No. __-____

In the Supreme Court of the United States

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

Petitioner,

v.

CONNIE K. COPELAND PARSONS
AND
THE STATE OF TEXAS,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In *Rose v. Rose*, 481 U.S. 619, 641-642; 107 S. Ct. 2029; 95 L. Ed. 2d 599 (1987), Justice Scalia stated in his concurring opinion:

> 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 (amended)], 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...and because its underlying purpose of "achiev[ing] uniformity in the administration of veterans' benefits and protect[ing] the Administrator from

> expensive and time-consuming litigation"...would not be impaired. 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.* But there is absolutely no need to pronounce upon that issue here.
>
> 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. (emphasis added).

So stated Justice Scalia, speaking to the applicability of 38 U.S.C. § 211 [now § 511 (amended)] to the very circumstances that is before the Court in this case.

After Rose, supra, Congress 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 had 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." (emphasis added).

The reference in § 211(a) to courts "of the United States" was replaced with a separate sentence that excludes review of benefits determinations 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 it 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, as opposed to the prior language, which merely provided that the "decisions of the Administrator" would be deemed final and conclusive.

In passing the Veterans Judicial Review Act (VJRA), Congress also created a specialized Article I Court to oversee exclusive appellate review of the VA Secretary's decisions on apportionment claims.

These sweeping and fundamental changes in the law removed any doubt about the federal government's *primary* and *exclusive* jurisdiction concerning all claims for veterans' benefits.

This case presents the very question Justice Scalia posed in *Rose*, with the added benefit of Congress' subsequent, direct response in passing the VJRA and amendments to 38 U.S.C. § 511, namely: Where the VA denies a claim for an apportionment of protected

veterans' disability benefits pursuant to 38 U.S.C. § 5307, can a state court ignore that decision in contravention of 38 USC § 511(a) and force (directly or indirectly) the disabled veteran to use his benefits to satisfy a state court family support order?

2. Congress's enumerated military powers preempt *all state law* concerning disposition of military benefits. 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 v. Howell*, 137 S. Ct. 1400, 1403-04, 1405; 197 L. Ed. 2d 781 (2017) (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" and ruling that "[s]tate courts cannot 'vest' that which (under governing federal law) they lack the authority to give.")

Not only are the states completely preempted by federal law from diverting or otherwise repurposing federal veterans' benefits, but they also surrendered their sovereignty and jurisdiction to determine the disposition of such benefits, and may not assert authority over them as against a veteran's claim to his constitutional rights and entitlements. 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, supra*; 38 U.S.C. § 5301.

The question presented for the Court is as follows: 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 support obligations to dependents, see 42 U.S.C. § 659(h)(1)(A)(ii)(V), and, in fact, excludes such benefits from being considered as income 42 U.S.C. § 659(h)(1)(B)(iii), and further affirmatively protects these benefits from "all legal and equitable process whatever" whether "before or after receipt" by the veteran, see 38 U.S.C. § 5301(a)(1), is *Rose*, 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 Texas to usurp the Supremacy Clause and, in direct conflict with positive federal law, order Petitioner, 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), *Howell*, *supra*, 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*, *supra*, can the state legitimately raise state law doctrines of judicial convenience and equity such as "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, Greg Parsons, was the Plaintiff-Appellant below.

Respondent / Appellee, Connie Copeland Parsons, in pro per.

The State of Texas Office of the Attorney General was a Defendant below in the Petitioner's suit to void the prior state court orders, which allowed the State of Texas to garnish Petitioner's restricted federal veterans' benefits.

There are no other parties involved in these proceedings.

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Lieutenant (JG), Greg K. Parsons, United States Navy (PDRL), respectfully petitions for a writ of certiorari the Supreme Court of Texas.

OPINIONS BELOW

The Supreme Court of Texas denied Petitioner's Application for Review on April 8, 2022, Case Number 22-0032 (1a).[1]

The November 18, 2021 opinion of the Texas Court of Appeals, Case Number 06-20-00067-CV, is attached (2a-8a).

