APPLICATION NO. __-____

IN THE SUPREME COURT OF THE UNITED STATES

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WILLIAM R. LOTT,
PETITIONER,

v.

MARIA V. LOTT,
RESPONDENT.

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ON APPLICATION FOR EXTENSION OF TIME TO FILE
A PETITION FOR A WRIT OF CERTIORARI
TO THE VIRGINIA SUPREME COURT

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# PETITIONER'S APPLICATION

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Respectfully submitted by:

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PETITIONER'S APPLICATION FOR AN EXTENSION OF TIME TO FILE HIS PETITION FOR A WRIT OF CERTIORARI TO THE VIRGINIA SUPREME COURT

Submitted To: The Honorable John G. Roberts, Chief Justice, Circuit Justice for the Fourth Circuit Court of Appeals and including the State of Virginia.

Pursuant to 28 U.S.C. § 2101(c) and Supreme Court Rule 13.5, Petitioner, William R. Lott, for good cause, respectfully submits this application for an extension of 60 days to file a Petition for a Writ of Certiorari to the Virginia Supreme Court in the above-captioned case.

Petitioner is seeking review of a December 10, 2024, decision by the Supreme Court of Virginia denying Petitioner's petition for rehearing from its earlier October 10, 2024, order refusing his petition to appeal a December 12, 2023, decision by the Virginia Court of Appeals.

The Virginia Court of Appeals affirmed a decision of the Circuit Court of Newport News, Virginia, which ruled that Petitioner was required to abide by a marital settlement agreement, which ultimately forced him to use federally protected federal veterans' benefits to satisfy his obligations under the agreement.

The Virginia Supreme Court's order denying Petitioner's application for a rehearing, its order refusing Petitioner's petition for appeal, and the opinion of the Virginia Court of Appeals are attached to this application. (Attachments 1, 2 and 3, respectively). The opinion of the Circuit Court of Newport News, Virginia, is also attached to this application. (Attachment 4).

The petition for a writ of certiorari in this Court from the Virginia Supreme Court's December 10, 2024, order is due on or before Monday, March 10, 2025.

Pursuant to the Rules of the Supreme Court, Rules 13.5 and 22, Petitioner is filing this application requesting an extension on or before a date 10 days prior to Monday, March 10, 2025.

## JURISDICTION OF THE COURT

Pursuant to 28 U.S.C. § 1257, this Court has jurisdiction over petitions for a writ of certiorari from final orders and judgments of the highest court of a state that disposes of all issues and parties. Under § 1257, the Court can review final judgments or decrees rendered by the highest court of a state in which a decision could be had where the validity of a treaty or statute of the United States is drawn in question, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of the United States.

Principal among the issues raised by Petitioner in the Virginia Court of Appeals was that the Circuit Court erred in its interpretation and application of 10 U.S.C. § 1408 (the Uniformed Services Former Spouses Protection Act (USFSPA)) and 38 U.S.C. § 5301, particularly as those statutes relate to the division of Petitioner's protected federal retirement and disability benefits pursuant to a divorce settlement agreement. The Circuit Court's interpretation caused Petitioner to be divested of military benefits that are protected by federal law, including, but not limited to, 10 U.S.C. § 1408 and 38 U.S.C. § 5301.

The Virginia Court of Appeals affirmed the Circuit Court's decision, thereby effectuating a violation of these provisions. See *Lott v. Lott*, No. 1322-22-1, 2023 Va. App. LEXIS 821 (Ct. App. Dec. 12, 2023) (Attachment 3).

This Court has jurisdiction over Petitioner's Application and Writ of Certiorari to the Supreme Court of the State of Virginia pursuant to 28 U.S.C. § 2101(c) and 28 U.S.C. § 1257, due to the latter court's December 10, 2024, denial of Petitioner's petition for rehearing, as that was the final order of Virginia's highest court and a final disposition of the matter.

