

No. 17-

In The
Supreme Court of the United States

MELVIN BLOUGH,

Petitioner,

v.

NICK NAZARETIAN, 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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Petitioner *pro se*
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November 20, 2017

QUESTION PRESENTED

In a claim to judicial immunity by state court judges does the term "judicial capacity" include jurisdiction to knowingly, unlawfully and covertly refuse to enforce those federal statutes which preempt state statutes and enforce those state statutes which were voided by the preempting federal statutes?

PARTIES TO THE PROCEEDING

NICK NAZARETIAN,

Individually and in his official capacity as a Justice
within the Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,

TRACY SHEEHAN,

Individually and in his official capacity as a Justice
within the Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,

LAUREL M. LEE,

Individually and in his official capacity as a Justice
within the Thirteenth Judicial Circuit in and for
Hillsborough County, State of Florida,

MARY ELIZABETH KUENZEL,

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

JOHN A. TOMASINO,

Individually and in his official capacity as Clerk of the
Court in the Supreme Court of the State of Florida.

JAMES S. MOODY, JR.,

Individually and in his official capacity as a Justice
within the United States District Court for the Middle
District of Florida Tampa Division,

See n. 4 to Appendix A relative to the status of Mary
Elizabeth Kuenzel and John Tomasino.

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JURISDICTION

Jurisdiction is conferred upon this Court by U.S.C. Title 28, Part VI, Chapter 81, section 1254(1) as to the August 21, 2017 judgment by the United States Court of Appeals for the Eleventh Circuit (App. A).

CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States of America
Article VI Clauses Two and Three

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.

The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executives and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution; but no religious Test shall ever be required as a Qualification to any Office or public Trust under the United States.

STATEMENT OF THE CASE AND FACTS MATERIAL TO THE QUESTION PRESENTED

This Petition presents two highly controversial issues which present a challenge to the authority of the United States Constitution (hereafter "Constitution") as it relates to the principle of Federalism:

1. Petitioner has learned by experience that state divorce court judges do not want the federal government in their courtrooms (i.e. federal legislation which preempts state statutes) and will do whatever is necessary to keep the preempting federal statutes out of their courtrooms including; but not limited to, refusing to permit Petitioner to testify during; and destroying evidence after, a sham "Final Hearing".

2. Inferior court judges view their entitlement to judicial immunity as sacred and; as the opinions by the lower courts in this case demonstrate, are subject to being bias in their analysis of the facts and laws presented. The issues of Eleventh Amendment immunity and preclusion under the *Rooker-Feldman* Doctrine are easily dismissed based upon an unbiased review of the facts and laws as presented in Petitioner's pleadings. The rulings by the district court and the appellate court fail to address Petitioner's position that "judicial capacity" of state court judges does not include jurisdiction to violate the Supremacy clause of the Constitution by refusing to enforce federal statutes which preempt state statutes and enforcing those state statutes which were voided by the preempting federal statutes.

The question brought to this Court does encompass the issues of due process and judicial immunity as governed by the Supremacy Clause of the Constitution. This case firmly establishes the principle that "judicial capacity" does not include jurisdiction (authority) to violate the "Supreme Law of the Land".

The *Rooker-Feldman* doctrine does not limit this Court's review of the judicial actions by the Defendant judges; causing loss of judges judicial immunity for violations of Petitioners federal statutory and federal Constitutional rights, in that the federal claims presented in this Complaint are not "inextricably intertwined" with

the state court claims. In addition the Complaint (exh. 1) and Appeal (exh. 5) fully document the fact that Petitioner was totally, intentionally, and maliciously denied the opportunity to raise his federal preemption claims throughout the state court proceedings and the Defendant judges did clearly violate the Supremacy Clause of the Constitution, Petitioners federal statutory rights; and Petitioner's Fifth and Fourteenth Amendment due process rights, in refusing to adjudicate and rule on Petitioners federal preemption claims. *Wood v. Orange County*, 715 F.2D 1543, 1547 (11th Cir. 1983). The ruling by the United States Court of Appeals for the Eleventh Circuit (App. A) states that the *Rooker-Feldman* Doctrine applies "to the extent that the state court wrongly decided the preemption issue"; however Petitioner's Complaint (exh. 1) and Appeal (exh. 5) clearly reflect the fact that the state court judges refused to provide a written or oral ruling on the preemption status of the two federal statutes claimed by Petitioner at any time during the four years of the divorce proceedings.

