favor"); *Oregon*, 366 U.S. at 647 ("[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*, 338 U.S. at 659 (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). This Court in *Ridgway*, in countering this oft-repeated contention, 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.* Accord *McCarty*, 453 U.S. at 229, n. 23.

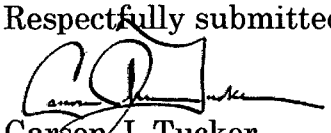
Here, the state court ignored Petitioner's arguments concerning 38 U.S.C. § 5301 independently protecting his benefits from any legal process. The Court also ignored Petitioner's argument that 38 U.S.C. § 511, and the fact that the VA Secretary had already made a determination denying an apportionment claim by the dependents meant that the state court lacked subject matter jurisdiction to force a different disposition of Petitioner's disability entitlement. Any decision affecting a veteran's receipt of benefits, is a decision affecting a claim; and in this case, the state's decision is in direct conflict with the VA's determination that allowing an apportionment (that is counting) Petitioner's disability would

constitute hardship for Petitioner. See *Veterans for Common Sense v. Shinseki*, 678 F. 3d at 1021.

In such cases, 38 USC § 511(a) and 38 U.S.C. § 5301 applies to *all state court process* (equitable or legal) and *jurisdictionally prohibits* state courts from considering funds both before and after receipt, *unless otherwise authorized by federal (not state) law*. See 38 U.S.C. 5301(a)(1). Section 659(h)(1)(B)(iii) of Title 42 clearly excludes the VA disability benefits at issue from being considered income.

Petitioner respectfully requests the Court grant his petition.

Respectfully submitted,



Carson J. Tucker
Lex Fori, PLLC
Attorney for Petitioner
(734) 887-9261

Dated: March 20, 2023

NO. __ - ____

IN THE SUPREME COURT OF THE UNITED STATES

DEREK SKELLCHOCK,
PETITIONER,

v.

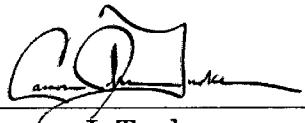
ALORA-ANN VOLZ,
RESPONDENT.

PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO SUPREME COURT

CERTIFICATE OF WORD COUNT

As required by Supreme Court Rule 33, I declare that the Petition for Writ of Certiorari to the Colorado Supreme Court being filed herewith contains 8,949 words, excluding parts of the document that are exempted by Supreme Court Rule 33.1(d).

Respectfully submitted,



Carson J. Tucker
Attorney for Petitioner
DPT #3020
1250 W. 14 MILE ROAD
TROY, MI 48083-1030
cjtucker@lexfori.org

Dated: March 20, 2023

No. __-____

In the Supreme Court of the United States

DEREK SKELLCHOCK,
Petitioner,

v.

ALORA-ANN VOLZ,
Respondent.

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

PETITIONER'S 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

INDEX

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: December 19, 2022 CASE NUMBER: 2018DR30326
Certiorari to the Court of Appeals, 2021CA503 District Court, Larimer County, 2018DR30326	
In re the Marriage of **Petitioner:** Derek Skellchock, **and** **Respondent:** Alora-Ann Volz.	Supreme Court Case No: 2022SC308
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, DECEMBER 19, 2022.

COLORADO COURT OF APPEALS DATE FILED: February 24, 2022

Court of Appeals No. 21CA0503
Larimer County District Court No. 18DR30326
Honorable Laurie K. Dean, Judge

In re the Marriage of

Derek Skellchock,

Appellant,

and

Alora-Ann Volz,

Appellee.

JUDGMENT AFFIRMED

Division A
Opinion by JUDGE CASEBOLT*
Román, C.J., and Graham*, J., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced February 24, 2022

Derek Skellchock, Pro Se

No Appearance for Appellee

*Sitting by assignment of the Chief Justice under provisions of Colo. Const. art. VI, § 5(3), and § 24-51-1105, C.R.S. 2021.

¶ 1 Derek Skellchock (father) appeals the district court's judgment that entered permanent orders in connection with the dissolution of his marriage with Alora-Ann Volz (mother). We affirm.

I. Background

¶ 2 The parties were married for approximately five months and had one child together when father initiated the dissolution proceeding in August 2018.

¶ 3 The district court entered temporary orders, which gave mother primary care of the child and ordered father to pay child support in the amount of $182 per month.

¶ 4 The parties later exercised relatively equal parenting time with the child, and the court modified the temporary parenting schedule to provide 50/50 parenting time. The court reserved ruling on whether to modify temporary child support.

