

No. \_\_\_\_\_

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**In The  
Supreme Court of the United States**

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**DOUGLAS C. CHARNOCK, JR.,**  
*Petitioner,*

v.

**COMMONWEALTH OF VIRGINIA;  
EDWARD W. HANSON, JR.;  
FREDERICK B. LOWE, JR.,**  
*Respondents.*

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**ON PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES COURT OF APPEALS  
FOR THE FOURTH CIRCUIT**

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**PETITION FOR WRIT OF CERTIORARI**

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*Dated: March 12, 2018*

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**QUESTIONS PRESENTED**

1. Should state court divorce decrees be able to order veterans to use disability income to pay off marital debt even after this Court's reaffirmation of 38 U.S.C. § 5301 (2012) and *Mansell v. Mansell* through its decision in *Howell v. Howell*?
2. Does a state court's denial of accessibility assistance to a disabled veteran that effectively precludes him from participation in courtroom proceedings violate his fundamental right to access state courts?
3. Should *Younger*, *Rooker-Feldman*, and immunity doctrines deny jurisdiction to federal courts over state judicial decisions when those decisions flagrantly contravene both federal law and United States Supreme Court decisions?

**PARTIES TO THE PROCEEDINGS**

The parties to this petition are Douglas Charnock, petitioner; Commonwealth of Virginia, respondent; Edward W. Hanson, Jr., respondent; Frederick B. Lowe, Jr., respondent.

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IN THE  
SUPREME COURT OF THE UNITED STATES

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PETITION FOR WRIT OF CERTIORARI

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Petitioner Douglas Charnock respectfully prays that a *Writ of Certiorari* issue to review the judgment from the United States Court of Appeals for the Fourth Circuit below. This Court has recently granted a *Writ of Certiorari* to a similar case, *Knick v. Township of Scott, Pa.*, No. 17-647 (2018) on the issue of federal jurisdictional bars to 5<sup>th</sup> Amendment claims against states. *See* fn. 7, *infra*, at 14. Thus, this Court should grant in this matter too.

**OPINIONS BELOW**

The opinion of the United States Courts of Appeals for the Fourth Circuit appears at Appendix page 1a and was decided on October 11, 2017. The court's opinion is unpublished in the Federal Reporter but reported in the Federal Appendix as *Charnock v. Commonwealth*, 698 F. App'x 158 (4th Cir. 2017). The court's denial of rehearing *en banc* can be found at Appendix page 22a and was decided on December 12, 2017. The opinion from the U.S. District Court for the Eastern District of Virginia, Norfolk Division, can be found starting at page 4a of the Appendix and was decided on January 4, 2017.

The Virginia Circuit Court of Accomack County's divorce decree, *Charnock v. Charnock*, Final Decree of Divorce from the Bond of Matrimony No. CL12-386 (2014) was entered on July 15, 2014. The order of the Virginia Supreme Court denying rehearing for Mr. Charnock's *pro se* appeal from his Final Decree of Divorce was decided on October 9, 2015.

### **JURISDICTION**

The United States Courts of Appeals for the Fourth Circuit issued its final decision on December 12, 2017 by denying Mr. Charnock's petition for rehearing/petition for hearing *en banc*. Appendix 22a. This Court has jurisdiction over Mr. Charnock's claims under 28 U.S.C. §§ 1257, 1331, 1654(a) (2012), and 42 U.S.C. § 1983 (2012).

### **STATEMENT OF THE CASE**

Mr. Charnock and (the former) Mrs. Charnock were divorced in proceedings held in the City of Accomack. *Joint Appendix* at 55-60, *Charnock v. Virginia*, 698 F. App'x 158 (4th Cir. 2017) (hereinafter "J.A."). On July 15, 2014, the Circuit Court of Accomack County issued a final divorce decree. The court ordered Mr. Charnock to pay the mortgage and the Home Equity Line of Credit on the Marital Residence. *Charnock*, No. CL12-386 at 7; J.A. at 67. The decree further stipulated that Mr. Charnock was required to establish an automatic deposit of his full Department of Veterans' Affairs ("DVA") disability income into an account to assure payment of the mortgage and loan repayment to creditors. *Id.* Any failure to keep the mortgage and loan repayment

"current and in good standing" would be considered a default of the divorce decree. J.A. at 68. The divorce decree did not provide for any spousal support and the former couple's children were all emancipated<sup>1</sup> at the time of the order.