## SUMMARY OF THE CASE

In *Howell v. Howell*, 581 U.S. 214, 221-22; 137 S. Ct. 1400 (2017), this Court ruled that federal law preempted state law based on this Court's decisions in *Mansell v. Mansell*, 490 U.S. 581 (1989), and thus, state courts could not force veterans to use their federal veterans' benefits without *specific* federal statutory authorization to do so. In *Yourko v. Yourko*, 74 Va. App. 80, 866 S.E.2d 588 (2021), the Virginia Court of Appeals followed *Howell* and held that a marital agreement in which the veteran agreed to dispossess himself of federal disability pay in violation of federal law and in violation of *Howell*, was *void ab initio*. *Yourko*, 866 S.E.2d at 594, citing *Mansell*, *supra*. However, the Supreme Court of Virginia reversed, effectively holding that while the agreement by and between the veteran and his former spouse forced the veteran to dispossess himself of his federal disability pay in violation of federal law, the agreement was an enforceable contract that could not be voided, even where federal law holds that such agreements are illegal. See 38 U.S.C. § 5301(a)(1), and

(a)(3)(A) and (C). See *Yourko v. Yourko*, 302 Va. 149, 884 S.E.2d 799 (2023), cert. denied, 220 L.Ed.2d 11 (2024).

In this case, the Virginia Court of Appeals upheld a Circuit Court order enforcing a marital settlement agreement that has the effect of forcing Petitioner to dispossess himself of his federally protected veterans' benefits in contravention of federal law, particularly, 10 U.S.C. § 1408 and 38 U.S.C. § 5301, and this Court's ruling in *Howell*.

The Supreme Court denied Petitioner's petition to appeal and denied his subsequent petition for rehearing.

Petitioner seeks to file a writ of certiorari to the Virginia Supreme Court to challenge the rulings below on the federal issues and constitutional grounds asserted in his pleadings and preserved for further review.

The Supremacy Clause, as set forth in Article VI, Clause 2, of the United States Constitution establishes that the Constitution, federal laws made pursuant to it, and treaties made under its authority, constitute the supreme law of the land. This clause binds all judges in every state to follow federal law when a conflict arises between federal law and either a state constitution or state law.

Pursuant to its enumerated powers concerning military affairs under Article I, section 8, Clauses 11 through 16 of the Constitution, Congress passes legislation proving for and protecting federal military benefits and Congress has historically intended those appropriated benefits to be the inviolable entitlement of the veteran beneficiary. See *Porter v. Aetna Cas. Co.*, 370 U.S. 159, 162 (1962) (interpreting 38

U.S.C. § 3101 (renumbered as 38 U.S.C. § 5301). In *Porter*, this Court noted that this provision is to be liberally construed "to protect the funds granted by the Congress for the maintenance and support of the beneficiaries thereof" and these benefits "should remain inviolate." *Id.* Section 5301(a)(1) therefore protects *all veterans' benefits* from any equitable or legal process, unless Congress provides otherwise. *Id.*

This Court stated as much in *Howell*, 581 U.S. at 221-22, when it noted that under 38 U.S.C. § 5301, state courts do not have the authority to vest these federal benefits in anyone other than the designated statutory beneficiary. The default position is, and always has been, that *prima facie*, *all* federal benefits are appropriated and purposed for a specific beneficiary and for a specific reason. *McCarty v. McCarty*, 453 U.S. 210, 101 S. Ct. 2728 (1981), with its rule of absolute preemption over state law in this area "*still applies*." *Howell*, *supra* at 218. Congress may grant authority to the states to consider federal benefits as disposable assets in domestic state proceedings, but when it does so, that grant is "precise and limited." *Id.*

One of these "precise and limited" grants is the USFSPA, 10 U.S.C. § 1408. It allows division of a portion of a veteran's retirement pension to be considered a divisible property asset available to a veteran's former spouse in state court divorce proceedings. Thus, the statute provides a limited exception to the prima facie default rule that all federal benefits appropriated by Congress for veterans are non-disposable and non-divisible in state court proceedings and for the exclusive use and enjoyment of the veteran beneficiary.

Any other forced division of federal benefits that is not compliant with the USFSPA's limited grant of authority is not authorized by federal law, preempted thereby, and should be *void ab initio*. This is the case whether that division results from a court order or an agreement by and between the parties. *Howell*, *supra* at 222-23. Indeed, 38 U.S.C. § 5301 specifically prohibits and *voids from inception* any instrument wherein a veteran beneficiary agrees to dispossess himself or herself of benefits beyond that which is affirmatively allowed by existing federal law. See 38 U.S.C. § 5301(a)(3)(A) and (C).

