

In The
Supreme Court of the United States

MELVIN BLOUGH,

Petitioner,

v.

MORRIS SILBERMAN, et al.,

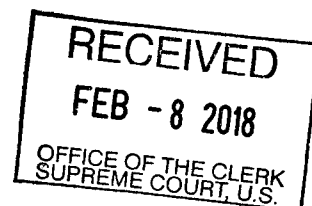
Respondents.

On Petition for Writ of Certiorari to the United
States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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February 5, 2018



QUESTION PRESENTED

The National Debt is not measured in dollars, but rather in the number of lives lost and lives crippled in service to their country by America's veterans. With the exception for those Americans who lost their life in service to their country; the American people, and thereby this Court of "we the people", have no greater Constitutional obligation than to protect the federal statutory rights of those veterans who became severely disabled in service to their country.

Petitioner; as a combat-disabled veteran with loss of both feet, loss-of-use of both hands, and eight other combat-related injuries, did waive his military disability retirement pay (U.S.C. Title 10, section 1201(b)(3) (B)) to receive the waiver protections afforded by U.S.C. Title 38, section 5305, and U.S.C. Title 5, sections 8332 and 8411. Petitioner's did earn by sacrifice those Federal Constitutional obligations and federal statutory waiver protections which were violated by Respondents under the guise of "judicial capacity" in the total absence of jurisdiction.

Respondent state court judges have acknowledged violating the Supremacy Clause of the United States Constitution, Petitioner's federal statutory rights, Petitioner's Fifth Amendment property and due process rights, and Petitioner's Fourteenth Amendment due process rights. Respondents have claimed judicial immunity based upon said actions being within their "judicial capacity" and have refused to address their total absence of jurisdiction.

Question: Is the "pubic interest" in an unrestrained judiciary of greater importance to the American people than the "federal interest" in those veterans who became severely disabled in service to their country?

PARTIES TO THE PROCEEDING

MORRIS SILBERMAN,

Individually and in his official capacity as a Justice
within the District Court of Appeal of the State of Florida
Second District,

MARVA CRENSHAW,

Individually and in her official capacity as a Justice
within the District Court of Appeal of the State of Florida
Second District,

DANIEL H. SLEET,

Individually and in his official capacity as a Justice
within the District Court of Appeal of the State of Florida
Second District.

TABLE OF CONTENTS

	<u>PAGE</u>
QUESTION PRESENTED.....	i
PARTIES TO THE PROCEEDINGS.....	ii
TABLE OF AUTHORITIES.....	iii - vii
JURISDICTION.....	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....	1
STATEMENT OF THE CASE AND FACTS MATERIAL TO QUESTION PRESENTED	2
ORIGINAL JURISDICTION.....	8
JUSTIFICATION FOR GRANTING THE PETITION.....	9
DENIAL OF DUE PROCESS.....	13
JUDICIAL IMMUNITY.....	19
CONCLUSION.....	29
INDEX TO APPENDICES:	
APPENDIX A: Opinion by the United States Court of Appeals for the Eleventh Circuit in the case before this Court.....	F 1-4
APPENDIX B: Order of Dismissal by the United States District Court for the Middle District of Florida.....	B 1-5

APPENDIX C: Constitutional and statutory provisions	C 1-2
---	-------

APPENDIX D: Index to volumes 1- 2. Listing as exhibits those pleadings by Petitioner and Respondents in the lower Courts (without supporting documents).....	D 1-7
--	-------

TABLE OF AUTHORITIES

<u>CASES</u>	PAGE
Arrington v. Cobb County, 139 F.3d 865, 872 (11 th . Cir. 1998).....	27..
Arver v. United States, 245, U.S. 366 (1918).....	10
Bradley v. Fisher, 13 Wall 335, 347 (1872)...	3, 20, 22, 24
Ex parte Virginia, 100 U.S. 339 (1880)	28
Ex parte Young, 209 U.S. 123 (1908).....	3..
Free v. Bland, 369 U.S. 663 (1962).....	3
Hisquierdo Hisquierdo, 439 U.S. 572 (1979).....	3
In Edgar v. MITE Corp, 457 U.S. 624 (1982).....	3, 2, 25, 27
Mansell v. Mansell, 490 U.S. 581 (1989). 3, 11, 15, 21, 23, 25, 26, 29	
McCarty v. McCarty, 453 U.S. 210 (1981).....	3, 12
McCune v. Essig, 199 U.S. 382 (1905).....	3
Pierson v. Ray, 386 U.S. 547.....	27, 28, 29
Stump v. Sparkman, 435 U. S. 349 3... (1978)	20, 22, 24, 27, 29
U. S. v. Yazell, 382 U.S. 541 (1966).....	3
Wetmore v. Mankoe, 196 U.S. 68 (1904).....	3

<i>Wissner v. Wissner</i> , 338 U.S. 655 (1950).....	3
<i>Yiatchos v. Yiatchos</i> , 376 U.S. 306 (1964)	3

CONSTITUTIONAL PROVISIONS

Article I, Section 8	1
Article III, Section 1	1, 8
Article III, Section 2	1, 8
Article VI Clause 2 ...	2, 13, 15, 16, 19, 20, 21, 22, 25, 26, 28

CONSTITUTIONAL AMENDMENTS

Fifth Amendment.....	5, 6, 7, 28
Eleventh Amendment.....	6, 7,
Fourteenth Amendment.....	5, 6, 7, 28,

STATUTES

U.S.C. Title 5 sections 8332/8411 (Regs section 831.301)	I, 11, 13,
U.S.C. Title 5.....	11, 12, 13, 18, 23
U.S.C. Title 10, section 1201(b)(3)(B)(ii).....	I, 12, 13, 23
U.S.C. Title 10, Subtitle A, Part II, Chapter 71, section 1408(a)(4)(B).....	11, 12

U.S.C. Title 28, Part IV, Chapter 85, section 1331.....	9
U.S.C. Title 28, Part VI, Chapter 81, section 1254(1)	1
U.S.C. Title 38 section 5305.....	I, 11, 12, 13, 18, 23
U.S.C. Title 42, Chapter 7, Subchapter IV, Part D, section 659(h)(2)(B).....	11, 12, 13
Title 42, section 1983	2, 3, 5, 6, 7, 9, 15, 27, 28, 29
 <u>FEDERAL RULES OF APPELLATE</u>	
<u>PROCEDURE RULE 12(b)(6)</u>	7
 <u>FLORIDA STATUTES</u>	
Title VI, Chapter 61, section 61.075(1)	17
 <u>MISC. REFERENCES</u>	
2 Harper & James, The Law of Torts 1642-1643 (1956).	28

JURISDICTION

Jurisdiction is conferred upon this Court by U.S.C. Title 28, Part VI, Chapter 81, section 1254(1) as to the November 7, 2017 judgment by the United States Court of Appeals for the Eleventh Circuit (App. A).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Constitution of the United States of America

We the People of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defense, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this Constitution of the United States of America.