The *sua sponte* Order by District Court Judge Scriven (App. 2) and the Motion to Dismiss by representatives of the Defendant judges (exh. 2) acknowledge that it is Petitioner's complaint that Defendant judges "refused to recognize and/or apply" those federal statutes claimed by Petitioner which preempted state divorce statutes on equitable distribution and alimony providing for enforcement of the preempted (voided) state statutes in the marriage dissolution proceedings". The Order by the district court (App. B) and the ruling by the United State Court of Appeals for the Eleventh Circuit (App. A) have taken the legal position that the unwritten/unspoken refusals by the Defendant judges to enforce the preempting federal statutes claimed by Petitioner; and the concurrent enforcement of the preempted (voided) state statutes, were acts within the "judicial capacity" of the Defendant judges.

The Supremacy Clause of the Constitution, the decision by the United States Supreme Court (hereafter "Supreme Court") in *Mansell v. Mansell*, 490 U.S. 581 (1989), and the requirement for timely due process, did mandate that Defendant judges enforce those preempting federal statutes claimed by Petitioner in the state divorce court proceeding and not enforce the preempted (voided) state statutes. The Defendant judges did lose their judicial immunity in violating the Supremacy Clause of the Constitution, the mandate by the Supreme Court in *Mansell v. Mansell*, supra. and Petitioners due process rights by acting in the total absence of jurisdiction by unlawfully refusing to enforce those preempting federal statutes claimed by Petitioner and enforcing the preempted (voided) state statutes. The Defendant judges did also violate Petitioners due process rights by intentionally and totally failing to litigate Petitioners claims and were thereby acting as a "minister of their own prejudices." Defendant judges are subject to suit under Title 42, section 1983 under the provisions of both *Pierson v. Ray*, 386 U.S. 547 (1967) and *Stump v. Sparkman*, 435 U. S. 349 (1978).

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 Defendant judges who are not entitled to the court-born doctrine of judicial immunity due to the fact that Defendant 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 United State Court of Appeals for the Eleventh Circuit has decided an important question of federal law that has not been, but should be, settled by this Court.

“When the responsibilities of lawmaker, prosecutor, judge, jury and disciplinarian are thrust upon a judge he is obviously incapable of holding the scales of justice perfectly fair and true.” *Fisher v. Pace*, 336 U.S. 155 at 167 (1949). It is requested that the Court recognize the inherent conflict of interest over the subject matter which influenced the responses by the appellate court (App. A) and the district court (App. B). It is respectfully requested that the Court review this petition based solely upon the facts, laws, and importance of the question presented.

ELEVENTH AMENDMENT IMMUNITY

The Complaint was not brought against the State of Florida and is therefore not barred by Eleventh Amendment Immunity. The respective state court judges are sued in their respective capacities as officers of the State of Florida and the Eleventh Amendment provides no shield of immunity for a state official confronted by a claim that he or she has deprived another of a federal right under color of state law (i.e. Florida equitable distribution and alimony statutes). The respective state court judges have been “stripped” of their state authority which they abused in violation of Petitioner’s rights under the Constitution. The unconstitutional actions by the respective state court judges were without authority of; and did not affect, the State of Florida in its sovereign or governmental capacity. This conclusion is supported by the following decision by the Supreme Court. Emphasis has been added by Petitioner to identify the specific violations:

“It has been well settled that the Eleventh Amendment provides no shield for a state official confronted by a claim that he had deprived another of a federal right (*the two federal statutes claimed by Petitioner*) under the color of state law (*State of Florida divorce statutes on the equitable distribution of property and the award of alimony*). *Ex parte Young* teaches that, when a state officer acts under a state law in a manner violative of the Federal Constitution (*the Supremacy Clause under Article VI Clause 2*), he comes into conflict with the superior authority of that Constitution, and he is, in that case, stripped of his official or representative character, and is subject in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States.” *Ex parte Young*, 209 U.S. 123 (1908).

