APPLICATION NO. __-____

IN THE SUPREME COURT OF THE UNITED STATES

JEREMY N. MILLER,
PETITIONER,

v.

CASI A. MILLER,
RESPONDENT.

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

PETITIONER'S APPLICATION

Respectfully submitted by:

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PETITIONER'S APPLICATION FOR AN EXTENSION OF TIME TO FILE HIS PETITION FOR A WRIT OF CERTIORARI TO THE TENNESSEE SUPREME COURT

Submitted To: The Honorable Brett M. Kavanaugh, Associate Justice, Circuit Justice for the Sixth Circuit Court of Appeals and including the State of Tennessee.

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rule 13.5, Petitioner, Jeremy N. Miller, for good cause, respectfully submits this application for an extension of 60 days to file a Petition for a Writ of Certiorari to the Tennessee Supreme Court in the above-captioned case.

Petitioner is seeking review of a January 24, 2025, decision by the Supreme Court of Tennessee (Attachment 1) denying Petitioner's application to appeal an August 21, 2024, decision by the Tennessee Court of Appeals (Attachment 2).

The Tennessee Court of Appeals ruled that Petitioner was required by state statute to "notify" the Attorney General of the State of Tennessee of his constitutional challenge to Tennessee State Law on the basis of federal preemption, and that Petitioner's failure to do so resulted in his waiver of his right to raise the constitutional challenge to the state trial court's refusal to abide by prevailing and preemptive federal law – to wit, that federal law completely preempted the trial court's decision ordering Petitioner to use his federal disability pay to satisfy a state domestic support order, even though the federal agency with exclusive and final jurisdiction over such disability benefits had already denied Respondent's claim to such benefits. The Tennessee Supreme Court's decision denying Petitioner's petition

for appeal, and the opinion of the Tennessee Court of Appeals are attached to this application. (Attachments 1 and 2, respectively).

The petition for a writ of certiorari in this Court from the Tennessee Supreme Court's January 24, 2025, order is due on or before Thursday, April 24, 2025.

Pursuant to the Rules of the Supreme Court, Rules 13.5 and 22, Petitioner is filing this application requesting an extension on or before a date 10 days prior to Thursday, April 24, 2025. The requested extension, if granted, would make Petitioner's petition for a writ of certiorari due on or before Monday, June 23, 2025.

JURISDICTION OF THE COURT

Pursuant to 28 U.S.C. § 1257, this Court has jurisdiction over petitions for a writ of certiorari from final orders and judgments of the highest court of a state that disposes of all issues and parties.

Under § 1257, the Court can review final judgments or decrees rendered by the highest court of a state in which a decision could be had where the validity of a treaty or statute of the United States is drawn in question, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of the United States.

Principal among the issues raised by Petitioner in the Tennessee Court of Appeals was that the Circuit Court erred in its interpretation and application of 38 U.S.C. § 511, which provides that the Department of Veterans Affairs (VA) has exclusive and final adjudicative authority over all questions concerning the apportionment of a veterans' disability benefits. Even though the VA had denied

Respondent's application for an apportionment of Petitioner's federal disability benefits, the state trial court ruled that Petitioner nonetheless was required to use those benefits to satisfy Respondent's state law domestic support claims. Not only was this decision by the state trial court directly contrary to the previously denied apportionment claim, but the trial court made this decision even after being advised that 38 U.S.C. § 511 gives exclusive jurisdiction and authority over all claims for apportionment of a veterans' disability benefits to the VA, and where the VA makes a decision, such decision is final and conclusive *as to all other courts*.

After full briefing and oral argument on the substantive issue, the Tennessee Court of Appeals (over a year after oral argument) decided to completely "punt" and claimed that Petitioner's argument that federal law fully and completely preempted state law could not be heard because Petitioner had failed to "notify" the Tennessee Attorney General that he was challenging the constitutionality of state law on federal preemption grounds. Thus, the Court of Appeals essentially ruled that "state law" such as this law of procedural convenience could completely usurp and displace a controlling federal statute that not only prohibited the state trial court from making an apportionment decision respecting Petitioner's federal veterans' disability benefit, but that completely removed all subject matter jurisdiction and authority over this issue from the state altogether. See 38 U.S.C. § 511.

The Supreme Court of Tennessee declined to grant Petitioner's application to appeal the Tennessee Court of Appeals' decision, thus agreeing that the state could

simply avoid federal preemption because of Petitioner's failure to "notify" the Tennessee Attorney General of the nature of his constitutional challenge.