Article I, Section 8

The Congress shall have Power To declare War, ... To raise and support Armies, ... To make all laws which shall be necessary and proper for to carry into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article III

Section 1. The judicial power of the United States shall be vested in one supreme Court, and in such other inferior Courts as the Congress may from time to time ordain and establish

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under the Constitution, the Laws of the United States.

Article VI Clause Two

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

Title 42 U.S.C. Section 1983

Every person who, under color of any state statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation or any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action of law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was not available.

STATEMENT OF THE CASE AND FACTS MATERIAL TO THE QUESTION PRESENTED

This Petition for Writ of Certiorari presents the Court with a conflict which exists between this Court's professed interest in having state court judges who are at liberty to exercise their independent judgment about the merits of a case without fear of being sued for damages under the doctrine of judicial immunity and the right of severely disabled veterans to bringing suit under U.S.C. Title 42, section 1983 against those state court judges who have violated the federal Constitutional and federal statutory

rights of said veterans under color of state law. The Respondent state court judges have done major damage to the “clear and substantial federal interests” of Petitioner by violating of the Supremacy Clause of the Constitution providing for loss of judicial immunity. *Mansell v. Mansell*, 490 U.S. 581 (1989), *In Edgar v. MITE Corp*, 457 U.S. 624 (1982), *v. Hisquierdo Hisquierdo*, 439 U.S. 572 (1979), *Free v. Bland*, 369 U.S. 663 (1962), *Ex parte Young*, 209 U.S. 123 (1908), *Bradley v. Fisher*, 13 Wall 335, 347 (1872), *McCarty v. McCarty*, 453 U.S. 210 (1981), *McCune v. Essig*, 199 U.S. 382 (1905), *Stump v. Sparkman*, 435 U.S. 349 (1978), *Wissner v. Wissner*, 338 U.S. 655 (1950), *Yiatchos v. Yiatchos*, 376 U.S. 306 (1964), *Wetmore v. Mankoe*, 196 U.S. 68 (1904), *U. S. v. Yazell*, 382 U.S. 541 (1966).

During the five year period preceding the filing of this Petition for Writ of Certiorari; seven (7) State of Florida Circuit Court Judges, five (5) State of Florida Appellate Court Judges, five (5) State of Florida Supreme Court Judges, four (4) Judges on the United States District Court for the Middle District of Florida, nine (9) Judges on the United States Court of Appeals for the Eleventh Circuit, and the nine (9) members on this Court have either personally violated; or acquiesced to the violation of the Supremacy Clause of the United States Constitution, Petitioner’s federal statutory rights, Petitioner’s Fifth Amendment property and due process rights, and Petitioner’s Fourteenth Amendment due process rights based solely upon Petitioner’s *pro se* status.

It is respectfully requested that this Court cease and desist in the blatant and continuous pattern of discriminatory judicial abuse; based solely upon Petitioner’s *pro se* status, which has been inflicted upon Petitioner by this Court and the inferior courts since this litigation was initiated in 2012. Petitioner has suffered greatly for the principle of equal justice for all and has

been denied equal justice by the judicial system which was founded to protect said principle.

Petitioner does not pretend to be a lawyer and was forced to protect his own federal statutory interests when the initial state trial court judge stated in open court that he would not allow the federal statutes claimed by Petitioner to be litigated in his courtroom. Petitioner was forced to dismiss his attorney who feared retaliation by the Courts if she attempted to litigate the claimed federal statutes and has appeared *pro se* since.

This Court cannot be so naïve as to deny that discrimination against *pro se* litigants, based solely upon their *pro se* status, does not exist within the state and federal courts. Petitioner; as a combat-disabled veteran with loss of both feet, loss-of-use of both hands, and eight other combat related injuries, is angered by the bias judgments which have been inflicted upon Petitioner throughout this litigation.

The reality is that each year tens of thousands of non-incarcerated individuals are required to appear *pro se* in the state and federal courts. Those persons employed by the courts to review the court record in litigation involving *pro se* litigants; and present their findings to the respective judge for the issuance of an opinion, will violate the rights of the *pro se* party whom the biased reviewer has pre-conceived to be the least qualified in their knowledge of the law and legal procedures or against whom the bias of the judge is directed. The judgments against the *pro se* litigants who are pre-conceived by the initial courts to be unqualified to represent themselves are readily accepted by the appellate court judges. In the case at point, the judgments by the initial courts completely ignored Petitioner's pleadings as false; and distort the facts and law presented, such as to reach an unlawful judgment.

The appellate courts did readily affirm the biased findings by the lower courts or provided no judgment at all. There is no excuse for the bias which exists within the courts to the detriment of *pro se* litigants. The laws, facts and questions within this Petition are presented such that this Court may address the blatant bias which exists within the state and federal courts and is destroying the waning public confidence in the extent of authority which this Court has bestowed upon sitting judges at all levels of the judiciary.

