



Uploaded to the VFC Website

▶▶▶ 2019 ◀◀◀

This Document has been provided to you courtesy of Veterans-For-Change!

Feel free to pass to any veteran who might be able to use this information!

For thousands more files like this and hundreds of links to useful information, and hundreds of "Frequently Asked Questions, please go to:

[Veterans-For-Change](#)

If Veterans don't help Veterans, who will?

Note:

VFC is not liable for source information in this document, it is merely provided as a courtesy to our members & subscribers.



NOTICE: THIS DOCUMENT
CONTAINS SENSITIVE DATA

IN THE DISTRICT COURT OF EL PASO COUNTY, TEXAS

388TH JUDICIAL DISTRICT

IN RE: IN THE MATTER OF
THE MARRIAGE OF

S. [REDACTED]

AND

MICAH PAUL LAVIGNE

AND IN THE INTEREST OF
S.J.I.,
A CHILD

§
§
§
§
§
§
§
§
§
§
§

CAUSE NO. 2016DCM5370

DUE PROCESS AFFIDAVIT

THE STATE OF TEXAS
COUNTY OF

EL PASO

BEFORE ME, the undersigned authority, on this day personally appeared MICAH PAUL LAVIGNE, who swore or affirmed to tell truth, and stated as follows:

"My name is MICAH PAUL LAVIGNE. I am of sound mind and capable of making this sworn statement. I have personal knowledge of the facts written in this statement. I understand that if I lie in this statement I may be held criminally responsible. This statement is true.

1) **45 Code of Federal Regulations § 302.56** provides guidelines for setting child support awards. Pursuant to paragraph (f), the state of Texas must provide me a rebuttable presumption, in any judicial or administrative proceeding for the award of child support, that the amount of the award which would result from the application of the Texas Family Code guidelines established in **§ 154.062(b)(5) & § 154.066**, for both setting and modifying child support award amounts is the correct amount to be awarded. I have also attached my completed *Challenge to Constitutionality of a State Statute* Form. My subsequent assertions listed below that rebut TFC **§ 154.062(b)(5)** shall state the amount of support that should be required under appropriate & just procedural due process guidelines and include the required justification proof:

2) I am a U.S. Army Specialist (SPC) placed on the Temporary Disability Retirement List (TDRL), who served

his country honorably for almost 8 years as evidenced by my DD-214. Pursuant to **38 CFR 3.750(a)** "*Definition of military retired pay. For the purposes of this part, military retired pay is payment received by a veteran that is classified as retired pay by the Service Department, including retainer pay, based on the recipient's service as a member of the Armed Forces*". By law, I do not waive a portion of military retired pay in order to receive my Department of Veterans Affairs (VA) service-connected disability compensation benefit award. I am a 90% disabled veteran since February 2016, as evidenced in my latest VA Summary of Benefits letter. As evident on the right side of my attached redacted Retirement Account Statement (RAS), and as legally defined in TFC **§ 8.055 AMOUNT OF MAINTENANCE (2)(a-1)(2)(F)** and **10 U.S.C. § 1408(a)(4)(B)**, my Title 38 disposable retired pay is \$0.00 for compliance with any division of property or child/spousal support consideration by the state of Texas and does show a congressional intent to exempt such benefits from a contentious legal process outside the exclusive jurisdiction of the VA courts established in the **Veteran Judicial Review Act of 1988**.

3) 42 U.S.C. § 659 § (a) & (h)(1)(B)(iii) bars consent of the United States to income withholding, garnishment, and similar proceedings for enforcement of child and spousal support obligations by the state of Texas with any of my service-connected disability compensation benefit award provisioned by the Secretary of the Department of Veterans Affairs since I do not nor have I ever waived a portion of military retired pay in order to receive such. Also, **5 C.F.R. § 581.103 (c)(7)** prohibits the state of Texas from garnishing my VA service connected disability compensation benefits award.