Mr. Charnock is a service-connected disabled Veteran of the United States military. He receives 100% disability benefits from the DVA for *inter alia*, residuals of head injury with left hairline scar, nystagmus, severe with vertigo and tinnitus, dysthymic/panic disorder with agoraphobia. J.A. at 85-86. Mr. Charnock also receives additional DVA benefits for being housebound.

During the divorce proceedings, Mr. Charnock suffered a mental health crisis resulting from his service-connected traumatic brain injury, which manifested in vertigo, a panic attack and high blood pressure invoking a nose bleed.<sup>2</sup> J.A. at 34. The court failed to order a continuance and ordered the bailiff to bring Mr. Charnock into the courtroom. Additionally, Mr. Charnock requested a *guardian ad litem* and

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<sup>1</sup> The decree did require the parents to assist their children with their education through undergraduate college or the age of 24, whichever came first. Only one child, Elizabeth Charnock was entitled to any form of child support. *Charnock v. Charnock*, No. CL12-386 at 2; J.A. at 64-65.

<sup>2</sup> Recall, Mr. Charnock is a veteran who receives 100% disability benefits and special monthly compensation based on housebound criteria. Mr. Charnock's disabilities consist of residuals of head injury, nystagmus, severe with vertigo and tinnitus, dysthymic/panic disorder with agoraphobia, intervertebral disc syndrome, cervical spine, radiculopathy of both extremities, and degenerative joint disease with torn meniscus, right knee with scar. J.A. at 85-86.

auxiliary aids<sup>3</sup> from the Accomack County Clerk, due to Mr. Charnock's *pro se* status and service-connected disability. J.A. at 89 & 94. Sadly, these requests for accessibility aids were flatly denied by the Accomack County Court. J.A. at 94.

Mr. Charnock subsequently filed a motion to dismiss and reverse the divorce order, but the Virginia Court of Appeals affirmed the divorce order on May 12, 2015. A petition for rehearing was refused by the panel on June 11, 2015. J.A. at 84. Concurrently, Mr. Charnock, still *pro se*, filed a *Writ of Mandamus* before this Court to require the Circuit Court of Accomack County and Judge Hanson to stay the execution of the court's decision. This *Writ* was denied on March 10, 2015. J.A. at 17, 22, 37 and *Charnock v. Charnock*, No. 1865-14-1 (Va. Ct. App., March 10, 2015)<sup>4</sup>. Following the Court of Appeal's refusals, Mr. Charnock appealed to the Supreme Court of Virginia. This appeal was procedurally dismissed on October 9, 2015. *Charnock v. Circuit Court of Accomack Cty.* No. 151064 (Va. 2015); J.A. at 83.

After exhausting all state court avenues, Mr. Charnock filed a complaint against Defendants for declaratory and injunctive relief in the United States District Court for the Eastern District of Virginia (Norfolk Division) on August 11, 2016. J.A. at 6-25, 26-45. The United States District Court dismissed Mr. Charnock's case on lack of jurisdiction pursuant to the *Younger* and *Rooker-Feldman* doctrines. *Charnock v. Virginia*, No. 2:16-cv-00493-RAJ-LRL (E.D. Va. Jan. 5, 2017). The Fourth Circuit affirmed

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<sup>3</sup> Mr. Charnock requested recordings, cameras and a trained advocate for accommodations.

the District Court's decision without an opinion. *Charnock v. Commonwealth*, 698 F. App'x 158 (4th Cir. 2017). Finally, the Fourth Circuit denied Mr. Charnock's petitions for rehearing and an *en banc* hearing. Appendix B.