This is the third in a series of Petitions directed to this Court based upon the judicial abuse to which Petitioner has been subjected by the inferior courts:

1. The initial state court action was directed to Petitioner's claims of entitlement to the protections of two federal statutes which preempted (voided) state divorce statutes on equitable distribution and alimony in State of Florida circuit and appellate court proceedings. The appeal of the flagrant and intentional judicial abuse of Petitioner's Fifth and Fourteenth Amendment due process rights under the United States Constitution (hereafter "Constitution") and the claimed federal statutes were brought to this Court on a Petition for an Alternative Writ of Mandamus to the District Court of Appeal of the State of Florida Second District in Case No. 16-1531 which was denied by this Court on October 2, 2017. Although this Petition for Writ of Certiorari is directed to the personal liability of the same judges as those named judges on the Petition for an Alternative Writ of Mandamus to the District Court of Appeal of the State of Florida Second District; this federal action does not challenge the state court decision in the form of the Final Judgment and the questions presented are neither identical nor closely related.

2. Petitioner did initially bring a personal injury suit under U.S.C. Title 42, section 1983 in federal court against the named trial court judges in the state court action claiming that said trial court judges did; in refusing to enforce the two claimed federal statutes which did preempt state statutes, violate the Supremacy Clause of the Constitution, Petitioner's federal statutory rights, Petitioner's Fifth Amendment property and due process rights, and Petitioner's Fourteenth Amendment due process rights. Respondents did concede; for Federal Appellate Procedure Rule 12(b)(6) summary dismissal purposes, that Respondents did violate the Supremacy Clause of the Constitution, and Petitioner's Fifth/Fourteenth Amendment property/due process rights in a claim of entitlement to two federal statutes which preempted state statutes, by refusing to enforce the federal statutes which preempted state statutes and enforcing those state statutes which were preempted by the federal statutes. Respondent state trial court judges have taken the legal position that Respondents are entitled to judicial immunity for their actions as Respondents were acting in their judicial capacity in violating the Supremacy Clause of the Constitution. Respondents failed to respond to Petitioner's claim that Respondents did act in the total absence of jurisdiction. Respondents did also claim Eleventh Amendment immunity and claim exclusion under the *Rooker-Feldman* doctrine. The federal appellate court did dismiss Petitioner's complaint based upon Respondent's claim of judicial immunity and the *Rooker-Feldman* doctrine. The initial federal action directed to the personal liability of the named trial court judges is currently before this Court on a Petition for Writ of Certiorari

to the United States Court of Appeals for the Eleventh Circuit.in Case No. 17-880.

3. Petitioner did bring this second personal injury suit under U.S.C. Title 42, section 1983 in federal court against the named state appellate court judges in the state court action who “affirmed” the Final Judgment by the state trial court without further comment claiming the same Constitutional and federal statutory violations of Petitioner’s rights as in the initial federal court action against the named state trial court judges.

The Respondents in this second liability suit have also conceded; for Federal Appellate Procedure Rule 12(b)(6) summary dismissal purposes, that Respondents did violate the Supremacy Clause of the Constitution, and Petitioner’s Fifth/Fourteenth Amendment property/due process rights in a claim of entitlement to two federal statutes which preempted state statutes, by refusing to enforce the federal statutes which preempted state statutes and enforcing those state statutes which were preempted by the federal statutes. Respondent state appellate court judges have taken the legal position that Respondents are entitled to judicial immunity for their actions as Respondents were acting in their judicial capacity in violating the Supremacy Clause of the Constitution. Respondents failed to respond to Petitioner’s claim that Respondents did act in the total absence of jurisdiction. The federal district court and the federal appellate court did not accept Respondents claims of exclusion under the *Rooker-Feldman* doctrine or Eleventh Amendment Immunity; however did affirm dismissal of Petitioner’s Complaint based upon Respondent’s claim of judicial immunity.

Although this Petition for Writ of Certiorari is directed to the same court as Petitioner's Petition for Writ of Certiorari in Case No. 17-880; this Petition is directed to the individual liability of the named state appellate court judges; as opposed to the named state trial court judges, and is filed to prevent the expiration of the personal liability statute. This Petition presents a challenge to the doctrine of judicial immunity based upon the Federal Constitutional and federal statutory interests afforded to Petitioner while the Petition for Writ of Certiorari in Case No. 17-880 does question the doctrine of judicial immunity based upon a bogus claim of judicial capacity in the absence of jurisdiction. Neither this Petition for Writ of Certiorari nor the Petition in Case No. 17-880 challenge the state court's decision in the form of the Final Judgment which was appealed to this Court on a Petition for an Alternative Writ of Mandamus.

The United States Court of Appeals for the Eleventh Circuit has summarily dismissed a well-established federal interest based upon an animus which is so firmly established within the minds of federal and state court judges that only the authority granted to this Court under Article III section 1 of the Constitution will be able to bring "justice" to a very unjust judiciary. *See* Appendix A.

ORIGINAL JURISDICTION

Federal subject matter jurisdiction over the legal claims stated in the Complaint were brought to the United States District Court pursuant to Article III, Section 2, Clause 1 of the Constitution which extends to all cases, in Law and Equity, arising under the laws of the United States. Codified under U.S.C. Title 28, Part IV, Chapter 85, section 1331. The district court did have personal jurisdiction over the Respondent state appellate

court judges who are not entitled to the court-born doctrine of judicial immunity due to the fact that Respondent state appellate court judges did act in the “clear absence of all jurisdiction over the subject matter” and did violate Petitioners clearly established federal statutory and Constitutional rights.

JUSTIFICATION FOR GRANTING THE PETITION

The responsible judges on the Florida Second District Court of Appeal have done grave harm to Petitioner’s “clear and substantial federal interests” in refusing to accept the preempting authority of the federal statutes claimed by Petitioner by affirming the decision by trial court Judge Nazaretian.

Great foresight was shown by the authors of the Federal Constitution by including the Supremacy Clause directed to potential unconstitutional actions by state court judges who refuse to preserve and protect the federal interests of the American people which are represented in the extensive number of federal statutes enacted by the United States Congress which promote and protect such federal interests as the civil rights act of 1964, the equal voting rights act, the American with disabilities act in 1990, and those federal statutes which address America’s continuing obligation to those who served in the military. State court judges have a proven history of abusing minority rights, women’s rights, the rights of the handicapped, and as this case demonstrates – the rights of veterans to the protection of federal statutes which preempt state divorce statutes. The United States Congress did provide; under U.S.C. Title 42, section 1983, for the accountability of said state court judges as violators of federal statutory interests.