The instant case represents yet another critical and errant decision affecting a vast number of disabled veterans. The Virginia Court of Appeals and the Virginia Supreme Court have essentially *ignored* federal statutory law and particularly this Court's sweeping decision in *Howell*, *supra* at 221-22, which reasoned that "State courts cannot 'vest' that which (under governing federal law) they lack the authority to give. Cf. 38 U.S.C. §5301(a)(1) (providing that disability benefits are generally nonassignable)." *Howell* ruled simply that state law was and always has been fully preempted where Congress exercises its enumerated powers under Article I of the Constitution concerning compensation and benefits for federal military members. *Id.* at 218 (stating that *McCarty [v. McCarty*, 453 U.S. 210, 101 S. Ct. 2728 (1981)] with its rule of federal pre-emption, still applies.").

Despite this Court's sweeping affirmation of this rule of absolute federal preemption in this subject, state courts have continued to find ways to circumvent this principle and have persisted in considering federally appropriated veterans'

benefits that are not legally available as disposable income and/or property that can be taken from the sole and exclusive beneficiary. These benefits may not be used for any purpose other than that designated by federal statute and the federal agencies with exclusive jurisdiction over those federal appropriations. See, e.g., *Hillman v. Maretta*, 569 U.S. 483, 491 (2013) (citing *Ridgway v. Ridgway*, 454 U.S. 46, 55 (1981) and noting that federal benefits (there federal employee life insurance benefits) are protected by the Supremacy Clause from state control or invasion, and the economic aspects of domestic relations must give way to federal law).

The Virginia Supreme Court's decision refusing Petitioner's appeal, and affirming the lower courts' rulings, conflicts with the exercise by Congress of its enumerated powers in contravention of the Supremacy Clause.

## BACKGROUND

The instant matter originated in the Newport News Circuit Court on May 4, 2017, on a Motion to Show Cause by Respondent, Maria V. Lott concerning her alleged entitlement to payments from Petitioner under a marital settlement agreement, part of which concerned disposition of Petitioner's federal veterans' benefits (including retirement and disability benefits).

Challenging Respondent's position, Petitioner filed a Motion to Establish Arrears and/or Credits on September 24, 2019. On June 22, 2021, the Circuit Court held a hearing and heard evidence regarding the amounts of payments made to Respondent by Petitioner.

The Circuit Court issued an Opinion and Order on July 12, 2021, holding that pursuant to the settlement agreement, Petitioner was required to use Concurrent Retirement and Disability Pay (CRDP), 10 U.S.C. § 1414, to make up the difference in what Respondent would have been entitled to from just calculating the amount of "disposable retired pay" under the USFPA available to Petitioner after his disability benefits designation. (Attachment 4, *Lott v. Lott*, 2021 Va. Cir. LEXIS 184, *16-19 (Cir. Ct. Va. 2021).

Petitioner filed a Motion to Reconsider the Circuit Court's Interlocutory Opinion and Order on August 13, 2021. Later, at an *ore tenus* hearing on August 27, 2021, the Court clarified the Opinion and Order.

On April 13, 2022, Petitioner submitted an additional Motion to Reconsider and Brief in Support on the issues of jurisdiction and federal preemption regarding the show cause for failure to pay retirement. On August 5, 2022, over Petitioner's objection, the Circuit Court entered its final order in the case.

Petitioner appealed the circuit court's judgment. Petitioner continued to argue in the Court of Appeals that the state courts could not consider his federal veterans' disability pay and military retirement pay as income for purposes of establishing his financial obligations, even if there was a marital settlement agreement purporting to do so. In this latter regard, Petitioner argued, *inter alia*, that only Congress, through positive legislation, could permit state courts to include federal benefits as property or disposable income in state court divorce proceedings. Citing *Howell v. Howell*, 581 U.S. at 218, Petitioner argued further that Congress has only provided limited and

precise grants of authority to the states to divide federal military benefits. Otherwise, the rule of absolute preemption *McCarty v. McCarty*, 453 U.S. 210, 224, 228 (1981), "still applies." Petitioner also noted the case from Virginia in which this Court ruled the same with respect to benefits paid to federal employees pursuant to federal law. See, *Hillman v. Maretta*, 569 U.S. 483, 491 (2013) (noting that state laws governing the economic aspects of domestic relations must give way to clearly conflicting federal enactments and citing *Ridgway v. Ridgway*, 454 U.S. 46, 55 (1981) (cleaned up)).

