

APPLICATION NO. _____

IN THE SUPREME COURT OF THE UNITED STATES

LT (JG) GREG K. PARSONS, UNITED STATES NAVY, PDRL,
PETITIONER,
v.
CONNIE K. COPELAND PARSONS AND STATE OF TEXAS,
RESPONDENTS.

ON APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI
TO THE TEXAS SUPREME COURT

**PETITIONER'S APPLICATION
TO EXTEND TIME TO FILE A
PETITION FOR A WRIT OF CERTIORARI**

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To the Honorable Samuel A. Alito, Jr., Associate Justice, Circuit Justice for the 5th Circuit Court of Appeals and including the State of Texas:

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rule 13.5, Petitioner Greg Parsons, for good cause, respectfully requests an extension of 60 days to file a Petition for a Writ of Certiorari to the Texas Supreme Court in the above-captioned case from the latter court's April 8, 2022 order denying his petition for review from the decision of the Texas Court of Appeals

The petition for a writ of certiorari in this Court is due on or before Thursday, July 7, 2022. The Texas Supreme Court's denial of Petitioner's request for review and the decision of the Court of Appeals are attached for this Court's reference. (Attachments 1 and 2, respectively).

Pursuant to the Rules of the Supreme Court, Rules 13.5 and 22, Petitioners are filing this Application on or before a date 10 days prior to Thursday, Thursday, July 7, 2022.

JURISDICTION OF THE COURT

This Court has jurisdiction over this Application and over the Petition for Writ of Certiorari to the Supreme Court of the State of Texas pursuant to 28 U.S.C. § 2101(c) and 28 U.S.C. § 1257, from its April 8, 2022 order denying the petition for review of the decision of the Court of Appeals of Texas.

SUMMARY OF THE CASE

Petitioner is a disabled veteran who served as an officer in the United States Navy. He was placed on the Permanent Disability Retired List (PDRL) in 1989, and was subsequently ruled as unemployable at 100%, totally and permanently service-connected disabled. On April 8, 2010, the Department of Veterans Affairs issued an apportionment ruling denying an apportionment of Petitioner's VA disability pay to his then dependents for support. This ruling was retroactive to November 1, 2009. See 38 U.S.C. § 511(a) and 38 U.S.C. § 5307.

Petitioner challenges a state's jurisdictional authority to contradict a prior decision by a federal agency (the Department of Veterans Affairs (VA)), which agency has exclusive jurisdiction and final decision making authority as to all questions of law and fact concerning a dependent's claim for a portion of Petitioner's veteran's disability benefits. See 38 U.S.C. § 511(a); 38 U.S.C. § 5307. Such decision is final and conclusive as to *all other courts*. See 38 U.S.C. § 511(a).

This petition seeks review of the April 8, 2022 decision of the Texas Supreme Court, which denied review of a decision of the Texas Court of Appeals (Morriss, C.J., Burgess and Stevens, JJ; Opinion by Justice Stevens) from an August 11, 2020 order of the trial court in Lamar County, Texas. (Order Attached).

The trial court granted the state's plea to jurisdiction dismissing the case on the basis that it lacked subject matter jurisdiction to hear the case and to entertain Petitioner's collateral attack on the prior judgments rendered by the State of Texas concerning the disposition of Petitioner's federal veteran's disability benefits. The trial court denied Petitioner's request to render void ab initio the state court's orders dated August 19, 2009, November 7, 2009, July 7, 2010, April 20, 2012, and September 24, 2012 and dismissed Petitioner's Second Amended Original Petition filed in the underlying case.

A significant issue of federal law exists in this case, among others, to wit, whether a state court has jurisdiction and authority to contradict a decision by a federal agency, which agency has final and exclusive authority as to *all courts* over all questions of law and fact concerning a dependents' claim for a portion of a disabled veteran's federal disability pay, where said federal agency has in fact denied such claim.

REASONS FOR GRANTING EXTENSION OF TIME

1. Petitioner is a disabled veteran who suffers service-connected disabilities.
2. Undersigned counsel is a solo practitioner and assists veterans in *pro bono* and *low bono* representation in trials and appeals throughout the United States.
3. No prejudice would arise from the requested extension. If the petition were granted, the Court would likely not hear oral argument until after the October 2022 term began.
4. This case raises issues concerning the absolute preemption of federal law over state courts in the disposition of VA disability benefits. Under its enumerated Article I “Military Powers”, Congress provides veterans disability benefits as a personal entitlement to the veteran.