The National debt to combat-disabled veterans is of such importance that the Constitution authorizes the

Federal Government to intrude into domestic relations (a subject normally reserved to the states) to protect the “clear and substantial federal interests” of combat-disabled veterans; which the Federal Government did in the form of those federal waiver statutes claimed by Petitioner.

“The extraction by the government from the citizens of the performance of his supreme and noble duty of contributing to the defense of the rights and honor of the nation as the result of a war declared by the great representative body of the people. It may not be doubted that the very conception of a just government and its duty to the citizen includes the reciprocal obligation of the citizen to render military service in case of need; and the right to compel it. *Arver v. United States*, 245, U.S. 366 (1918).

No continuing relation between the Federal Government and a citizen is more distinctively federal in character than that between it and the severely disabled veteran. The relation between the Federal Government and severely disabled veterans is such that said veterans are “wards” of the Federal Government. The scope, nature, guarantees, protections, implied contracts, and reciprocal obligations of the relation are derived from the United States Constitution, governed by federal legislative, judicial and executive authority, and have been the subject of Congressional recognition since the inception of the Republic.

There exists a reciprocal obligation within the Federal Constitution protecting rights specific to the status of severely disabled veterans. The United States Government did; in meeting its Constitutional responsibility to provide for the national defense by raising armies, establish a Constitutional obligation to Petitioner; a combat-disabled veteran, guaranteeing that

the Federal Government (including the United States Supreme Court) will protect Petitioner's Constitutional and federal statutory rights. Protecting the Constitutional rights of severely disabled veterans is a reciprocal obligation of the Federal Government inherent to the status of severely disabled veterans.

The waiver of military disability retirement pay permitted under U.S.C. Title 38 section 5305 and U.S.C. Title 5 sections 8332(c)/8411 (Regs section 831.301); transfers the Constitutional tort liability of the United States Government for combat injuries in the form of military disability retirement pay to U.S.C. Title 5 and/or U.S.C. Title 38 compensation. Said waivers convert the liability from one form of compensation into another which retains the same rights, claims and privileges. Because the United States Government cannot dismiss its liabilities by having others assume its liabilities; waived military disability retirement income waived to receive U.S.C. Title 5 and U.S.C. Title 38 compensation cannot be extinguished by equitable distribution or alimony. The rights, claims, privileges to military disability retirement income (including the U.S.C. Title 5 and/or U.S.C. Title 38 compensation waived to) is absolute under the waiver provisions. The alimony exclusion under U.S.C. Title 42 section 659(h)(2)(B) is an example of this principle. See exhibits 4 and 5 to Petitioner's Writ of Mandamus in Case No. 16-1531.

Congress did draft the U.S.C. Title 10, section 1408(a)(4)(B) deductions based upon U.S.C. Title 42, 659(h)(2) deductions (see footnote to *Mansell v. Mansell*, supra.). bringing the known rights, claims, and privileges of military disability retired pay to military longevity retirement pay which has been converted (waived) to U.S.C. Title 5 compensation and/or U.S.C. Title 38 compensation. The waivers provide exclusions to the U.S. C. Title 10 1408(a)(4)(B) property interests of

military longevity retirees as did in 1982 exist for military disabled retirees under U.S.C. Title 42, section 659(h)(2)(B). U.S.C. Title 38 section 5305; U.S.C. Title 5 sections 8332(c)/8411 (Regs section 831.301); transfer the Constitutional tort liability of the United States Government for combat-injuries in the form of military disability retirement pay to U.S.C. Title 5 and/or U.S.C. Title 38 compensation.

The *McCarty* blanket military retirement pay exemption recognized that military disability retirement pay under U.S.C. Title 10, section 1201(b)(3)(B) already had the waiver protections of U.S.C. Title 38 and U.S.C. Title 5 compensation at time of the waivers were executed (i.e. time of discharge from the military and the time of civil service retirement). *Mansell* and *Howell* did acknowledge the waived portion of military longevity retirement pay protections to U.S.C. Title 38 and U.S.C. Title 5 compensation which the *McCarty* blanket military retirement pay exemption recognized and to which the Former Spouses' Protection Act granted entitlement upon waiver. The *McCarty* recognition of waived U.S.C. Title 38 and U.S.C. Title 5 compensation to combat-disabled veterans (U.S. C. Title 38 section 5305 and U. S.C. Title 5 sections 8332(c) and 8411; (Regs section 831.301) were never lost under the Former Spouses' Protection Act as *Mansell* and *Howell* addressed the waiver of military longevity retirement pay to receive entitlement protections to Title 38 and Title 5 compensation.

The *McCarty* court stated that the protections for military disability retirement pay are already provided by Congress in the waiver provisions under U.S.C. Title 38 section 5305 and did not need to be addressed in *McCarty* and thereby *Mansell*. The *McCarty* reference to the military disability retirement pay protections under USC Title 38 section 5305 did also incorporate the waiver specific provisions under U.S.C. Title 5 section 8332(c)

and 8411; Regs 831.301 blanket exception for veterans wounded in combat. Please refer to exhibits 4 and 5 of Petitioner's Petition for Writ of Mandamus (Case No. 16-1531) which describes the basis for the protections afforded to military disability retirement pay which has been waived to receive entitlement to the exclusions for Title 38 and Title 5 compensation under U.S.C. Title 10, section 1408(a)(4)(B) and U.S.C. Title 42, section 659(h)(2)(B).

It is inherent to the Constitutional authority and purpose of this Court to protect the rights of severely disabled veterans in compliance with the Federal Governments reciprocal obligation.