¶ 5 After a two-day permanent orders hearing in 2020, at which both parties were represented by counsel, the court adopted the parties' pre-hearing stipulations asserted in their amended joint trial management certificate (JTMC) and entered permanent orders resolving their remaining disputes.

¶ 6 Concerning property division, the court acknowledged that the parties had largely stipulated to the marital property distribution. For the two disputed issues, the court ordered the parties to split an outstanding utility bill and resolved their disagreement over personal property. The court declined to allocate additional debts, including the amount of a purported loss from the short sale of the parties' marital home, because the parties' amended JTMC did not identify a dispute over these additional debts and father had not provided discovery to mother for the short sale.

¶ 7 As for the allocation of parental responsibilities, the court adopted the parties' stipulation to continue the 50/50 parenting time schedule, declined father's request to temporarily alter the holiday parenting plan schedule to give him make-up parenting time, and allowed the parent not exercising parenting time to have telephone and video contact with the child at specific times. The court also found that father had perpetrated acts of domestic violence against mother and determined that joint decision-making responsibility was not appropriate. It allocated to mother decision-making responsibility for educational and medical

decisions, and it allocated to father decision-making responsibility over extracurricular activities.

¶ 8 The court then ordered father to pay mother child support in the amount of $111 per month. In calculating this amount, the court used father's veteran's disability benefits for his income (as he had stipulated in the amended JTMC) and found that mother's workers' compensation benefits, which she was receiving after suffering a serious workplace injury during the proceeding, represented her total gross income.

¶ 9 Mother and father filed motions for post-trial relief, seeking clarification, amendment, and reconsideration of the permanent orders. The court amended its judgment in part but otherwise declined to reconsider the permanent orders. As relevant, the court retroactively reduced father's temporary child support obligation to $111 per month given the prior modification to temporary parenting time. The court also amended its orders to remove video contact with the child by the parent not exercising parenting time, limiting this communication to telephone calls to decrease the conflict that was occurring between the parties.

II. Preliminary Matters

¶ 10 Before we turn to the merits of father's contentions, we note a few preliminary matters that frame our review of his appeal.

¶ 11 Father represents himself, and his opening brief does not meet the basic requirements of C.A.R. 28. These requirements are not mere technicalities; they facilitate our appellate review. *See In re Marriage of Parr*, 240 P.3d 509, 513 (Colo. App. 2010). The precise arguments father raises in his brief, therefore, are, at times, difficult to discern. We liberally construe his pro se arguments and address his contentions as best we can understand them. *See In re Estate of Cloos*, 2018 COA 161, ¶ 7; *Cikraji v. Snowberger*, 2015 COA 66, ¶ 10. But we will not develop father's arguments for him or search the record for supporting facts not cited in his brief. *Cikraji*, ¶ 10. Nor will we consider any material not included in the appellate record. *See In re Marriage of McSoud*, 131 P.3d 1208, 1223 (Colo. App. 2006).

¶ 12 Father also did not provide us with a transcript of the two-day permanent orders hearing or any other evidentiary hearing. *See* C.A.R. 10(d)(3) (It is the appellant's responsibility to "include in the record transcripts of all proceedings necessary for considering and

deciding the issues on appeal."); *see also In re Marriage of Tagen*, 62 P.3d 1092, 1096 (Colo. App. 2002). In the absence of these transcripts, we must presume that they support the court's findings and conclusions. *See In re Marriage of Beatty*, 2012 COA 71, ¶ 15; *McSoud*, 131 P.3d at 1223.

III. Property Division

¶ 13 Father contends that the district court improperly disregarded his credit card debt and the loss from the marital home's short sale when it divided the marital property because he had disclosed these debts to mother on his sworn financial statement. Based on the record, we discern no error.

¶ 14 The district court has broad discretion over the equitable division of marital property. *In re Marriage of Balanson*, 25 P.3d 28, 35 (Colo. 2001). We will not disturb the court's determinations "unless there has been a clear abuse of discretion," meaning that its decision is manifestly arbitrary, unreasonable, or unfair, or a misapplication of the law. *Id.*; *see In re Marriage of Young*, 2021 COA 96, ¶ 7.

