

25-1349 MARSCHNER V. MARSCHNER

DECISION BELOW: 33 N.W.3d 9

LOWER COURT CASE NUMBER: 20250066

QUESTION PRESENTED:

In the Uniformed Services Former Spouses' Protection Act ("USFSPA"), Congress provided that a State may treat veterans' longevity-based retirement pay as divisible property in divorce. 10 U.S.C. § 1408(c). But Congress further provided that retirement pay that was waived to receive disability pay, as well as certain retirement pay received due to disability-related retirements, would be indivisible. 10 U.S.C. § 408(a)(4)(A)(ii), (iii).

In *Howell v. Howell*, 581 U.S. 214 (2017), a divorced veteran waived a portion of his longevity-based retirement pay in order to receive disability pay, causing his ex-wife's share of his retirement pay to decrease. The divorce court ordered him to indemnify his ex-wife for that reduction. This Court held that the USFSPA preempted that indemnification order. *See id.* at 222.

In this case, unlike in *Howell*, the parties agreed as part of their divorce settlement that the veteran would indemnify his ex-wife if her share of his retirement pay were reduced because he later waived his retirement pay to receive disability benefits or because he received disability-based retirement pay. Even though the veteran agreed to the indemnification provision at the time of the divorce, the North Dakota Supreme Court nonetheless held that, under *Howell*, enforcement of the indemnification provision was preempted.

The question presented is:

Does the USFSPA require state courts to refuse enforcement of indemnification provisions in divorce settlement agreements?

CERT. GRANTED 10/1/2026