DENIAL OF DUE PROCESS

A total of seventeen (17) state court judges (including Respondent appellate court judges) unlawfully refused to enforce those preempting federal statutes claimed by Petitioner under judicial authority which had been specifically granted to them by Congress, the Supreme Court, and Article VI Clause 2 of the Constitution. The seventeen (17) state court judges have also unlawfully enforced the voided (preempted) state divorce statutes under judicial authority which had been specifically withheld from them by Congress, the Supreme Court, and Article VI Clause 2 of the Constitution. The end result is that Petitioner has lost his entire U.S.C. Title 5 civil service annuity and has nothing to show for thirty-three (33) years of employment with the federal government and Petitioner is being evicted from that residence with was purchased by Petitioner alone with funding by the Department of Veterans Affairs (DVA), including \$84,000 in grants from the DVA under the DVA Specially Adapted Housing Program which is directed to those most severely disabled veterans. The house will be sold and all proceeds remitted to the ex-wife.

Petitioner's claims of entitlement to and enforcement of the claimed federal statutory provisions; and the preemption effect of the claimed federal statutes on State of Florida divorce statutes, were not challenged by the courts or the ex-wife's four attorney's at any point during the four years of litigation. The orders, opinions, and judgment issued by the state court judges did not even mention Petitioner's claimed preempting federal statutes. The Final Judgment by the trial court; which was affirmed by the Respondent appellate court judges without comment, made no mention of the federal statutes claimed by Petitioner.

Petitioner's Complaint (exh. 1) goes into great detail regarding Petitioner's pleadings which were well pleaded to the Respondent state appellate Court judges.

Allegation number one of Petitioner's appeal of the state trial court Final Judgment went into great detail in advising appellate court Judges Silberman, Crenshaw, and Sleet that the Final Judgment under appeal was without judicial authority in that it is based exclusively upon State of Florida divorce statutes which had been preempted (voided) by federal statutes.

Allegation number two of Petitioner's appeal of the state trial court Final Judgment documented the judicial abuses by Judge Nazaretian before, during and subsequent to the Final Hearing and provided indisputable evidentiary proof of Petitioner's entitlement to the protections of the claimed federal statutes. The judicial abuse by the trial court judges of those federal statutes claimed by Petitioner was fully pleaded in the appeal. Petitioner did request that the Final Judgment be vacated by the appellate court in that it was based upon state statutes which had been preempted (voided) by

those federal statutes claimed by Petitioner and was therefore without judicial authority.

Allegation number three of Petitioner's appeal of the state trial court Final Judgment did explain the legal basis upon which Judge Nazaretian was "stripped" of his State of Florida judicial authority and subject to suit as an individual including the legal precedents causing the loss of Judge Nazaretian's judicial authority.

The only lawful judicial actions which could have been taken by State of Florida Appellate Court Judges Nazaretian, Silberman, Crenshaw, Sleet were limited to voiding the Final Judgment and returning the case to the trial court with instructions to enforce the claimed federal statutes which did preempt (void) State of Florida divorce states on equitable distribution and alimony. The judicial authority to enforce the preempted (voided) Florida statutes on equitable distribution and alimony had been specifically withheld from the respective judges by Article VI Clause 2 of the Constitution pursuant to the 1982 enactment of the preempting federal statute (Former Spouses' Protection Act) as mandated by the Court in *Mansell*, supra. State appellate court Judges Silberman, Crenshaw, and Sleet did act in violation of the "Supreme Law of the Land" by refusing to exercise authority which had been granted to them and concurrently exercising judicial authority which had been specifically withheld from them.

Upon issuance of the Final Judgment by trial court Judge Nazaretian; Petitioner did bring a personal liability suit against the state trial court judges in the United States District Court under U.S.C. Title 42, section 1983. This federal action is currently pending before this Court as Case No. 17-880. During the appeal of this federal court action the Final Judgment in the state court action was "Affirmed" on February 1, 2017 without further

comment by a panel of the Florida Second District Court of Appeal consisting of Respondent state appellate court judges in this case.

The February 1, 2017 affirmation of the Final Judgment by the respective judges on the Florida Second District Court of Appeal was an act of retaliation against Petitioner for bringing suit against the Defendant trial court judges involved in the other litigation. This suit against trial court Judge Nazaretian in federal court alleges violations of Article VI Clause 2 the United States Constitution causing loss of judicial immunity to Judge Nazaretian for his actions in regard to the final hearing and Final Judgment which were not within his judicial capacity. Attorney's representing Judge Nazaretian in the United States Court of Appeals for the Eleventh Circuit did respond to Petitioner's appeal in the federal appellate court on the February 1, 2017 date on which the panel of the Florida Second District Court of Appeal affirmed Judge Nazaretian's Final Judgment. The three judge panel of the Florida Second District Court of Appeal; acting under color of state law, chose the same February 1, 2017 date to absolve Judge Nazaretian of his judicial misconduct and avoid causing damage to Judge Nazaretian in the personal injury lawsuit in federal court by affirming the Final Judgment without comment. The appellate court judges did thereby violate Petitioner's due process rights in the current litigation and send a clear message to Petitioner that state appellate court judges Silberman, Crenshaw, and Sleet will retaliate for bringing suit against State of Florida trial court judges.

In filing the federal suit against four trial court judges (Case No. 17-880) before the Florida Second District Court of Appeals had ruled on the appeal of the Final Judgment; Petitioner did believe that Florida Second District Court of Appeals judges would apply the law as required; however the retaliation by the Florida Second

District Court of Appeals indicates the said individuals have loyalty to higher authority than the law.

The Opinion by the United States Court of Appeals relative to Petitioner's federal suit against state appellate court judges Silberman, Crenshaw, and Sleet is the subject of this Petition for Writ of Certiorari and is attached as Appendix A and was timely appealed to this Court. Petitioner references the Opinion by the federal appellate court for the limited purpose of pointing out to the Court the cavalier attitude which the lower courts hold regarding *pro se* litigants and the Constitutional mandate that the lower courts hold regarding the Constitutional mandate that state court judges are required to adhere to the "Supreme Law of the Land" and enforce federal statutes passed by the United States Congress. The Opinion does contain the following statement: "What's more, Blough does not argue, and there is no indication in the complaint that, the defendants lacked jurisdiction to hear his case, rather, he only asserts that they improperly failed to apply federal law." The mandate by the Supremacy Clause that state court judges apply federal law is at the heart of the principle of Federalism.