¶ 15 Although father listed his credit card debt and identified the marital home's short sale on his sworn financial statement, that

alone does not necessarily satisfy father's disclosure requirements. C.R.C.P. 16.2 imposes a heightened duty to disclose in a dissolution proceeding, and it demands that the parties affirmatively disclose all information that is material to the resolution of the case, including financial statements and records of personal debts. *See* C.R.C.P. 16.2(e)(1); C.R.C.P. 16.2(e)(2) & app. form 35.1; *see In re Marriage of Hunt*, 2015 COA 58, ¶ 13. The parties have a continuing duty to supplement this financial information during the proceeding. *See* C.R.C.P. 16.2(e)(4). "If a party fails to comply with any of the provisions of this rule, the court may impose appropriate sanctions . . . ." C.R.C.P. 16.2(j).

¶ 16 Beyond listing the multiple credit card accounts and balances on his sworn financial statement, the record does not show that father substantiated these debts with any financial documents after October 2018 — over two years before the permanent orders hearing. Even then, the October 2018 disclosures included only a few of the credit card accounts reported on father's 2020 sworn financial statement. And there is no indication that he introduced evidence at the hearing to substantiate these debts. *Cf. In re Marriage of Rodrick*, 176 P.3d 806, 815 (Colo. App. 2007) ("It is the

parties' duty to present the trial court with the data needed to allow it to value the marital property, and any failure by the parties in that regard does not provide them with grounds for review.").

¶ 17 Nor did the parties identify or dispute husband's credit card debts in their amended JTMC or any of mother's personal debts. Rather, they stipulated that each party would retain accounts already in their separate names as their sole and separate property. Father reported that the credit card accounts were solely in his name.

¶ 18 As for the short sale, the amended JTMC did not identify this as a disputed debt and father's sworn financial statement reported only an estimated loss. The record does not show that father disclosed documents to mother before the hearing or introduced evidence that established the amount of any loss. The only exhibits in the record concerning the short sale, while not admitted at the hearing, revealed that neither party had an outstanding debt following the sale.

¶ 19 Given this record support and the presumption that the testimony from permanent orders would support the court's ruling, we are not persuaded that the court erred by not entering

additional orders concerning father's credit card debt and the marital home short sale. *See Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223.

¶ 20 Father also asserts that the parties "received 1099c [c]ancellation of debt in the amount of $21,635," for which the parties must pay taxes. Father does not indicate that he raised this issue with the district court; nor does the record indicate that he did so. We will not address this issue for the first time on appeal. *See In re Marriage of Ensminger*, 209 P.3d 1163, 1167 (Colo. App. 2008) ("Arguments not presented at trial cannot be raised for the first time on appeal.").

IV. Allocation of Parental Responsibilities

¶ 21 Father also raises multiple challenges to the district court's allocation of parenting time and decision-making responsibility. We discern no error.

A. Legal Standards

¶ 22 The district court has broad discretion over parenting matters, and we exercise every presumption in favor of upholding its decision. *See In re Marriage of Hatton*, 160 P.3d 326, 330 (Colo. App. 2007). We will not overturn the court's parenting decisions

absent a showing that the court abused its discretion. *Id.* The district court allocates parental responsibilities in accordance with the child's best interests. *In re Custody of C.J.S.*, 37 P.3d 479, 482 (Colo. App. 2001); *see* § 14-10-124(1.5), C.R.S. 2021.

B. Parenting Time

¶ 23 Father asserts that mother associates with known gang members and that having the child in that environment as well as being around mother's other alleged behaviors (which included "drinking, smoking, and drug usage") was not in the child's best interests. But father stipulated to the parenting time schedule that provided mother with equal parenting time, discrediting his allegations that parenting time with mother was not in the child's best interests. The court also found that "[t]here was no evidence presented" that mother's relationships with her friends had impacted her parenting with the child. Although father disputes the court's finding, we must presume the missing transcripts support it. *See Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223. To the extent father further challenges the court's allocation of parenting time, we will not consider bald legal propositions presented without

argument or development. *See Barnett v. Elite Props. of Am., Inc.*, 252 P.3d 14, 19 (Colo. App. 2010).

¶ 24 Father also attempts to challenge the court's temporary orders that allowed mother's family to assist with parenting time exchanges, but such temporary orders are not subject to our review. *See In re Marriage of Adams*, 778 P.2d 294, 295 (Colo. App. 1989) (providing that a temporary parenting time order "is not an order that may be appealed to this court").

