

No. 26-_____

SUPREME COURT OF THE UNITED STATES

JOSEPH S. McFALL,

Petitioner,

vs.

BERNADINE McFALL OSBORNE,

Respondent.

On Petition for a Writ of Certiorari to
the Mississippi Supreme Court

Stephen J. Maggio
The Maggio Law Firm, P.C.
2201 24th Ave.
Gulfport, MS 39501
Tel.: (228) 863-9111
Fax: (228) 863-9191
Email: stephen@sjmaggio.com
Attorney for Petitioner

I. Question Presented

Whether a state court's post-divorce judgment entered eleven years after the divorce and imposing an involuntary judicial division of a former service member's disability benefits is preempted as being in violation of the Supremacy Clause when there was no prior divorce settlement agreement whereby the service member agreed to divide his disability payments, where the original divorce judgment awarded him his disability payments as his sole property free and clear from any claims by his wife, where the wife was denied any form of alimony, and where the post-divorce judgment was entered to indemnify the wife for his not ever becoming eligible to receive a military retirement?

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IV. Petition for Writ of Certiorari

Former Army Master Sergeant Joseph S. McFall petitions this Court for writ of certiorari to review the Mississippi Supreme Court's order denying his petition for writ of certiorari.

V. Opinions Below

The February 12, 2010, original judgment of divorce entered by the Chancery Court of Jackson County, Mississippi in Cause No. 30CH1:06-cv-1745 is attached as Appendix ("Apx.") at 48-60.

The October 22, 2021, post-divorce judgment modifying the original judgment entered by the Chancery Court of Jackson County, Mississippi in Cause No. 30CH1:06-cv-1745 is attached at Apx. 26-33.

The October 13, 2023, judgment denying Mr. McFall's Rule 60 motion entered by the Chancery Court of Jackson County, Mississippi in Cause No. 30CH1:06-cv-1745 is attached at Apx. 16-18.

The April 8, 2025, Opinion of the Mississippi Court of Appeals in Cause No. 2023-CA-01234-COA, affirming the trial court's judgment is attached at Apx. 4-15.

The August 26, 2025, Order of the Mississippi Court of Appeals in Cause No. 2023-CA-10234-COA denying his motion for rehearing is attached at Apx. 2-3.

The December 10, 2025, Order of the Mississippi Supreme Court in Cause No. 2023-CT-01234-SCT denying his petition for writ of certiorari is attached at Apx. 1.

VI. Jurisdiction

The Mississippi Supreme Court denied Mr. McFall's petition for certiorari on December 10, 2025. This Court has jurisdiction over his Petition for Writ of Certiorari pursuant 28 U.S.C. § 1257 as filed within ninety days of the Mississippi Supreme Court's order.

VII. Constitutional Provision Involved

The Supremacy Clause of the United States Constitution provides:

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.

U.S. Const. art. VI, cl. 2.

VIII. Statutory Provisions Involved

The Uniformed Services Former Spouses Protection Act [“USFPSA”] at 10 U.S.C. § 1408(a)(4)(A)(iii) provides:

(A) The term “disposable retired pay” means the total monthly retired pay to which a member is entitled less amounts which

...

(iii) in the case of a member entitled to retired pay under chapter 61 of this title [10 USCS §§ 1201 et seq.] ... or the date on which the member’s name was placed on the temporary disability retired list

Id.

IX. Statement of the Case

On August 21, 2006, Bernadine Osborne [hereinafter “Bernadine”] filed her divorce complaint against Joseph McFall [hereinafter “Joseph”].

On February 26, 2007, several years before trial, Joseph was involuntarily placed on the Temporary Disabled Retired List (“TDRL”)¹ by the Secretary of the Army due to

¹TDRL benefits are “chapter 61” disability benefits which are excluded from definition of “disposable retired pay”. See 10 USC § 1408(a)(4)(A)(iii). See also, *Brown v. Brown*, 260 So. 3d 851, 855-56 (Ala. Civ. App. 2018); *Selitsch v. Selitsch*, 492 S.W.3d 677, 684 (Tenn. Ct. App. 2015); *Guerro v Guerro*, 362 P.3d 423, 438-39 (AK 2015).

combat service related injuries. *See* Apx. 35-38. The determination letter clearly states, “You are released from . . . duty because of physical disability . . . and [placed] on the *Temporary Disability Retired List*.” *See* Apx. 36. (Emphasis added). The letter cites 10 USC § 1372 and 10 USC § 1202 as the statutory authority for the determination. *See* Apx. 36.

Three years later, Bernadine and Joseph entered into a Consent to a Divorce on Grounds of Irreconcilable Differences and Permission for the Court to Decide The Issues Upon Which the Parties Cannot Agree.² *See* Apx. 49. They submitted two issues for decision (1) equitable division of marital property and (2) alimony. *See* Apx. 50.

On February 12, 2010, following trial on the contested issues, the original chancellor issued his Findings of Fact, Conclusions of Law, Ruling and Judgment of the Court. *See* Apx. 48-60. He accepted their stipulation granting them an irreconcilable differences divorce. *See* Apx. 50. *See also* Apx. 57. In analyzing equitable distribution, he made a clear distinction between Joseph’s military disability payments and any future military retirement he might receive. *Cf.* Apx. 53(¶¶11-12) and Apx. 58-59. As to the military disability payments, he determined that:

[W]ith the exception of . . . [Joseph’s] . . . military retirement, *each party shall be entitled to the use and ownership of their . . . pension plans, . . . disability payments, and retirement accounts, free and clear of any claim of the other.*

See Apx. 59. (Emphasis added).

At the time of the divorce, Joseph had not served twenty years and was not eligible for a military retirement. However, as there was the possibility Joseph could recover

² Mississippi requires both parties to consent to an irreconcilable differences divorce, but if the parties cannot agree as to all issues, they may enter into a stipulation agreeing to the divorce and proceeding to trial on any contested issues. *See* Miss. Code Ann. § 93-5-2(3) (1972).

and be restored to active duty thereby potentially earning a military retirement, the original chancellor found Bernadine, “[I]s entitled to and is hereby awarded *a sum equal to one-half* of all *future military retirement payments* received . . . [by] JOSEPH . . .” *See* Apx. 58. (Emphasis added). He awarded Joseph his military disability payments solely to him “free and clear” of any claim on Bernadine her. *See* Apx. 59.

The original chancellor then engaged in a detailed explanation and consideration of each type of alimony allowable under Mississippi law and denied Bernadine any form of alimony. *See* Apx. 54-58.