The aforementioned are the substantive rulings Petitioner seeks to appeal.

JURISDICTION

The Court has jurisdiction over this petition pursuant to 28 U.S.C. § 1257.

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

STATEMENT OF THE CASE

1. Introduction

In 1987, this Court held that state courts could consider veterans disability benefits as "income" for purposes of calculating child support obligations and could force, through its powers of contempt, a disabled veteran to use his or disability benefits to satisfy such obligations, even if that veteran was 100 percent totally and permanently disabled, and even if his or her disability benefits were his only source of income. *Rose v. Rose*, 481 U.S. 619; 107 S. Ct. 2029; 95 L. Ed. 2d 599 (1987).

That decision is contrary to the Supremacy Clause, contrary to Congress' exclusive enumerated powers over all matters concerning the national military, and in conflict with express federal statutes passed thereunder.

Congress's authority over military benefits originates from its enumerated "military powers" under Article I, § 8, clauses 11 through 14 of the Constitution. In matters governing the compensation and benefits provided to veterans, the state has no sovereignty or jurisdiction without an express grant from Congress. *Howell*, 137 S. Ct. at 1404; *Mansell v. Mansell*, 490 U.S. 581, 588; 109 S. Ct. 2023 (1989), *Torres v. Tex. Dep't of Pub. Safety*, 142 S. Ct. 2455, 2460 (2022). In fact, *unless* otherwise allowed by *federal* 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.

Even where Congress has granted permission to the states to consider veterans' benefits in state court proceedings, 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).

Petitioner is one-hundred percent service-connected disabled. He receives VA disability compensation. Such benefits are explicitly excluded as remuneration for employment, i.e., "income", for purposes of calculating his child support obligations in state court. 42 U.S.C. § 659(h)(1)(B)(iii).

These benefits are affirmatively protected from all legal and equitable process either before or after receipt. 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 v. Aetna*

Cas. & Surety Co., 370 U.S. 159, 162; 82 S. Ct. 1231; 8 L. Ed. 2d 407 (1962).

Moreover, in this case, the VA expressly denied a claim for apportionment made by the dependents, *before* the state court concluded that it could consider Petitioner's disability in fixing his support obligations. That state court decision was in direct contravention of the VA's exclusive jurisdiction and its final decision-making authority, which is final and conclusive as to *all other courts*. See 38 U.S.C. 511(a). 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 not be apportioned to his dependents. 38 USC § 511(a); 38 U.S.C. 5301(a)(1).

This Court recently reconfirmed that federal law preempts all state law concerning the disposition of VA benefits in state domestic relations proceedings. *Howell*, 137 S. Ct. at 1404, 1406. There, 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 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*, it merely confirmed what federal law allows, i.e., "some military *retirement pay* might be waived" and partial disability paid in lieu may be used to calculate spousal support. *Id.* at 1406. This is consistent with 42 U.S.C. § 659 (h)(1)(A)(ii)(V), which recognizes the availability of a limited portion of waived disposable *disability retired pay* consistent with 10 U.S.C. § 1408(e)(4).

Otherwise, federal law *excludes* veteran's disability pay from this definition. 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 put them to a use different from their intended purpose. This Court's reiteration in *Howell* that federal law preempts all state law in this particular subject *unless* Congress says otherwise remains intact. There is 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 in 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 interpretation to preemption cases wherein the Court has addressed Congress exercise of the same enumerated Article I Military Powers as against state efforts to thwart Congress' objectives and goals in passing legislation thereunder. *Id.* at 2460, 2463-64; citing Article I, § 8, cls. 1, 11-16.

This is no surprise. The concepts of state sovereignty and 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 a state from asserting sovereign immunity because Congress has provided a mechanism for the objectives of legislation passed pursuant to its enumerated powers to be realized by pursuit of a statutory civil action against the state. 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 to benefit returning servicemembers. On the flip side, Article VI, clause 2, the Supremacy Clause prohibits,

i.e., *preempts*, the state from passing and enforcing laws or issuing judicial decisions that equally frustrate the same national interests underlying exercise by Congress of these plenary powers.