One other aspect of this Petition is noteworthy in that after oral argument in July of 2023, the Tennessee Court of Appeals actually notified the Tennessee Attorney General of Petitioner's federal constitutional challenge on the basis of federal preemption and gave the parties the opportunity for supplemental briefing on the issues. (Attachment 3, Tennessee Court of Appeals' Order, July 13, 2023). While the Tennessee Attorney General attempted to rest its case on the failure of Petitionre to give the requisite notice of his federal constitutional and federal preemption challenges under state law, all parties (including the Tennessee Attorney General) were notified of the substantive challenge and given full opportunity to brief the substantive issue, and the issue of waiver due to the failure of Petition to provide the state-required "notice" of his federal constitutional challenge. Petitioner provided supplemental briefing and the Tennessee Court of Appeals took over a year to come up with the decision that Petitioner had waived his right to raise federal preemption in the state appellate proceedings.

This Court has jurisdiction over Petitioner's Application and Writ of Certiorari to the Supreme Court of the State of Tennessee pursuant to 28 U.S.C. § 2101(c) and 28 U.S.C. § 1257, due to the latter court's January 24, 2025, denial of Petitioner's application for leave to appeal as that was the final order of Tennessee's highest court and a final disposition of the matter.

SUMMARY OF THE CASE

Petitioner's case arises out of a judgment by the Chancery Court of Montgomery County, Tennessee, which ruled that Petitioner's federal veterans' disability pay was to be considered "income" for purposes of payment to Respondent of child support arrearages.

Petitioner filed a timely appeal and oral argument was presented by undersigned to the Tennessee Court of Appeals on July 11, 2023. After oral argument, the Court of Appeals notified the Tennessee Attorney General and ordered the parties to weigh in on the issues concerning federal preemption and invited the parties to submit further briefs. (Attachment 3).

On August 21, 2024, the Tennessee Court of Appeals issued a decision concluding that Petitioner had waived the substantive issue of federal preemption by failing to notify the Tennessee Attorney General during trial that he was challenging the constitutionality of a state law based on federal preemption.

For purposes of the legal issues raised in this brief the following facts are relevant. Petitioner and Respondent were divorced on September 2, 2011, and the parties entered into a Marital Dissolution Agreement (MDA). Petitioner was on active military duty at the time of the divorce. The MDA provided for Respondent to receive 27 percent of Petitioner's "disposable retirement income in accordance with Title 10" of the United States Code.

On February 27, 2017, Petitioner was medically discharged from the United States Army and determined to be 100-percent totally and permanently disabled.

Petitioner does not receive any retirement benefits or income. Petitioner's only source of income is his veterans' disability pay.

After the divorce, Respondent applied to the federal Defense Finance and Accounting Service (DFAS) for direct payment of a portion of Petitioner's disposable retirement and retainer pay as contemplated in the MDA, i.e., 27 percent of Petitioner's "disposable retirement income." On March 10, 2017, DFAS responded that "[t]he entire amount of [Petitioner's] retired/retainer pay is based on disability, thus there are no funds available under the [Uniformed Services Former Spouses Protection Act (USFSPA), 10 U.S.C. § 1408]."

Respondent next submitted a claim with the Veterans Administration (VA) seeking an apportionment of Petitioner's restricted veterans' disability benefits for purposes of satisfying support payments. See 38 U.S.C. § 511. On June 12, 2018, the VA, which, pursuant to the aforementioned provision, has exclusive jurisdiction over all questions of law and fact concerning a claim for veterans' disability benefits for purposes of paying child support and dependency support obligations, denied Respondent's apportionment claim.

Instead of appealing that decision or seeking further appellate review in the proper federal venue and through the proper federal appeals process concerning the denial of such claims, Respondent filed a motion for contempt in the Montgomery County Tennessee state trial court, in part to challenge the rulings by the federal agency that she was not entitled to any of Petitioner's pay to satisfy the 27 percent retirement pay provision in the MSA and that she and the dependents were not

entitled to support payments. Petitioner argued, inter alia, that his disability benefits could not be considered income for purposes of calculating dependency (child and spousal) support payments in state court proceedings.

The parties subsequently submitted counter-opposing findings of fact and conclusions of law at the request of the trial court. The trial court issued its decision on May 13, 2022. The trial court concluded that Petitioner was permanently and totally disabled. The trial court further ruled that Petitioner does not receive any retirement benefits from the military. *Id*. The trial court concluded that Petitioner's only source of income is his veterans' disability pay.