THE ROOKER-FELDMAN DOCTRINE

Those rulings, orders, or judgments made by state court judges during the four year period of litigation on Petitioners dissolution of marriage proceeding did totally exclude any rulings, decisions or references to Petitioners claim to two federal statutes which preempted state divorce statutes on the equitable distribution of property and the award of alimony. During the period beginning with the initial Petition for Dissolution of Marriage to the date the federal suit was filed (four years) all five state court judges refused to acknowledge Petitioners claims of preemption and entitlement to two federal statutes, did not permit litigation on said claims, and did covertly deny Petitioners Fourteenth Amendment due process rights.

1. Petitioner did motion all five circuit court judges to take judicial notice of Petitioners entitlement; and the courts responsibility to enforce, two federal statutes which preempted state statutes on equitable distribution and alimony. See pages 18-20 and 40-42 of Petitioners Complaint (exh. 1) which describes the content of the Motions That the Court Take Judicial Notice (hereafter "Notice") which Petitioner did fully plead to the respective state court judges. The Notice is a very comprehensive document consisting of twenty pages and fourteen supporting exhibits. All five circuit court judges refused Petitioner's request to even hold hearings on said Notice.

2. Petitioner did petition four courts for the issuance of Writ(s) of Mandamus to the lower courts directing the lower courts to recognize Petitions claims of entitlement to the federal statutes and enforce the federal statutes which preempted state divorce statutes. All four of Petitioner's Petitions for Writ of Mandamus were denied without comment by the following courts:

A. The United States Court of Appeals for the Eleventh Circuit. Petitioner did request that said court direct the United States District Court for the Middle District of Florida to honor Petitioner's Request for Declaratory Judgment directing the initial state court judges to enforce the federal statutes claimed by Petitioner. See Complaint exh. 1 pages 8-18.

B. The Second District Court of Appeal State of Florida. Petitioner did request that the appellate court direct State of Florida Circuit Court Judge Nazaretian to enforce the federal statutes claimed by Petitioner. See Complaint exh. 1 pages 18-25.

C. The Florida Supreme Court. Petitioner did request that the Florida Supreme Court direct State of Florida Circuit Court Judge Nazaretian to enforce the federal

statutes claimed by Petitioner. See Complaint exh. 1 pages 25-26.

D. The Supreme Court. On April 15, 2017 Petitioner did file a Petition for Writ of Mandamus with this Court pursuant to the February 1, 2017 Affirmation of the Final Judgment by the trial court in the state court action. The Opinion by the Second District Court of Appeal State of Florida was without comment thereby preventing appeal to the Florida Supreme Court. Petitioner's Petition for Writ of Mandamus to this Court in case number 16-1531; which was denied by this Court October 2, 2017, did include an eight volume appendix documenting in detail the denial of due process by the trial court judges which is the subject of this federal complaint providing for loss of judicial immunity by the respective trial court judges. The state court action was directed to recognition and enforcement of Petitioner's claimed federal statutory rights and this federal court action is directed to the loss of judicial immunity by those state court judges who knowingly, unlawfully, and covertly denied Petitioner's federal statutory and due process rights in the state court action. The following question was presented to this Court in the state court action and provides further evidence that the *Rooker-Feldman* doctrine does not apply to the federal action before this Court in the form of this Petition for Writ of Certiorari. The Uniformed Services Former Spouses' Protection Act if referenced as "FSPA":

"Question: Are the unlawful denials of Petitioner's due process rights to Petitioner's federal statutory rights under the FSPA; as summarized above and fully documented within this Petition, sufficiently egregious as to warrant the issuance of an alternative writ of mandamus to the responsible judges on the District Court of Appeal of the State of Florida Second District demanding that the respective judges either compel the trial court to

recognize Petitioner's entitlement to and enforcement of Petitioner's federal statutory rights under the FSPA or appear before this Court to show cause for refusing to compel the trial court to recognize Petitioner's entitlement to and enforcement of Petitioner's federal statutory rights under the FSPA?"