Hence, in *Howell*, *supra*, and other cases addressing the USFSPA, state courts are prohibited from repurposing those federal benefits that Congress has provided, again under its Article I military powers, to incentivize, maintain, and support national service. As was stated in *McCarty*, 453 U.S. at 229, n. 23, quoting *Buchanan v. Alexander*, 4 How. 20 (1845), the funds of the government are appropriated for a specific purpose and if they may be diverted or redirected by state process or otherwise, the proper functioning of the government would cease.

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 veterans' 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 where Congress has acted

affirmatively to pass legislation pursuant to and within the realm of those Article I powers. See also U.S. Const. Art. VI, cl 2 (1789) (the Supremacy Clause).

Indeed, the USERRA, like statutes providing military servicemembers and veterans with post-service benefits, is legislation designed to promote, maintain, and incentivize service to the nation and to ensure reintegration into civilian life; the former preserving a servicemember's right to return to civilian work without penalty, and the latter providing 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).") (cleaned up).

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).

These cases confirm 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*, *supra*, Congress quickly acted to remove any speculation that authority had been ceded to state courts over these veteran's benefits. These post-*Rose* occurences, 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 Department of Veterans Affairs.

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 at the request of the dependent or the guardian. 38 U.S.C. § 511; 38 U.S.C. § 5307. When such a decision is made prior to a state court effort to sequester or otherwise divert or repurpose these funds, whether directly or indirectly, it constitutes an *extra-jurisdictional act that is for all*

intents and purposes ultra vires – it constitutes an act on the part of the state that can assume no position of superiority or priority in the hierarchy of federal supremacy.

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 Secretary of Veterans Affairs, and all decisions on any benefit determination (whether an initial determination or on a request for apportionment) is final and conclusive as to *all other courts*. 38 U.S.C. § 511(a). Review can only be sought in the Article I court established by Congress after *Rose*. See 38 U.S.C. §§ 511(a), 7251,

7261.

As this Court stated long ago, 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).

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's 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 (which the Respondent OAG claimed in this particular case,

as well), to contravene Congress' will in effectuating national military policy.

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 all decisions affecting 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.

2. Background Facts

Petitioner is a disabled veteran who served as an officer in the United States Navy (3a). He was placed on the federal Permanent Disability Retired List (PDRL) in 1989, and was subsequently ruled as unemployable at 100%, totally and permanently service-connected disabled (*Id.*).

Petitioner was married to Respondent Copeland from 1993 to 2003, and the couple had three children (3a). Subsequent to their divorce, Petitioner was ordered to pay child support on behalf of the children to the Office of the Attorney General's (OAG) Texas Child Support Disbursing Unit (*Id.*). In June 2009, the 196th Judicial District Court of Hunt County (the Hunt District Court) increased Petitioner's court-ordered child support (*Id.*). In calculating Petitioner's obligation, the trial court included Petitioner's VA disability benefits.

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 (3a-4a; 9a-17a). This ruling was retroactive to November 1, 2009 (14a). Respondent Copeland was provided an opportunity to appeal the ruling and was notified of her right to do so (16a). She did not appeal the decision.

The denial constituted an exclusive jurisdictional determination by the VA under 38 U.S.C. § 511 and

38 U.S.C. § 5307, respectively, that the dependents were not entitled to any of Petitioner's VA disability pay, and constituted a then adjudicated fact that the state was precluded from reviewing or otherwise contradicting.

In 2010, the case was transferred to the 395th Judicial District Court of Williamson County (the Williamson District Court) (4a). That court entered orders in July 2010, April 2012, and June 2012 modifying Petitioner's child-support payments. Each time the Williamson District Court included Petitioner's VA disability benefits in calculating his child support obligation (*Id.*).

On September 4, 2012, in direct contravention of the exclusive and final decision of the VA with respect to division of Petitioner's VA benefits, the Williamson District Court issued an order to pay child support against Petitioner.