Concerning the property division in the MDA, the trial court held that Respondent was not entitled to any of Petitioner's veterans' disability benefits under the MDA's provision allotting 27 percent of Petitioner's disposable retired pay because Petitioner had no such pay.

Concerning child support, the trial court ruled that despite the fact that the federal agency (the VA) with exclusive jurisdiction to determine whether a veteran's restricted federal disability benefits can be used to satisfy dependency (child and/or spousal) support obligations had denied Respondent's claim for an apportionment of Petitioner's VA disability benefits on June 12, 2018, it ruled that it could still consider these benefits in awarding child support and arrearages. In this regard the trial court reasoned:

> The former husband argues that his former wife previously filed a claim for an apportionment of his disability benefits to be paid to her for child support. He states that the claim was denied by the Veteran's Administration. The letter advised that in order to be entitled for

> additional payments for child support the former non-military spouse must demonstrate a need for benefits and not receive a reasonable level of support from the primary beneficiary (the former military spouse). The letter additionally explained that the former husband was providing $450.00 per month in child support which was deemed a reasonable level of support. The Court is a little confused with this argument. Certainly, the VA provided the letter saying that the veteran is providing $450.00 a month in financial support and that it is deemed a reasonable level of support. The problem is that the $450.00 per month is not what the VA deemed is reasonable but what this court in its final decree/parenting plan dictated would be paid in support. That support was based on an agreement of the parties and a court order. Certainly, the Court has the ability to adjust that support to deem what is necessary. The Court cannot believe that the VA holds its own child support hearings or evaluates support amounts to determine what's reasonable but instead follow what courts say is reasonable for child support.
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> Three factors point to the use of disability payment as income for child support. First, Tennessee's child support regulations include VA disability as income. Second, at least one other State Supreme Court finds that it doesn't violate federal statutes to include disability income for child support purposes. Third, *Howell* [*v. Howell*, 137 S. Ct. 1400 (2017)] doesn't specifically exclude disability payments from being used to calculate child support. This Court concludes that it is appropriate to include Mr. Miller's disability benefits for child support purposes.

On the basis of this ruling, the trial court also denied the Petitioner's request for attorneys' fees. Petitioner had argued that since Respondent had been informed by the federal agencies with exclusive jurisdiction over all decisions of law and fact concerning a claim for benefits and support payments from restricted veterans' disability benefits that she and the dependents were not entitled to such benefits, Respondent pursuing these benefits through state court contempt proceedings was frivolous and unmerited, warranting attorneys' fees.

The Court of Appeals took briefing and held oral argument on July 11, 2023. During the oral argument, the Court of Appeals addressed Respondent's argument

that Petitioner had waived the issue concerning jurisdiction and preemption for a failure to notify the Tennessee Attorney General during the trial that such a challenge had been lodged. See Tenn. Code Ann. § 29-14-107(b). After oral argument, the Court of Appeals notified the Attorney General (Attachment 3) and provided the parties with additional time to submit supplemental briefing. The Tennessee Attorney General acknowledged being notified and argued the substantive merits of the underlying issue, while at the same time arguing that that Petitioner had waived his right to argue the federal constitutional and federal preemption arguments. (Attachment 4).

Over a year later, the Tennessee Court of Appeals issued its decision, punting on the substantive federal preemption issue, and ruling instead that Petitioner's failure to provide the statutory notice of his intent to raise the federal preemption argument was fatal to his case, and that he had therefore *waived* the issue of federal preemption. In its decision, the Court of Appeals noted an exception that would seemingly apply where a federal statute jurisdictionally excludes a state court from even considering an issue governed by federal law and concerning federally appropriated benefits – a Petitioner waives the federal constitutional and preemption challenges "except to the extent the challenged statutes are so clearly or blatantly unconstitutional as to obviate the necessity for any discussion." See Attachment 2, *Miller v. Miller*, ___S.W.3d___; 2024 Tenn. App. LEXIS 365, at *7 (Ct. App., Aug. 21, 2024).

The Court of Appeals' reasoned that Petitioner's challenge was to Tennessee's child support guidelines, but it did not address the argument that the trial court lacked authority *and* jurisdiction under the federal statute, 38 USC § 511, to even issue a ruling on a claim for benefits that had already been disposed of by the federal agency with exclusive jurisdiction and final adjudicative authority over such claims.

