The State of New Hampshire

SUPREME COURT

Case No. 2019-0065

IN THE MATTER OF
SEAN BRAUNSTEIN AND JERICKA BRAUNSTEIN

RULE 7 APPEAL OF THE FINAL ORDERS OF THE
6TH CIRCUIT FAMILY COURT DIVISION – HOOKSETT

BRIEF OF PETITIONER – APPELLANT
SEAN BRAUNSTEIN

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2. Did the Trial Court err by allowing a State Statue to be applied to this matter, when Federal Law supersedes?

3. Did the Trial Court err when it removed residential responsibility from Sean, due to Ms. Braunstein willfully refusing to cooperate to save the marital home from foreclosure?

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all of the required Mandatory Disclosure documents, along with interrogatories which were ordered to compel to obtain such documents, all pertaining to financials?

8. Whether or not the Court erred in allowing testimony be considered credible during a financial hearing, without evidence that was requested during Interrogatories, with out sanctioning the party and without providing guidance on requested orders for a Motion in Limine, an open Motion barring testimony?

STATEMENT OF THE CASE

The parties, Sean Braunstein, (Mr. Braunstein) and Jericka Braunstein[1], (Ms. Braunstein) were wed on January 26, 2010. On May 26, 2017, Mr. Braunstein filed an *Ex Parte* requesting emergency custody with the parties' only minor child (Rowyn Jeyna Braunstein, hereafter "Rowyn" D.O.B 12/12/2012) along with a Petition for Divorce[2].

[1] Jericka Braunstein is now Jericka Angelini. To prevent confusion, she will be called Ms. Braunstein throughout this brief.

[2] Ms Braunstein and Sean will be referred to collectively as "the parties."

An *Ex Parte* hearing was conduction on June 6, 2017, at which time, Sean requested that the court appoint a *Guardian at Litem* (GAL) for the parties child. A temporary hearing was scheduled for August 22, 2017.

On August 13, 2017, Sean and Ms Braunstein both assented to a motion to continue for the GAL. The Temporary Hearing was rescheduled for November 14, 2017.

On October 23, 2017, Sean filed an Ex Parte Motion[3] to remain in his home, after the bank was attempting to conduct a fraudulent foreclose on the property. Sean spoke with the bank, and was informed he qualified for the Veterans Affairs Home Affordability Modification Program, but would need to have the co-borrower also participate, and therefore would not accept Sean's Modification documents. Despite the numerous attempts in obtaining a full Rule 1.25 and 1.25a Ms Braunstein refused to sign loan modification documents and refused to provide financial documentation that the bank requested. Ms. Braunstein noted that she did not want to be held "financially responsible, as she had discharged the debt in 2016, after the parties filed a joint bankruptcy petition, which discharged her obligation to the home." The foreclosure would cause him to lose 96% of the eligibility, leaving him with a non-cash value of $17,080. By losing the home, Sean would have both immediate and irreparable harm done to

[3] See App, Vol 1, pg 4

him, yet Ms. Braunstein continued to refuse. The only other option was for Sean to request a Quit Claim deed, and do the modification alone. The Court did NOT deny the motion, but ruled:[4] *"The Motion shall be addressed at the pending temporary hearing."* No objection was ever filed by Ms Braunstein.

On November 14, 2017, the parties had a Temporary Hearing that reviewed the proposed decree, parenting, child support, and the ex parte motion. Attorney Santoro[5] stated that the order had been denied, and the Court reiterated their stance that *"it had not been denied, and there was no objection."* The GAL submitted a 20 page preliminary report[6] and provided testimony directly to the Court, addressing all of the concerns in her appointment. In the report, it does address that Ms. Braunstein had just changed her schedule, to now work Monday to Thursday, allowing her to home on weekends during her parenting time. Attorney Santoro and Ms. Braunstein both testify that her income that reflects her current Financial Affidavit, would remain the same, at $3,850/mo. Sean testified to the current state of the marital home, and steps that he had taken to remove it from foreclosure.

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[4] See App, Vol 1, page 21
[5] See 11/14/2017 Transcript pg 2; lines 13-25.
[6] See App Vol 2, GAL Report page 4

On December 5, 2017, Counsel for Sean, Attorney Caroline Lefebure, withdrew from the case, and provided limited appearance, requiring Sean to represent himself, Pro Se. [7]

On January 16, 2018, the court issued orders[8] from the Temporary Hearing, which provided specific instructions concerning the marital home, and assigned Rowyn's residency to Sean, on a temporary basis. Attorney Santoro filed a Motion to Reconsider, on January 31, 2018[9], which was 5 days past the deadline (See Rule 1.26f) Sean submitted an objection February 2, 2018[10], supporting his original stance, and again asking for the documents that Ms. Braunstein still refused to provide, again being in violation with Family Rule 1.25.

The parties exchanged interrogatories. Sean supplied his response, and objected to others that were overly broad, or overly burdensome. The motion was granted in part, and further guidance was given. Attorney Santoro never supplied further guidance; therefore the information was given, based off of the courts suggestion. Sean later sent his interrogatories.

On March 9, 2018, Sean sent Ms. Braunstein a request for Interrogatories, due back by April 8, 2018. Attorney Santoro was aware of the deadline.

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[7] See App Vol 1, Pg 22
[8] See App, Vol 1, Pg 23-46
[9] See App, Vol 1, Pg 48
[10] See App, Vol 1 Pg 52

On March 19, 2018 the parties had a Pre-Trial Hearing, where the parties exchanged plans, and only providing Sean with 1 paystub, and a financial affidavit that was not able to be verified, based on the numbers compared to her bank statements, and the charges she listed. The parties also agreed to attend three sessions of mediation.

On April 17, 2018 Sean had to file a Motion to Compel, requesting the court to provided assistance to get Ms. Braunstein to respond. Despite the request through the court, and through emails, Attorney Santoro did not respond.

On May 22, 2018 A notice of Conditional Default for failure to provide Interrogatories was entered by the Clerk of the Court.

On June 1, 2018, Attorney Santoro submitted a Motion to Strike the Conditional Default, stating that answers were supplied on May 31, 2018. When Sean received the responses, he found that the answers were lacking specific details, releases weren't signed, and a majority were stated "n/a". He reached out again to Attorney Santoro, but did not hear back.