### **REASONS FOR GRANTING THIS PETITION**

#### **I. STATE COURT DIVORCE ORDERS CONTINUE TO FLAGRANTLY CONTRAVENE FEDERAL LAW AND SUPREME COURT PRECEDENT CONCERNING THE DIVISIBILITY OF VETERANS' DISABILITY INCOME.**

In 1982, Congress strove to protect two vulnerable groups: Spouses of veterans who are going through divorce, and veterans who receive disability pay from the DVA. PL 97–252, 96 Stat 718. Titled the Uniformed Services Spouses' Protection Act, this law made sure that states could retain autonomy in their judicial decisions involving how to disperse veterans' retirement pay in divorce orders. 10 U.S.C. § 1408(a)(4)(A) (2012). Additionally, Congress made sure that divorce orders could not divest a veteran of more than 50% of their disposable pay. § 1408(e)(1) (2012).

However, Congress made it clear that state courts cannot exercise authority over the dispensation of every type of retirement benefit. § 1408(a)(4) (2012). Congress did this to keep intact existing federal law regarding the non-divisibility of DVA benefits. 38 U.S.C. § 5301 (2012). This Court has repeatedly applied and reaffirmed the principle that

state courts cannot divest veterans of DVA disability benefits/income because federal law has clearly preempted state authority over this benefit. See *Howell v. Howell*, 137 S. Ct. 1400 (2017); *Mansell v. Mansell*, 490 U.S. 581 (1989). Unfortunately, it appears that state courts continue to **wrongly** assert authority over veterans' DVA disability income. Mr. Charnock is subject to the jurisdiction of one these states, Virginia, and so asks this Court to use its authority as the final arbiter of federal law to remedy the unlawful and inequitable dispensation of his DVA disability income.

**A. Since This Court Decided *Howell* in 2017, At Least Three States Continue To Divest Veterans Of Their Disability Income, While Five States Firmly Protect Veterans' Disability Income.**

On May 15, 2017, this Court handed down its opinion in *Howell v. Howell* that reaffirmed Congress's intent to protect veterans' disability income. 137 S. Ct. 1400. Sadly, in less than a year, at least three states have circumvented *Howell* and continue to interfere with veterans' use of their protected disability income. *Lesh v. Lesh*, 2018 WL 414072 (N.C. Ct. App. 2018); *Jennings v. Jennings*, 2017-Ohio-8974, (Ohio Ct. App. 2017); *Charnock v. Charnock*, No. 1865-14-1 (Va. Ct. App. 2015)<sup>4</sup>.

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<sup>4</sup> Though *Charnock v. Charnock* was decided before *Howell*, Virginia had notice, because of *Mansell*, that its misappropriation of Mr. Charnock's disability income violated federal law and Supreme Court precedent. Additionally, the Fourth Circuit Court of Appeals could have remedied this

On the other hand, five states disagree and interpret *Howell* to mean that veterans' disability income should be firmly protected. *Wells v. Cruce*, 2018 WL 580600 (Ariz. Ct. App. 2018); *Stojka v. Stojka*, 2017 WL 5036322 (Md. Ct. Spec. App. 2017); *Hurt v. Jones-Hurt*, 168 A.3d 992, 1003 (Md. Ct. Spec. App. 2017); *Mattson v. Mattson*, 903 N.W.2d 233, 237 (Minn. Ct. App. 2017) (review denied); *Vlach v. Vlach*, 2017 WL 486499 (Tenn. Ct. App. 2017).

In less than one calendar year, state courts have already begun to differ significantly in their interpretation of *Howell*. This presents a danger for countless veterans who receive disability income and are going through divorce proceedings. Not only does the split of the states create significant uncertainty for veterans, but it also jeopardizes the federally protected rights of veterans.

**B. When States Like Virginia Apportion Veterans' Disability Income In Violation of Federal Law And Supreme Court Precedent This Constitutes A "Taking" Under the Fifth And Fourteenth Amendments.**

The Supreme Court allows state courts "to take account of" potential disability income only in one situation: The payment of alimony and child support.

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misappropriation but refused. The Fourth Circuit even granted a stay on Mr. Charnock's appeal in 2017 because it acknowledged that *Howell*, then pending, could substantially affect his appeal. But after the decision for *Howell* was issued, the lower court failed to uphold the *stare decisis* as reaffirmed by this Court's ruling in *Howell*.