The Texas Office of Attorney General (OAG) disbursed funds taken from Petitioner for purposes of the Williamson District Court's order. Thereafter, the OAG received monies pursuant to the district court's extra-jurisdictional act ordering Petitioner to pay child support based, in part, on his receipt of restricted VA disability benefits.

3. Procedural History

In 2017, Petitioner filed suit against Copeland and the OAG seeking an order voiding the prior judgments rendered by the state court and for recoupment and restitution concerning payments made to the state of

Texas and his former spouse for child support (4a). An amended petition was filed on June 18, 2019, which led to the OAG's filing of a plea to the jurisdiction of the trial court, which was heard on August 3, 2020.

Petitioner filed a motion to strike, in which he argued that the original court in Williamson County did not have the authority or jurisdiction to hear any claims with respect to Petitioner's military benefits because the VA had denied an apportionment of those benefits in 2009 on the dependent's claim that they be used in satisfaction of a support obligation (4a). Petitioner sought a declaration that the modification orders entered by the Hunt and Williamson District Courts were void, alleging that since the VA regional office had denied Copeland's apportionment request, those courts were barred from considering his VA disability benefits in determining his child support liability. Petitioner also sought an injunction barring the OAG from enforcing the orders and compensatory and exemplary damages from Copeland and the OAG for their roles in seeking the modification orders and enforcing the same (*Id.*).

In the OAG's plea to jurisdiction it plead (1) sovereign immunity barred Petitioner's claims against the OAG, (2) the Williamson District Court had exclusive, continuing jurisdiction since Petitioner was attempting to modify that court's child support orders, and (3) Petitioner's claims against the OAG were moot (5a).

Petitioner filed an amended original petition. Petitioner also filed a response in opposition to the plea to the jurisdiction. After a hearing, the trial court

granted the OAG's plea to the jurisdiction, without stating the basis of its ruling, and dismissed all of Petitioner's claims against the OAG.

In the OAG's plea of jurisdiction, it acknowledged Petitioner's argument that the original state court "did not have the authority or the jurisdiction to hear any claims with respect to his child support amounts subsequent to the VA denying an apportionment in 2009[sic], April of 2009[sic]...[and] that the VA Court is the one that assumed jurisdiction of all matters regarding his child support." (22a).

The OAG further acknowledged that what Petitioner was requesting of the trial court was to "void...any orders that were entered by the court of continuous exclusive jurisdiction after April of 2009[sic]." *Id.* The OAG also acknowledged that "[t]he only way that a sister court can void another court's order...or set it aside is if that order is, in fact, void" and "[a]n order can only be void if one of two elements is missing." (22a-23a). The OAG then noted that where a court lacks subject matter jurisdiction an order that it enters will be void (*Id.*)

Addressing Petitioner's argument that the VA had been given exclusive jurisdiction over the disposition of his benefits for purposes of supporting dependents, and that the 2009 decision by the VA Secretary denying apportionment of those benefits for the support of Petitioner's dependents was final and exclusive, the OAG argued that the 1987 case of *Rose v. Rose*, 481 U.S. 619 (1987) approved the state of Tennessee's use of its contempt powers to force a 100 percent disabled veteran to pay child support from

those funds (24a). The OAG further argued that the Court in *Rose* held that "neither the Veteran's Benefit provisions of Title 38 nor the garnishment provisions of the Child Support Enforcement Act of Title 42 indicate unequivocally that a veteran's disability benefits are provided solely for that veteran's support." (27a). The OAG attorney concluded that the trial court "had appropriate subject-matter jurisdiction" and its orders were not void (30a).