Petitioner did not at any point in the five years of litigation contest the fact that state court judges have jurisdiction to hear or decide the initial subject matter of the case (i.e. Petition for Dissolution of Marriage). It was Petitioner's position throughout the five years of litigation that the state trial court judges and state appellate court judges were completely without jurisdiction to refuse to enforce the preempting federal statutes claimed by Petitioner and enforce the preempted (voided) state statutes. Under Title VI, Chapter 61, section 61.075(1) of the Florida Dissolution of Marriage statutes (equitable distribution) the state divorce court must first set aside each parties nonmarital assets and liabilities (an income

source is an asset). Petitioner's nonmarital income did consist of waived U.S.C. Title 5 compensation (monthly civil service retirement annuity) and waived U.S.C. Title 38 monthly veterans' disability compensation (including assets purchased with said nonmarital income such as Petitioner's residence which was totally funded with nonmarital income). Waived U.S.C. Title 5 and U.S.C. Title 38 is specifically excluded from equitable distribution by the federal statutes claimed by Petitioner throughout the litigation. Waived U.S.C. Title 5 and U.S.C. Title 38 is specifically excluded from being awarded as alimony by the federal statutes claimed by Petitioner throughout the litigation. Florida divorce statutes state that the nonmarital income, assets and liabilities are first to be set aside before equitably distributing the other property (i.e. marital income, assets, liabilities) of either party. The state trial court judge must complete the equitable distribution of income, assets, liabilities before addressing alimony (which is based upon the need for alimony which is itself a function of a completed equitable distribution process. No child custody issues in this case. Because the state trial court judge refused to first enforce the claimed preempting federal statutes on equitable distribution and alimony they were absent all jurisdiction to equitably distribute any assets, liabilities, income streams or award any alimony under those state statutes which had been preempted (voided) and were therefore without judicial authority. The refusals by the state trial court judges; and the Respondent state appellate court judges, to enforce the preempting federal statutes were not "errors" as the Respondent state appellate court judges and Respondent state trial court judges in Case No. 17-880 were well informed of their Constitutional and federal statutory responsibility to enforce by Petitioner. The refusals to enforce the preempting federal statutes were not in excess of the judges' jurisdiction but in defiance of their mandated jurisdiction. The jurisdiction of the judges was limited to enforcement of the

preempting federal statutes which they refused to do in violation of the Supremacy Clause of the Constitution.

JUDICIAL IMMUNITY

The record before this Court clearly reflects the fact that Petitioner has fully and consistently presented Petitioner's claims to two federal statutes which preempt (void) State of Florida statutes on equitable distribution and alimony throughout the litigation. Petitioner did fully plead entitlement to; and the state courts requirement to enforce, the claimed statutes under Article VI Clause 2 of the United States Constitution. Petitioner was denied the right to testify and present Petitioner's case during the course of the Final Hearing and Judge Nazaretian did destroy evidence which was admitted into evidence at the final hearing. The Final Judgment is totally silent in response to Petitioner claims of entitlement to the protections of the two (2) federal statutes which preempt (void) those State of Florida statutes on the equitable distribution of Petitioner's property and the requirement that Petitioner be subjected to the payment of alimony. Said preempted (voided) State of Florida statutes form the entire basis for the Final Judgment against Petitioner which is therefore without judicial authority. Petitioner's due process rights were grossly abused by trial court Judge Nazaretian during and after the Final Hearing and by Respondent state appellate court judges who refused to compel the trial court to enforce the claimed federal statutes and retaliated against Petitioner for seeking justice against the state trial court judges. *See* Complaint (exh. 1) and Petitioner's Writ of Mandamus as filed with this Court (Case No. 16-1531).

Sitting aside the total denial of Petitioners Fourteenth Amendment due process rights in Petitioners claims of entitlement to two federal statutes; Defendants judicial

actions were not performed within their judicial capacity as “judicial capacity” does not include acting unlawfully in the clear absence of all jurisdiction by refusing to enforce the preempting federal statutes and enforcing the respective preempted state statutes on equitable distribution and alimony in conflict with Article VI Clause 2 of the Constitution.

For one-hundred and forty-five years this Court has advised judges on what judicial actions are within their “judicial capacity” for purposes of retaining their judicial immunity. This case firmly establishes the principle that “judicial capacity” does not include jurisdiction (authority) to violate the “Supreme Law of the Land”.

“Where there is no jurisdiction over the subject matter any authority exercised is a usurped authority and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible”. *Bradley v. Fisher*, 13 Wall 335, 347 (1872).

“A judicial act includes the ability to decide any matter not specifically withheld from him”. *Stump v. Sparkman*, 435 U.S. 349, 355 (1978).

Bradley, supra. provides for judicial immunity if the act itself is not expressly prohibited by existing law. The preempted state statutes were void of judicial authority under *In Edgar v. MITE Corp*, 457 U.S. 624 (1982) and the litany of cases referenced in the Complaint (exh. 1).

The state appellate court judges did act in the complete absence of judicial authority by enforcing preempted (voided) state statutes under authority to which had been specifically prohibited by the federal authority of the Former Spouses’ Protection Act and the Supreme Court decision in *Mansell*, supra. The only judicial actions which could have been lawfully taken by

the state appellate court judges were limited to enforcing the claimed federal statutes which did preempt (void) the State of Florida equitable distribution and alimony statutes. The judicial authority to not to enforce the preempting (voiding) federal statutes had been specifically withheld from the Judges by Article VI Clause 2 of the Constitution pursuant to the 1982 enactment of the preempting federal statute as mandated by the Court in *Mansell*, supra. The judicial authority to enforce the preempted (voided) Florida statutes on equitable distribution and alimony had been specifically withheld from the Judges by Article VI Clause 2 of the Constitution pursuant to the 1982 enactment of the preempting Federal Statute as mandated by the Court in *Mansell*, supra.