*Howell*, 137 S. Ct. at 1406 (citing *Rose v. Rose*, 481 U.S. 619, 630-34 (1987) and § 1408(e)(6) (2012); 42 U.S.C. § 659(a) (2012). A state cannot affect veterans' disability income for any other reason. *See Rose*, 481 U.S. at 630. Because Virginia's final divorce decree specifies that Mr. Charnock must place his full disability income into an account to pay for debts on the marital residence, it does not fall under *Rose*. *Charnock*, No. CL12-386 at 7. This violates Congress's clear intent that states *cannot* force veterans to pay creditors with disability income. § 5301(a)(1) (2012).

Under § 5301, disability benefits are designated as non-assignable, exempt from all claims against creditors and cannot be attached "under any legal or equitable process." § 5301(a)(1) (2012). This statute undoubtedly prohibits any agreement entered into by a veteran or ordered by the State that assigns a veteran's disability benefits. § 5301(a)(3)(A) (2012). In light of this statute and governing precedent, veterans' disability benefits are not divisible as community property upon divorce. *See Mansell*, 490 U.S. 581.

The Court in *Mansell*, interpreted the statute to clearly prohibit state courts from having the power to treat military retirement pay waived to receive veteran's disability benefits as property divisible upon divorce. *Id.* at 582. The statute's exclusion of veterans' disability benefits indicates Congress' clear intent to prohibit courts from dividing veterans' disability benefits upon divorce. Virginia disregards this important Congressional objective by forcing Mr.

Charnock to dispense his *entire* disability income into an account to pay for marital debts. *See Id.* at 585.

Because Virginia's final divorce decree does not fall under the exception outlined in *Rose*, it "takes" Mr. Charnock's property, which the Fifth Amendment prohibits such takings without just compensation. U.S. Const. Amend. V. The Fourteenth Amendment confers Fifth Amendment protections to all US citizens and allows Congress to enforce incorporated constitutional rights. U.S. Const. Amend. 14, §§ 1 & 5.

In sum, the final divorce decree failed to legitimately devise Mr. Charnock's disability income. Virginia's decision resulted in significant harm to Mr. Charnock's DVA disability benefits. It is in direct conflict with Congress' intent to preserve disability benefits to the veteran as designed under § 5103 (2012) and this Court's prior rulings, making the final divorce decree against Mr. Charnock an illegitimate "taking" of his property. *See Howell*, 137 S. Ct. 1400; *Mansell*, 490 U.S. 581.

**C. The *Younger* and *Rooker-Feldman* Doctrines Should Not Deny Federal Remedies To Disabled *Pro Se* State Plaintiffs When The State Judicial Decision Brazenly Contradicts Federal Law And Supreme Court Precedent.**

The Fourth Circuit summarily dismissed Mr. Charnock's case for lack of jurisdiction under the *Younger* and *Rooker-Feldman* doctrines.<sup>5</sup> *Charnock v. Virginia*, No. 2:16-cv-00493-RAJ-LRL. However, these doctrines were never meant to exclude federal courts from adjudicating valid federal questions of law. See *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293 (2005). Both the *Younger* and *Rooker-Feldman* doctrines are inapplicable to Mr. Charnock's claim under federal law and the US Constitution.

First, there was no significant ongoing state court proceedings when Mr. Charnock sought federal court adjudication. Not only had Virginia issued his final divorce decree, but the Virginia Supreme Court had issued a final judgment against Mr. Charnock. *Charnock v. Circuit Court of Accomack Cty.* No. 151064 (Va. 2015). Since Mr. Charnock had no pending substantive actions in Virginia courts regarding the terms of his divorce, the *Younger* doctrine plainly does not apply. See *Younger v. Harris*, 401 U.S. 37, 40 (1971).

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<sup>5</sup> The Fourth Circuit did not issue a substantive opinion, and instead adopted the opinion of the US District Court for the Eastern District of Virginia (Norfolk Division).

Second, the *Rooker-Feldman* doctrine is not meant to allow state courts to frustrate prior federal decisions. See *Pennsylvania Bureau of Correction v. U.S. Marshals Serv.*, 474 U.S. 34, 40 (1985); *In re Am. Honda Motor Co., Inc., Dealerships Relations Litig.*, 315 F.3d 417, 437 (4th Cir. 2003); 28 U.S.C. § 1651(a) (2012). Though § 1651(a) (2012) does not independently grant subject matter jurisdiction, Mr. Charnock solved this barrier because he claims violation of federal law. See *Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32-33 (2002). Mr. Charnock has an independent source to create a federal question, and so does not rely on § 1651(a) (2012) by itself to grant him federal jurisdiction.