The Court of Appeals concluded that Petitioner's argument was that federal law *preempted* state law, and he had waived that argument for failure to notify the Attorney General, but it did not address the effects of the statute providing the federal agency with exclusive jurisdiction over claims for benefits, and the fact that the agency had already assumed that jurisdiction over Respondent's claim before she went to the state trial court challenging the agency's disposition.

The Court of Appeals did not address any of the substantive merits of Petitioner's claims regarding the federal agency's jurisdiction and authority. Indeed, the Court of Appeals acknowledged in its ruling that the Tennessee Supreme Court "has never held that failure to notify the Attorney General of a constitutional challenge results in the waiver of that challenge. Compare *Buettner*, 183 S.W.3d at 358 with *In re Adoption of E.N.R.*, 42 S.W.3d 26, 31-34 (Tenn. 2001). But, as a published decision, *Buettner* is controlling. See TENN. R. SUP. CT. 4(G)(2)." *Miller v Miller*, ___SW3d___; 2024 Tenn. App. LEXIS 365 n.1, at *7 (Ct App, Aug 21, 2024).

The Tennessee Court of Appeals avoided addressing an issue of first impression, one which is controlled by federal law and within the exclusive jurisdiction of a federal agency, and thus preemptive of all state law. (Attachment 2,

Court of Appeal Opinion, 08/21/2024). Rather than address the substantive issue, the Court of Appeals concluded that Petitioner's failure to notify the Tennessee Attorney General of the jurisdictional and constitutional challenges underlying his appeal constituted a waiver of the federal preemption issue. However, after oral argument, the Court of Appeals provided all the notice required for participation by the Tennessee Attorney General *and* provided all parties an opportunity to address the substantive issues. (Attachment 3, Court of Appeals Notice and Order, 07/13/2023). Indeed, although it argued that failure of notice constituted a waiver of that issue, the Attorney General nonetheless stated its desire to participate and its intent to file a brief. (Attachment 4, Tennessee Attorney General's Notice of Intent to Participate and File Brief, 08/07/2023).

In any event, while Petitioner's argument was based on federal preemption, he also pointed out that the federal agency that made the decision denying Respondent's claim for federal benefits has exclusive jurisdiction over such claims, which thereby deprived the trial court of the ability to issue a contrary ruling. Where a federal agency has exclusive jurisdiction over all questions of law and fact concerning a claim for benefits, and final, adjudicative authority over a decision on such a claim as to *all other courts*, an inferior court has no authority or jurisdiction to issue a ruling contrary to the federal agency's final decision. The predicate questions of federal preemption and exclusive jurisdiction was raised and argued in both the trial court and the Court of Appeals.

Petitioner respectfully requests this Court to grant his application for an extension of time to file his Petition for a Writ of Certiorari to present these fundamental questions to this Court.

QUESTIONS PRESENTED

I. Where the Tennessee Attorney General was provided notice and given the opportunity to participate in the substantive issues raised on appeal, did the Court of Appeals err in concluding that Petitioner waived the issue by failing to notify the Attorney General in accordance with state law of his federal constitutional and federal preemption challenges?

II. 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 adjudication of such claims as to "any other court" in any action for mandamus or otherwise, can a state court subsequently 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), 38 U.S.C. § 5301(a)(1).

The Tennessee Supreme Court refused Petitioner's petition to appeal the Court of Appeals' decision. (Attachment 1).

Petitioner seeks review in this Court and hereby respectfully requests a 60-day extension of time to file said writ for the following reasons, inter alia.

REASONS FOR GRANTING EXTENSION OF TIME

1. Petitioner is a disabled veteran who suffers from 100-percent 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. The filing and preparation of petitions for writs of certiorari requires significant

resources, costs, and expenses that cannot always be borne by the veteran. As a result, undersigned is required to maintain his regular law practice, while coordinating with various veterans' groups and organizations, and devising alternative ways to allocate resources and cover these costs.

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 2025 term began.