On July 26, 2018, Sean submitted a Second Motion to Compel[11], and a Partially Assented to continuance. The motion

[11] See App, Vol 1, Pg 62

was granted in part, "pertaining to information related to financial issues only"

On August 6, 2018, the parties appeared in court for their final hearing. Attorney Santoro supplied the Court with a Findings of Fact/Rulings of Law[12]. Sean testified regarding the difficulty of obtaining specific documents, and that his case was being impacted negatively due to Ms. Braunstein not providing the required documents. The court agreed to a continuance for the financial hearing, but continued with the parenting portion.

On August 8, 2018, the parties appeared for a second day of parenting, with Attorney Santoro looking to settle the case, and not continue. Based upon the amount of documents that were received, Sean disagreed, stating that he had not been given the opportunity to review the documents, and thus declined to move forward with a financial hearing that day. In a very quick review an effort to rebuttal Attorney Santoro's Findings of Fact/Rulings of Law,.

The court issued orders on August 9, 2018.[13]

The court reversed the temporary order, since Sean's home was in foreclosure. The court further states that a Full Day

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[12] See App Vol 1, Pg 69
[13]See App, Vol 1, Pg 73

Program would be better for Rowyn – despite the GAL specifically stating that she recommends Hooksett School System, knowing that it was half day, and knowing that Sean's home was in foreclosure.

The order granted Ms. Braunstein's residence to be used in Pembroke for school destination for kindergarten. The court seems to overlook the Motion of Contempt that Sean filed, stating the only reason his home was in foreclosure, was that Ms. Braunstein was intentionally refusing to follow the original court orders, which ordered her to cooperate and provided any documents that were needed to file a modification.

Sean submitted a motion to reconsider, stating that prior orders that had been previously ruled on, by the former judge, they appear to seem to have been overlooked based on the October 16, 2018, ruling.

On October 10, 2018, to obtain the requested 1.25a and final answers to his interrogatories, to support his case, Sean files for a third Motion to Compel.

On October 29, 2018, the parties attend their financial hearing. Attorney Robert Hunt in a limited capacity for Sean, argues to the court that documents pertaining to the hearing, are still missing, which have caused irreprehensible harm to both Sean

and Rowyn. Sean also filed a Memorandum of Law[14], in an effort to provide the updated case of Howell v Howell, 137 S. Ct. 1400, 1403 (2017).

Despite the courts direct knowledge of Ms Braunstein not being in compliance, Sean argues that the court erred in allowing Ms. Braunstein the ability to testify, based on the Motion in Limine.[15] The court did not specifically rule on it, and place it in a blanketed denial in the December 31, 2018.[16]

The parties each submitted a motion to reconsider, each stating their opinions of the errors of the orders. Sean was fond in contempt[17] for not paying Child support, despite his award amount being inaccurately calculated, and Ms. Braunstein.

STATEMENT OF FACTS

Sean is a disabled veteran. He served in the United States Army from 2003-2007. After several appeals, in 2010, the Veterans Administration (VA) back dated Sean's claims and determined he was 70% as of the date of his last day of service, and then was increased to 100% as of the letter, making him disabled due to a service-connected condition. In 2012, the VA revisited Sean's service connected-disabilities, and rated him at

[14] See App, Vol 1, Pg142
[15] See App, Vol1, Pg 131
[16] See App, Vol1 Pg 189
[17] See App, Vol1 Pg 149

100% Permanent and Total (P&T.) Each changed; Sean received a lump sum payment of Veterans Administration (VA) disability benefits.

ISSUES

Among the issues likely to be addressed in this case is the rule concerning the absolute preemption of federal law over state courts in the disposition of VA disability benefits. Under it's enumerated Article I "Military Powers", Congress provides veterans disability benefits as a personal entitlement to the veteran. The Supremacy Clause provides that federal laws passed pursuant to Congress' enumerated Article I powers absolutely preempt all state law. Under this power, Congress has prohibited *any legal process* from being used to deprive veterans of their disability benefits. 38 U.S.C. § 5301.Unless Congress has *lifted* the absolute preemption provided by federal law in this area, state courts and state agencies simply have no authority, or jurisdiction, to direct that such benefits be seized or paid over to someone other than their intended beneficiary. 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; and (2) spousal support and child support, through the Child Support Enforcement Act (CSEA), 42 U.S.C. § 659. 42 U.S.C. § 659 was amended to specifically *exclude* VA disability benefits that are paid to non-retiree disabled veterans – those veterans who had not retired, and therefore could not have waived retired or retention pay to receive

disability benefits. See also *Howell v. Howell*, 137 S. Ct. 1400 (2017).

Where a state court is preempted by controlling federal law, the state court has no authority to issue an order that exceeds its jurisdictional control. When federal law, through the Supremacy Clause preempts state law, as it does in the area of divorce in regard to veterans' benefits, then a state court lacks jurisdiction to issue a contrary award. "State courts may exercise jurisdiction and authority over veteran's disability pay to satisfy a child support and/or spousal support award, *but only up to the amount of his or her waiver of retired pay.*" *In re Marriage of Cassinelli*, 20 Cal App 5th 1267, 1277; 229 Cal Rptr 3d 801 (2018). See also 42 U.S.C. §§ 659(a), (h)(1)(A)(ii)(V), (B)(iii); 5 C.F.R. § 581.103 (2018) (emphasis supplied). *Cassinelli* was a decision on remand after *Howell, supra.*

VA and Federal disability benefits have also been deemed constitutionally protected property rights under the Fifth and Fourteenth Amendments to the Constitution. *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009) and *Robinson v. McDonald*, 28 Vet. App. 178, 185 (U.S. 2016) (federal veterans' benefits are constitutionally protected property rights). See also *Morris v Shinseki*, 26 Vet. App. 494, 508 (2014) (same).
Petitioner has presented the arguments that demonstrate federal law preempts state law, and that his constitutional rights have been infringed upon by the trial court, incorrectly calculating his

support order, forcing him to pay for privatized schooling, and ordering him to pay Ms. Braunstein's attorney's fee for contempt.

Finally, *Rose* was wrongly decided, and it is an outdated case that does not even apply to the factual circumstances of this case because Congress amended 42 U.S.C. § 659 to add subsection (h)(1)(B)(iii) after *Rose*. Most importantly, all of the issues of law presented by this case are of national significance due to the increasing number of disabled veterans whose main or only source of income are disability benefits.