As he had presented in his pleadings in support of his petition, Petitioner argued that in *Rose* the Court was not addressing a situation in which the VA had actually denied an apportionment request. Petitioner further argued that subsequent to *Rose*, Congress changed the law and confirmed that state courts have no concurrent subject matter jurisdiction to consider or calculate or count veteran's disability income in making a support award (32a-33a). Petitioner further argued that state courts are deprived of subject-matter jurisdiction when principles of federal preemption are applicable and collateral attack is allowed if the state court never acquired jurisdiction over the issue (35a-36a). Once the VA issued an order under 38 U.S.C. § 511 denying apportionment of Petitioner's benefits, that ruling was final and conclusive and no other official "has any jurisdiction over that ruling." (36a-37a).

The Lamar County District Court entered an order on the State's Plea to Jurisdiction on August 11, 2020.

Petitioner filed an appeal from that order and submitted a brief (61a-124a). The Court of Appeals affirmed the trial court's ruling (2a-8a). The Court of

Appeals noted that the OAG had made three arguments in its plea to jurisdiction: (1) sovereign immunity barred Petitioner's claims; (2) the Williamson District Court had exclusive, continuing jurisdiction; and (3) Petitioner's claims were moot (5a).

The Court of Appeals concluded that since the trial court had granted the OAG's plea to jurisdiction without stating the basis of its ruling, and Petitioner had only challenged one (that the state court had continuing, exclusive jurisdiction), because Petitioner had failed to challenge any "alternate basis for the appealed order, any error in the challenged basis for the order is rendered harmless." (6a). As the Court noted: "[Petitioner] maintains that his submitted evidence shows that the previously unchallenged child support orders entered by the Hunt and Williamson District Courts were void and, therefore, that he could collaterally attack the orders in the Lamar District Court." (6a).

Like the trial court, the Court of Appeals did not address Petitioner's substantive arguments concerning the absolute absence of *any sovereign authority*, or *jurisdiction* for the state courts to have ever entered an order that made a different disposition of Petitioner's restricted VA disability pay than that which had been previously decided by the VA's apportionment decision denying the dependents' claim. See 38 U.S.C. § 511(a); 38 U.S.C. § 5307.

REASONS FOR GRANTING THE PETITION

1. 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.

2. This is why the Court has emphasized that the judiciary must not delve into the consequences of applying clearly expressed federal law in this subject matter. *Mansell*, 490 U.S. at 588-592. It does not have to inquire into policies of Congress when the law is expressly authorized by the Constitution. This is precisely why military service and compensation has historically been protected under exclusive and preemptive federal law.

Congress has exercised exclusive legislative authority in these premises since the earliest days of the Republic. See, e.g., *Hayburn's Case*, 2 U.S. 409 (1792) (discussing the Invalid Pensions Act of 1792). See also Rombauer, Marital Status and Eligibility for Federal Statutory Income Benefits: A Historical Survey, 52 Wash. L. Rev. 227, 228 (1977); Waterstone, Returning Veterans and Disability Law, 85:3 Notre Dame L. Rev. 1081, 1084 (2010). For an excellent discussion 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 reasons have been rejected. *Hisquierdo v. Hisquierdo*, 439 U.S. 572, 581; 99 S. Ct. 802; 59 L. Ed. 2d 1 (1979); *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. (9a-17a). This decision was "final and conclusive" as to *all other courts*. See 38 U.S.C. § 511(a). No appeal was made to the special Article I Court created by Congress in the wake of the *Rose* decision.

Federal law, and only federal law, authorizes the Secretary of Veterans Affairs to decide whether these restricted benefits may be used to support dependents. 38 U.S.C. § 511(a); 38 U.S.C. § 5307. Absent such a determination, the decision of the Secretary on the question of a veteran's entitlement to these benefits is absolute and review may only be sought through the Article I Court expressly created by Congress *after Rose* for that purpose. 38 U.S.C. §§ 7251, 7261. *Henderson, supra.*

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.

3. 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).

This Court recently reaffirmed the principle that military compensation and disability benefits fall exclusively under Congress's enumerated military powers. *Howell v. Howell*, 137 S. Ct. at 1404, 1406 (2017) (*McCarty* with its rule of federal preemption, still applies" and "the basic reasons *McCarty* gave for believing that Congress intended to exempt military retirement pay from state community property laws apply a fortiori to disability pay (describing the federal interests in attracting and retaining military personnel.")).