The “judicial act” in *Stump*, supra. was approval of the petition in question. In the case at point the “judicial act” was the enforcement of preempted (voided) state statutes under authority to which had been specifically denied and knowingly refusing to enforce the claimed federal statutes which did preempt (void) State of Florida equitable distribution and alimony statutes under authority which had been specifically granted to the state divorce court Judges under the Former Spouses’ Protection Act, *Mansell*, and Article VI Clause 2 of the Constitution. State appellate court judges did act in violation of the “Supreme Law of the Land” by exercising judicial authority which had been specifically withheld from the state divorce court Judges and concurrently refusing to exercise judicial authority which had been granted.

The doctrine of judicial immunity was born into common law by the Supreme Court and the decisions by all of the lower courts; including this Court, have relied exclusively upon those common law principles. The federal common law principles of judicial immunity must be in compliance with the Constitution. As the origin of judicial immunity; and the inherent conflict of

interest by members of the inferior court, it is appropriate that this Court make the finding relative to judicial immunity based upon the facts, laws, and issue presented in this case.

Blough does not challenge the doctrine of judicial immunity other than to the extent the doctrine allows immunity for violating Article VI Clause 2 of the Constitution by state court judges.

In violating Article VI Clause 2 of the Constitution said state appellate court judges have lost their judicial immunity under the common law standards established by the Supreme Court in *Bradley v. Fisher*, 13 Wall 335 (1872) and *Stump v. Sparkman*, 435 U. S. 349 (1978).

The facts and laws present a challenge to the judicial authority of the Supreme Court, a violation of the separation of powers clause under the Constitution, and supreme authority of the Constitution as the “law of the land” under Article VI Clause 2.

The requirement that Respondent state court judges enforce the federal statutes passed by Congress; with entitlement claimed and proven by Petitioner; were not discretionary actions, but rather mandated by Art. VI Cl. 2 of the Constitution. Respondents are not entitled to qualified immunity because their judicial actions violated clearly established federal statutory and Constitutional rights of which they were fully advised.

Judicial immunity is lost to any judge who violates the Supremacy Clause of the Constitution as no judge has jurisdiction superior to that of the Constitution.

The briefs submitted on behalf of the Respondent state court judges intentionally avoid Petitioners legal position that judicial capacity does not include performing acts which are prohibited by current law causing the judges to

be without judicial authority (jurisdiction). The briefs to address the facts that the judges did violate the Supremacy Clause of the Constitution, did deny those federal statutory protections claimed by Petitioner as a severely disabled veteran, did refuse to recognize the legislative authority of the Congress of the United States, and did challenge the judicial authority of the Supreme Court as mandated in *Mansell v. Mansell*, supra.

As stated within the Motions That the Courts Take Judicial Notice, the courts ministerial duty of proving Petitioner's claim of entitlement to the protections of the Former Spouses' Protection Act requires that Petitioner provide evidence of three documents: (1) Petitioner's "military discharge paper" (Form DD-214) (2) Petitioner's waiver of military retirement disability pay under U.S.C. Title 10, section 1201(b)(3)(B)(ii) to receive U.S.C. Title 38 veterans' disability compensation effective September 1, 1971 (Veterans Affairs Form 21-651) (3) Petitioner's waiver of military retirement disability pay under U.S.C. Title 10, section 1201(b)(3)(B)(ii) to receive credit for military service in the computation of Petitioner's retirement annuity under USC Title 5 effective December 3, 2005. These documents were attached to the Notices and the originals were submitted into evidence at the Final Hearing.

The allegations presented in the Complaint (exh. 1) also revolve around the limited; but well settled question of judicial immunity, which has been defined in the common law decisions by the Supreme Court in *Bradley v. Fisher*, 13 Wall 335, 347 (1872) and *Stump v. Sparkman*, supra. The standard for loss of judicial immunity presented in *Bradley v. Fisher* and *Stump v. Sparkman*, supra. requires that there be a "clear absence of all jurisdiction over the subject matter" where an official could be expected to know that certain conduct would violate statutory or constitutional rights.

In *Bradley v. Fisher*, supra. a “judicial act” is defined as “the lawful exercise and performance of his authority and duty as the presiding judge” and provides for judicial immunity if the judicial act itself is not expressly prohibited by existing law. In *Stump v. Sparkman*, supra. a “Judicial act” was defined as “an act normally performed by a judge” and the “judge possessed ‘general jurisdiction’ (the ability to decide any matter not specifically withheld from him)”.

“Where there is no jurisdiction over the subject matter any authority exercised is a usurped authority and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible”. *Bradley v. Fisher*, supra.

In violating Article VI Clause 2 of the Constitution Respondent judges have lost their judicial immunity under the common law standards established by the Supreme Court in *Bradley v. Fisher*, supra. and *Stump v. Sparkman*, supra. This case tests the limits of judicial immunity authorized by the Supreme Court as Respondent state court judges did act in open defiance with the mandate of the Supreme Court in *Mansell*, supra.

Bradley, supra. provides for judicial immunity if the act itself is not expressly prohibited by existing law. The preempted state statutes were void of judicial authority under *In Edgar v. MITE Corp*, 457 U.S. 624 (1982) and the Respondent judges were fully advised of such in Petitioners appeal. The state appellate court judges did act in the complete absence of judicial authority by enforcing preempted (voided) state statutes under authority to which had been specifically prohibited by the federal authority of the Former Spouses’ Protection Act and the Supreme Court decision in *Mansell*, supra. The

only judicial actions which could have been lawfully taken by the state appellate court judges were limited to enforcing the claimed federal statutes which did preempt (void) the State of Florida equitable distribution and alimony statutes. The judicial authority to enforce the preempting (voiding) federal statutes had been specifically granted to the judges by Article VI Clause 2 of the Constitution pursuant to the 1982 enactment of the preempting federal statute as mandated by the Court in *Mansell*, supra. The judicial authority to enforce the preempted (voided) Florida statutes on equitable distribution and alimony had been specifically withheld from the judges by Article VI Clause 2 of the Constitution pursuant to the 1982 enactment of the preempting Federal Statute as mandated by the Court in *Mansell*, supra.