The Court of Appeals affirmed the Circuit Court's decision. (Attachment 3). The Court held that state contract law could usurp preexisting federal law that preempted state law concerning the division and disposition of military benefits. Specifically, the Court held that this rule applied even where Petitioner had agreed to indemnify Respondent if his disposable retired pay were to be reduced by his receipt of disability pay. *Id*., pp. 7-9.

In fact, as Petitioner submitted in the proceedings below, he is a disability retiree under Chapter 61, 10 U.S.C. § 1201 and § 1204, and thus, his benefits are not considered disposable retired pay and are therefore expressly protected from division by the USFSPA. See 10 U.S.C. § 1408(a)(4)(A)(iii). Further, the Court of Appeals erred when it found that that Petitioner had "waived" his retirement pay to receive disability pay. (Attachment 3, pp. 7-8). This is not true as there is no waiver for a chapter 61 disability retiree.

While the Circuit Court and Court of Appeals erred by forcing a distribution of Petitioner's benefits that is not allowed by federal law, they also failed to consider the

language of the settlement agreement with his former spouse, and particularly the indemnification clause. The latter clearly states Respondent was entitled to 41 percent of "disposable retired pay" and Petitioner agreed to reimburse Respondent only if he waived retirement pay. Since he did not waive retirement pay, the indemnification clause, if properly read and applied, protected Petitioner's disability pay and could not provide from reimbursement to Respondent of the amount ultimately determined.

The Virginia Supreme Court refused Petitioner's petition to appeal the Court of Appeals' decision (Attachment 2) and denied Petitioner's motion for a rehearing on December 10, 2024. (Attachment 1).

Petitioner seeks review in this Court and hereby respectfully requests a 60-day extension of time to file said writ for the following reasons, inter alia.

REASONS FOR GRANTING EXTENSION OF TIME

1. Petitioner is a disabled veteran who suffers from 100-percent service-connected disabilities. (Attachment 5).

2. Undersigned counsel is a solo practitioner and assists veterans in *pro bono* and *low bono* representation in trials and appeals throughout the United States. The filing and preparation of petitions for writs of certiorari requires significant resources, costs, and expenses that cannot always be borne by the veteran. As a result, undersigned is required to maintain his regular law practice, while coordinating with various veterans groups and organizations, and devising alternative ways to allocate resources and cover these costs.

3. No prejudice would arise from the requested extension. If the petition were granted, the Court would likely not hear oral argument until after the October 2025 term began.

4. This case is yet another example of state courts continued and persistent defiance of federal law notwithstanding the absolute preemption of federal law concerning the disposition of federal veterans' benefits by virtue of the enumerated Article I "Military Powers" of Congress. The Supremacy Clause provides that federal laws passed pursuant to Congress' enumerated Article I powers absolutely preempt all state law. Congress has affirmatively legislated that veterans' disability benefits are a personal entitlement for the veteran and must remain inviolate. See, e.g., *Porter v. Aetna Cas. Co.*, 370 U.S. 159, 162 (1962) (interpreting 38 U.S.C. § 3101 (renumbered as currently at 38 U.S.C. § 5301) and noting that this provision is to be liberally construed "to protect the funds granted by the Congress for the maintenance and support of the beneficiaries thereof" and these benefits "should remain inviolate."). Section 5301(a)(1) therefore protects *all veterans' benefits* from any equitable or legal process, unless Congress provides otherwise. *Id.* This Court has confirmed, time and again, that unless Congress passes legislation expressly allowing these benefits to be considered disposable and therefore divisible among the veteran beneficiary and non-beneficiaries, the default rule is that federal preemption applies. See, e.g., *Howell*, 581 U.S. at 218, 220-22; *Hillman*, 569 U.S. at 491, Ridgway, 454 U.S. at 55.

These protected benefits are federal appropriations made by Congress pursuant to its enumerated powers under Article I. Any disposition of these pre-appropriated federal benefits without express, precise, and limited federal statutory authorization is preempted, being contrary to federal law, inter alia, 38 U.S.C. § 5301(a)(1) and (3), and therefore void.