4. Despite the preemption of state law and the plain and unambiguous language of the federal statutes, the Court in *Rose* ignored the principle of absolute preemption, ignored the statutory exclusion of veterans' disability benefits from consideration as an available asset, ignored the blanket and sweeping prohibition in 38 U.S.C. § 5301, and ruled that because veterans have a general obligation to support dependents, 100 percent of their benefits could be

counted as income, leaving the state free to unilaterally repurpose these federal appropriations.

Despite explicit federal statutory law that protects veterans disability benefits "due or to become due" from "*any legal or equitable process whatever*, either *before* or *after* their receipt", see 38 U.S.C. § 5301(a)(1) (emphasis added), the Court gave the state carte blanche to assert dominion and control over these benefits and order that they be paid by the disabled veteran to satisfy support obligations. *Rose*, 481 U.S. at 630-631, rejecting application of 38 U.S.C. § 5301.

The Court also rejected the argument that the Veterans Administration had exclusive jurisdiction under 38 U.S.C. § 211 (amended and renumbered as 38 U.S.C. § 511) over veterans' benefits and determinations of how such benefits should be distributed.

As pointed out by Petitioner, just after *Rose*, Congress passed the VJRA and amended 38 U.S.C. § 211. See *Larrabee v. Derwinski*, 968 F.2d 1497, 1498-1502 (2d Cir. 1992). Congress made two substantial changes. First, Congress created an independent Article I Court (the Board of Veterans Appeals) and gave it exclusive jurisdiction over appeals from final decisions of the Secretary of Veterans Affairs.

Second, Congress replaced the phrase from § 211 "Court of the United States" with "any court". In direct response to the discussion in *Rose* concerning the scope of a state court's authority and jurisdiction over veteran's disability benefits, Congress affirmed that the VA was the only entity with authority and

exclusive jurisdiction to decide whether veterans' benefits should be paid to a dependent. 38 U.S.C. § 511.

In 2017, this Court ruled that under 38 U.S.C. § 5301(a)(1) state courts do not have authority to assert control over veterans' benefits unless federal law permits the state to do so. *Howell*, 137 S. Ct. at 1404, citing *Mansell*, 490 U.S. at 588. In doing this, the Court reaffirmed pre-*Rose* case law that held absolute federal preemption over state domestic law issues is the rule, *unless* Congress says otherwise. "*McCarty* with its rule of federal preemption, *still applies*." *Id.* (emphasis added). The Court also reconfirmed what it had said in *Mansell*, that when Congress does give the state jurisdiction and authority over these benefits, the grant is precise and limited. *Id.*

The state lacks authority because these federal benefits originate from Congress's enumerated military powers, U.S. Const. Art. I, § 8, cls. 11 – 14. *Oregon*, 366 U.S. at, 648-649; *McCarty*, *supra* at 232; *Howell*, 137 S. Ct. at 1404, 1406. If the state could invade the benefits appropriated by Congress for the express purpose of support and maintenance of the military and veterans, the function of government would cease. *McCarty*, *supra* at 229, n. 23, citing *Buchanan v. Alexander*, 45 U.S. 20, 20 (1846) ("The funds of the government are specifically appropriated to certain national objects, and if such appropriations may be *diverted and defeated by state process or otherwise*, the functions of the government may be suspended.") (emphasis added).

Congress has only given state courts jurisdiction

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

Consistent with the absolute preemption of state law over *all* military benefits, excluded from the amounts which Congress has given states jurisdiction over, are benefits paid to retirees who have become totally disabled (the retiree is no longer among the rolls of the serviceable military retirees) and those disabled veterans who never attained time in service to quality for retirement. 42 U.S.C. § 659(h)(1)(B)(iii). As to all veterans' benefits that are *not* specifically allowed by *Congress* to be subjected to state process, 38 U.S.C. § 5301(a)(1) prohibits state courts from using "any legal or equitable process whatever" to divert them through any type of court order, whether *before* (that is, while in the hands of the government) or *after* receipt by the beneficiary.