The purpose of Congress in enacting 38 U.S.C. § 5301 was to "prevent the deprivation and depletion of the means of subsistence of veterans dependent upon these benefits as the main source of their income." *Rose*, 481 U.S. at 630. For a very limited time (after *Rose v. Rose*), the *judicial* allowance to state courts to force veterans to use their disability pay for child support and spousal support appears to have applied across the board to all disabled veterans. However, this worked an inequitable result on a certain subset of disabled veterans; namely those, like Sean in this case, who had been injured and rendered disabled and unable to serve before they had acquired years in service sufficient to also have the financial support and economic security of retirement pay. Now, this subset of veterans, especially due to the last 3 decades of up-tempo, high-volume deployment and military operations in which the U.S. military has been involved represents the largest population of disabled veterans in existence. The significance of this cannot be understated. See Trauschweizer, 32 International

Bibliography of Military History 1 (2012), pp. 48-49 (describing the intensity of military operations commencing in the 1990's culminating in full-scale military involvement in Iraq and Afghanistan during the past three decades).

[18]Our Country is faced with the waning population of disabled veterans from the post-Vietnam era and prior. *Rose* was, as noted, a 1987 case, and it necessarily addressed an entirely different population of aging and disabled veterans. Since 1990, there has been a 46% increase in disabled veterans, placing the total number of veterans with service-connected disabilities *above* 3.3 million as of 2011.[19]. As of March 22, 2016, the number of veterans receiving disability benefits had increased from 3.9 million to 4.5 million. *Id.* See also VA, National Center for Veterans Analysis and Statistics, What's New at: https://www.va.gov/vetdata/veteran_population.asp. Also, since 1990, there has been a remarkable increase in veterans with disability ratings of 50 percent of higher, with approximately 900,000 in 2011. VA, Trends, *supra* at slide 6. That same year, 1.1 million of the 3.3 million total disabled veterans had a disability rating of 70 percent or higher. *Id.*

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[18] See also VA, Trends in Veterans with a Service-Connected Disability: 1985 to 2011, Slide 4 at: http://www.va.gov/vetdata/docs/QuickFacts/SCD_trends_FINAL.pdf.

[19] VA, Trends, *supra*. By 2014, the number of veterans with a service-connected disability was 3.8 million.[19] See U.S. Census Bureau, Facts for Features at: http://www.census.gov/newsroom/facts-for-features/2015/cb15-ff23.html

Finally, the disability numbers and ratings for younger veterans has markedly inclined. Conducting an adjusted data search, 570,400 out of 2,198,300 non-institutionalized civilian veterans aged 21 to 64 had a VA service-connected disability at 70% or higher in the United States in 2014. See Erickson, W., Lee, C., von Schrader, S. Disability Statistics from the American Community Survey (ACS) (2017). Data retrieved from Cornell University Disability Statistics website: www.disabilitystatistics.org. Thus, according to this data analysis, half of the total numbers of veterans with a disability rating *greater* than 70% are between 21 and 64 years of age.

Per the National Veterans Foundation, there are over 2.5 Military Members, who served in Iraq and Afghanistan. Of those, nearly 6,600 were killed, and over 770,000 have filed disability claims. See http://www.nvf.org/staggering-number-of-disabled-veterans/. Yet another study shows nearly 40,000 service members returning from Iraq and Afghanistan have suffered traumatic injuries, with over 300,000 at risk for PTSD or other psychiatric problems. These veterans face post-deployment health concerns, sharing substantial burdens with their families. These staggering numbers are, in part, a reflection of the nature of wounds received in modern military operations, modern medicine's ability to aggressively treat the wounded, and modern transportation's ability to get those most severely wounded to the most technologically advanced medical treatment facilities in a

matter of hours.[20] Physical injuries in these situations are understandably horrific. *Id*[21]. However, many veterans also suffer severe psychological injuries, some attendant to witnessing the sudden arbitrariness and indiscretion of war's violence. Zeber, Noel, Pugh, Copeland & Parchman, Family perceptions of post-deployment healthcare needs of Iraq/Afghanistan military personnel, 7(3) Mental Health in Family Medicine 135-143 (2010). As one observer has stated: "assignments can shift rapidly from altruistic humanitarian work to the delivery of immense deadly force, leaving service members with confusing internal conflicts that are difficult to integrate. During deployments, even medical personnel are at times compelled to use deadly force to protect themselves, their patients, and their fellow soldiers."
Combat-related post-traumatic stress symptoms (PTSS), with or without a diagnosis of post-traumatic stress disorder (PTSD) can negatively impact soldiers and their families. These conditions have been linked to increased domestic violence, divorce, and suicides. Stress Medicine 131-137 (1995).[22]

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[20] Fazal, Dead Wrong? Battle Deaths, Military Medicine, and Exaggerated Reports of War's Demise, 39:1 International Security 95 (2014), pp. 95-96, 107-113.
[21] . See also Kriner & Shen, Invisible Inequality: The Two Americas of Military Sacrifice, 46 Univ. of Memphis L. Rev. 545, 570 (2016)
[22] Melvin, Couple Functioning and Posttraumatic Stress in Operation Iraqi Freedom and Operation Enduring Freedom – Veterans and Spouses, available from PILOTS: Published International Literature On Traumatic Stress. (914613931; 93193). See also Schwab, et al., War and the Family, 11(2) Stress Medicine 131-137 (1995).

Such conditions are exacerbated when returning veterans must face stress in their families caused by their absence. Despite the amazing cohesion of the military community and the best efforts of the larger military family support network, separations and divorces are common. Families, already stretched by this extraordinary burden, are often pushed beyond their limits causing relationships to break down. Long deployments, the daily uncertainty of not knowing whether the family will ever be reunited, and the everyday travails of civilian life are difficult enough. A physical disability coupled with mental and emotional scars brought on by wartime environments make the veteran's reintegration with his family even more challenging. Finley, *supra.*

This younger population of disabled veterans are not entitled to retirement pay because they were injured or wounded during the first few years of their service to the country. Like Sean, who only served for approximately 4 years, many disabled veterans in this population do not and will never have the financial security and economic assurances of a retirement pension and all the other benefits that come with being classified as retired. When it became apparent that this growing subset of disabled veterans were also being subjected to having their disability benefits taken by state courts to satisfy support orders in domestic relations cases, Congress acted to differentiate this class of veterans by amending the CSEA and adding 42 U.S.C. § 659(h)(1)(A)(ii)(V) and (h)(1)(B)(iii) distinguishing the two subsets of veterans and the two classes of disability benefits, those which are available to former spouses and

minor children from the former group of retiree veterans and those that are not from the latter group of non-retiree veterans. Because federal law has always preempted state law in this very specific circumstance, any state-court domestic relations order awarding support (child and/or spousal) would be void and unenforceable, both going forward and retroactively. In this case, all of Petitioner's federal disability benefits are specifically excluded from consideration as remuneration for employment, and therefore as income, by 42 USC 659(a); (h)(1)(A)(ii)(V); and (h)(1)(B)(iii). As such, these benefits are jurisdictionally protected from *any legal process* whatever by 38 U.S.C. § 5301.