C. Video Contact

¶ 25 Father next appears to dispute the district court's amended permanent orders ruling that removed video contact with the child by the parent not exercising parenting time. The parties sought post-trial clarification on video contact due to disagreements that had arisen after permanent orders, and the court amended its order to decrease the parties' conflict. Lessening the parents' conflict promotes the child's best interests. *See* § 14-10-124(1.5)(a)(III), (VI). Beyond father's general disagreement with the ruling, he develops no legal argument explaining how the court erred. We therefore will not disturb the court's ruling. *See Westrac, Inc. v. Walker Field*, 812

P.2d 714, 718 (Colo. App. 1991) (When the party "fail[s] to specify why the trial court erred, we will not review the ruling.").

D. Domestic Violence Finding

¶ 26 Father also contends the court erred by finding that he had perpetrated acts of domestic violence against mother when determining the allocation of decision-making responsibility. *See* § 14-10-124(4)(a)(II)(A) (limiting the district court's ability to allocate joint decision-making responsibility when one party has committed domestic violence). We disagree.

¶ 27 The district court found that (1) mother had credibly testified to an incident where father pointed a handgun at her in 2017; (2) mother had obtained a permanent protection order against father during the dissolution proceeding based on his acts of domestic violence; and (3) father continued to verbally abuse mother, including consistently accusing her of lying. Given these findings, the court found by a preponderance of the evidence that father had committed acts of domestic violence. *See* § 14-10-124(1.3) (defining domestic violence as an act of violence or a threatened act of violence, including acts or threats "used as a method of coercion, control, punishment, intimidation, or revenge").

¶ 28 Father disputes the evidence in support of the court's determination and the credibility of mother's testimony. But it was for the district court to resolve the conflicts in the evidence, determine the credibility of witnesses, weigh the testimony, and draw inferences from the evidence. *See In re Parental Responsibilities Concerning D.T.*, 2012 COA 142, ¶ 17. We must presume the testimony from the permanent orders hearing supports the court's findings. *See Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223.

¶ 29 Father further argues that the lack of a criminal conviction against him undermines the court's domestic violence finding. However, there is no requirement that a criminal conviction be entered before a court may find a party has committed domestic violence when determining an allocation of decision-making responsibility. *See* § 14-10-124(4)(a)(II); *In re Marriage of McCaulley-Elfert*, 70 P.3d 590, 592-94 (Colo. App. 2003). Unlike a criminal conviction (which requires proof beyond a reasonable doubt), the court needs to find only by a preponderance of the evidence that a party committed domestic violence — that it was

more likely true than not. *See* § 14-10-124(4)(a)(II); *McCaulley-Elfert*, 70 P.3d at 593.

¶ 30 We therefore will not disturb the court's finding that father perpetrated acts of domestic violence.

E. Allocation of Decision-Making Responsibility

¶ 31 We reject father's challenge to the court's allocation of medical and educational decision-making responsibility to mother.

¶ 32 The district court determined that, because of father's domestic violence, it could not order joint decision-making (which he had requested). It then considered the conflicting evidence concerning each parent's ability to act in the child's best interests for major decisions and allocated decision-making responsibility accordingly.

¶ 33 In challenging the court's determination, father points to the evidence he believes supported an allocation of decision-making responsibility to him instead of mother. However, without the permanent orders transcript, we are bound by the court's resolution of the conflicting evidence. *See D.T.*, ¶ 17; *see also Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223.

¶ 34 To the extent father suggests that he should have control over preschool enrollment because that "is typical" of an extracurricular activity and not an educational decision, father did not raise this issue with the district court. *See Ensminger*, 209 P.3d at 1167. Nor does he provide any legal support for this assertion. *See Biel v. Alcott*, 876 P.2d 60, 64 (Colo. App. 1993) ("An appealing party bears the burden to provide supporting authority for contentions of error asserted on appeal, and a failure to do so will result in an affirmation of the judgment."). We thus decline to address it.

¶ 35 In sum, we discern no error by the court in its allocation of parental responsibilities.

V. Modifying Temporary Child Support

¶ 36 Father contends that, following the entry of temporary child support, the child resided with him the majority of the time and that the court failed to determine the retroactive modification to temporary child support based on the actual number of overnights the child spent with him. We discern no error.

¶ 37 The court may modify child support "when a court-ordered, voluntary, or mutually agreed upon change of physical care occurs," § 14-10-122(5), C.R.S. 2021, or "upon a showing of changed

circumstances that are substantial and continuing," § 14-10-122(1)(a). We review child support orders for an abuse of discretion. *In re Marriage of Davis*, 252 P.3d 530, 533 (Colo. App. 2011).