In the years following the divorce, Joseph remained disabled and was never reinstated to active duty. After five years on the TDRL, the Secretary of the Army deemed Joseph permanently disabled, involuntarily moved him to the Permanent Disability Retired List (“PDRL”), and he was fully and finally separated from the military without ever having qualified for a retirement.

By the time Bernadine filed for modification on May 19, 2020, some ten years after the divorce, as Joseph’s disability rating had continued to increase, he was receiving a combination of PDRL and VA disability pay. Bernadine claimed Joseph had intentionally waived military retirement for disability thus purposefully denying her the half of his unrealized military retirement. She sought indemnification based on his military disability benefits. *See* Apx. 44-47.

On July 27, 2020, Joseph answered asserting: he was on disability at the time of the divorce; he had remained on the disability list since 2007; he never received any military retirement; he did not choose to receive disability over retirement being involuntarily placed the TDRL or the PDRL; and, he had not waived any military retirement. *See* Apx. 39-43, specifically Apx. 40(¶4). This marks the first time Joseph claimed his military disability benefits were not divisible and he had not waived any military retirement.

On October 22, 2021, the subsequent chancellor³ entered a judgment in favor of Bernadine awarding her \$800.00 per month, an amount he determined to be one-half of Joseph's then military disability payments. *See App 26-33.* He awarded her this amount to indemnify her, believing Joseph had waived retirement or chose not to receive retirement. *See App. 32-33.*

Seven months later on May 23, 2022, Bernadine sued Joseph for contempt. *See App 23-25.*

On September 27, 2022, Joseph responded claiming his failure to pay was not wilful and also asking the judgment be set aside under MRCP Rule 60(b)(4) as void in violation of the Supremacy Clause and preemptive federal law against dividing military disability benefits as property. *See App. 19-22, specifically App. 21(¶¶ 8-9).* This marks second time he claimed federal preemption.

On October 13, 2023, the chancery court denied his Rule 60 motion as being untimely⁴, entered judgment against him, and ordered him to pay or be incarcerated. *See App. 16-18.*

Joseph perfected an appeal. The Mississippi Supreme Court assigned the case to the Mississippi Court of Appeals.⁵ On April 8, 2025, the Mississippi Court of Appeals affirmed the chancery court. *See App. 4-15.* On August 26, 2025, it denied his motion for rehearing. *See App. 2-3.* On December

³ In the intervening eleven years, the original chancellor had retired.

⁴ However, as to timeliness, “[O]n motions . . . pursuant to Rule 60(b)(4) . . . there . . . [is] . . . no time limitation for relief . . . as ‘no amount of time or delay may cure a void judgment.’” *O’Neal v. O’Neal*, 17 So. 3d 572 (Miss. 2009).

⁵ MRAP 16(c) provides the Mississippi Supreme Court may assign any case before it to the Mississippi Court of Appeals.

10, 2025, the Mississippi Supreme Court denied his petition for a writ of certiorari. *See* Apx. 1. Joseph now timely seeks review by this Court.

X. Reasons for Granting Writ

Joseph suggests the October 22, 2021, modification judgment involuntarily imposing a division of his military disability payments is preempted, due to be set aside, and void. Further, he suggests review is necessary to resolve a conflict among the states regarding whether preemption acts to deprive state courts of subject matter jurisdiction or to allow collateral attack of a state court judgment in this limited area.

Preemption

Our system of overlapping federal and state sovereignties gives rise to "the possibility that laws can be in conflict or at cross-purposes." *Arizona v. United States*, 567 U.S. 387, 399 (2012). The Supremacy Clause, dictates that federal law "shall be the supreme Law of the Land, *and the Judges in every State* shall be bound thereby" and it overwhelms "any Thing in the Constitution or Laws of any State to the Contrary . . . Under this principle, Congress has the power to preempt state law." *Arizona*, 567 U.S. at 399. (Emphasis added).

In *McCarty v. McCarty*, 453 U.S. 210 (1981) this Court held the Supremacy Clause and preemption completely removed from the entire landscape of domestic relations law a state court's ability to divide military retired pay as marital property. In response, Congress enacted the Uniformed Services Former Spouses Protection Act ["USFSPA"], 10 U.S.C. § 1408, et. seq. to restore this authority to state courts, but not entirely.

As later held by this Court in *Howell v. Howell*, 581 U.S. 214 (2017), in passing the USFSPA Congress had restored a state court's power to divide disposable military retired pay, but withheld any power to divide disability benefits.

Justice Thurgood Marshall . . . pointed out that . . . *McCarty*, “completely pre-empted the application of state community property law to military retirement pay.” 490 U.S., at 588 He noted that Congress could “overcome” this preemption “by enacting an affirmative grant of authority giving the States the power to treat military retirement pay as community property.” *Ibid.* He recognized that Congress, with its new Act, had done that, but only to a limited extent. The Act provided a “precise and limited” grant of the power to divide federal military retirement pay. *Ibid.* It did not “gran[t]” the States “the authority to treat total retired pay as community property.” *Id.*, at 589 Rather, Congress excluded from its grant of authority the disability-related waived portion of military retirement pay. Hence, in respect to the waived portion of retirement pay, *McCarty*, with its rule of federal preemption, still applies.

Howell v. Howell 581 U.S. 214, 218 (2017).

In the wake of *Howell, supra*, various state cases arose wherein former service members sought to void or collaterally attack divorce judgments entered prior to *Howell, supra*, which had adopted their voluntary agreements to divide military disability or reimburse a former spouse for waived retirement. Those courts, relying on contractual principles, upheld the prior decrees finding no prohibition against a service member voluntarily agreeing to divide military disability benefits. *See e.g. Yourko v Yourko*, 884 S.E. 2d 799 (Va. 2023); *Parish v Parish*, 991 N.W. 2d 1, 5 (Neb. 2023); *Martin v Martin*, 520 P.3d 813, 818-19 (Nev. 2022); *Foster v Foster*, 983 N.W. 2d 373, 379-80 (Mich. 2022); *Shelton v Shelton*, 78 P.3d 507, 510 (Nev. 2003). With the exception of *Yourko, supra*, which was decided while this case was on appeal, those were the cases cited by the Mississippi Court of

Appeals in denying Joseph's appeal. See Apx. 10. Those decisions are discussed more fully below concerning the conflict among the states.

However, those decisions differ from the case at hand as Joseph never agreed to divide his military disability payments or to reimburse Bernadine if he waived retirement. Further distinguishing those decisions is the fact that Joseph never received a military retirement nor did he take any action to deprive Bernadine of her share of any potential retirement. Joseph did not choose to be put on the TDRL nor did he waive retirement.

