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IN THE SUPREME COURT OF THE UNITED STATES

Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

JOHN MICHAEL McClUNG,

Petitioner,

v.

BRENNAN McClUNG,

Respondent.

Case No. _____

(On Petition for Writ of Certiorari to the
Fifth District Court of Appeal of Florida)

MOTION FOR STAY OF ENFORCEMENT PENDING CERTIORARI

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INTRODUCTION

Petitioner John Michael McClung, a 100% combat-disabled Army veteran suffering from service-connected PTSD and traumatic brain injury, respectfully moves this Court to stay enforcement of a Florida state court income withholding order (IWO) that garnishes \$736.74 per month directly from his Combat-Related Special Compensation (CRSC) payments — a federal benefit Congress expressly declared non-divisible, non-attachable, and exempt from state court process.

The state court accomplished this garnishment through a commingling theory: it relabeled CRSC as “income” rather than a divisible military benefit, converted past obligations predicated on CRSC into “arrears,” and then enforced those arrears through an IWO directed at Petitioner’s federal pay source. This indirect route does precisely what *Howell v. Howell*, 581 U.S. 232 (2017), and *Mansell v. Mansell*, 490 U.S. 581 (1989), forbid. The Florida Supreme Court declined review without opinion on May 5, 2026.

Without an immediate stay, Petitioner loses \$736.74 every month from his \$1,725.17 CRSC payment — a 43% reduction of a benefit Congress designed to compensate him for wounds sustained in combat. The harm is ongoing, immediate, and irreversible. A stay is warranted.

STATEMENT OF THE CASE

A. Petitioner's Federal Benefits.

Petitioner is a combat-disabled Army veteran rated 100% disabled by the Department of Veterans Affairs as a result of PTSD and traumatic brain injury sustained in service. He receives three streams of federally protected income: VA disability compensation (\$2,502.17/mo), Combat-Related Special Compensation (\$1,725.17/mo), and Social Security Disability Insurance (\$2,171.90/mo).

CRSC is paid under 10 U.S.C. § 1413a. Congress structured CRSC as a separate, non-divisible payment specifically to compensate veterans for combat-related disabilities — not as a division of retired pay, not as a marital asset, and not as income subject to domestic-relations enforcement. It is expressly excluded from the definition of “disposable retired pay” under the USFSPA, 10 U.S.C. § 1408.

B. The State Court Proceedings.

The dissolution of marriage, Citrus County Case No. 09-2018-DR-000210, produced a Final Judgment entered April 2, 2025. The trial court — applying a commingling theory — characterized Petitioner's CRSC payments as general income rather than a federal benefit exempt from state-court division. In a November 14, 2024 order classifying income, the trial court treated CRSC as fungible with Petitioner's other income for purposes of calculating and enforcing support obligations.

On September 5, 2024, the trial court acknowledged in writing that the existing IWO was inoperable — confirming that the enforcement mechanism was legally defective at that time. Rather than vacating the obligation, the court subsequently recast the accumulated deficit as arrears and entered a new IWO.

On December 18, 2024, Respondent's attorney communicated in writing that she had no idea CRSC was non-divisible at the time the relevant obligations were calculated. This admission confirms the trial court's support calculations rested on a legally erroneous premise.

C. Appellate History.

The Fifth District Court of Appeal issued its mandate on March 31, 2026, affirming without opinion. The Florida Supreme Court rejected review on May 5, 2026 (Ref. No. 247443045), confirming it lacked jurisdiction to review the per curiam affirmance. The current garnishment is \$736.74 per month — 43% of Petitioner's CRSC payment.

STANDARD FOR STAY

A stay pending certiorari requires: (1) a reasonable probability that four Justices will vote to grant certiorari; (2) a fair prospect that a majority will vote to reverse; (3) a likelihood of irreparable harm absent the stay; and (4) that the balance of equities favors a stay. *Nken v.*

Holder, 556 U.S. 418, 434 (2009); *Virginian Ry. Co. v. United States*, 272 U.S. 658, 672-73 (1926). These factors are balanced.

ARGUMENT

I. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS.

A. *Howell v. Howell* Directly Controls.

In *Howell v. Howell*, 581 U.S. 232, 238-39 (2017), this Court held unanimously that a state court cannot order a veteran to indemnify a former spouse for the reduction in disposable retired pay caused by a waiver to obtain disability compensation — and that the Supremacy Clause and the comprehensive federal scheme governing military pay preempt such state court orders.