¶ 38 The district court found that, after the entry of temporary child support, the parties had cohabitated for approximately three months. The court also found that, after this cohabitation, they agreed to a nearly equal parenting time schedule, and the temporary parenting plan was modified to a 50/50 parenting schedule. The court then reduced father's temporary child support obligation retroactively to account for these changes in parenting time.

¶ 39 The court rejected father's request to further reduce his obligation based on allegedly exercising more than 50/50 parenting time after the parties cohabitated. The court found that it was "nearly impossible to tell from the record" that an increase in father's parenting time was "an agreed upon change in physical care" because evidence from the hearing showed that some of the parenting time deviations were the "result of [father] refusing to allow" mother to have her equal parenting time.

¶ 40 Thus, any change in the child's physical care for more than the 50/50 schedule was not a result of a court-ordered, voluntary, or mutually agreed upon change. *See* § 14-10-122(5). And father made no showing that this change was substantial and continuing. *See* § 14-10-122(1)(a). We must presume the testimony at the hearing supports the court's factual finding and therefore cannot conclude that the court erred by not further modifying temporary child support. *See Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223.

VI. Income Determinations for Child Support

¶ 41 Father also contends that the court's findings concerning his and mother's incomes for purposes of determining child support were improper. We disagree.

¶ 42 First, he argues that the court erred by using his veteran's disability benefits as his income when determining child support, arguing that federal law preempts the district court's ability to use this compensation. However, father stipulated to the court's use of his veteran's disability benefits as his income. A stipulation is binding on the party who makes it. *Maloney v. Brassfield*, 251 P.3d 1097, 1108 (Colo. App. 2010). Father therefore waived this argument, and he may not assert a position that is contrary to the

one he took at the permanent orders hearing. *See In re Marriage of Hill*, 166 P.3d 269, 273 (Colo. App. 2007) ("Waiver is the intentional relinquishment of a known right."); *see also Roberts v. Am. Fam. Mut. Ins. Co.*, 144 P.3d 546, 549-50 (Colo. 2006) ("[A] party may . . . be estopped from asserting on appeal a position contrary to one he took at trial or in which he later acquiesced . . . ."); *Horton v. Suthers*, 43 P.3d 611, 618 (Colo. 2002) (invited error bars a party from taking a position on appeal that is inconsistent with that party's actions in the trial court). Father must abide by the consequences of his actions at the hearing. *See Horton*, 43 P.3d at 618; *Roberts*, 144 P.3d at 549-50. To the extent father suggests that his attorney acted contrary to his direction, we will not address this allegation that is asserted for the first time on appeal. *See Ensminger*, 209 P.3d at 1167.

¶ 43 In any event, a "veteran's disability benefits are income to be included as gross income" for purposes of determining child support. *In re Parental Responsibilities Concerning M.E.R-L.*, 2020 COA 173, ¶ 31. In reaching this conclusion, the court in *M.E.R-L.* rejected arguments like the arguments father now asserts. *See id.* at ¶¶ 20-21, 23-30.

¶ 44 Second, father disputes the court's factual findings concerning mother's income. He argues that the court erred by not including income she was receiving in addition to her workers' compensation benefits and by not imputing additional income due to her voluntary underemployment. He also argues that mother failed to disclose her full financial information and misrepresented her earnings at the hearing. The district court rejected these arguments, finding that father did not establish that mother was hiding her income; that the income she had earned in addition to her workers' compensation benefits was limited, inconsistent, and not a regular source of income; and that because of her severe workplace injury, mother was not voluntarily underemployed. Given that father failed to provide the transcripts of the hearing, we presume the testimony supports these factual findings. *See Beatty*, ¶ 15; *McSoud*, 131 P.3d at 1223.

¶ 45 We therefore discern no error in the court's income findings.

VII. Judicial Bias

¶ 46 Father suggests that the court's permanent orders were the result of the judge's bias and personal opinions. True, a trial judge must not exhibit bias directed toward any party. *See Hatton*, 160

P.3d at 330. But father's conclusory claims based solely on his disagreement with the court's rulings do not establish judicial bias. *See id.*; *see also McSoud*, 131 P.3d at 1223.