"[B]eing placed on the TDRL is materially different from a military spouse voluntarily choosing . . . to waive . . . [retirement] . . . benefits in order to receive VA disability benefits instead. Under TDRL statutes, a servicemember is 'placed on' the TDRL.

Brown v. Brown, 260 So. 3d at 855, quoting, *In re Marriage of Poland*, 264 P.3d 647, 650 (Colo. App. 2011). (Emphasis added).

Under federal law, a service member may remain on the TDRL for five years. "[T]he statute provides for periodic medical examinations to evaluate the status of disabilities of persons on . . . [TDRL] . . . and requires a final decision within five years. 10 U.S.C. § 1210(a),(b)." *Cronin v. United States*, 765 F.3d 1331, 1336 (Fed. Cir. 2014). If a service member's disability rating still exceeds thirty percent (30%) after five years on the TDRL, he is then transferred to the PDRL. See 10 USC § 1210(c). If he is recovered and fit for service, he is either returned to active duty service (with his consent), or permanently separated from the military. Cf. 10 USC § 1210(f) with 10 USC § 1211. See also, *Casiano v. United States*, 141 Fed. Cl. 528, 538 n. 6 (Ct. Cl. 2019); *Craft v. United States*, 210 Ct. Cl. 170,176 (Ct. Cl. 1976).

The decision of *Williams v. Burks*, 353 So. 3d 549 (Ala. Civ. App. 2021) is instructive. The Alabama Civil Court of

Appeals was faced with a very similar fact pattern as the case herein. The husband in *Williams, supra*, was honorably discharged after almost 18 years of military service without qualifying for a military retirement. Following his discharge, he filed for VA disability benefits and, near the same time, filed for divorce. Just prior to the divorce, he was awarded, “[S]ervice connected benefits [with a] combined disability rating from the VA [of] 50%.” *Williams*, 353 So. 3d at 549-50. The court imposed a judgment awarding the wife, as property settlement, an amount equal to forty percent (40%) of his disability payments. *Williams*, 353 So. 3d at 550. He never paid his wife any of his disability payments and seventeen years later she filed a complaint requesting 40% of his disability. *Williams*, 353 So. 3d at 551. He argued, “[b]y statute, ... [I don’t] have to pay anything associated with the VA.” *Williams*, 353 So. 3d at 552. The trial court ruled in her favor. *Williams*, 353 So. 3d at 552. He appealed.

Relying on the express exclusion of disability payments contained in the USFSPA and the decisions of *Howell v. Howell*, 581 U.S 214 (2017) and *Brown v. Brown*, 260 So. 3d 851 (Ala. Civ. App. 2018) he argued the provisions “[I]n the parties’ divorce judgment relating to the VA disability benefits were ‘preempted by federal law’ and . . . not ‘within the [trial] court’s authority to award.’” *Williams*, 353 So. 3d at 553.

The *Williams, supra*, court engaged in a detailed analysis of the *Howell, supra*, decision concluding the original judgment dividing his military disability benefits was preempted, void, and unenforceable. *Williams*, 353 So.3d at 553-55. The *Williams, supra*, court noted the case did not present the question of waiver of military retirement as, “The former husband apparently was not qualified for military-retirement benefits when he separated from the military, and he repeatedly testified that the payment he had received from the VA were not for retirement.” *Williams*, 353 So. 3d at 555-56. “Nevertheless, based on . . . the protected status of

disability benefits . . . [as discussed] in *Howell* and *Brown* and . . . the pertinent federal statute . . . it is clear that the trial court lacked the authority to award the former wife any portion of the VA disability benefits.” *Williams*, 353 So. 3d at 556.

As to the issue the husband collaterally attacking the original divorce judgment, the former wife argued he could not challenge the judgment as he never appealed it. The *Williams*, *supra*, court rejected this argument.

[T]he strong language used by the Court in *Howell* suggests that the lack of power to award VA disability benefits as part of a property settlement is the type of defect that would make such an award void. . . .

Williams, 353 So. 3d at 556-57.

Turning to the case at bar, in his October 22, 2021, judgment the subsequent chancellor framed the issue as follows:

The crux of the issue . . . is whether the final divorce judgment, wherein Bernadine was awarded a portion of Joseph’s military retirement, should be modified to take into account Joseph’s increased disability rating and thus lower the monthly amount owed to Bernadine.

See Apx. 28.

The subsequent chancellor recognized the division of military retirement versus military disability had been addressed by this Court in *Mansell v Mansell*, 490 U.S. 581 (1989) holding state courts are prohibited from dividing disability benefits. *See* Apx. 28. Further, he recognized the Mississippi Supreme Court’s holding in *Mallard v Burkhart*, 95 So. 3d 1264, 1272 (Miss. 2012) that, “state law is preempted by federal law, and thus, state courts are precluded from ordering distribution of military disability benefits contrary to federal law.’ *Id.*” *See* Apx. 29. He also

noted this Court's decision in *Howell v. Howell*, 581 U.S. 214 (2017) reversing an Arizona state court decision requiring a service member to indemnify his former spouse for waived military retirement where the divorce decree awarded her 50% of her husband's future military retirement pay. The subsequent chancellor correctly noted an order requiring indemnification for waived retirement pay would, "[D]isplace the federal rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress. *Id.* at 1406.' And 'All such orders are thus preempted.'" See Apx. 30-31 quoting *Howell*, 518 U.S. at 222. While recognizing these authorities, the subsequent chancellor confessed he did not understand the type of benefits Joseph was receiving nor did he understand whether Joseph had elected disability pay.

Making determinations of disability and/or retirement are matters beyond the ability of this Court to understand. It is unknown whether Joseph could elect to receive benefits as retirement and thus pay Bernadine one-half, or if he is obligated and required to accept his pension under the umbrella of disability and therefore defeat Bernadine from receiving . . . one-half

See Apx. 31.

This statement indicates a basic misunderstanding of the nature of and reason for Joseph receiving disability benefits. Joseph did not elect TDRL or PDRL benefits. See *Brown v. Brown*, 260 So. 2d 851, 855 (Ala. Civ. App. 2018); *In re Marriage of Poland*, 264 P.2d 647, 650 (Colo. App. 2011). Despite the subsequent chancellor's inference that Joseph had a hand in Bernadine's not receiving any share of a military retirement, the facts are that Joseph never qualified for a military retirement and never waived a military retirement. Notwithstanding, even if he had waived retirement to receive disability, Bernadine would still not be entitled to

indemnification. *Howell v. Howell*, 581 U.S. 214 (2017).