3. Petitioner did motion the state circuit courts for summary judgment on three occasions and hearings were held with Petitioner providing documentation and testimony relative to Petitioner's claim to entitlement and enforcement of two federal statutes; which preempted (voided) state statutes on equitable distribution and alimony. No defense was provided by Respondents attorneys and the state court judges did remain silent throughout the hearings. After each of the hearings the courts did issue an Order stating that the "issues were not ripe for litigation" and would be heard during the Final Hearing (even though discovery was complete by both parties and the Final Hearing was scheduled within the following month). The respective Orders made no reference to the federal statutes claimed by Petitioner.

Respondent's three attorneys did at no point in the litigation address Petitioner's claims of entitlement to the two federal statutes with any form of an affirmative defense and did thereby waive any objection by Respondents as to Petitioner's entitlement and the courts responsibility to enforce the claimed federal statutes. Respondents failure to litigate the claims raised by Petitioner suggests that it was common knowledge that the state court judges were predetermined to refuse to enforce Petitioner's claims to the two federal statutes claimed.

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 Petitioners Fourteenth Amendment due process rights, Constitutional rights and federal statutory entitlement to said federal statutes under U.S.C. Title 42 section 1983.

In *District of Columbia Court of Appeals v. Feldman*, 460 U.S. (1983) and *Rooker v. Fidelity Trust Co.*, 263 U.S. (1923) the claims were made and ruled upon by the respective courts; however in the case at point Petitioner did fully plead his claim of entitlement to the federal statutes and the courts legal responsibility to enforce said federal statutes over the entire four years of litigation which was limited to by the Defendant judges to those state divorce statutes which had been preempted by the federal statutes. State and federal court judges; including defendant judges, did covertly (i.e. silently) refuse to rule on either Petitioners federal claims or the preemption issue during the entire four years of litigation.

As fully pleaded in Petitioners Reply (exh. 8 pg. 8-11); Petitioners claims in federal court were at no time inextricably intertwined with Petitioners claims in state court because the judges in state court refused to permit Petitioners claims to be litigated including; but not limited to, destroying documentation admitted into evidence during the final hearing, refusing to allow Petitioner to testify during the final hearing, stating in open court that the respective judge would not allow litigation of Petitioner's claim to the FSPA, refusing to rule on Petitioner's motions for summary judgment after hearings were completed on the motions, refusing to even grant hearings on Petitioner's Motions That the Court Take Judicial Notice of Petitioner's federal statutory claims, judicial actions by the initial trial court judge which violated the judicial code of ethics and were directed toward voiding Petitioner's lawsuit, and refusing

to grant Petitioner's request for a Writ of Mandamus based upon misrepresentations by the appellate court.

This federal action does not challenge the state court decision in the form of the Final Judgment. Petitioner does complain of injury caused by the actions of Defendant judges who did unlawfully; and with full knowledge of the unlawful nature of their actions, violate the Supremacy Clause of the Constitution and deny Petitioner's right to due process covertly; meaning with intent and in silence, in making no written or oral judgments relative to Petitioner's many written claims of entitlement to the protections of two federal statutes which preempted (voided) state divorce statutes.

Petitioner's claim to entitlement and enforcement of Petitioner's federal statutory rights which preempted (voided) state divorce statutes on equitable distribution and the award of alimony was the basis of Petitioner's state court action. Petitioner's federal action is as stated within the heading of Petitioner's Complaint at page 2: "Complaint of Systemic Judicial Abuse Providing for the loss of Defendants Judicial Immunity in Failing to Comply with the Supremacy Clause of the United States Constitution". Petitioner did not file the federal suit to continue pursuing the protections of the federal statutes to which he was covertly denied due process by the Defendant judges; but rather to hold those judges responsible individually for violating Petitioner's due process rights in Petitioner's state court claim to the following federal statutes which were mandated to enforcement by Article VI Clause 2 of the Constitution and the following decision by the Supreme Court in *Mansell v. Mansell*, supra. Defendant state court judges were fully advised of the following preempting statutes and the mandate of enforcement by the Supreme Court throughout the four years of litigation on state statutes:

- 1) U.S.C. Title 10, Subtitle A, Part II, Chapter 71, section 1408(a)(4)(B). A provision within a Federal statute

titled the federal Uniformed Services Former Spouses' Protection Act (FSPA).