VIII. Father's Motion for Post-Trial Relief

¶ 47 Father also generally contests the court's denial of his post-trial motion for reconsideration. He argues irregularities in the proceedings, accident or surprise, newly discovered evidence, and errors in law. C.R.C.P. 59(d)(1), (3), (4), (6). While he frames his contentions under C.R.C.P. 59, he merely reasserts the errors addressed and rejected above. In particular, father (1) notes mother's undisclosed income and ability to work; (2) challenges the credibility of evidence in support of the court's rulings; (3) disagrees with the amended JTMC's stipulations; and (4) disputes the court's failure to divide marital debts and its determination of child support. His disagreements with the court's rulings do not entitle him to relief under C.R.C.P. 59. *See People in Interest of K.L-P.*, 148 P.3d 402, 403 (Colo. App. 2006) (The primary purpose of C.R.C.P 59 "is to give the court an opportunity to correct any errors that it may have made."). We thus are not persuaded that the district court abused its discretion by declining father's request to reconsider

these portions of the permanent orders. *See Credit Serv. Co. v. Skivington*, 2020 COA 60M, ¶ 24 (reviewing a district court's C.R.C.P. 59 ruling for an abuse of discretion).

IX. Conclusion

¶ 48 The judgment is affirmed.

CHIEF JUDGE ROMÁN and JUDGE GRAHAM concur.

Court of Appeals

STATE OF COLORADO
2 East 14th Avenue
Denver, CO 80203
(720) 625-5150

PAULINE BROCK
CLERK OF THE COURT

NOTICE CONCERNING ISSUANCE OF THE MANDATE

Pursuant to C.A.R. 41(b), the mandate of the Court of Appeals may issue forty-three days after entry of the judgment. In worker's compensation and unemployment insurance cases, the mandate of the Court of Appeals may issue thirty-one days after entry of the judgment. Pursuant to C.A.R. 3.4(m), the mandate of the Court of Appeals may issue twenty-nine days after the entry of the judgment in appeals from proceedings in dependency or neglect.

Filing of a Petition for Rehearing, within the time permitted by C.A.R. 40, will stay the mandate until the court has ruled on the petition. Filing a Petition for Writ of Certiorari with the Supreme Court, within the time permitted by C.A.R. 52(b), will also stay the mandate until the Supreme Court has ruled on the Petition.

BY THE COURT: Gilbert M. Román,
Chief Judge

DATED: January 6, 2022

***Notice to self-represented parties**: You may be able to obtain help for your civil appeal from a volunteer lawyer through The Colorado Bar Association's (CBA) pro bono programs. If you are interested in learning more about the CBA's pro bono programs, please visit the CBA's website at www.cobar.org/appellate-pro-bono or contact the Court's self-represented litigant coordinator at 720-625-5107 or appeals.selfhelp@judicial.state.co.us.*

DEPARTMENT OF VETERANS AFFAIRS

May 11, 2021

DEREK ARNOLD SKELLCHOCK
5100 RONALD REAGAN BLVD
APT H106
JOHNSTOWN CO 80534-6462

In Reply Refer To: 335/21
File Number:
Skellchock, Derek

Dear Mr. Skellchock:

We made a decision on the claim for apportionment received on April 8, 2021, by Alorna Volz on behalf of your child, Brantley James Skellchock.

This letter tells you what we decided, how we made our decision and the evidence used to decide your claim. We have also included information about what to do if you disagree with our decision, and who to contact if you have questions or need assistance.

What We Decided

We have denied apportionment for your child Brantley James Skellchock because of the following reasons:

- Financial need is not established
- Grant of an apportionment will cause hardship on the Veteran

We have removed our pre-apportionment adjustment. Your award will continue at your current rate.

Applicable Laws and Regulations: 38 U.S.C. 5307, 38 CFR 3.451, 38 CFR 3.450, 38 CFR 3.458, 38 CFR 3.58, 38 CFR 3.106, 38 CFR 3.57, 38 CFR 3.400, 38 CFR 3.707, 38 CFR 21.3023, 38 CFR 3.453, 38 CFR 3.460, 38 CFR 3.112, 38 CFR, 3.551, 38 U.S.C. 7105A.

Your Award Amount and Payment Start Date

Your monthly entitlement amount is shown below:

Effective date	Total VA Benefit	Allot W/H	Amount Paid	Reason For Change
Dec 1, 2020	$3,350.91	$0.00	$3,350.91	Cost of Living Adjustment

We are paying you as a veteran with 2 dependents. Your payment includes an additional amount for your child, Brantley Skellchock and Samantha Erin A. Skellchock. *Let us know right away if there is any change in the status of your dependents.*

1.160 oz 548181-O02-03842810 0001498 0020907 I=000000