To be certain, while the subsequent chancellor may not have understood the type disability Joseph was receiving, he understood it was not divisible disposable military retired pay and Bernadine’s counsel effectively conceded such as demonstrated by the following exchange between him and the court at the modification hearing. “THE COURT: He wasn't drawing retirement at that time. He was drawing disability.” See Apx. 34. Bernadine’s counsel, recognizing the effect of preemption conceded, “[W]e're asking the Court . . . to find a way . . . any way that the Court can do it” See Apx. 34. (Emphasis added). It is perplexing that the subsequent chancellor recognized but ignored *Howell v. Howell*, 581 U.S. 214 (2017) and instead applied principles of equitable property division and general equity to circumvent the preemption of the USFSPA. The subsequent chancellor’s reliance on equitable distribution and general equity principles is demonstrated by his statements that, “In fairness to Bernadine, and the indirect service to our Country she provided by being married to Joseph and supporting him in all of his military endeavors” See Apx. 31.⁶ Further, “Equity will not suffer a wrong without a remedy” and “But where the law provides no remedy, equity must do so.” See Apx. 31.

To be certain, that his modification judgment was designed to circumvent preemptive federal law and *Howell, supra*, is borne out by his statement that his ruling would, “[E]nsure that the ‘harsh reality’ mentioned by the Court in *Mallard, supra*, does not come to fruition.” See Apx. 33. The “harsh reality” mentioned in *Mallard v. Burkart*, 95 So. 3d

⁶ In Mississippi a chancellor must consider several factors in equitably dividing marital property, *inter alia*, “Direct or indirect contribution to the acquisition of the property.” See e.g., *Owen v. Owen*, 928 So. 2d 156, 160 (Miss. 2006).

1264 (Miss. 2012) is a direct reference to *Mansell v. Mansell*, 490 U.S. 581 (1989).

[W]e are constrained to find that *Mansell* applies even though the “*harsh reality* . . . is that former spouse’s . . . share of their ex-spouse’s military retirement pay can ... [be reduced] . . . simply because [the military spouse] elects to . . . [convert] . . . a portion of that pay into disability benefits.”

Mallard, 95 So. 3d at 1272. (Miss. 2012). (Emphasis added).

In *Howell*, *supra*, this Court stated, “We recognize, as we recognized in *Mansell*, the *hardship* . . . preemption can sometimes work on divorcing spouses. . . .” *Howell*, 581 U.S. at 222 (2017). (Emphasis added).

In addition to resorting to general equitable principles, the subsequent chancellor engaged in semantical machinations to achieve his goal of avoiding what he considered to be the “harsh” result dictated by preemptive federal law and *Howell*, *supra*.

The prior chancellor ordered Bernadine was entitled to .. “a *sum* equal to one-half of all future military retirement payments” The prior chancellor did not award Bernadine a portion of Joseph’s retirement in and of itself, as was the case in *Mallard* and *Howell*, *supra*.

See Apx. 32. (Emphasis in original).⁷

With all due respect, the subsequent chancellor’s conclusion that Bernadine was not actually awarded an interest in Joseph’s future military retirement based solely on his assertion that the language of the divorce judgment herein was different from that in *Howell*, *supra*, is not supported by the *Howell*, *supra*, decision itself which quoted

⁷ The Mississippi Court of Appeals adopted this semantical device as the means by which it avoided the preemptive prohibition against ordering a division of military disability payments. *See* Apx. 6, n.2.

from the divorce decree awarding the wife, “FIFTY (50%) of John’s military retirement when it begins.” *Howell*, 581 U.S. at 219 (2017). The subsequent chancellor’s isolation of the word “sum” in the case at bar takes that word out of context. It is apparent that the original chancellor used the word “sum” in the mathematical not the comparative sense. “Sum” was used to express the result or quotient of dividing the military retirement payments by the number two. The word “sum” was nothing more or different than what the decree at issue in *Howell, supra* provided. Sandra Howell was awarded “50%” meaning “a sum equal to one-half” of the future military retirement payments. The only factual difference between *Howell, supra*, and the case at bar is that Joseph never qualified for nor ever received any military retirement. He only ever received non-divisible military disability benefits in one form or another.

Additionally, the exact semantical device used in this case, i.e., that Bernadine had not actually been awarded an interest in Joseph’s retirement, but merely a “sum” equal to one-half was repudiated in *Williams v. Burks*, 353 So. 3d 549 (Ala. Civ. App. 2021) wherein the wife had been awarded “an amount equal to forty percent (40%) of his disability . . . when he starts to receive said benefits.” *Williams*, 353 So. 3d 550. The wife in *Williams, supra*, recognizing preemption prohibited division of military disability benefits argued (as did Bernadine and the subsequent chancellor herein) that she had not been awarded an interest in his disability in and of itself, but merely a “sum” or “amount equal” to 40% of the disability benefits.

[I]t is clear that the trial court lacked the authority to award the former wife any portion of the VA disability benefits. At trial, the former wife essentially conceded that such an award would be legal error. *Nevertheless, she contends . . . she was not awarded 40% of the VA disability benefits but, instead, was awarded an*

amount equal to 40% of the VA disability benefits. We must reject this argument as the type of semantic exercise that has been foreclosed by *Howell*. . . . To recognize the legitimacy of such an argument would eviscerate federal preemption.

Williams, 353 So. 3d at 556. (Emphasis added).

Furthermore, examination of the record in this case shows the subsequent chancellor did no calculations to actually determine the value of Joseph’s nonexistent military retirement, but relied on the value of Joseph’s military disability benefits as listed in his financial declaration⁸ as the means by which he calculated the equivalency award to indemnify Bernadine. “The measuring stick . . . was Joseph’s [disability] *compensation from the military* pursuant to his 8.05 Financial Statement” See Apx. 33. (Emphasis added). In the original judgment, the chancellor noted, “JOSEPH’s . . . income is derived from disability payments that he receives in the sum of \$1,400.00 per month” See Apx. 55.

When the original divorce judgment is read in conjunction with the subsequent chancellor’s modification judgment, “the measuring stick” used by the subsequent chancellor was Joseph’s disability payments. He divided those in substitution for the retirement Joseph never qualified to receive.

However well intentioned, *Howell v. Howell*, 518 U.S. 214 (2017) makes it abundantly clear that resorting to semantics and using disability payments to determine the amount of any indemnification award is not allowed and is an outcome which this Court found would, “[D]isplace the federal

⁸ Pursuant to Mississippi Uniform Chancery Court Rule 8.05(A) “[E]ach party in every domestic case involving economic issues and/or property division shall provide . . . disclosures . . . to be substantially in the form of Form 1 . . . of these rules”

rule and stand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress.” *Howell*, 518 U.S. at 222. And that, “All such orders are preempted.” *Ibid*.