Federal law is very clear and has been changed since *Rose v. Rose* to protect veterans' rights and enforce federal law. Yet, state courts across the country continue to blindly cite *Rose* for the proposition that states have unfettered access to these disability benefits no matter what the income and status of the disabled veteran. This has caused a systemic destruction of the ability of disabled veterans to sustain themselves and their families. The greatest tragedy, of course, is the effect that this has had on the veteran community as a whole. Homelessness, destitution, alcoholism, drug abuse, criminality, incarceration and, in too many cases, suicide, are a direct result of the consequences of a blind adherence to outdated and no longer viable federal law that fails to take account of the reality of current circumstances.

A state court that rules incorrectly on a matter preempted by federal law acts in excess of its jurisdiction. Such rulings, and the judgments they spring from, including all subsequent contempt and related orders (which would cover the contempt award here) 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 US (4 Wheat) 316, 436; 4 L Ed 579 (1819) (MARSHALL, CJ) (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*

SUMMARY OF ARGUMENT

Sean believes that his case has two main points to argue. The first one in regards to the inconsistencies across New Hampshire Courts when it comes to following mandated court rules, or following court orders. While he is aware each Justice is able to use their own discretion, he questions at what point does the line get drawn, and willful violations receive appropriate consequences? He argues that if two exact cases were argued with one in one district, and that the other in a further district, its likely they would have completely different results. The same would likely happen when a Judge who oversaw all the foundation of a case is being laid out, and then a new Judge came in, and took over. The possibility of the orders would certainly be different, which should not be the case.

The second main point, is in regard to Federal disability benefits, and how Congress provides veterans with multiple benefits and entitlements by enacting legislation pursuant to its "Military Powers" under Article I, § 8, clauses 11 through 13 of the United States Constitution. These enumerated powers are supported by the Necessary and Proper Clause, § 8, cl. 16. These powers are further protected from state infringement by the Supremacy Clause, Article VI, cl. 2, which expressly declares the laws of Congress enacted pursuant to its Military Powers "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." Congress provides

veterans benefits for the maintenance, readiness, support and care of the nation's military service members, for the common defense and protection of the nation's citizens. The type of veterans' benefits at issue in this case (federal retirement and disability pay) have been authorized since the dawn of this nation's independence.[23] The United States Supreme Court has, over the course of nearly a century, confirmed that such benefits are an exercise of Congress' exclusive Article I, § 8 Military Powers and have held, accordingly, that state courts are preempted from exercising authority or control over these benefits to the detriment of veterans. Since the 6th Circuit Court in the case sub judice violated this principle, Appellant respectfully submit this brief in support of to urge reversal.

ARGUMENT

XVII. Whether or not the Court erred by including the appellant's Veteran Disability Compensation as

[23] Rombauer, Marital Status and Eligibility for Federal Statutory Income Benefits: A Historical Survey, 52 WASH. L. REV. 227, 228 (1977) ("[o]ne of the early resolutions of the first Congress in 1776 provided for monthly payments of up to half pay to officers, soldiers, and seaman disabled in the line of duty" and "in 1789 one of the early acts of the Congress under the new Constitution provided continuance of these payments to the disabled veterans of the Revolutionary Army.") See also Waterstone, Returning Veterans and Disability Law, 85:3 NOTRE DAME L. REV. 1081, 1084 (2010).

"income", for purposes of calculating child support at the final and temporary hearing when 26 USC Sec104(b)(2)(D) specifically excludes this award from definition of gross income?

While there are many Federal Statues that cover this specific benefit on, the Internal Revenue Service, the Department of Treasury do not consider any veteran's benefits income, and have ruled that it is safe from any assignment or seizure.

XVIII. Whether or not the Court erred by including the appellant's Federal Disability Retirement as "income", for purposes of calculating child support at the final and temporary hearing when 26 USC Sec 104(b)(2)(D) specifically excludes this award from definition of gross income?

Federal Statues that cover this specific benefit include the Internal Revenue Service, and the Department of Treasury. Both of which do not consider any Federal Disability benefits to be income. Despite this knowledge, the Court erred in their calculations, which caused irreversible damage, both by forcing an order of $95 per week, and the State garnishing 25% of Sean's federal disability, totally over $500 a month.

XIX. Whether or not the Court erred by allowing a State Statue to be applied to this matter, instead of Federal Law?

During the Trial, a Memorandum of Facts was provided by Attorney Santoro, and in response Sean supplied a Memorandum of Law[24], and later a Reconsideration requesting to address the Courts disagreement, who instead sited NH RSA 458 C:2 regarding child support income. Both of these documents, specifically spelling out the errors that the court was ruling on, along with the known errors that the State of New Hampshire's Department of Health and Human Service were well aware of[25], yet the State opted to sweep any knowledge under the carpet, with regards to HB652-FN's final publication. Since *Rose v Rose*, many state courts, without authority, have asserted an unbridled interest in veterans' disability pay to force veterans to pay child support, spousal support, maintenance and alimony to former spouses. Federal law preempts state law concerning the disposition and entitlement to veteran's benefits. Moreover, after *Rose*, Congress amended federal law to specifically exclude veterans disability benefits from being counted towards a disabled veterans child support or spousal support obligations, *unless* the veteran had also gained enough time in service and credit to retire, and chose to waive retirement or retention benefits to receive such disability pay. Sean in this case is like so many other disabled veterans who have been severely disabled and who have not waived retired or retainer pay to receive their disability entitlements. Federal law protects this pay by way of the U.S. Constitution's Supremacy Clause, which provides that all state laws that stand in the way of

[24] See App, Vol 1, Pg 137-142
[25] See New Hampshire, HB652, 2017

Congress' exercise of its enumerated powers are void, have no force and effect, and are preempted. Moreover, positive enactments by Congress further specify that certain veterans' disability pay is off limits to state courts and state agencies for satisfaction of child support and spousal support in state court divorce proceedings. See 42 USCS 659(a), (h)(1)(A)(ii)(V), and (h)(1)(B)(iii); and 38 USCS 5301. These provisions jurisdictionally bar state courts from exercising authority over veterans' personal entitlements to their disability benefits. The United States Supreme Court recently said as much in the case of Howell v. Howell, 137 S. Ct. 1400 (2017). There, the Court held that 38 USCS 5301 jurisdictionally protected all veterans' disability pay and state courts had no authority to vest those benefits in any one other than the entitled beneficiary, i.e., the veteran. The Court also noted the one limited federal law exception in the child support and spousal support context envisioned by 42 USCS 659(h)(1)(A)(ii)(V), "...who is in receipt of retired or retainer pay if the former member has waived a portion of the retired or retainer pay in order to receive such compensation; which Sean did not do, therefore it must be exempt.