No legal process may be used to deprive veterans of their disability benefits. 38 U.S.C. § 5301(a)(1). This includes a state court decision approving of an indemnification clause (or divorce agreement provision) whereby the disabled veteran agrees to dispossess himself or herself of benefits that are considered "inviolate" and affirmatively protected. See 38 U.S.C. § 5301(a)(3)(A) and (C). The latter provision expressly "voids from inception" any such agreement.

As this Court has held on multiple occasions, unless Congress has, by express legislation, *lifted* the absolute preemption provided by federal law in this area, state courts and state agencies simply have no authority, or jurisdiction, to direct or hold that such benefits be seized and/or paid over to someone other than their intended beneficiary. See, e.g., *McCarty v. McCarty*, 453 U.S. 210 (1981); *Ridgway v. Ridgway*, 454 U.S. 46 (1981); *Mansell v. Mansell*, 490 U.S. 581 (1989); *Hillman v. Maretta*, 569 U.S. 483 (2013); *Howell v. Howell*, 137 S. Ct. 1400 (2017); *Torres v Texas Dep't of Pub. Safety*, 142 S. Ct. 2455 (2022) (noting the total occupation by federal law in areas of Congress' express enumerated powers and highlighting Congress' "military powers" as a lead example). In such cases, the states have no authority or jurisdiction in the premises. *Howell*, *supra* at 221-22, citing 38 U.S.C. § 5301.

Congress has lifted this absolute preemption in a small subset of cases: (1) for marital property through the Uniformed Services Former Spouses Protection Act (USFSPA), 10 U.S.C. § 1408 (defining "disposable retired pay" for purposes of division in state court divorce proceedings); and (2) for spousal support and child support from disability pension (retirement pay (not disability benefits)), through the Child Support Enforcement Act (CSEA), 42 U.S.C. § 659(a), (h)(1)(A)(ii)(V).

Thus, if there is no federal statute authorizing the states to consider federal benefits in state court domestic relations proceedings, they are simply and expressly prohibited from doing so.

These protected benefits include those that Petitioner is being forced to consider disposable income available to Respondent by virtue of the Virginia Court of Appeals' ruling. There is no federal statute that would expressly allow the disposition of Petitioner's benefits in the manner in which the Circuit Court and Virginia Court of Appeals ruled that they could be considered.

5. The state court's decision, being preempted by federal law, is *void* and of no effect, and it must be rectified to effect justice. The Court of Appeals' opinion in this case directly usurps Congress's exercise of its enumerated Article I powers. Where a state court is preempted by controlling federal law, the state court has no authority to issue an order that exceeds its authority or jurisdiction. See, e.g., *Hines v. Lowrey*, 305 U.S. 85, 91 (1938) ("Congressional enactments in pursuance of constitutional authority are the supreme law of the land."); *Kalb v. Feuerstein*, 308 U.S. 433, 439 (1940) ("The States cannot, in the exercise of control over local laws and practice, vest

state courts with power to violate the supreme law of the land."). This is especially the case where Congress has provided exclusive jurisdiction to a federal agency over persons and property. *Kalb*, *supra*.

A state court that rules incorrectly on a matter preempted by federal law acts in excess of its authority and jurisdiction. Such rulings, and the judgments they spring from, including all subsequent contempt and related orders, are *void ab initio* and exposed to collateral attack. The United States Supreme Court has said as much: "That a state court before which a proceeding is competently initiated may – by operation of supreme federal law – lose jurisdiction to proceed to a judgment unassailable on collateral attack is not a concept unknown to our federal system." *Kalb v. Feurstein*, 308 U.S. 433, 440, n. 12 (1940). "The States cannot, in the exercise of control over local laws and practice, vest state courts with power to violate the supreme law of the land." *Id*. at 439. "States have *no power*…to retard, impede, burden, or *in any manner control*, the operations of the constitutional laws enacted by Congress to carry into execution the powers vested in the general government." *McCulloch v. Maryland*, 17 U.S. (4 Wheat) 316, 436 (1819) (emphasis added). Absent such power, any attempt by state courts to impede the operation of federal laws must be considered a nullity and void. *Kalb*, *supra*.

When federal law, through the Supremacy Clause, preempts state law, as it does in the area of divorce and family law in regard to federal benefits, see, inter alia, *Hillman*, 569 U.S. at 491, then a state court lacks jurisdiction and authority to issue a ruling that contradicts the federally directed designation of these benefits, period.