Voidness

Joseph asserts the October 22, 2021, judgment of the subsequent chancellor awarding Bernadine one-half of his disability benefits is void as directly conflicting with the controlling federal law, namely the USFSPA, and this Court’s holding, “. . . *McCarty*, with its rule of federal preemption, still applies.” *Howell v. Howell* 581 U.S. 214, 218 (2017).

The Mississippi trial and appellate courts rejected Joseph’s Rule 60 motion based on his having not appealed the original judgment of divorce. However, Joseph made it clear that he takes no exception with the original judgment of divorce awarding him his military disability payments “free and clear” of any claims of Bernadine. *See* Apx. 59. The original judgment only divided his future disposable military retired pay. *See* Apx. 58. Joseph did not appeal the 2010 divorce judgment as it was correct and in accord with *McCarty v. McCarty*, 453 U.S. 210 (1981) and the USFSPA. It is the second judgment entered eleven years later that Joseph claims is void as dividing his military disability payments to indemnify Bernadine and because the subsequent chancellor relied on “equity” and semantics to side step the preemptive result dictated by *Howell v. Howell* 581 U.S. 214 (2017).

The Mississippi Court of Appeals reasoned the subsequent judgment dividing his military disability benefits could not be void as the trial court had subject matter jurisdiction to divide marital property at the time of the divorce and even if the subsequent judgment directly conflicted with Congress’ express statutory preemption, it would nonetheless stand as it was merely erroneous. However, as recognized in *Ridgway v. Ridgway*, 454 U.S. 46, 54 (1981) this Court has inherent power over state court judgments, “[T]o correct them to the extent that they

incorrectly adjudge federal rights." *Ibid.*

Joseph respectfully suggests state courts do not have subject matter jurisdiction to divide military disability benefits as marital property, that power being removed by *McCarty v. McCarty*, 453 U.S. 210 (1981) and not being returned when Congress passed the USFSPA which only, "[P]rovided a "precise and limited" grant of the power to divide federal military retirement pay." *Howell v. Howell* 581 U.S. 214, 218 (2017). *McCarty's, supra*, impact on the entire landscape of domestic relations law means disability payments are *per se*' no longer marital property and any judgment in conflict with federal law is of no effect, preempted, and void. While the Court in *Howell v. Howell*, 581 U.S. 214 (2017), did not explicitly use the word "void", it nonetheless clearly held any such judgments would, "[D]isplace the federal rule", "[S]tand as an obstacle to the accomplishment and execution of the purposes and objectives of Congress", and "All such order are thus preempted." *Howell*, 518 U.S. at 222 (2017). The net effect of *Howell*, 581 U.S. 214 (2017) is that the power of state courts is circumscribed and any such orders are not merely erroneous, they are void as taking back that which Congress clearly and precisely removed. That is the natural result required by the Supremacy Clause. To hold otherwise would relegate the protections of the USFSPA to the vagaries of various *ad hoc* state court remedies and as held in *Williams v Burks*, 353 So. 3d 549, 556 (Ala. Civ. App. 2021) would, "[E]viscerate federal preemption."

Joseph suggests his not appealing the second judgment within thirty days is not an impediment to his seeking to have it set aside as preempted. In *Ridgway v Ridgway*, 454 U.S. 46 (1981), the original unappealed divorce decree ordered the husband, "[T]o keep in force the life insurance policies . . . now outstanding for the benefit of the parties' three children." *Ridgway*, 454 U.S. at 48. At the time of the divorce he was covered by a policy issued under the Servicemen's Group Life

Insurance Act of 1965 (SGLIA). *Ridgway*, 454 U.S. at 48. “[F]our months after the divorce, Ridgway married his second wife, Donna Six days later, the sergeant changed the policy's beneficiary designation” *Ridgway*, 454 U.S. at 48. Ten months later, he died. In the wake of his death, his first wife filed in state court claiming the SGLIA policy benefits for her children pursuant to the divorce decree. The second wife claimed the proceeds under the SGLIA statute. The trial court denied the first wife’s claim based on the SGLIA’s express reservation of the beneficiary designation to the service member alone. On appeal the Maine Supreme Court reversed directing the proceeds be paid to the first wife in accordance with the divorce decree.

In reversing the Maine Supreme Court, this Court discussed the history of the SGLIA program and Congress’ specific purpose in reserving the beneficiary designation to the service member alone and the SGLIA preempting the original divorce decree even though it was unappealed.

The . . . statutory plan adopted by Congress . . . demonstrates the pervasive and detailed characteristics of the congressional specifications. The obvious and stated concern of Congress was to provide coverage for the member . . . and thus protection for the member's designated beneficiaries. The legislation itself says nothing about contrary dictates of state law or state judgments.

Ridgway, 454 U.S. at 53.

The *Ridgway, supra*, Court relied heavily on *McCarty v. McCarty*, 453 U.S. 210 (1981), holding the state divorce decree had no legal effect.

Notwithstanding the limited application of federal law in the field of domestic relations generally, *see McCarty v. McCarty*, 453 U.S. 210, 220 (1981) . . . this Court, even in that area, has not hesitated to protect, under the Supremacy

Clause, rights and expectancies established by federal law against the operation of state law, or to prevent the frustration and erosion of the congressional policy embodied in the federal rights. . . . While "[state] family and family-property law must do 'major damage' to 'clear and substantial' federal interests before the Supremacy Clause will demand that state law be overridden," *Hisquierdo*, 439 U.S., at 581, with references to *United States v. Yazell*, 382 U.S. 341, 352 (1966), "[the] relative importance to the State of its own law is not material when there is a conflict with a valid federal law, for the Framers of our Constitution provided that the federal law must prevail." *Free v. Bland*, 369 U.S., at 666. *See also Gibbons v. Ogden*, 9 Wheat. 1, 210-211 (1824). *And, specifically, a state divorce decree . . . must give way to clearly conflicting federal enactments. McCarty v. McCarty, supra; Hisquierdo v. Hisquierdo, supra.* That principle is but the necessary consequence of the Supremacy Clause of our National Constitution.

Ridgway, 454 U.S. 54-55. (Emphasis added).

The Court in *Ridgway, supra*, also noted the earlier decision in *Wissner v. Wissner*, 338 U.S. 655 (1950) reaching a similar result applying the National Servicemen's Life Insurance Act ["NSLIA"] to preempt a state court judgment, "Congress has spoken with force and clarity in directing that the proceeds belong to the named beneficiary and no other." *Wissner*, 338 U.S. at 658. *And*, "[T]he judgment below nullifies the soldier's choice and frustrates the deliberate purpose of Congress. It cannot stand." *Wissner*, 338 U.S. at 659. *See also Ridgway*, 454 U.S. at 55.