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 a veteran'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.

Despite this plain statutory law and the uninterrupted jurisprudence holding that federal law in this subject preempts state law, this Court held in *Rose* that state courts could force veterans to use their disability benefits to satisfy state-imposed support orders.

In 1988, after *Rose*, Congress overhauled both the internal review mechanism in § 211 (now § 511) and enacted the Veterans Judicial Review Act (VJRA).

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

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

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

Third, Congress *expanded* the provision precluding judicial review in former § 211. Under the new provision, eventually codified at 38 U.S.C. § 511,[2] the VA "shall decide *all questions of law and fact* necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans." 38 U.S.C. § 511(a) (emphasis added). Whereas § 211(a) prohibited review of "decisions on any question of law or fact...under any law...providing benefits to veterans," 38 U.S.C. § 211(a) (1970), § 511(a) prohibits review of the Secretary's decision on "*all questions of law and fact necessary to a decision*...that affects the provision of benefits," 38 U.S.C. § 511(a) (2006). This change places primary and exclusive authority over the initial benefits determination in the VA Secretary.

In keeping with this removal of state court jurisdiction over decisions affecting veterans' benefits, whereas § 211 precluded any other "official or court *of the United States*" from reviewing a decision, § 511 now precludes review "by *any court*...." (emphasis added). This of course, would apply to preclude state courts from making any initial or subsequent disposition of veteran's disability benefits, which are considered off-limits by existing federal statutes, particularly, 42 U.S.C. § 659(h)(1)(B)(iii) and 38 U.S.C. § 5301. Any other court or entity making a decision that disturbs the calculated benefits determination would be an usurpation of the Secretary's exclusive authority and an extra-jurisdictional act.

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

Moreover, as Petitioner pointed out in his arguments below, there is (and always has been) a process for the VA to pay disability benefits to dependents in need. 38 U.S.C. § 5307. Consistent with 38 U.S.C. § 511 and the VJRA, the process for a dependent to seek these benefits is through the apportionment procedures outlined in 38 U.S.C. § 5307. *Id.*

5. 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 courts lacked subject matter jurisdiction to force a different disposition of Petitioner's disability entitlement. The state's argument that it did not directly take Petitioner's disability is irrelevant because the net effect is to reduce the Petitioner's income. 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

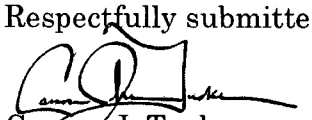
U.S.C. 5301(a)(1). Section 659(h)(1)(B)(iii) of Title 42 clearly excludes the VA disability benefits at issue from being considered income. The federal government will not pay such benefits to a state court in compliance with an order that requests funds directly from the federal government, 42 U.S.C. 659(h)(1)(B)(iii), and 38 U.S.C. § 5301 directly and explicitly prohibits a state court from unilaterally forcing the veteran to directly or indirectly pay these monies over to another by counting them as available income.

Thus, not only has Congress *not included* Petitioner's benefits as available for direct garnishment in state court proceedings, Congress *has indeed indicated* that Petitioner's veterans disability benefits are not income and may not be subject to calculations for child support awards in state domestic relations proceedings. Moreover, in this case, the federal agency with exclusive authority and jurisdiction to make decisions concerning a division of these restricted benefits declined to do so, denying the dependents' claim for apportionment. That constituted a final and conclusive decision that no other court can contradict. See 38 USC § 511. Finally, *Howell* confirmed that with respect to such disability benefits, 38 U.S.C. 5301 erects a jurisdictional bar to a state court's exercise of authority over such funds. The state simply had no jurisdiction or authority to subsequently consider Petitioner's restricted disability benefits. Any and all judgments and orders which did so are *void ab initio* and can be challenged at any time.

CONCLUSION

Petitioner respectfully requests the Court grant his petition.

Respectfully submitted,



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