4. This case is yet another example of state courts continued and persistent defiance of federal law, notwithstanding the absolute preemption of federal law concerning the disposition of federal veterans' benefits by virtue of the enumerated Article I "Military Powers" of Congress. The Supremacy Clause provides that federal laws passed pursuant to Congress' enumerated Article I powers absolutely preempt all state law. Congress has affirmatively legislated that veterans' disability benefits are a personal entitlement for the veteran and must remain inviolate. See, e.g., *Porter v. Aetna Cas. Co.*, 370 U.S. 159, 162 (1962) (interpreting 38 U.S.C. § 3101 (renumbered as currently at 38 U.S.C. § 5301) and noting that this provision is to be liberally construed "to protect the funds granted by the Congress for the maintenance and support of the beneficiaries thereof" and these benefits "should remain inviolate."). Section 5301(a)(1) therefore protects *all veterans' benefits* from any equitable or legal process, unless Congress provides otherwise. *Id.* This Court has confirmed, time and again, that unless Congress passes legislation expressly allowing these benefits to be considered disposable and therefore divisible among the veteran

beneficiary and non-beneficiaries, the default rule is that federal preemption applies. See, e.g., *Howell*, 581 U.S. at 218, 220-22; *Hillman*, 569 U.S. at 491, Ridgway, 454 U.S. at 55.

These protected benefits are federal appropriations made by Congress pursuant to its enumerated powers under Article I. Any disposition of these pre-appropriated federal benefits without express, precise, and limited federal statutory authorization is preempted, being contrary to federal law, inter alia, 38 U.S.C. § 5301(a)(1) and (3), and therefore void.

No legal process may be used to deprive veterans of their disability benefits. 38 U.S.C. § 5301(a)(1). This includes a state court decision defying a prior decision by the VA denying a claim for an apportionment of these protected benefits. See 38 U.S.C. § 511(a). Not only does the latter provision provide that the VA has exclusive jurisdiction over all questions of law and fact concerning apportionment of veterans' disability benefits, but it further provides that any such decision is final and conclusive as to *all other courts*. This would of course include a state court that attempts to issue a subsequent decision effectively ordering an apportionment of these disability benefits, where such an apportionment has already been denied by the VA.

As this Court has held on multiple occasions, unless Congress has, by express legislation, *lifted* the absolute preemption provided by federal law in this area, state courts and state agencies simply have no authority, or jurisdiction, to direct or hold that such benefits be seized and/or paid over to someone other than their intended

beneficiary. See, e.g., *McCarty v. McCarty*, 453 U.S. 210 (1981); *Ridgway v. Ridgway*, 454 U.S. 46 (1981); *Mansell v. Mansell*, 490 U.S. 581 (1989); *Hillman v. Maretta*, 569 U.S. 483 (2013); *Howell v. Howell*, 137 S. Ct. 1400 (2017); *Torres v Texas Dep't of Pub. Safety*, 142 S. Ct. 2455 (2022) (noting the total occupation by federal law in areas of Congress' express enumerated powers and highlighting Congress' "military powers" as a lead example). In such cases, the states have no authority or jurisdiction in the premises. *Howell*, *supra* at 221-22, citing 38 U.S.C. § 5301.

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 (defining "disposable retired pay" for purposes of division in state court divorce proceedings); and (2) for spousal support and child support from disability pension (retirement pay (not disability benefits)), through the Child Support Enforcement Act (CSEA), 42 U.S.C. § 659(a), (h)(1)(A)(ii)(V).

Thus, if there is no federal statute authorizing the states to consider federal benefits in state court domestic relations proceedings, they are simply and expressly prohibited from doing so. Moreover, a state could not usurp the federal constitution and ignore the effects of preemptive federal law by virtue of a statute that requires "notice" to the state attorney general of a challenge being made to state law on the basis of federal preemption and the federal constitution. This would effectively countenance allowing the state to circumvent the effects of federal preemption on the basis of the failure of a citizen protected by such preemption to notify the state of his or her intent to raise this argument. The Constitution protects all from federal

preemption as a matter of the Supremacy Clause itself – notwithstanding any state law to the contrary. This very principle is ensconced within the Supremacy Clause itself.

5. The state court's decision, being preempted by federal law, is *void* and of no effect, and it must be rectified to effect justice. The Court of Appeals' opinion in this case directly usurps Congress's exercise of its enumerated Article I powers. Where a state court is preempted by controlling federal law, the state court has no authority to issue an order that exceeds its authority or jurisdiction. See, e.g., *Hines v. Lowrey*, 305 U.S. 85, 91 (1938) ("Congressional enactments in pursuance of constitutional authority are the supreme law of the land."); *Kalb v. Feuerstein*, 308 U.S. 433, 439 (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."). This is especially the case where Congress has provided exclusive jurisdiction to a federal agency over persons and property. *Kalb*, *supra.*

A state court that rules incorrectly on a matter preempted by federal law acts in excess of its authority and 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 U.S. (4 Wheat) 316, 436 (1819) (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.*

When federal law, through the Supremacy Clause, preempts state law, as it does in the area of divorce and family law in regard to federal benefits, see, inter alia, *Hillman*, 569 U.S. at 491, then a state court lacks jurisdiction and authority to issue a ruling that contradicts the federally directed designation of these benefits, period.