The *Ridgway v. Ridgway*, 454 U.S. 46 (1981) Court further noted similar results in other decisions applying a

variety of preemptive federal statutes with all concluding that state decrees or judgments in conflict with the federal law were preempted and had no effect or authority.

The same approach has been followed in later cases: *Free v. Bland, supra*, concerning the right of survivorship in United States Savings Bonds . . . *Hisquierdo v. Hisquierdo, supra*, involving the Railroad Retirement Act of 1974 . . . and *McCarty v. McCarty, supra*, concerning military retired pay.

Ridgway, 454 U.S. at 55.

In *McCarty*, 453 U.S. 210 (1981) this Court discussed the importance of federal regulation of military pay and benefits being vital to the national interests and why state laws and decrees in these specific areas of domestic relations law are preempted. *McCarty*, 453 U.S. at 232-33. This Court in *Ridgway, supra* likewise discussed the important federal interest involved.

Federal law and federal regulations bestow upon the servicemember an absolute right to designate the policy beneficiary. *That right is personal to the member alone. It is not a shared asset subject to the interests of another, as is community property.*

Ridgway, 454 U.S. at 59-60. (Emphasis added).

And in *McCarty v. McCarty*, 453 U.S. 210 (1981), “Indeed, Congress has explicitly stated: ‘Historically, military retired pay has been a personal entitlement payable to the retired member himself as long as he lives.’” *McCarty*, 453 U.S. at 224. “[I]t is clear that Congress intended that military retired pay ‘actually reach the beneficiary.’” *McCarty*, 453 U.S. at 228. And that allowing state courts to interfere has, “The potential for disruption of military personnel management . . .” *McCarty*, 453 U.S. 234.

In *Howell v. Howell*, 581 U.S. 214 (2017), this Court relied on all of the reasons given in *McCarty, supra*, but

emphasized that they apply even more so to military disability payments.

The basic reasons *McCarty* gave for believing that Congress intended to exempt military retirement pay from state community property laws apply *a fortiori* to disability pay. See 453 U. S., at 232-235, 101 S. Ct. 2728, 69 L. Ed. 2d 589, (describing the federal interests in attracting and retaining military personnel). And those reasons apply with equal force to a veteran's post divorce waiver to receive disability benefits to which he or she has become entitled.

Howell, 581 U.S. at 222.

Regardless, *Ridgway v Ridgway*, 454 U.S. 46 (1981) and the cases cited therein support the proposition that an appeal of the underlying state court decree is not required to later assert it was preempted, unenforceable, and void. *Ridgway*, *supra*, recognized the SGLIA did not expressly mention state divorce decrees, but that did not lessen its preemptive effect on such decrees. Those cases give no legitimacy to the state court decrees merely by passage of time. Sergeant Ridgway did not appeal the original divorce decree delimiting his right to designate the beneficiary of his SGLIA policy. He changed his beneficiary without leave of court. His change in the beneficiary designation was nevertheless upheld by this Court finding the unappealed state divorce decree must yield as preempted and unenforceable. *Ridgway*, 454 U.S. at 54-55.

Several decisions following *Ridgway*, *supra*, applied the same rationale in invalidating unappealed state divorce decrees, even years after the fact. See *e.g.*, *Metro. Life Ins. Co. v. Zaldivar*, 413 F.3d 119 (1st Cir. 2005); *Prudential Ins. Co. v. Hinkel*, 121 F.3d 364 (8th Cir. 1997); and *Metropolitan Life Ins. Co. v. Christ*, 979 F.2d 575 (7th Cir. 1992).

Joseph submits given the clear holdings of *Howell v. Howell*, 581 U.S. 214 (2017), the rationale' of *Ridgway v*

Ridgway, 454 U.S. 46 (1981), and the other cases cited above, his failure to appeal the modification judgment does not change the fact it is preempted and has no legal effect.

XI. Conflict Among States

The Mississippi Court of Appeals held the chancery court's judgment in derogation of federally preemptive law cannot be collaterally attacked as the trial court had subject matter jurisdiction over the divorce and issues of equitable division of marital property is at odds with the holding of other states which have considered the issue. The Mississippi Court of Appeals held, "Put plainly, if the trial court has subject matter jurisdiction to divide marital property,⁹ then its judgment . . . [is] . . . erroneous . . . not void." *See* Apx. 11.

The Mississippi Court of Appeals cited several cases (*see* Apx. 10) from different states enforcing prior settlement agreements dividing military disability benefits finding the agreements were contractual and not subject to collateral attack as the service member had consented to division of their military disability payments and the USFSPA did not prohibit a veteran from agreeing to divide disability benefits.

However, nearly all of those states upholding martial separation agreements to divide military disability benefits have also held that absent an agreement a state court cannot impose a judgment to divide military disability.

One state concluded any judgment or agreement to divide military disability benefits is void as federal law deprives the court of subject matter jurisdiction in this limited area of the law.

One state held a judicially imposed division of VA benefits is void and may be collaterally attacked.

⁹ Of course, this begs the question of how any state court can divide military disability as marital property as the USFSPA specifically declared such benefits are not per se' marital property. In Mississippi a, "[C]hancellor may equitably divide *only the property that is . . . marital . . .*" *Jenkins v. Jenkins*, 67 So. 3d 5, 9 (¶10) (Miss. Ct. App. 2011).

Another state has held that a settlement agreement dividing military disability payments can be collaterally attacked.

Given this conflict among the states on the issue and the nationwide implications regarding this significant federal question, Joseph suggests this Court should grant his request for review

Nebraska

In *Parish v Parish*, 991 N.W. 2d 1, 5 (Neb. 2023), the Nebraska Supreme Court enforced a marital settlement agreement awarding the wife nominal alimony and which also included a specific provision that the nominal alimony would be modified, “[I]f her former spouse . . . accepted a veteran’s disability” *Parish*, 991 N.W.2d at 4. The husband later elected a waiver and quit paying. The trial court dismissed her modification action, “[A]s a request to divide disability . . . which it determined was preempted under federal law. The order stated the district court ‘lacks subject matter jurisdiction’ to entertain the division of a VA disability waiver . . . due to federal preemption” *Parish*, 991 N.W.2d at 6. On appeal, the *Parish, supra*, Court relying on *Rose v. Rose*, 481 U.S. 619 (1987) held preemption did not apply, “As explained above, the alimony provision was not void” *Parish*, 991 N.W.2d at 9. “Robert’s receipt of disability benefits was merely a condition that permitted the court to reevaluate . . . alimony. . . not to divide disability The district court did not lack subject matter jurisdiction to consider a modification of alimony.” *Parish*, 991 N.W.2d at 9. Joseph suggests *Parish, supra* is distinguishable from his case as: (a) Bernadine was not awarded alimony; (b) there was no settlement agreement concerning election of a waiver and (c) there was no military retirement to waive. Further, while *Parish, supra*, disapproved the prior decision of *Ryan v Ryan*, 600 N.W.2d 739 (Neb. 1999), Joseph would point out that *Ryan, supra*, allowed collateral attack of a judicially imposed division of VA benefits, even decades after the fact.