Furthermore, federal jurisdiction over Mr. Charnock's claim is warranted because it is "necessary or appropriate" for "the usages and principles of [federal] law." § 1651(a) (2012). Mr. Charnock's pleadings in federal court at the district level may be considered unsophisticated, but his status as *pro se* should remedy any confusion in his

early pleadings.<sup>6</sup> By the time Mr. Charnock appeared, through counsel, before the Fourth Circuit, he had artfully shown that federal law remained an issue in his final divorce decree. Consequently, federal courts should have jurisdiction to “rectify the injustice” enacted against Mr. Charnock. *See In re Am. Honda Motor Co.*, 315 F.3d at 437.

Mr. Charnock is not seeking federal review so that he can receive more favorable proceedings in a different jurisdiction; neither is he attempting to retry his case in federal court. Mr. Charnock seeks protection of his disability income as required by federal law. Even the Fourth Circuit, which summarily dismissed Mr. Charnock’s claim, acknowledges that the *Rooker-Feldman* doctrine should not keep out important constitutional and federal questions. *See Adkins v. Rumsfeld*, 464 F.3d 456 (4th Cir. 2006). Most importantly, this Court has recently grant a *Writ of Certiorari* for *Knick v. Township of Scott, Pa.*, No. 17-647 (2018), on the issue

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<sup>6</sup> Any concern that Mr. Charnock did not properly raise a federal question under 1408 and/or 5301 should give way to his *pro se* status. The Supreme Court has held that in cases in which the plaintiff appears *pro se*, courts must construe the pleadings liberally and give the plaintiff the benefit of any doubt, as pleadings drafted by *pro se* litigants are held to less stringent standards than those drafted by lawyers. *Erickson v. Pardus*, 551 U.S. 89,94 (2007) (“A document filed *pro se* is to be liberally construed, and a *pro se* complaint, however in artfully pleaded, must be held to less stringent standards than formal pleadings drafted by lawyers.”) (internal quotation marks and citations omitted). Therefore, we ask this Court to liberally construe Mr. Charnock's filings and give him, a veteran of the United States, the benefit of the doubt, as previous decisions show that his intentions and arguments were misconstrued and/or not understood.

of whether jurisdictional “ripeness” doctrines for 5<sup>th</sup> Amendment claims against states create substantial inequities for claimants.<sup>7</sup>

Lastly, even if this Court should decide that *Rooker-Feldman* doctrine applied to Mr. Charnock, it still has jurisdiction to review his claim because you are the Supreme Court of the land. *Exxon Mobil Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 284 (2005) (discussing *Rooker v. Fid. Tr. Co.*, 263 U.S. 413, 416 (1923)) (stating that the US Supreme Court has jurisdiction to review state court decisions that other federal court cannot review because of the *Rooker* doctrine). Therefore, there are no jurisdictional obstacles keeping this Court from reviewing Mr. Charnock’s claim.

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<sup>7</sup> The issue in *Knick* that relates closely to Mr. Charnock’s case is: whether *Williamson County*’s ripeness doctrine bars review of takings claims that assert that a law causes an unconstitutional taking on its face, as the U.S. Courts of Appeals for the 3rd, 6th, 9th and 10th Circuits hold, or whether facial claims are exempt from *Williamson County*, as the U.S. Courts of Appeals for the 1st, 4th and 7th Circuits hold. Mr. Charnock agrees with the petitioner and his *amicus curiae* that this trend of jurisdictional dismissals creates inequities for plaintiffs who wish to hold states accountable for their actions that may violate the constitution or federal law. See *Amicus Curiae Brief for Institute of Justice* at 14, *Knick v. Township of Scott, Pa.*, No. 17-647 (2018); *Amicus Curiae Brief for Cato, et al* at 4, *Knick v. Township of Scott, Pa.*, No. 17-647 (2018).