- 2) U.S.C. Title 42, Chapter 7, Subchapter IV, Part D, section 659(h)(2)(B).

“Because domestic relations are preeminently matters of state law, we have consistently recognized that Congress, when it passes general legislation, rarely intends to displace state authority in this area.... The instant case, however, [the FSPA] presents one of those rare instances where Congress has directly and specifically legislated in the area of domestic relations.” *Mansell v. Mansell*, *supra*.

The ban on federal review of state court decisions does not apply (as in the case at point) when the federal statutory claims were **never inextricably intertwined** with the state court case because the state court judges refused to acknowledge Petitioners claims or allow Petitioner to litigate the federal claims. The *Rooker-Feldman* doctrine applies only if Petitioner had a reasonable opportunity to raise and litigate his federal claims in the state court proceedings. Petitioner was denied his Fourteenth Amendment substantive and procedural due process rights to litigate his claims which the state court judges refused to acknowledge as claims or permit to litigate. Litigation was restricted to Florida divorce statutes and Petitioner did not plead the Florida divorce statutes at any point in the litigation.

Defendants did make the following false statements within their pleadings: “The party seeking relief had a reasonable opportunity to raise the claims in state court.” “Plaintiff had sufficient opportunities to challenge the judicial rulings and actions in the state trial and

appellate courts and avail himself of those options.” Defendant’s pleadings make frequent reference to “Plaintiff” taking issue with the Judges’ ruling on various motions.” Petitioner did fully plead in the initial Complaint (exh. 1 page 18 item 37 thru page 33 item 69; page 40 item 82 thru page 51 item 100; page 54 item 107 thru page 57 item 113) that the state court judges refused to acknowledge, permit litigation, or rule upon Petitioners claims to two federal statutes which preempted state statutes throughout the state court litigation.

There were no rulings on any of Plaintiff/Petitioner’s motions (Petition for Dissolution of Marriage, Motions That the Court Take Judicial Notice, Motions for Summary Judgment of the federal statutes claimed, Motions for Writ(s) of Mandamus) during the entire four years of litigation including of the Final Judgment which was based exclusively upon state divorce statutes to the exclusion of those federal statutes claimed by Plaintiff/Petitioner.

The Rooker-Feldman Doctrine does not apply based upon the statements of fact and law presented by Petitioner in the Complaint and the Appeal. The *Rooker-Feldman* Doctrine prevents federal courts from exercising jurisdiction to review state court decisions where (1) the party in federal court is the same party as in the state court; (2) the state court ruling was a final or conclusive judgment; (3) the party seeking relief had a reasonable opportunity to raise the claims in state court; and (4) the issues raised in federal court were adjudicated by the state court or intertwined with the state court’s judgment. *See Amos v. Glynn Co. Bd. of Tax Assessors*, 347 F.3D 1249, 1266 n. 11 (11th. Cir. 2003). Petitioner did not have an opportunity to raise the claims in state court because the state court judges would not acknowledge Petitioners claims and Petitioners claims were not adjudicated or intertwined with the state court’s judgment because the

state court denied all due process to Petitioners claims. See Complaint (exh. 1 pages 8-33) and Appeal pages 19-26.

“Because the issue did not figure, and could not reasonably have figured, in the state court’s decision, the district court has “original” jurisdiction over the issue as required by USC Title 28, section 1331. Finally, interpreting Rooker to preclude a federal court from considering an issue that the plaintiff had no reasonable opportunity to raise in state court might pose due process problems. Such a harsh rule might deprive the plaintiff of any forum, state or federal, where he has a reasonable opportunity to present his federal constitutional claims, a result arguably contrary to the requirements of due process”. *Wood v. Orange County*, 715 F.2D 1543, 1547 (11TH Cir. 1983).

It would be a denial of due process to block this liability suit under the *Rooker-Feldman* doctrine based upon the principles stated in *Wood v. Orange County*, supra.