The *Parish, supra*, court's failure to address this distinction gives rise to what the Mississippi Court of Appeals did in this case, which was to allow a judgment involuntarily imposing indemnification by dividing disability benefits to stand in derogation of controlling federal law.

Nevada

In a Nevada Supreme Court case, *Martin v Martin*, 520 P.3d 813 (Nev. 2022), the parties specifically agreed to an indemnification provision that the wife would be reimbursed for lost military retirement waived for disability. Four years after divorce, he retired and she began receiving her share of the retirement, but a year thereafter he elected full disability waiving all retirement. *Martin*, 530 P.3d at 815. The state trial court enforced their agreement. The Nevada Supreme Court denied his appeal based on their agreement. However, the Nevada Supreme Court noted the result would be different if the trial court had imposed a division. "*Howell and Mansell are distinguishable.*" *Martin* 520 P.3d at 817. (Emphasis in original). "*Howell and Mansell . . . provide . . . federal law preempts state courts from treating disability benefits as community property . . . for . . . lost or diminished share of retirement payment.*" *Martin*, 520 P.3d at 817. "Neither of those cases, however, involved the parties agreeing to an indemnification provision in the divorce . . . property settlement." *Martin*, 520 P.3d at 817.

Federal law precludes state courts from dividing disability pay as community property . . . and courts may not order the reimbursement of a nonveteran spouse to the extent of this diminution. We conclude, however, that state courts do not improperly divide disability when they enforce the terms of a negotiated property settlement as res judicata . . . [as] . . . the parties agreed on a reimbursement provision that the state court would lack authority otherwise to mandate.

Martin, 520 P.3d at 815. (Emphasis added).

Nevada’s answer appears to be that preemption would invalidate a court order to divide disability payments, but does not go so far as to prohibit an agreement for such.

Alaska

The Alaskan Supreme Court in *Jones v. Jones*, 505 P.3d 224 (AK 2022) likewise upheld an indemnification clause agreed upon by the parties holding it could not be collaterally attacked, but it too, like the Nevada Supreme Court held, “*Howell* makes clear that state courts cannot simply order a military spouse who elects disability pay to reimburse or indemnify the other . . . *Howell* does not preclude one spouse from agreeing to indemnify the other as part of a negotiated property settlement.” *Jones*, 505 P.3d at 230. The *Jones*, *supra*, court noted a distinction between a judge ordering a division and service member agreeing to it. “[I]t’s one thing to argue about a judge’s power to require a duty to indemnify,’ but ‘another matter entirely to require a litigant to perform what he has promised in a contract.” *Jones*, 506 P.3d at 230.

Virginia

In *Yourko v Yourko*, 884 S.E. 2d 799 (Va. 2023), the Virginia Supreme Court, like the courts in Alaska and Nevada, held that the parties’ agreement which included an indemnification provision was enforceable and could not be collaterally attacked. However, the Virginia Supreme Court made a clear distinction between agreed upon indemnification and court ordered indemnification, “*Howell* . . . makes [it] clear that state courts cannot *order* a veteran who elects to waive retirement . . . to indemnify a former spouse. 581 U.S. at 222” *Yourko*, 884 S.E.2d at 804. (Emphasis in original).

Michigan

In *Foster v. Foster*, 983 N.W. 2d 373 (Mich. 2022), the parties’ settlement agreement acknowledged, “At the time of the divorce, defendant was receiving both military retirement

and military disability benefits” *Foster*, 983 N.W.2d at 376. And as to retirement and disability they agreed she would be, “[A]warded 50% of defendant’s retirement pay She was not awarded any of defendant’s military disability benefits.” *Foster*, 983 N.W.2d at 376. However, they further agreed, “To protect the plaintiff in the event the defendant became entitled to (and accepted) more disability benefits. . . . the parties agreed to . . . a provision . . . that has become known as the ‘offset provision.’” *Foster*, 983 N.W.2d at 376. After a lengthy discussion of preemption and the question of a consent judgment being subject to collateral attack as being void for “want” of jurisdiction as opposed to an “erroneous exercise” of jurisdiction, the court concluded, “In sum, we hold that federal preemption under 10 U.S.C. 1408 . . . does not deprive our state courts of subject matter jurisdiction over a divorce action involving the division of military property.” *Foster*, 983 N.W.2d at 384. The decision seemed to turn on the fact that the parties agreed to indemnification, however, *Foster*, *supra*, could be read to stand for the proposition that preemption can never apply as state divorce courts have general inherent authority to divide property in a divorce. It appears the Mississippi Court of Appeals read it in just that fashion. As such, *Foster, supra*, could appear to be in conflict with this Court’s decision in *Howell v. Howell*, 581 U.S. 214 (2017). It is suggested the fault of this rationale’ is it would effectively destroy Congress’ protection against military disability being treated as marital property leaving it to disabled veterans all across our country to engage in expensive and protracted appellate litigation (with uncertain and varying results) to continually correct errant trial court orders improperly dividing military disability payments.

Alabama

On the other hand, in *Brown v. Brown*, 260 So. 3d 851 (Ala. Civ. App. 2018) the Alabama Civil Court of Appeals dealt with a case which is nearly identical to the one at bar. In *Brown, supra*, the parties’ agreement granted the wife,

“(25%) of Husband’s disposable retirement . . . without . . . any reductions or offsets due to disability compensation . . .” *Brown*, 260 So.3d at 853. Neither party appealed.

When they divorced, the husband was still active duty and not retired. Five years after the divorce, “[T]he Army convened an informal physical evaluation board (‘the PEB’) . . . found . . . [he] was physically unfit to remain on active duty. . . . [placong him] . . . ‘the TDRL’. . . . [He] was separated from service and placed on the TDRL.” *Brown*, 260 So. 2d at 854. The husband did not pay her any of his TDRL benefits and when later sued he claimed his TDRL benefits were not “retired pay”, that he had never received a retirement, and that there was no retirement to divide because all he was receiving was TDRL which is exempt under the USFPSA. The wife argued that receiving TDRL resulted in a reduction of his military retired pay. The trial court agreed with the wife. The Alabama Civil Court of Appeals reversed.