**II. BECAUSE VIRGINIA REFUSED TO PROVIDE MR. CHARNOCK DISABILITY AIDS FOR HIS SERVICE-CONNECTED DISABILITIES, HIS FUNDAMENTAL CONSTITUTIONAL RIGHT TO ACCESS STATE COURTS WAS SEVERELY INHIBITED.**

The Americans with Disabilities Act ("ADA") expressly provides that a qualified individual with a disability will not be "excluded from participation in or be denied the benefits of services, from programs or activities of a public entity." 42 U.S.C. § 12132 (2012). The requirements for fair access and accommodations apply to all states and local governments and require states/local governments to provide auxiliary aids and services, as well as fair access for individuals with disabilities. *E.g. Tennessee v. Lane*, 541 U.S. 509 (2004); 42 U.S.C. § 12131(2) (2012). Congress's ban against disability discrimination extends to "communication barriers." *Lane*, 541 U.S. at 549 (citing 42 U.S.C. §§ 12101(a)(3) & (a)(5)).

Following this, state courts, like the Accomack County Court, owe a duty to disabled individuals, *especially our service-connected veterans*, to provide them with communication aids when necessary. *Id.* Congress can force this duty upon states. Recall, this Court decided that the ADA abrogated sovereign immunity and is a proper use of Fourteenth Amendment enforcement power. *Lane*, 541 U.S. at 510, 522-23, & 531; *See also* U.S. Const. Amend. XIV § 5.

**A. Virginia Unreasonably Denied Mr. Charnock's Requests for Accessibility Assistance In Light of His Proven Service Connected Mental And Physical Disabilities.**

The regulations promulgated pursuant to Title II of the ADA require that "A public entity shall take appropriate steps to ensure that communications with applicants, participants, members of the public ...are as effective as communications with others." 28 C.F.R. § 35.160(a)(1). This same section further details that "[a] public entity shall furnish appropriate auxiliary aids and services where necessary to afford qualified individuals with disabilities...an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity of a public entity." § 35.160(b)(1). Because of this Court's decision in *Lane*, these regulations apply with full force to state courts. 541 U.S. 509. As a result, Virginia had a responsibility under the ADA, its regulations, and *Lane* to at the very least Appoint a *guardian ad litem* to determine if Mr. Charnock was fit to participate in courtroom proceedings. *See infra at 17, Fonner v. Fairfax Cnty.*, 415 F.3d 325, 329 (4<sup>th</sup> Cir. 2005).

But, Virginia took no steps to even consider if Mr. Charnock's established disabilities substantially interfered with his participation in the courtroom proceedings. J.A. at 17, 22, 37. This complete lack of action violates Virginia duty under the ADA, and its regulations, to provide "equal opportunity to participate in" the state court proceedings. § 35.160(b)(1).

Mr. Charnock can show that his disabilities precluded him from effective participation in courtroom proceedings. Mr. Charnock experienced a panic attack and severe vertigo during courtroom proceedings forcing him to retire from the courtroom. J.A. at 34. This episode became so severe that the court had to order a bailiff to escort Mr. Charnock back into the courtroom. J.A. at 34-35.

This event did not persuade the court to begin finding ways to aid Mr. Charnock with his *service-connected* mental disabilities; instead, the court continued to deny all of Mr. Charnock's requests for disability aids. J.A. at 35. The mere facts that the DVA recognized Mr. Charnock's mental and physical disabilities were severe enough to meet "housebound criteria" and that the DVA granted Mr. Charnock significant disability ratings should persuade any court that appointing a *guardian ad litem* deserves more than a simple summarily order to appear in court. J.A. at 85-86.

The Fourth Circuit, who dismissed Mr. Charnock's claims without even an opinion, itself admits that a *guardian ad litem* can regularly be used to assess of a party is an able participant in litigation. *Fonner*, 415 F.3d at 329. In *Fonner*, the court saw the need for the *guardian ad litem* even though the state had not before declared the litigants to be mentally disabled. *Id.* How much more appropriate is a *guardian ad litem* required when a governmental agency has already declared that an individual severely suffers from disabilities as to be declared "housebound"? Mr. Charnock's proven mental and

physical disabilities should require any court to offer aids to assist his access to courtroom proceedings. This Court should not allow state and federal courts to continue to hamper disabled parties', especially our service-connected Veterans, full access to the judicial process.