The ruling by the appellate court (App. A) distorts the facts to justify denying the appeal. The appellate court opinion does at page 6 distort the record by stating “those [Blough’s] claims would succeed ‘only to the extent that the state court wrongly decided’ the preemption issue”. The statement is false in that; as the Complaint, Appeal, and exhibits prove, the Defendant state court judges (including trial court Judge Nazaretian) refused to even acknowledge those claimed filed by Petitioner and would not permit Petitioners claims to be litigated (in concert with Respondents counsel). During the four years that the state divorce statutes were before the five state court judges the state court judges did completely ignore Petitioners filings relative to Petitioners claims to two federal statutes which preempted (voided) State of Florida statutes on the equitable

distribution of Petitioner's property and the exclusion of Petitioners income from the payment of alimony. The Defendant judges covertly refused to issue a ruling on the preemption issue. The state court judges did covertly (silently) deny Petitioners due process rights relative to Petitioners claims throughout the litigation. To insure that no evidence of Petitioners claims became part of the trial court record; Judge Nazaretain did refuse to allow Petitioner to testify at the final hearing which was transcribed, forced Petitioner to submit his entire case in the form of a fifty-two page narrative (with forty supporting exhibits into the court record as evidence), issued a Final Judgment which was completely void of any reference to Petitioners claim of entitlement to two federal statutes which preempted state statutes, and then destroyed Petitioners fifty-two page narrative which presented Petitioners entire case in support of the two claims which preempted state statutes.

This federal action does not require that the federal courts review the Final Judgment of the state trial court for purposes of the issues lost in state court, but rather the actions; and inactions, of those state court judges [and District Court Judge Moody] who claim judicial immunity. The Final Judgment made no decision or even mention of the two federal statutes claimed by Petitioner. In fact no decision on the two federal statutes was ever made by the state court judges.

JUDICIAL IMMUNITY

This petition presents a conflict between the public 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 "clear and substantial federal interest" in the rights of a severely disabled veteran whose federal Constitutional and federal statutory rights were violated by state court judges under color of state law. The Defendant judges have done major

damage to the clear and substantial federal interests of Petitioner by violating of the Supremacy Clause of the Constitution in the clear absence of all jurisdiction.

Mansell v. Mansell, supra., *In Edgar v. MITE Corp*, 457 U.S. 624 (1982), *Hisquierdo Hisquierdo*, 439 U.S. 572 (1979), *McCarty v. McCarty*, 453 U.S. 210 (1981).

The Supreme Court did anticipate the reluctance by state court judges to enforce the Uniformed Services Former Spouses' Protection Act (hereafter "FSPA") in a domestic policy area normally delegated to the states (i.e. marriage) and did provide specific instructions in *Mansell v. Mansell*, supra. that the FSPA was directed to enforcement by state court judges and it was not to the discretion of state court judges to enforce claims under the FSPA:

"Thus, the legislative history (of the Former Spouses' Protection Act), read as a whole, indicates that Congress intended both to create new benefits for former spouses and to place limits on state courts designed to protect military retirees. Our task is to interpret the statute as best we can, not to second-guess the wisdom of the congressional policy choice. See, e.g. *Rodriguez v. United States*, 480 U.S. 522, 526 (1987) (per curiam) ('deciding what competing values will or will not be sacrificed to the achievement of a particular objective is the very essence of legislative choice'). We realize that reading the statute literally may inflict economic harm on many former spouses. But we decline to misread the statute in order to reach a sympathetic result when such a reading requires us to do violence to the plain language of the statute and to ignore much of the legislative history."

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. *See* Complaint (exh. 1 at pages 27-33) 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. As discussed in the Complaint (page 12 item 8 and page 38 item 78 of exh. 1) ninety-seven percent (97%) of the issuers presented in the state court proceeding are required to be resolved based upon those federal statutes claimed by Petitioner.

The requirement that Defendant 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. Defendants are not entitled to qualified immunity because their judicial actions violated clearly established federal statutory and Constitutional rights of which they were fully advised.

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 Defendant 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 Defendant state court judges total denial of Petitioner's Fourteenth Amendment right to procedural and substantive due process.