XX. Whether or not the Court erred by not allowing appellant to challenge the constitution of a state statue and/or properly provide due process to appellant?

In his initial Memorandum of Law[26] in the Trial Court, Petitioner argued that 38 U.S.C. § 5301(a)(1) exempts his federal disability benefits from "attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary." Petitioner conceded that certain VA benefits may be subject to income withholding, garnishment, or other legal process brought by a state agency seeking to enforce payment of a child-support obligation, but only with respect to those VA disability benefits received in lieu of retirement or retention benefits. *Cf.* 42 U.S.C. § 659(a), (h)(1)(A)(ii)(V), and (h)(1)(B)(iii). Because Petitioner's VA disability was not received in lieu of retirement pay or retention pay, as such they could not lawfully be assigned, or included for child support purposes, and were off limits under 38 U.S.C. § 5301 as a personal entitlement. See *Howell v. Howell*, 137 S. Ct. 1400, 1405-1406 (holding state courts cannot vest that which under governing federal law they lack the authority to give, citing 38 U.S.C. § 5301, which provides that disability benefits are generally non-assignable, while noting that for military retirement pay, the state courts are allowed to take account that some retirement or retainer pay may be waived and calculate or recalculate the need for child support or spousal support, citing *Rose v. Rose*, 481 U.S. 619, 630-634, and n. 6, 107 S. Ct. 2029, 95 L. Ed. 2d 599 (1987), but reserving the questions concerning the scope and breadth of allowing the use of VA disability pay for spousal support and child support). Petitioner also made a claim under 42 U.S.C. § 1983, alleging the court had,

[26] See App, Vol 1, 137

by its actions, deprived him of his constitutional rights to his property, of Federal disability benefits and VA disability pay. The Court disagreed[27] that Sean's disability benefits were off limits, in fact, sited NH RSA 458 C:2. The Trial Court violated federal statutory and constitutional provisions, including 38 U.S.C. § 5301(a)(1) and 42 U.S.C. § 659(h)(1)(A)(ii)(V), and that its decision was clearly erroneous, arbitrary and capricious. Petitioner also claimed that the Trial Court had violated his rights under the due process clause of the 14th Amendment to the United States Constitution. Petitioner also argued that the NH Legislation branch, and the Department of Health and Human Services, knew they were out of compliance with federal mandates when the state attempted to submit HB-652-FN in 2017.

XXI. Whether or not the Court erred by holding a final hearing in the case when the appellant still had not received all interrogatories that were propounded or a final financial hearing, when financial documents still had not been received that were previously ordered, to be provided to appellant?

The parties requested two days to conduct their final hearing, which included financials. Despite THREE Motions to Compel, and various requests for documents Sean still had not been given the Full Financial Mandatory Disclosure that was required at the beginning of the case. He was rarely supplied with updated Financial Affidavits, and was not given consecutive pay

[27] See App, Vol 1, 146 Orders

stubs, trust information, employment benefits, bank statements, Profit & Loss Statements, and various other documents that were requested in the interrogatories. It wasn't until the evening of he second trial in August 2018, nearly a year later, Sean was provided with minimal information. Despite the request for the documents, and seeking the courts assistance, Sean was met with opposition when he attempted to obtain information he had a right to have.

XXII. Whether or not the Court erred in not upholding Court Rules 1.25a Mandatory Disclosures, 1.25c, Unavailability of Documents, and 1.25d Failure to Provide Initial Disclosures?

Sean pointed out in his final motion of reconsideration, that Ms. Braunstein knowingly refused to provide initial disclosures, despite having an obligation to either provide the documents, or a release for Sean to obtain them himself, per Rule 1.25-C (1)(2). Notably, in Rule 1.25D Failure to provide initial disclosures.... By section B and C.... the Court may impose sanctions, including.... Prohibiting a party from introducing evidence, testifying or making an offer of proof... filing requests for discovery, or filing any discovery motion. As a requirement for Child Support, both parties must provide accurate information, and if a parties failure to provide such information, prejudices access of a compliant party to requested substantive relief, such as the calculation and receipt of Child Support, the court may, in addition to other sanctions address the relief requested by the compliant party on the basis of reasonable estimates and assumptions, at least until such time the

documents are produced. The Trial Court erred in allowing Ms Braunstein to provide "creditable testimony" knowing that she was out of compliance, and continuing the financial hearing, which resulted negatively for Sean. Based on Ms Braunstein's testimony, the court found that by changing her work hours, and stepping down from a management position, that she was not purposely underemployed. Sean points out that Ms. Braunstein's testimony does not reflect the facts, since by doing so, it caused her wages to go down over $1,000/mo -despite previous testimony that her wages would not be impacted. Based on this, his child support was increased.

XXIII. Whether or not the Court erred in removing residential responsibility of the parties minor child due to other party not following temporary orders, causing financial distress to appellant or erred in not holding the other party accountable for excessive interest and fees, due to non-compliance?

During the Final Parenting Plan, in which Sean has filed a contempt prior to the hearing of violation of not providing the necessary financial information the bank needed, and not cooperating to secure his housing from foreclosure. Ms. Braunstein attempted to previously argue at the Temporary Hearing, with the prior Judge, saying she wasn't allowed to talk to the bank, despite

being on the mortgage, and deed. The court informed her that the bank was required to talk with her, and stated that both parties had all the documents in court, and should review them together. Ms. Braunstein, through counsel, refused, continued to contradict testimony of being able to speak with them or not when a new judge was appointed. Attorney Santoro, painted a different picture of the complexity of the home foreclosure, which lead to a permanent change in residency.

XXIV. Whether or not the Court erred by only holding appellant in contempt, when both parties filed Contempt Motions?

Attorney Santoro filed a Motion of Contempt[28] regarding child support, and non payment. Sean did file an objection[29] stating, the parties were in mediation discussing it up until July 31, 2018. Sean also filed a Motion for Contempt[30] regarding non-compliance in the January 16, 2018 order, regarding the marital home. Sean was excessively charged every day, while in foreclosure with the bank. The court erred by not find Ms. Braunstein in contempt, as the interested he was assessed, was far more than child support payments the court ordered.