6. This case also raises the issue of a violation of Petitioner's personal constitutional rights. VA disability benefits are constitutionally protected property interests under the Fifth and Fourteenth Amendments to the Constitution. See, e.g., *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009) and *Robinson v. McDonald*, 28 Vet. App. 178, 185 (2016) (federal veterans' benefits are constitutionally protected property rights). See also *Morris v. Shinseki*, 26 Vet. App. 494, 508 (2014) (same). The Virginia Court of Appeals' decision affirming the Circuit Court's order effectively deprives Petitioner of his constitutionally protected benefits.

7. The issues in this case are of national significance. State courts across the country have issued conflicting and disparate opinions in the wake of *Howell* that are inconsistent and, in the majority, not in keeping with the principles of federal supremacy concerning the disposition of congressionally authorized and appropriated military benefits.

Therefore, Petitioner is not the only disabled veteran whose disability pay is a sole means of subsistence and who relies on these benefits to survive. He is also not the only disabled veteran whose benefits have been misappropriated and redirected by state courts in violation of the principles of absolute federal preemption and Congress' inviolate Article I powers.

Every decision by a state court defying the Supremacy Clause and ignoring federal law affects thousands of veterans in that state. States courts that have addressed this issue and ruled against the veteran include, *inter alia*:

- *Yourko v. Yourko*, 884 S.E.2d 799 (Va. 2023), cert. denied, 220 L.Ed.2d 11 (2024) (undersigned for Petitioner);

- *Martin v. Martin*, 520 P.3d 813 (Nev. 2022), cert. denied, 220 L.Ed.2d 10 (2024) (undersigned for Petitioner);

- *Foster v. Foster*, 983 N.W.2d 373 (Mich. 2022), modified on reh'g, 509 Mich. 988 (2022), cert. denied, 144 S. Ct. 79 (2023) (undersigned for Petitioner);

- *Hammond v. Hammond*, 680 S.W.3d 269 (Tenn. Ct. App. 2023);

- *Boutte v. Boutte*, 304 So. 3d 467 (La. App. 2020), state cert. denied (undersigned for appellant veteran), state cert denied, 306 So. 3d 426 (2020), cert denied, 142 S. Ct. 220 (2021) (undersigned for Petitioner);

- *In re Marriage of Weiser*, 475 P.3d 237 (Wash. 2020);

- *Jones v. Jones*, 505 P.3d 224 (Alaska 2022).

In *Hammond* 680 S.W.3d at 279, the court noted that in the wake of *Howell*, state courts had reached a vast array of conclusions regarding its application.

However, as demonstrated herein, the more recent cases are trending away from upholding the principles of the supremacy of federal law.

Consistent with *Howell* and 38 U.S.C. § 5301, there are states that have ruled that *any* disposition of a veterans' federal benefits which are not expressly designated as disposable and therefore divisible in state court divorce proceedings, whether it be through contractual provisions or state court orders, is contrary to federal law and invalid.

These include, *inter alia*:

- *Russ v. Russ*, 485 P.3d 223, 225 (N.M. 2021);

- *Fattore v. Fattore*, 203 A.3d 151 (N.J. Sup. Ct. App. Div. 2019);

- *In re Babin*, 437 P.3d 985, 989 (Kan. App. 2019);

- *Brown v. Brown*, 260 So.3d 851, 858 (Ala. Civ. App. 2018);
- *Phillips v. Phillips*, 820 S.E.2d 158, 163-64 (Ga. 2018);
- *Berberich v. Mattson*, 903 N.W.2d 233, 237 (Minn. Ct. App. 2017) (undersigned on the *amicus curiae* brief in support of the veteran)

Still other states have gotten this right from the beginning and have not wavered from their adherence to the federal Constitution's strict mandate regarding the supremacy of federal law in this particular subject matter. Well before *Howell*, the Nebraska Supreme Court ruled, correctly, that because res judicata does not bar collateral attacks on void judgments and the state court had no authority or jurisdiction to issue an order dividing federal veterans' disability benefits, that portion of an order dividing such income was void and subject to collateral attack in any subsequent enforcement action. *Ryan v. Ryan*, 600 N.W.2d 739, 744 (Neb. 1999).