The Supremacy Clause provides that federal laws passed pursuant to Congress’ enumerated Article I powers absolutely preempt all state law. Under this power, Congress has prohibited *any legal process* from being used to deprive veterans of their disability benefits. 38 U.S.C. § 5301.

Unless Congress has *lifted* the absolute preemption provided by federal law in this area, state courts and state agencies simply have no authority, or jurisdiction, to direct that such benefits be seized or paid over to someone other than their intended beneficiary.

Congress has lifted this absolute preemption in a small subset of cases: (1) for marital property through the Uniformed Services Former Spouses Protection Act (USFSPA), 10 U.S.C. § 1408; and (2) spousal support and child support, through the Child Support Enforcement Act (CSEA), 42 U.S.C. § 659. 42 U.S.C. § 659 was amended to specifically *exclude* VA disability benefits that are paid to non-retiree disabled veterans – those veterans who had not retired, and therefore could not have waived retired or retention pay to receive disability benefits. See also *Howell v. Howell*, 137 S. Ct. 1400 (2017).

Congress has also passed federal statutes regulating the specific situation in this case – providing *exclusive* jurisdiction over all questions of law and fact concerning a claim by a dependent for a portion of this restricted disability pay, i.e., pay that is already protected from all state legal and equitable process by 38 U.S.C. § 5301, and which is, in any event, excluded from being considered disposable income by 42 U.S.C. § 659(h)(1)(B)(iii).

Where a state court is preempted by controlling federal law, the state court has no authority to issue an order that exceeds its jurisdictional control. When federal law, through the Supremacy Clause preempts state law, as it does in the area of divorce in regard to veterans’ benefits, then a state court lacks jurisdiction and authority to issue a contrary award.

VA disability benefits have also been deemed constitutionally protected property rights under the Fifth and Fourteenth Amendments to the Constitution. *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009) and *Robinson v. McDonald*, 28 Vet. App. 178, 185 (U.S. 2016) (federal veterans’ benefits are constitutionally protected property rights). See also *Morris v Shinseki*, 26 Vet. App. 494, 508 (2014) (same).

Petitioner has presented the arguments that demonstrate federal law preempts state law, and that his constitutional rights have been infringed upon by Respondents.

Finally, and most importantly, all of the issues of law presented by this case are of national significance due to the increasing number of disabled veterans whose main or only source of income are disability benefits. Petitioner is not the only disabled veteran whose disability pay is a sole means of subsistence and who relies on these benefits to survive.

A state court that rules incorrectly on a matter preempted by federal law acts in excess of its jurisdiction. Such rulings, and the judgments they spring from, including all subsequent contempt and related orders, are *void ab initio* and exposed to collateral attack. The United States Supreme

Court has said as much: “That a state court before which a proceeding is competently initiated may – by operation of supreme federal law – lose jurisdiction to proceed to a judgment unassailable on collateral attack is not a concept unknown to our federal system.” *Kalb v. Feurstein*, 308 U.S. 433, 440, n 12 (1940). “The States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land.” *Id.* at 439. “States have *no power...to retard, impede, burden, or in any manner control*, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government.” *McCulloch v Maryland*, 17 US (4 Wheat) 316, 436; 4 L Ed 579 (1819) (MARSHALL, CJ) (emphasis added). Absent such power, any attempt by state courts to impede the operation of federal laws must be considered a nullity and void. *Kalb, supra*.

CONCLUSION

For the foregoing reasons, undersigned counsel requests additional time to prepare a full exposition of the important legal issues at the heart of this dispute.

WHEREFORE, for the reasons stated herein, Petitioners apply to Your Honor and respectfully requests an extension of 60 days from the Thursday, July 7, 2022 due date to file a Petition for a Writ of Certiorari to the Texas Supreme Court, so that this Court may consider said petition and Petitioner’s appeal on or before Monday, September 5, 2022.

Respectfully submitted,



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Dated: June 27, 2022