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[28] See App, Vol 1 Pg ,109
[29] See App, Vol 1, Pg 119
[30] See App, Vol1, Pg 128

XXV. Whether or not the Court erred in ruling on the Motion in Limine, and if the ruling was upheld?

Sean filed a Motion in Limine on October 17, 2018. The motion was mentioned during the final financial hearing, however, when limit counsel Attorney Robert Hunt for Sean informed the court of the list of documents that still had not been provided, the court simply state that if documents from Ms. Braunstein was attempted to be given, that he could object. The Court erred in not providing a direct motion on whether or not the Motion in Limine was granted, or denied. This does two things. First, it leaves the door open for Ms. Braunstein to testify on her own behalf, instead of providing evidence, and documents that were requested, and her testimony was accepted without providing proof or validation. Second, it removes the opportunity for Sean to appeal to a higher court, until all open motions are ruled on. Sean does point to this out in his Motion to Reconsider. The court responded, and provided an overly broad response of saying all further requests are denied. This is unjust, and leaves him the inability to have properly appealed the decision, impacting his right to due-process. See Morill v Morill 147 N.H. 116 (2001).

XXVI. Whether or not the court erred on the ruling of Mutual Releases?

Throughout the history of the parties divorce, Sean has requested several financial and business records from Ms. Braunstein, who kept the business computer, after the business closed. Ms. Braunstein was the Treasurer on business the parties operated

jointly. Despite these requests, Sean was unable to obtain any of the information regarding the business. As such, Sean asked the court to remove the clause[31] of the parties mutually releasing one another. As stated in the October 29, 2018 hearing, the parties went through a personal bankruptcy, and any remaining debts that their business had, could potentially still be sought after, as their businesses did not go through bankruptcy, despite Attorney Santoro's statement.

XXVII. Whether or not the Court erred in recognizing that appellant was being held solely financially responsible for the minor child and required appellant to pay for private kindergarten?

In the final parenting orders, the court orders that Rowyn go to school in Pembroke Public School District. Ms. Braunstein wanted to leave Rowyn in her current school. When Ms. Braunstein refused to update the USO, Sean later found out that his cost share would actually double, from when Attorney Santoro informed the court what the cost share would be[32]. Sean filed a motion to reconsider asking the court to either agree to the changes, or to enforce the order for public school. The court denied the request, and as a result, Sean was put in several financial predicaments due to the constant change of tuition costs, ranging form $32/week to $137/week. Since Ms. Braunstein did

[31] Trans Vol 3, pg 145, ln 12-20

[32] Trans 11/14/17 pg 18, Ln 2-16

not keep Sean current of the financial changes, the school would continuously send emails saying that Rowyn's cost share was suddenly increasing, without advance notice, which impacted his ability to budget being on a fixed budget.

XXVIII. Whether or not the Court erred in not finding the other party in default after several motions to compel, and conditional defaults were filed, or allowing opposing counsel to provide changed proposed orders moments before walking into court?

Each Motion to Compel that was submitted to the court was either granted, or granted in part. Despite this, each time, no answer from Ms. Braunstein's attorney, regarding the status of the information, when information was finally provided, it was minimal, and extremely rushed. The court erred in finding Ms Braunstein in contempt for not providing releases, correct data, and full disclosures.

XXIX. Whether or not the Court erred in not fully reading the GAL Comprehensive report, and hearing testimony, showing significant concerns that were raised?

From the Temporary Hearing, until the Final Financial hearing, the orders that were presented for Parenting, and recommendations from the GAL that were turned into orders, by the prior Judge, were essentially ignored by the income Judge.

Sean was transparent with all entities' he worked with, as such, the prior Judge ruled that he have Legal Residency, and the GAL supported Rowyn going to Hooksett Public School System. Several of the orders contradict what the GAL recommended, and as such, became confusing for both parties.

XXX. Whether or not the Court erred in equitable division of cash value on a Whole Life Policy that was owned and paid since its inception by appellant?

The Court erred in allowing a cash asset to solely go to one individual, despite all other marital cash being divided equally. Sean owned the Whole Life Insurance Policy, and as such, should have been entitled to half of the total value, which was $2,512. The court denied his request for reconsideration.[33]

XXXI. Whether or not the Court erred in allowing testimony be credible during a financial hearing, without evidence that was requested during Interrogatories?

Sean requested several documents to support his case, and was unable to obtain them from Ms. Braunstein. As such Sean requested the court in a Motion in Limine, to refuse any testimony that pertained to financial matters. Sean argues that Ms. Braunstein discussed her reasoning for lowering her hours, and pay, which was in direct conflict of her earlier testimony from the

[33] See App, Vol 1, Pg 173

August 8, 2018 Hearing[34]. Since the court never directly provided an approval or a denial, Sean's ability to have due process, and validate testimony was denied. He further was not provided with such requests that were stated earlier in this brief.

XXXII. Whether or not the Court erred in not submitted case to the Complex Case Docket?

On several occasions the court appeared to be overwhelmed and frustrated with the specifics of this case, specifically around Bankruptcy Protections, VA Benefits, including a VA Home Loan, and the complexity of whether or not the Court Rules were adhered to. While most Judges are provided with a certain level of discretion, it should not be done in such a matter that appears to be out of sync with their own Mandatory Rules. The vast majority of veterans today need more support and knowledgeable justices in the courtroom, as each court appears to have different standards for them. Veterans who are not retirees, and did not waive retirement pay to receive disability pay, and therefore, have no other forms of subsistence. Yet, trial courts ignore federal law, blindly cite to *Rose v. Rose* as authority, and continue to take veterans' disability pay from the veteran. As such, this case should have been referred by the presiding judge to the Complex Case Docket, where it could have had the time it needed to untangle the complexity in each issue.

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[34] Trans Vol 2, Pg 121, Ln 1-9

Statement of the Case

Sean is a disabled veteran. He served in the United States Army from August 2003 to June 2007. After a several appeals, in 2010, the Veterans Administration (VA) back dated Sean's claims and determined he was 70% as of the date of his last day of service, and then was increased to 100% as of the letter, making him disabled due to a service-connected condition. In 2012, the VA rated him at 100% Permanent and Total (P&T.)