The “judicial act” in *Stump*, supra. was approval of the petition in question. In the case at point the “judicial act” was knowingly refusing to enforce the claimed federal statutes which did preempt (void) State of Florida equitable distribution and alimony statutes under authority which had been specifically granted to the state divorce court judges under the Former Spouses’ Protection Act, *Mansell*, and Article VI Clause 2 of the Constitution and the enforcement of preempted (voided) state statutes under authority to which had been specifically denied. The Respondent judges did act in violation of the “Supreme Law of the Land” by exercising judicial authority which had been specifically withheld from the state appellate court judges and concurrently refusing to exercise judicial authority which had been granted to state appellate court judges.

This case meets the common law requirements for loss of judicial immunity in that the Respondent judges did knowingly commit judicial acts which were expressly prohibited by existing law. The Complaint and Appeal

provide proof of; however the Order of Dismissal by the District Court, Respondent's Briefs, and the Judgement by the appellate court fail to address Petitioner's claim that Respondent state appellate court judges did not have jurisdiction (authority) over the matters before them because Respondent judges did act in the complete absence of judicial authority (jurisdiction) by 1) enforcing state divorce statutes which had been voided of authority by federal preempting statutes and 2) by refusing to enforce the preempting federal statutes as required by the Supremacy Clause of the Constitution.

The Order of Dismissal by the District Court and Defendant's/Appellee's Briefs seek solace in the phrase "judicial capacity" as the saving phrase providing the protections of judicial immunity to the judicially abusive and unlawful actions by Respondent judges. "Judicial capacity" provides no immunity protections to those judges who violate the Supremacy Clause of the Constitution by knowingly 1) refusing to enforce lawful federal statutes which preempt (void) state statutes and 2) enforcing the respective voided (preempted) state statutes which are without judicial authority pursuant to Article VI Cl. 2 of the Constitution, the preemption and enforcement mandate by the Supreme Court in *Mansell v. Mansell* supra., the preemptive language of the respective lawful federal statutes under the Former Spouses' Protection Act and federal alimony statutes, and the loss of judicial authority by the preempted state statutes under the Supreme Court decision In *Edgar v. M.I.T.E. Corp.* supra.

In *Stump v. Sparkman*, supra. the Court did consider the scope of a judge's immunity from damages liability when sued under 42 U.S.C. section 1983 and did make the following observation:

“that the concept of what is a judicial act must take its content from consideration of the factors that support immunity from liability for the performance of such an act. Those factors were accurately summarized by the Court in *Pierson v. Ray*, 386 U.S. at 554.” *Stump* citing *Pierson*. “It is a judge’s duty to decide all cases within his jurisdiction that are brought before him”. The Respondent judges did refuse to decide Petitioner’s claims of entitlement to the two federal statutes which were fully pleaded before the courts and did thereby void a claim to judicial immunity in the performance of a judicial act.

To establish liability under Title 42, section 1983 Petitioner must prove that (1) Defendants deprived him of a right secured under the Constitution or a federal law and (2) that such deprivation occurred under color of state law. *Arrington v. Cobb County*, 139 F.3d 865, 872 (11th. Cir. 1998). There is no question that Respondent state court judges violated the Supremacy Clause of the Constitution depriving Petitioner of his statutory right to two federal statutes which preempted state statutes on equitable distribution of Petitioner’s property and the award of Petitioner’s income as alimony pursuant to the Respondent state court judges total denial of Petitioners Fourteenth Amendment right to procedural and substantive due process.

Petitioner is entitled to trial by jury in this suit for damages against Respondent judges; who are not entitled to judicial immunity, in that the Respondents (as state appellate court judges) did refuse to enforce the federal statutes claimed by Petitioner as required by Article VI Clause 2 of the Constitution, did violate Petitioners Fifth and Fourteenth Amendment due process rights, and are subject to suit individually under U.S.C. Title 42, section 1983 for actions in the absence of jurisdiction.

A judge is liable for injury caused by a ministerial act; to have immunity the judge must be performing a judicial function. See, e.g. *Ex parte Virginia*, 100 U.S. 339 (1880); 2 Harper & James, *The Law of Torts* 1642-1643 (1956). The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function. When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a “minister” of his own prejudices”. n. 6. *Pierson v. Ray*, supra.

The ministerial act (duty) required to be performed by the Respondent judges was the recognition of Petitioner’s statutory entitlement to the protections of the Former Spouses’ Protection Act after ascertaining the existence of a specified state of facts in response to a duty which was positively imposed by law without exercise of personal judgment or discretion. An act is ministerial when the law requires it to be done without any choice. The inferior court judges had no choice but to perform the acts (duties) of recognizing entitlement and enforcing the Former Spouses’ Protection Act when Petitioner proved entitlement to the federal statutory protections of the Former Spouses’ Protection Act with three (3) documents which were attached to the Notice motions which were provided to each of the eighteen inferior court judges. The Former Spouses’ Protection Act, the Supremacy Clause of the Constitution, and the mandate by this Court in *Mansell v. Mansell*, supra. did require enforcement of the Former Spouses’ Protection Act upon Petitioner’s proven entitlement. The statutorily required enforcement of the Former Spouses Protection Act is of such public importance and mandated with such judicial force as to be a ministerial duty as opposed to a discretionary duty of inferior court judges.

The Respondent judges have refused to perform their ministerial duty of recognizing and enforcing Petitioner's proven federal statutory right to the Former Spouses' Protection Act (a judicial function) and are therefore subject to suit under Title 42, section 1983 "as a 'minister' of his own prejudices". n. 6. *Pierson v. Ray*, supra.

Respondent state appellate court judges are subject to suit under Title 42, section 1983 under the provisions of both *Pierson v. Ray*, supra. and *Stump v. Sparkman*, supra.

CONCLUSION

The state court claims of entitlement to two federal statutes which preempt state statutes on equitable distribution and alimony are forever lost to Petitioner. The purpose in this federal suit is to hold accountable those individuals who violated Petitioner's Fourteenth Amendment due process rights, Constitutional rights, and federal statutory entitlements to said statutes under U.S.C. Title 42, 1983. It is respectfully requested that the Court find that Respondents are not entitled to judicial immunity such that the case may be returned to trial by jury at the district court.

February 5, 2018.

Respectfully submitted,

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