6. This case also raises the issue of a violation of Petitioner's personal constitutional rights. VA disability benefits are constitutionally protected property interests under the Fifth and Fourteenth Amendments to the Constitution. See, e.g., *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009) and *Robinson v. McDonald*, 28 Vet. App. 178, 185 (2016) (federal veterans' benefits are constitutionally protected property rights). See also *Morris v. Shinseki*, 26 Vet. App. 494, 508 (2014) (same). The Tennessee Court of Appeals' effectively deprives Petitioner of his constitutionally protected benefits.

7. The issues in this case are of national significance. While a consequence of Petitioner's argument, if correct, would be that federal law preempts state law in this area, the premise of that argument was based on a federal statute that actually

jurisdictionally *excludes* a state court from making *any contrary decision* on a claim for the federal benefits at issue in this case. In other words, the state courts of Tennessee (and the Tennessee Attorney General) *never had and never could acquire subject matter jurisdiction over this matter because a federal statute explicitly stays that state courts have no jurisdiction and that the VA's decision as to all questions of law and fact is final and conslusive –* ***as to all other courts***. These factors mitigate in favor of this Court accepting Petitioner's application to address these issues of first impression.

The only substantive legal issue before the Tennessee Court of Appeals was whether a state court can make a decision that is contrary to that of a federal agency, which, by federal statute, has been given ***exclusive jurisdiction*** and final adjudicative authority over all questions of law and fact concerning disposition of a veteran's disability benefits to dependents upon a claim for support. The federal statute at issue is 38 U.S.C. § 511. It provides, in relevant part, as follows:

> The Secretary [of 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 or the dependents or survivors of veterans. Subject to subsection (b), 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. 38 U.S.C. § 511(a).

The federal agency charged with that responsibility and provided with that exclusive jurisdiction, the VA, denied Respondent's application for support payments for the dependents out of Petitioner's restricted federal veterans' disability benefits – his only source of income from his military service. The trial court, aware of this decision, nonetheless contradicted it by ruling that Petitioner's disability benefits

could be considered and counted as income for this purpose. Was the trial court correct in so deciding?

This is the very question that was left open by this Court in *Rose v. Rose*, 418 U.S. 619, 640-643 (1987), a case also originating in Tennessee, in which this Court ruled that state courts could (without a prima facie federal determination) ostensibly exercise ***concurrent jurisdiction*** over veterans' disability benefits for payment of child support, and could therefore force a disabled veteran to use such benefits to satisfy such an obligation in a state court domestic relations matter. *Rose*, *supra* at 636 (majority holding) and 640-643 (Scalia, J., concurring).

Justice Scalia prefaced his concurrence with the opinion that the states probably *did not have concurrent jurisdiction to issue a ruling that would contradict the federal agency's decision* denying a claim by a dependent for a portion of a disabled veteran's benefits to satisfy a state child support obligation. *Id.* at 641-642. As Justice Scalia reasoned, even before the statutory overhaul in response to *Rose* discussed herein, "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 [38 U.S.C.] § 211 [now renumbered, as amended, 38 U.S.C. § 511] making his decisions 'final and conclusive' – and if so would…be pre-empted, regardless of the Court's perception that it does not conflict with the 'purposes' of § 211." *Id.*

However, since there had been no prior adjudication by the VA of a claim for an apportionment of the veteran's disability benefits, there was no need to address

the question. *Id*. at 642. In the instant case, the VA *did make* a prior decision *denying* a claim for a portion of Petitioner's federal disability benefits under 38 U.S.C. § 5307. Thus, *Rose* is of limited value to the disposition of this case because before she went to the trial court making a claim for Petitioner's disability benefits, Respondent filed a claim in the federal agency; the federal agency assumed exclusive jurisdiction over that claim for the benefits concerned; and the federal agency issued a final ruling *as to any other court*, before the trial court here issued a contrary ruling. See 38 U.S.C. § 511.

Moreover, the federal statute in existence at the time, 38 U.S.C. § 211 (renumbered as 38 U.S.C. § 511), was arguably ambiguous on the issue of exclusivity with respect to "state court" jurisdiction. *Id*. at 641 (Scalia, J., concurring, quoting the then-applicable language of § 211(a), which stated: "…decisions of the Administrator [now Secretary of the VA] 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", and stating that the Court found this provision "inapplicable because *it does not explicitly exclude state-court jurisdiction*, as it does federal") (emphasis added). *Id*.