Until recently, there was authority to support the wife’s position. After the United States Supreme Court decided *Mansell v. Mansell*, 490 U.S. 581, 594-95 . . . holding . . . “the [USFPSA] does not grant state courts the power to treat as divisible . . . military retirement pay that has been waived to receive veterans’ disability benefits,” state courts were nonetheless willing to enforce settlement agreements in which . . . the military member elected to waive all or some of his or her military-retirement pension to divide disability benefits. . . .

In 2017, however, the United States Supreme Court again visited the issue of whether the spouse . . . was entitled to receive a share of . . . “waived” retirement pay . . . converted to disability pay. In *Howell v. Howell*,[581 U.S.

214 (2017)] . . . “[T]he Court held that federal law completely preempts the States from treating waived military retirement pay as divisible”

Brown, 260 So. 2d at 857.

In this case we have established that, under federal law, the husband’s TDRL pay is disability pay . . . not subject to division. . . . Therefore, based on . . . *Howell* we are compelled to hold that the wife is not entitled to receive a portion of the husband’s TDRL pay

Brown, 260 So. 2d at 858.

Later in *Williams v. Burks*, 353 So. 3d 549 (Ala. Civ. App. 2021) the Alabama Civil Court of Appeals was faced with a related question, that being whether a state court could judicially impose a division of VA disability payments. In 2001, after a trial, the divorce court issued a judgment awarding the wife, “[A]n amount equal to forty percent (40%) of his disability income to begin when he starts to receive said benefits.” *Williams*, 353 So.3d at 550. Neither party took an appeal. The husband never paid. Seventeen years later she sued to collect. He defended claiming the original judgment was preempted and void. The trial court rejected his defense. The Alabama Civil Court of Appeals reversed holding the original judgment violated federal law, was void, and subject to collateral attack.

[T]he strong language used by the Court in *Howell* suggest that the lack of power to award VA disability benefits as part of a property settlement is the type of defect that would make any such award void. 581 U.S. at , 137 S.Ct. At 1405 (“State courts cannot ‘vest’ that which (under governing federal law) they lack authority to give

Williams, 353 So.3d at 557.

Minnesota

The Minnesota Court of Appeals reached a conclusion similar to the Alabama Civil Court of Appeals, holding preemption can be applied to collaterally attack a judgment dividing disability benefits, even one adopting the parties' indemnification agreement. In *Berberich v. Mattson*, 903 N.W.2d 233 (Minn. App. 2017) the parties agreed the wife would receive 40% of the husband's military retirement and 40% of his military disability. Several years later she sought enforcement of their settlement agreement with the trial court ruling in her favor. The Minnesota Court of Appeals initially noted its earlier precedent of *Gatfield v. Gatfield*, 682 N.W.2d 632 (Minn. App. 2004) upholding a settlement agreement where the veteran agreed to pay a portion of his disability payments to the former spouse. "[W]e held that 'federal law does not preempt state district courts from enforcing the stipulated terms/provisions' of a divorce decree. *Id.* at 637." *Berberich*, 939 N.W.2d at 239. But the Minnesota court recognized this Court's later decision in *Howell v. Howell*, 581 U.S. 214 (2017) that, "[a] state court may not order a veteran to indemnify a divorced spouse for the loss . . . of the veteran's retirement pay caused by ... waiver of retirement . . . to receive service-related disability benefits. *Howell*, 137 S.Ct at 1401." *Berberich* 903 N.W.2d at 240. "In light of *Howell*, we conclude that our holding in *Gatfield* has been functionally overruled." *Berberich* 903 N.W.2d at 241. As to the issue of res judicata,

Berberich maintains that Mattson is contractually bound by the their stipulated agreement . . . and that Mattson [did] not [challenge] the decree, which remains a valid judgment. But this argument runs headlong into *Howell*, which makes clear that state courts "cannot 'vest' that which (under governing federal law) they lack authority to give." 137 S.Ct. at 1406. Moreover, *Howell* effectively

overruled cases relying on the sanctity of contract to escape federal preemption. *See id.* at 1404-05 (listing *Krapf*, 786 N.E.2d at 318, as among the state court cases that failed to properly interpret *Mansell*). Simply put, state laws are preempted in this specific area.

Berberich ... argues that she should be entitled to the apportioned *amount* of disability compensation . . . once the disability compensation funds reach [Mattson] Again as recognized in *Howell*, state courts may not simply circumvent federal preemption by relying on arguments rooted in semantics. 137 S.Ct. At 1406. To recognize the legitimacy of such an argument would eviscerate federal preemption.

Berberich, 903 N.W.2d at 241.

As such, the law in Minnesota is that a prior judgment, even one adopting the parties' settlement agreement and containing an indemnification clause dividing disability benefits, is subject to collateral attack because the trial court lacked subject matter jurisdiction to enter any such order.

XII. Conclusion

The 2010 final judgment of divorce which divided Joseph's potential future disposable military retired pay, but awarded him his military disability payments as his sole property free and clear from any claims of Bernadine was correct and in accordance with this Court's decisions in *McCarty v. McCarty*, 453 U.S. 210 (1981) and later in *Howell v. Howell*, 581 U.S. 214 (2017) and the clear legislative preemption of 10 U.S.C. § 1408(a)(4)(A)(iii). The October 22, 2021, judgment entered eleven years later which awarded Bernadine half of his military disability benefits to indemnify her for the fact that Joseph never qualified for a military retirement is not. Such a result is preempted, "[T]hat which federal law preempts is just what the . . . family court did

here.” *Howell v. Howell*, 581 U.S. 214, 220 (2017). As this Court succinctly stated, “State courts cannot ‘vest’ that which (under governing federal law) they lack the authority to give.” *Howell*, 581 U.S. at 221. Allowing the Mississippi lower court’s decision to stand would do substantial harm to Congress’ clear and precise legislative enactments and would effectively nullify preemptive federal law. For the reasons stated above, Joseph asks this Court to grant his petition for certiorari to reverse the decision of the Mississippi court and to resolve the conflict among the states

Respectfully submitted, this the 24th day of February, 2026.



Stephen J. Maggio
US Supreme Court Bar No. 326867

Stephen J. Maggio
The Maggio Law Firm, PC
2201 24th Ave.
Gulfport, MS 39501
Ph. (228) 863-9111
F. (228) 863-9191
E. stephen@sjmaggio.com
Attorney for Petitioner- Joseph McFall