Issues

Among the issues likely to be addressed in this case is the rule concerning the absolute preemption of federal law over state courts in the disposition of VA disability benefits. Under it's enumerated Article I "Military Powers", Congress provides veterans disability benefits as a personal entitlement to the veteran. The Supremacy Clause provides that federal laws passed pursuant to Congress' enumerated Article I powers absolutely preempt all state law. Under this power, Congress has prohibited *any legal process* from being used to deprive veterans of their disability benefits. 38 U.S.C. § 5301.Unless Congress has *lifted* the absolute preemption provided by federal law in this area, state courts and state agencies simply have no authority, or jurisdiction, to direct that such benefits be seized or paid over to someone other than their intended beneficiary. 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; and (2) spousal support and child support, through

the Child Support Enforcement Act (CSEA), 42 U.S.C. § 659. 42 U.S.C. § 659 was amended to specifically *exclude* VA disability benefits that are paid to non-retiree disabled veterans – those veterans who had not retired, and therefore could not have waived retired or retention pay to receive disability benefits. See also *Howell v. Howell*, 137 S. Ct. 1400 (2017).

Where a state court is preempted by controlling federal law, the state court has no authority to issue an order that exceeds its jurisdictional control. When federal law, through the Supremacy Clause preempts state law, as it does in the area of divorce in regard to veterans' benefits, then a state court lacks jurisdiction to issue a contrary award. "State courts may exercise jurisdiction and authority over veteran's disability pay to satisfy a child support and/or spousal support award, *but only up to the amount of his or her waiver of retired pay.*" *In re Marriage of Cassinelli*, 20 Cal App 5th 1267, 1277; 229 Cal Rptr 3d 801 (2018). See also 42 U.S.C. §§ 659(a), (h)(1)(A)(ii)(V), (B)(iii); 5 C.F.R. § 581.103 (2018) (emphasis supplied). *Cassinelli* was a decision on remand after *Howell, supra.*

VA and Federal disability benefits have also been deemed constitutionally protected property rights under the Fifth and Fourteenth Amendments to the Constitution. *Cushman v. Shinseki*, 576 F.3d 1290 (Fed. Cir. 2009) and *Robinson v. McDonald*, 28 Vet. App. 178, 185 (U.S. 2016) (federal veterans' benefits are constitutionally protected property rights). See also *Morris v Shinseki*, 26 Vet. App. 494, 508 (2014) (same).

Petitioner has presented the arguments that demonstrate federal law preempts state law, and that his constitutional rights have been infringed upon by the trial court, incorrectly calculating his support order, forcing him to pay for privatized schooling, and ordering him to pay Ms. Braunstein's attorney's fee for contempt.

Finally, *Rose* was wrongly decided, and it is an outdated case that does not even apply to the factual circumstances of this case because Congress amended 42 U.S.C. § 659 to add subsection (h)(1)(B)(iii) after *Rose*. Most importantly, all of the issues of law presented by this case are of national significance due to the increasing number of disabled veterans whose main or only source of income are disability benefits.

The purpose of Congress in enacting 38 U.S.C. § 5301 was to "prevent the deprivation and depletion of the means of subsistence of veterans dependent upon these benefits as the main source of their income." *Rose*, 481 U.S. at 630. For a very limited time (after *Rose v. Rose*), the *judicial* allowance to state courts to force veterans to use their disability pay for child support and spousal support appears to have applied across the board to all disabled veterans. However, this worked an inequitable result on a certain subset of disabled veterans; namely those, like Sean in this case, who had been injured and rendered disabled and unable to serve before they had acquired years in service sufficient to also have the financial support and economic security of retirement pay. Now, this subset of veterans, especially due to the last 3 decades of up-

tempo, high-volume deployment and military operations in which the U.S. military has been involved represents the largest population of disabled veterans in existence. The significance of this cannot be understated.

Indeed, the country is no longer only faced with the waning population of disabled veterans from the post-Vietnam era and prior. *Rose* was, as noted, a 1987 case, and it necessarily addressed an entirely different population of aging and disabled veterans. Since 1990, there has been a 46% increase in disabled veterans, placing the total number of veterans with service-connected disabilities *above* 3.3 million as of 2011. VA, Trends, *supra*. By 2014, the number of veterans with a service-connected disability was 3.8 million. See U.S. Census Bureau, Facts for Features at: http://www.census.gov/newsroom/facts-for-features/2015/cb15-ff23.html. As of March 22, 2016, the number of veterans receiving disability benefits had increased from 3.9 million to 4.5 million. *Id.* See also VA, National Center for Veterans Analysis and Statistics, What's New at: https://www.va.gov/vetdata/veteran_population.asp. Also, since 1990, there has been a remarkable increase in veterans with disability ratings of 50 percent of higher, with approximately 900,000 in 2011. VA, Trends, *supra* at slide 6. That same year, 1.1 million of the 3.3 million total disabled veterans had a disability rating of 70 percent or higher. *Id.*

Finally, the disability numbers and ratings for younger veterans has markedly inclined. Conducting an adjusted data search, 570,400 out of 2,198,300 non-institutionalized civilian veterans aged 21 to 64 had a VA service-connected disability at 70% or higher in the United States in 2014. See Erickson, W., Lee, C., von Schrader, S. Disability Statistics from the American Community Survey (ACS) (2017). Data retrieved from Cornell University Disability Statistics website: www.disabilitystatistics.org. Thus, according to this data analysis, half of the total numbers of veterans with a disability rating *greater* than 70% are between 21 and 64 years of age.

Per the National Veterans Foundation, there are over 2.5 million Military Members served in Iraq and Afghanistan. Of those, nearly 6,600 were killed, and over 770,000 have filed disability claims. See http://www.nvf.org/staggering-number-of-disabled-veterans/. Yet another study shows nearly 40,000 service members returning from Iraq and Afghanistan have suffered traumatic injuries, with over 300,000 at risk for PTSD or other psychiatric problems. These veterans face numerous post-deployment health concerns, sharing substantial burdens with their families. These staggering numbers are, in part, a reflection of the nature of wounds received in modern military operations, modern medicine's ability to aggressively treat the wounded, and modern transportation's ability to get those most severely wounded to the most technologically advanced medical treatment facilities in a matter of hours. Fazal, Dead Wrong? Battle Deaths, Military

Medicine, and Exaggerated Reports of War's Demise, 39:1 International Security 95 (2014), pp. 95-96, 107-113. Physical injuries in these situations are understandably horrific. *Id.* See also Kriner & Shen, Invisible Inequality: The Two Americas of Military Sacrifice, 46 Univ. of Memphis L. Rev. 545, 570 (2016). However, many veterans also suffer severe psychological injuries, some attendant to witnessing the sudden arbitrariness and indiscretion of war's violence. Zeber, Noel, Pugh, Copeland & Parchman, Family perceptions of post-deployment healthcare needs of Iraq/Afghanistan military personnel, 7(3) Mental Health in Family Medicine 135-143 (2010). As one observer has stated: "assignments can shift rapidly from altruistic humanitarian work to the delivery of immense deadly force, leaving service members with confusing internal conflicts that are difficult to integrate. During deployments, even medical personnel are at times compelled to use deadly force to protect themselves, their patients, and their fellow soldiers." Finley, Fields of Combat: Understanding PTSD Among Veterans of Iraq and Afghanistan (Cornell Univ. Press 2011).