Just after *Rose*, Congress responded with the passage of the Veterans Judicial Review Act (VJRA), Pub. L. No. 100-687, 102 Stat. 4105 (1988), codified in various sections of Title 38 of the United States Code. As part of this overhaul, Congress changed the language in § 211 to specifically exclude state courts from exercising any

jurisdiction over claims for these particular benefits, rewriting it as follows: "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*." 38 U.S.C. § 511(a) (second sentence) (emphasis added). Clearly, if Congress had agreed with the *Rose* majority's decision, it would have left this language alone, indicating tacit agreement with this Court's interpretation that the statute did not in fact exclude state court jurisdiction as to decisions respecting a veterans' disability benefits and claims therefor lodged by dependents. But Congress specifically removed the apparent limitation in § 211 (now § 511) to only federal courts. Moreover, Congress solidified that "*all questions of law and fact*" with respect to any claim for these benefits that a dependent might have is within the exclusive jurisdiction of the VA. 38 U.S.C. § 511(a) (first sentence).

Therefore, Congress addressed any ostensible ambiguity in this provision and provided for exclusive federal jurisdiction over all claims for these benefits. With the overhaul of § 511 and the enactment of the post-*Rose* VJRA, state courts clearly have no jurisdiction or authority over veterans' disability benefits and certainly they cannot make a ruling that would be contrary to the federal agency's decision on a claim by a dependent for a portion of these benefits to satisfy any type of dependency support obligation.

Finally, in 2017, this Court issued a decision in which it clarified that federal law preempts all state law in this particular subject matter. *Howell v. Howell*, 137 S. Ct. 1400, 1404-1406 (2017). Unless federal law explicitly allows state courts to

consider specific veterans' benefits in state court domestic proceedings, they may not do so. While the case only addressed property division using federal veterans' disability benefits in state domestic relations provisions, this Court clearly ruled that federal law has always preempted state law in this particular area and that 38 U.S.C. § 5301 removed all authority from the state over those benefits that are not allowed by federal law to be divided. *Id.* at 1405. And, even where Congress does allow the state to consider veterans' benefits in state court domestic relations proceedings, the grant of authority is both "precise and limited". *Id.* at 1404, citing *Mansell v. Mansell*, 490 U.S. 581, 589 (1989).

While acknowledging its 1987 decision in *Rose*, this Court in *Howell* made clear that unless federal law *allows the state* authority over the particular benefits at issue, the default position is (1) federal law preempts all state law, and (2) state courts have *no authority* "legal or equitable" by virtue of 38 U.S.C. § 5301, to vest these specific disability benefits in anyone other than the veteran beneficiary. *Id.* at 1405.

Since such disability pay is *excluded* from being considered income, it is protected by 38 U.S.C. § 5301(a)(1) from all legal and equitable state court process. See also *Howell*, 137 S. Ct. at 1405. The only legal process available to dependents seeking a portion of these benefits as "support" would be the federal apportionment process under 38 U.S.C. § 5307.

In the instant case, Respondent submitted a claim on behalf of the minor children to have the VA make a decision as to whether Petitioner's pure VA disability benefits could be further apportioned to pay for support. The VA denied that claim.

Respondent's only option at that point was to appeal that decision within the federal agency framework established by the VJRA to the Court of Appeals for Veterans Claims (CAVC). Respondent did not do so. Thus, the decision of the VA denying the claim for an apportionment of these benefits became final as to *any other court*, including the state trial court here. See 38 U.S.C. § 511(a) (second sentence).

Thus, the state trial court had no authority or jurisdiction to conclude that Petitioner's veterans disability benefits could be used to satisfy the dependency support obligations in the state court proceeding. That decision was extra-jurisdictional and without the authority of the state court to make. As such it must be reversed and the Court of Appeals erred by not ruling on the substantive issue.