Petitioner is entitled to trial by jury in this suit for damages against Defendant judges; who are not entitled to judicial immunity, in that the Defendants (as state trial court judges) did refuse to enforce the federal statutes claimed by Petitioner as required by Article VI Clause 2 of the Constitution, did violate Petitioner's 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.

Defendant's Motion to Dismiss (exh. 2): "Plaintiff essentially takes issue with the decision to apply state law to his divorce proceeding and not apply the FSPA,

However, Plaintiff is misguided as this does not overcome judicial immunity and entitle Plaintiff to sue the judges". 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 *sua sponte* Order by the district court judge (App. B) did advocate for the Defendant judges in stating that "it is clear that the Defendant Judges had jurisdiction over the matters before them concerning Plaintiff's marriage dissolution proceedings"; however failed to address Petitioner's fully pleaded claims to two federal statutes which preempted state statutes on the equitable distribution of property and alimony which the Defendant judges covertly refused to acknowledge, litigate or rule upon during the four years of litigation in which the judges restricted the proceedings to the state divorce statutes which were preempted by the claimed federal statutes. The facts and laws presented in Petitioners Complaint (exh.1) and Motion to Reconsider the Order of Dismissal (exh. 3) fully negate the arguments presented in the Orders by the district court barring Petitioners federal action based upon Judicial Immunity, Eleventh Amendment Immunity, and the *Rooker-Feldman* Doctrine.

The state appellate court did subsequently affirm the Final Judgement of the state trial court judge without further comment. Petitioner did bring suit against the state appellate court judges in federal court based upon the same claims as those against Defendant judges (App. H). A copy of the appellate court decision is included within this petition for the limited purpose of pointing out to this Court the cavalier attitude which 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 (App. H) does

contain the following statement: "What's more, Blough does not argue, and there is no indication in his 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.

The facts and laws in this case present a challenge by Defendant judges to the judicial authority of the Supreme Court, the United States Congress, and supreme authority of the Constitution as the "law of the land" under Article VI Clause 2.

The briefs submitted on behalf of the Defendant judges; and the Order of Dismissal by District Court Judge Scriven, 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 and the Order of Dismissal by Judge Scriven also fail to address the facts that the Judges did violate the Supremacy Clause of the United States Constitution (hereafter "Constitution"), did deny those federal statutory protections claimed by Petitioner as a severely disabled veteran, did refuse to recognize the legislative authority of the United States Congress (hereafter "Congress"), and did challenge the judicial authority of the Supreme Court as mandated in *Mansell v. Mansell*, supra.

The federal statutes claimed by Petitioner; and to which entitlement has been proven to each of the seventeen judges, serve a clear and substantial federal interest under the provisions U.S.C. Title 10, Subtitle A, Part II, Chapter 71, section 1408(a)(4) of the federal armed forces statutes and U.S.C. Title 42, Chapter 7, Subchapter IV, Part D, section 659(h)(2)(B) of the federal

alimony statutes. The federal statutes claimed are mandated to enforcement by federal and state court judges under Article VI Cl. 2 of the Constitution. The armed forces statute; which is formally titled the Uniformed Services Former Spouses' Protection Act (hereafter "FSPA"), was found to preempt state divorce statutes on the equitable distribution of property and was mandated to enforcement by state court judges in the decision by the Supreme Court in *Mansell v. Mansell*, *supra*.

The claimed federal statutes did preempt (void) State of Florida divorce statutes on the equitable distribution of property and the award of alimony as said state divorce statutes are void of judicial authority pursuant to the decisions by the Supreme Court *In Edgar v. MITE Corp*, 457 U.S. 624 (1982). The seventeen federal and state court judges (including Defendant judges) have unlawfully refused to enforce the preempting (voiding) federal statutes under judicial authority which had been specifically granted of them by Congress, the Supreme Court, and Article VI Clause 2 of the Constitution. The seventeen federal and state court judges (including Defendant judges) have also unlawfully enforced the voided (preempted) state divorce statutes; which were voided of judicial authority by the preempting federal statutes, under judicial authority which had been specifically withheld from them by Congress, the Supreme Court, and Article VI Cl. 2 of the Constitution.