What is clear is that there is a split of authority among the states. These decisions cover the entire spectrum of rulings for and against the veteran, and all of the arguments and reasoning concerning this issue have been presented to the highest courts of these states. Thus, the state cases have once again reached a point of issue singularity, which is primed and ready for this Court's treatment.

Those courts that have ruled that the state (and lawyers) can devise ways to get around the clear implication of *Howell's* rule of absolute preemption have implemented a variety of methods to do so, e.g., *Foster*, *supra* (holding that res judicata and/or collateral estoppel prohibits a court from revisiting a consent decree that was clearly in violation of *Howell* and 38 U.S.C. § 5301); *Hammond*, *supra* (holding that divorcing spouses may negotiate an arrangement requiring the former

military spouse to pay alimony *in futuro* in the same amount as the waived portion of retirement, whether or not that means that the military spouse must obligate his or her protected military benefits to satisfy the agreement). Whatever the reasoning, all of these decisions have the same effect, i.e., they force the veteran to part with federal benefits which have *not only not* been expressly granted by Congress for disposition to another beneficiary, but which are also *always* protected from all legal and equitable process whatever, and which cannot be the subject of contractually agreed to divestment. See 38 U.S.C. § 5301(a)(1) and (3)(A) and (C).

Thus, the state courts have begun to do, again, exactly what this Court admonished them for doing in the first place – counting the amount of federal benefits that are off limits because they are not expressly authorized by statute to be considered disposable and therefore divisible, and adding that amount back into the available divisible funds subject to a negotiated property settlement agreement or simply awarding that same amount to be paid in alimony or spousal support. The result is the same. The veteran is dispossessed of his or her personal entitlement.

It is not that these federal benefits are available to be divided and disposed of if there is no federal law that prohibits such disposition. It is that they are strictly off limits and cannot be divided and disposed of *unless* Congress has expressly and precisely provided therefor. The former proposition is a fundamental misconception among the states and practitioners in general that continuously misinforms their understanding concerning the propriety of division of federal benefits in state domestic relations proceedings. The state cannot invade the federal interest created

by the federal legislation and force a distribution thereof to a beneficiary other than that found in the federal statute. *Hillman*, 569 U.S. at 494, citing *Ridgway*, 454 U.S. at 55.

Furthermore, if there was any doubt, 38 U.S.C. § 5301 affirmatively protects a military veteran's benefits from any "legal or equitable process whatever," prohibits any contractual agreements by which the veteran beneficiary agrees to dispossess himself or herself of these benefits, and voids from inception any such agreement. See 38 U.S.C. § 5301(a)(1) and (3)(A) and (C).

State courts cannot do indirectly what they are prohibited by federal law from doing directly. The simple expedient of an offsetting award or equalizing agreement (whether that be enforcement of a past or future divorce agreement) is incompatible with the Supremacy Clause's absolute federal preemption in this area and, more directly, contrary to the express and affirmative prohibitions articulated in 38 U.S.C. § 5301. See, e.g., *Howell*, *supra*; *Hillman*, 569 U.S. at 491, *McCarty*, 453 U.S. at 227, n.21; and *Ridgway*, *supra*. Indeed, principles of state contract law, res judicata, and collateral estoppel do not even apply when it is determined that there is an agreement dispossessing the veteran of his personal entitlement because in addition to prohibiting them, § 5301 voids any such agreement from their inception.

The court below ruled with those states that have continued to ignore the clear import of the Supremacy Clause and absolute federal preemption in this area of the law. As a result, Petitioner has been deprived of his personal entitlement to federally appropriated and specifically designated federal benefits.

## CONCLUSION

It is Petitioner's desire that his petition for a writ of certiorari be granted so that the federal benefits to which he and other veterans in his situation across the country are entitled can be finally and ultimately restored.

For the foregoing reasons, undersigned counsel requests additional time to prepare a full exposition of the important legal issues underlying Petitioner's case.

WHEREFORE, for the reasons stated herein, Petitioner applies to Your Honor and respectfully requests an extension of 60 days from the Monday, March 10, 2025, due date to file a Petition for a Writ of Certiorari to the Virginia Supreme Court, so that this Court may consider said petition on or before Friday, May 9, 2025.

Respectfully submitted,

Carson J. Tucker
Attorney for Petitioner

Dated: February 25, 2025