While Petitioner believes that preemptive federal law fully controls the disposition of this issue, and that the order of reversal is a simple matter of course for this Court, the legal issue itself is a jurisprudentially significant one. Most state courts, including Tennessee, simply conclude, on the basis of *Rose*, *supra*, that a state can "count" or "consider" veterans' disability benefits as income, and thus, these benefits are included as "income" along with any other monies received by the veteran when considering a disabled veteran's support obligations. However, state courts have not directly addressed the post-*Rose* passage of the VJRA by Congress and the accompanying amendments to the language of 38 U.S.C. § 511. These changes directly and immediately responded to *Rose* and clarified that state courts in fact do not have *any* jurisdiction when it comes to a division of a veteran's pure disability benefits and may not therefore issue a decision contrary to that of the federal agency

now provided with the exclusive jurisdiction and adjudicative authority to do so. As one court has put it, any decision affecting a veteran's disability pay would be a decision affecting, and indeed, reducing a veteran's entitlement to disability benefits – any such "adjudication…'would necessitate a 'consideration of issues of law and fact involving the decision to reduce [the veteran's] benefits,' a review explicitly precluded by 38 USC § 511(a)." *Veterans for Common Sense v. Shinseki*, 678 F. 3d 1013, 1023 (9th Cir. 2011). Finally, while not addressing state dependent support obligations, this Court's 2017 decision in *Howell*, *supra*, and its more recent decision in *Torres v. Texas Dep't of Pub. Safety*, 142 S. Ct. 2455 (2022) discussed *infra*, provide significant current insight on the state of absolute preemption of federal law in this area.

Petitioner respectfully suggests the state courts erred and the decisions must be reversed and a remand is in order to direct the trial court to reassess the claimed arrearages and other legal obligations stemming from its erroneous decision, including its denial of Petitioner's claim for attorneys fees.

Petitioner is not the only disabled veteran whose disability pay is a sole means of subsistence and who relies on these benefits to survive. He is also not the only disabled veteran whose benefits have been misappropriated and redirected by state courts in violation of the principles of absolute federal preemption and Congress' inviolate Article I powers. Every decision by a state court defying the Supremacy Clause and ignoring federal law affects thousands of veterans in that state.

It is not that these federal benefits are available to be divided and disposed of if there is no federal law that prohibits such disposition. It is that they are strictly

off limits and cannot be divided and disposed of *unless* Congress has expressly and precisely provided therefor. The former proposition is a fundamental misconception among the states and practitioners in general that continuously misinforms their understanding concerning the propriety of division of federal benefits in state domestic relations proceedings. The state cannot invade the federal interest created by the federal legislation and force a distribution thereof to a beneficiary other than that found in the federal statute. *Hillman*, 569 U.S. at 494, citing *Ridgway*, 454 U.S. at 55.

Congress has provided exclusive jurisdiction and conclusive adjudicatory authority to the federal agency entrusted with these restricted and federally appropriated benefits. See 38 U.S.C. § 511.

Furthermore, if there was any doubt, 38 U.S.C. § 5301 affirmatively protects a military veteran's benefits from any "legal or equitable process whatever," prohibits any contractual agreements by which the veteran beneficiary agrees to dispossess himself or herself of these benefits, and voids from inception any such agreement. See 38 U.S.C. § 5301(a)(1) and (3)(A) and (C).

The Tennessee Courts ignored the Supremacy Clause and federal preemption, and ruled that Petitioner had *waived* his right to challenge the state on the basis of the Supremacy Clause's absolute preemption. The state courts ruled this way despite the fact that Petitioner argued in the original trial court proceeding that 38 U.S.C. § 511 removed all jurisdiction and authority from the state court to even consider a disposition of his federal benefits because the federal agency with such exclusive

jurisdiction and adjudicatory authority and control over these benefits had already issued a denial of the Respondent's claim for these benefits in the only forum in which she could make such a claim.

As a result, Petitioner has been deprived of his personal entitlement to federally appropriated and specifically designated federal benefits.

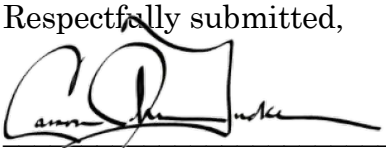
CONCLUSION

It is Petitioner's desire that his petition for a writ of certiorari be granted so that the federal benefits to which he and other veterans in his situation across the country are entitled can be finally and ultimately restored.

For the foregoing reasons, undersigned counsel requests additional time to prepare a full exposition of the important legal issues underlying Petitioner's case.

WHEREFORE, for the reasons stated herein, Petitioner applies to Your Honor and respectfully requests an extension of 60 days from the Thursday, April 24, 2025, due date to file a Petition for a Writ of Certiorari to the Tennessee Supreme Court, so that this Court may consider said petition on or before Monday, June 23, 2025.

Respectfully submitted,



Carson J. Tucker
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Dated: April 14, 2025