**B. The *Younger* and *Rooker-Feldman* Doctrines, the 11<sup>th</sup> Amendment, and Judicial Immunity Should Not Preclude Federal Jurisdiction Over Claims That A State Court Failed To Provide Fair Access To Disabled Parties.**

Federal courts continue to deny remedies to parties in state courts who are denied simple accessibility assistance. *Guttman v. Khalsa*, 669 F.3d 1101, 1107-08 (10<sup>th</sup> Cir. 2012) (holding that a doctor with PTSD had no right special dispensations under the ADA when appearing before state licensure boards); *King v. Marion Circuit Court*, 868 F.3d 589, 592 (7<sup>th</sup> Cir. 2017) (declaring that a deaf former litigant in Indiana state court could be denied an appointed American Sign Language interpreter); *Zied-Campbell v. Richman*, 2007 WL 1031399 (M.D. Pa. 2007), *aff'd* 428 F. App'x 224 (3<sup>d</sup> Cir. 2011) (holding that county Assistance Office could deny accessibility assistance to permanently psychologically disabled individual).

Contrarily, numerous federal circuits hold states accountable for their denials of accessibility assistance. *Bonnette v. D.C. Court of Appeals*, 796 F. Supp. 2d 164 (D.D.C. 2011) (holding that blind law

school graduate had substantial likelihood of success on merits of her claim under ADA's examination provision); *Enyart v. Nat'l Conference of Bar Examiners, Inc.*, No. C 09-5191 CRB (N.D. Cal. 2010), *aff'd*, 630 F.3d 1153 (9th Cir. 2011) (holding that a legally blind bar examination applicant was entitled to a reasonable accommodation to take the bar); *Wendel v. New York*, 574 F. Supp. 2d 290 (E.D.N.Y. 2008) (holding that New York statute regarding special license plates for disabled persons was not invalid as applied under ADA).

*Charnock v. Virginia, King, and Guttman*, *supra*, used jurisdictional preclusion doctrines, like the *Younger* and *Rooker-Feldman* doctrines, the 11<sup>th</sup> Amendment, and judicial immunity, to bar plaintiffs from suing states for failures to provide accessibility assistance. J.A. at 87; 868 F.3d 589; 669 F.3d at 1107-09. This Court concluded in *U.S. v. Georgia* that federal district courts should not be so quick to dismiss *pro se* plaintiffs' ADA claims against states. 546 U.S. 151 (2006). Jurisdictional and immunity doctrines have been used too frequently and too quickly as a means of dismissing *pro se* state plaintiff's claims. *See Id.* at 156-57. In effect, these doctrines are being used to protect state courts who decide that disability aids are too expensive or cumbersome to provide.

Here, Virginia does not have the luxury of using jurisdictional or immunity doctrines to dismiss Mr. Charnock's claim because denial of assistance to Mr. Charnock effectively excludes him from the courtroom, J.A. at 17, 22, 37, and this Court has deemed that access to all courts, including state

courts, constitutes a fundamental right. *Lane*, 541 U.S. at 530-31. As such, 11<sup>th</sup> Amendment immunity is abrogated. *Id.* When a fundamental right is at stake, sovereign immunity should be waived. *Lane*, 541 U.S. at 530-31; *Simmang v. Texas Bd. of Law Examiners*, 346 F. Supp. 2d 874, 883 (W.D. Tex. 2004) (stating that plaintiff's right to practice law was not fundamental, so sovereign immunity was not waived; however, if it had been fundamental, then sovereign immunity must be waived).

Since Virginia did not respect Mr. Charnock's fundamental right to participate in courtroom proceedings, and because federal circuits continue to use jurisdictional and immunity doctrines to deny plaintiff's remedies against states who violate the ADA, this Court should grant *certiorari* on Mr. Charnock's ADA claims against VA.

### **CONCLUSION**

The petition for a *Writ of Certiorari* should be granted because states continue to violate § 5301 and *Mansell v. Mansell* even after *Howell v. Howell*, Virginia violated Mr. Charnock's rights under the ADA, and this Court has already granted a *Writ of Certiorari* for *Knick v. Township of Scott, Pa.* regarding the Fifth Amendment takings argument expressed in this *Writ* petition.

Respectfully submitted,

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