Combat-related post-traumatic stress symptoms (PTSS), with or without a diagnosis of post-traumatic stress disorder (PTSD) can negatively impact soldiers and their families. These conditions have been linked to increased domestic violence, divorce, and suicides. Melvin, Couple Functioning and Posttraumatic Stress in Operation Iraqi Freedom and Operation Enduring Freedom – Veterans and Spouses, available from PILOTS: Published International Literature

On Traumatic Stress. (914613931; 93193). See also Schwab, et al., War and the Family, 11(2) Stress Medicine 131-137 (1995). Such conditions are exacerbated when returning veterans must face stress in their families caused by their absence. Despite the amazing cohesion of the military community and the best efforts of the larger military family support network, separations and divorces are common. Families, already stretched by this extraordinary burden, are often pushed beyond their limits causing relationships to break down. Long deployments, the daily uncertainty of not knowing whether the family will ever be reunited, and the everyday travails of civilian life are difficult enough. A physical disability coupled with mental and emotional scars brought on by wartime environments make the veteran's reintegration with his family even more challenging. Finley, *supra.*

This younger population of disabled veterans are not entitled to retirement pay because they were injured or wounded during the first few years of their service to the country. Like Sean, who only served for approximately 4 years, many disabled veterans in this population do not and will never have the financial security and economic assurances of a retirement pension and all the other benefits that come with being classified as retired. When it became apparent that this growing subset of disabled veterans were also being subjected to having their disability benefits taken by state courts to satisfy support orders in domestic relations cases, Congress acted to differentiate this class of veterans by amending the CSEA and adding 42 U.S.C. § 659(h)(1)(A)(ii)(V) and (h)(1)(B)(iii)

distinguishing the two subsets of veterans and the two classes of disability benefits, those which are available to former spouses and minor children from the former group of retiree veterans and those that are not from the latter group of non-retiree veterans. Because federal law has always preempted state law in this very specific circumstance, any state-court domestic relations order awarding support (child and/or spousal) would be void and unenforceable, both going forward and retroactively. In this case, all of Petitioner's federal disability benefits are specifically excluded from consideration as remuneration for employment, and therefore as income, by 42 USC 659(a); (h)(1)(A)(ii)(V); and (h)(1)(B)(iii). As such, these benefits are jurisdictionally protected from *any legal process* whatever by 38 U.S.C. § 5301.

Federal law is very clear and has been changed since *Rose v. Rose* to protect veterans' rights and enforce federal law. Yet, state courts across the country continue to blindly cite *Rose* for the proposition that states have unfettered access to these disability benefits no matter what the income and status of the disabled veteran. This has caused a systemic destruction of the ability of disabled veterans to sustain themselves and their families. The greatest tragedy, of course, is the effect that this has had on the veteran community as a whole. Homelessness, destitution, alcoholism, drug abuse, criminality, incarceration and, in too many cases, suicide, are a direct result of the consequences of a blind adherence to outdated and no longer viable federal law that fails to take account of the reality of current circumstances.

A state court that rules incorrectly on a matter preempted by federal law acts in excess of its jurisdiction. Such rulings, and the judgments they spring from, including all subsequent contempt and related orders (which would cover the contempt award here) 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 US (4 Wheat) 316, 436; 4 L Ed 579 (1819) (MARSHALL, CJ) (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*

CONCLUSION

Article I of the Constitution has given Congress plenary authority to make all provisions for the supply, maintenance and welfare of the service men and women of the armed forces so that

they may operate with the skill, dedication and concentration required in the most dangerous and unpredictable of environments. As explained in this brief, Congress has put in place the apparatus to protect our veterans both during and after their service to our country. These laws are based on perhaps the most powerful of those enumerated powers given to Congress by the Constitution, the Military Powers Clauses. Congress has been accorded no greater deference by this Court than in these premises.

The Court's decision in this case will not only impact three lives (Sean, Rowyn & Ms. Braunstein), it will also have a potential impact on numerous other New Hampshire families where individuals have been denied the correct due-process based on inconsistencies in the lower family courts

While it is arguably true that the New Hampshire Legislature may need to review and update statues that this pertain to, based on the current state of our law, we ask the court to review, and provide the following relief requested below that the trial courts

1. We ask that the Court to honor its Mandatory Rules, and to obtain detailed records as originally ordered.

2. We ask the Court to enforce the Rules of the Trial Court in terms of required documentation, information

regarding trusts and complete responses to interrogatories that are outstanding.

3. We ask the Court to reverse rulings that place Sean in contempt regarding child support; and calculate child support off of Sean's disposable income, per Federal Law.

4. We ask the court to reverse, and GRANT the request to remove Mutual Releases.

5. We ask the court to reverse the trial court orders, which required Sean to pay for private kindergarten,

6. We ask the court to grant and equitably divide the cash value of the Life Insurance Policy that Sean owned, of $2,512. Awarding each party $1,256.

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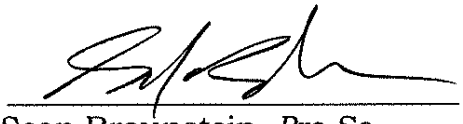
7. Any other relief that is equal and just.

Respectfully Submitted,
Sean Braunstein, *Pro Se*

28 Aug 2019
Dated



Sean Braunstein, *Pro Se*
56 Post Road, Hooksett, NH
603-396-8293

REQUEST FOR ORAL ARGUMENT

I, Sean Braunstein, request the opportunity to be heard at oral argument. Sean sees this matter as a case with updated information, with a current opinion, supporting the facts, from the United States Supreme Court Justices. The issues raised in this brief are of sufficient magnitude that the full court should consider its merits.

CERTIFICATIONS

I hereby certify that the word count is no more than 9,500 words.

I hereby certify that on August 28, 2019, ONE (1) copy of the foregoing as sent to the Court Appointed GAL, Attorney Deborah Mulcrone, and to Counsel for Jericka Braunstein, Attorney Anthony Santoro.

28 Aug 2019
Dated

Sean Braunstein, Pro Se