Title 42 U.S.C. section 1983 provides:

"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.

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 Defendant judges was the recognition of Petitioner's statutory entitlement to the protections of the FSPA after ascertaining the existence of a specified state of facts in response to a duty which was positively imposed by law (FSPA) 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 FSPA when Petitioner proved entitlement to the federal statutory protections of the FSPA with three (3) documents which were attached to the Notice motions which were provided to each of the eighteen inferior court judges. The FSPA, the Supremacy Clause of the Constitution, and the mandate by this Court in *Mansell v. Mansell*, supra. did require enforcement of the FSPA upon Petitioner's proven

entitlement to the FSPA. The statutorily required enforcement of the FSPA 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.

As stated within the Notice, the courts ministerial duty of proving Petitioner's claim of entitlement to the protections of the FSPA 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 Defendant judges have refused to perform their ministerial duty of recognizing and enforcing Petitioner's proven federal statutory right to the FSPA (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.

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 allegations presented in the Complaint 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 Defendant 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 Defendant 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 Defendant judges were fully advised of such in Petitioners Notice motions. The state divorce 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 FSPA and the Supreme Court decision in *Mansell*, supra. The only judicial actions which could have been lawfully taken by the state divorce 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 (FSPA) 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 (FSPA) 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 FSPA, *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 Defendant 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 to state divorce court judges.

The Complaint provides for the loss of judicial immunity by the Defendant judges in abusing their judicial authority by unlawfully enforcing state statutes which were void of legal authority and refusing to enforce lawful federal statutes as required by Article VI Clause 2 of the Constitution. Defendant judges did unlawfully take Petitioner's Fifth Amendment property interests without due process of law in denying Petitioner's Fifth and Fourteenth Amendment procedural and substantive due process rights to the protections of two federal statutes which preempted Florida divorce statutes.

Petitioner did in 2014, file a Complaint with the district court requesting that the district court; in the form of a request for declaratory judgment, instruct state divorce court judges that they were required by Article VI Clause 2 of the United States Constitution to enforce those specific federal statutes claimed by Petitioner. District Court Judge Moody did not formally acknowledge the absence of judicial authority by the state court judges; however did dismiss the complaint as moot because Judge Moody found that the state court judges were protected from their actions by judicial immunity. Because District Court Judge Moody refused to meet his Constitutional responsibility in 2014; Blough has been subject to continuing judicial abuse of his federal statutory claims by an additional thirteen state court judges. The Complaint (exh. 1 pages 8-18) present the facts,

documentary evidence, and arguments specific to the actions of Defendant Judge Moody.

Judge Moody is without judicial immunity in that his actions were in the absence of all judicial authority by permitting state court judges to do that which Judge Moody could not do himself (i. e. refuse to enforce federal statutes). The actions of Judge Moody did provide for the enforcement of voided state statutes by state court judges (an act without judicial authority) and did prevent the enforcement of the claimed federal statutes which preempted the voided state statutes. The judicial actions by Judge Moody in response to Petitioner's 2014 Request for Declaratory Judgment were a contributing factor of the continuing judicially abusive actions inflicted upon Petitioner by state court judges throughout this litigation and Petitioner did at no point in this litigation waive or abandon the dismissal of his claim of unlawful actions against Judge Moody.

This case meets the common law requirements for loss of judicial immunity in that the Defendant 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, Defendant's Briefs, and the Judgement by the appellate court fail to address Petitioner's claim that Defendant judges did not have jurisdiction (authority) over the matters before them because Defendant 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 Defendant 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 FSPA 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.

Defendant state 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.

Petitioner does not pretend to be a lawyer and appears *pro se* only because the attorney he retained when the litigation originally began refused to litigate the federal statutes claimed by Petitioner after the initial trial court judge did state in open court that he would not allow the claimed federal statutes to be litigated in his courtroom and Petitioners attorney feared retaliation by the judge if she attempted to litigate the federal statutes claimed.

CONCLUSION

It respectfully requested that the Court grant this petition and return the case to trial by jury.

November 20, 2017.

Respectfully submitted,

s/ Melvin E. Blough

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