Howell's rule applies with full force here. The Florida court's relabeling maneuver — treating CRSC as "income," converting the resulting obligation to "arrear," and enforcing through an IWO — is precisely the circumvention *Howell* foreclosed. A state court cannot accomplish indirectly through relabeling what it is prohibited from doing directly.

B. *Mansell* Forecloses Division of CRSC.

Mansell v. Mansell, 490 U.S. 581, 589 (1989), held that the USFSPA's definition of "disposable retired pay" controls: amounts deducted for disability compensation cannot be characterized as marital property subject to state court division. CRSC falls squarely within *Mansell*'s protection. A state court that computes a support obligation using CRSC as a base, then enforces that obligation through an IWO, achieves indirectly what *Mansell* prohibits directly.

C. The Commingling Theory Cannot Rescue the Enforcement Order.

The theory that CRSC becomes unrestricted "income" upon deposit into a bank account has been rejected by multiple courts and conflicts with 38 U.S.C. § 5301, which provides that VA and related benefits "shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever." Allowing commingling to dissolve this protection would render the statutory shield illusory.

Opposing counsel's written admission that she had no idea CRSC was non-divisible confirms that the entire enforcement structure is built on a legally erroneous premise. This is not a debatable application of settled law; it is a case where the court below never applied the correct federal framework.

D. The Question Presented Is Certiorari-Worthy.

State courts are divided on whether indirect enforcement mechanisms — commingling theories, arrears conversions, income-withholding orders directed at federal pay sources — are permissible where direct division is not. This Court's resolution of that division, in the context of CRSC affecting hundreds of thousands of combat-disabled veterans, is precisely the kind of question warranting certiorari.

II. PETITIONER WILL SUFFER IRREPARABLE HARM WITHOUT A STAY.

\$736.74 is withheld from Petitioner's CRSC payment every month — money Congress designated to compensate a 100% combat-disabled veteran for wounds sustained in service. Each month of garnishment is a month in which Congress's compensatory purpose is frustrated. This is not abstract economic loss; it is the ongoing deprivation of a congressionally mandated benefit.

If Petitioner ultimately prevails, requiring him to seek reimbursement from Respondent is not an adequate remedy. This Court has no coercive jurisdiction over Respondent to compel repayment. The practical reality is that garnished funds will not be returned.

Petitioner is 100% combat-disabled and lives on fixed federal benefits. The loss of \$736.74 per month — nearly 12% of his gross income — impairs his ability to secure adequate housing, medical care, and necessities appropriate to his service-connected condition.

III. THE BALANCE OF EQUITIES FAVORS A STAY.

Respondent will not be materially prejudiced by a stay. She has been receiving garnishment from a source that, on compelling argument, Congress placed entirely off-limits to state court process. Her interest in continuing payments from a constitutionally suspect source does not outweigh Petitioner's interest in retaining federally protected benefits while this Court considers the question.

Respondent's own counsel admitted in writing that she did not know CRSC was non-divisible when the relevant calculations were made. Respondent entered the current enforcement posture based on a legal error she was positioned to investigate. The equitable scales do not favor one who benefits from a legal mistake over a 100% combat-disabled veteran losing congressionally designated compensation every month.

IV. THE PUBLIC INTEREST SUPPORTS A STAY.

The public interest in uniform application of federal law — particularly laws protecting those who served in combat — weighs heavily in favor of a stay. Congress enacted 10 U.S.C. § 1413a and 38 U.S.C. § 5301 precisely because veterans' disability benefits require protection from state court process. Allowing that protection to be defeated through indirect enforcement mechanisms, while this Court considers the question, undermines the federal scheme.

The public interest also includes the hundreds of thousands of combat-disabled veterans who receive CRSC and who may face similar enforcement actions. A stay here prevents that harm from spreading while the legal question is definitively resolved.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that this Court stay enforcement of the income withholding order garnishing \$736.74 per month from his Combat-Related Special Compensation payments pending the filing and disposition of his Petition for Writ of Certiorari, and until the issuance of the mandate in any proceeding on the merits.

Respectfully submitted,



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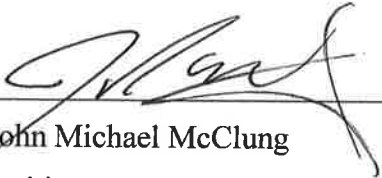
CERTIFICATE OF SERVICE

I hereby certify that on 28 MAY, 2026, I caused a true and correct copy of the foregoing Motion for Stay of Enforcement Pending Certiorari to be served upon Respondent by United States mail, first-class postage prepaid, addressed as follows:

Brennan McClung

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**Additional material
from this filing is
available in the
Clerk's Office.**