Barred consent of my VA Award is further confirmed in **DD Form 2293, APPLICATION FOR FORMER SPOUSE PAYMENTS FROM RETIRED PAY**: "*I request payment of: ... (2) Child support in the amount of \$ _____ per month.*" ... "*I hereby acknowledge that any payment from me must be paid from disposable retired pay as defined by the statute and implementing regulations.*" ... "**IMPORTANT NOTE: Making a false statement or claim against the United States Government is punishable. The penalty for willfully making a false claim or false statement is a maximum fine of \$10,000 or maximum imprisonment of 5 years or both (18 USC 287 and 1001).**"

4) 5 C.F.R. §§ 581.102 & 581.401 as well as **15 U.S.C. §§ 1672 & 1673** establishes that the "*aggregate disposable earnings*", when used in reference to the amounts due from, or payable by, the United States or the District of Columbia which are garnishable under the **Consumer Credit Protection Act** for child and spousal support, are the obligor's remuneration for employment. Black's Law Dictionary 1322 (8th ed. 2004) defines "*remuneration*" as "[p]ayment; compensation" and "*employment*" as "work for which one has been hired and is being paid," id. 545; see also id. at 1180, "*personal service*" as "*an economic service ... involving personal effort of an individual*". Therefore, reading **15 U.S.C. §§ 1672 and 1673** and **42 U.S.C. § 659** in tandem indicates that because my VA disability benefits award is not premised upon remuneration for employment, it is not "compensation paid or payable for personal services" and so does not count toward my aggregate disposable earnings. My VA award is legally defined to be "*not remuneration for employment*". I have attached a copy of my **Affidavit of Indigence**.

26 U.S.C. § 104(b)(2)(D) also codifies my VA disability **COMPENSATION** as "*not gross income*".

5) In 1998, federal Commissioner for the Office of Child Support Enforcement, David Gray Ross, published **Information Memorandum IM-98-03** to all state Title IV-D Agencies. IM-98-03 is entitled *Financial Support for Children from Benefits Paid by Veterans Affairs* and is a federal OCSE policy directive that instructs the state of Texas on how to properly submit a claim for apportionment to the Department of Veterans Affairs for those veterans whose benefits are legally defined as "*not remuneration for employment*".

Pursuant to **38 CFR 3.458**, Veteran's benefits will not be apportioned: (g) "*If there are any children of the veteran not in his or her custody an apportionment will not be authorized unless and until a claim for an apportioned share is filed in their behalf.*"

ROSE V. ROSE, 481 U. S. 619 (1987) - REBUTTAL

From the **U.S. Supreme Court** ruling of *ROSE V. ROSE, 481 U. S. 619 (1987)*, the late Associate Justice Antonin Scalia, concurring in part and concurring in the judgment, writes "I would not reach the question whether the State may enter a support order that conflict with an apportionment ruling made by the Administrator [now Secretary of the Department of Veterans Affairs], or whether the Administrator may make an apportionment ruling that conflicts with a support order entered by the State. Ante, at 627. Those questions are not before us, since the Administrator has made no such ruling." ... "*I am not persuaded that if the Administrator makes an apportionment ruling, a state court may enter a conflicting child support order. It would be extraordinary to hold that a federal officer's authorized allocation of federally granted funds between two claimants can be overridden by a state official.*" Page 481 U.S. 641

Justice Scalia continues, "*I also disagree with the Court's construction of 38 U.S.C. 211(a), which provides that '[d]ecisions of the Administrator on any question of law or fact under any law administered by the Veterans' Administration providing benefits for veterans and their dependents . . . shall be final and conclusive and no other official or any court of the United States shall have power or jurisdiction to review any such decision.'* The Court finds this [§ 211] inapplicable because it does not explicitly exclude state-court jurisdiction, as it does federal; ante, at 629." Ibid.

"Had the Administrator granted or denied an application to apportion benefits, state court action providing a contrary disposition would arguably conflict with the language of § 211 making his decisions 'final and conclusive' -- and, if so, would, in my view, be preempted, regardless of the Court's perception that it does

not conflict with the 'purposes' of § 211. But there is absolutely no need to pronounce upon that issue here. Because the Administrator can make an apportionment only upon receipt of a claim, Veterans' Administration Manual M21-1, ch. 26, § 26.01 (Aug. 1, 1979), and because no claim for apportionment of the benefits at issue here has ever been filed, the Administrator has made no 'decision' to which finality and conclusiveness can attach." ... "The Court again expresses views on a significant issue that is not presented."
Page 642

It is very remarkable here that immediately following the noted Rose deficiencies, Congress passed the previously noted **Veterans Judicial Review Act of 1988** in order to grant exclusive jurisdiction of the VA Apportionment Claim process within the newly created veteran court system. § 211 was repealed and Congress subsequently codified § 511 in 1991 to overcome the noted and lacking exclusivity language. § 511 now EXPLICITLY EXCLUDES state-court jurisdiction.

Another noteworthy shortcoming discussed in the Rose case; *"the implementing regulations, which simply authorize apportionment if 'the veteran is not reasonably discharging his or her [child support] responsibility . . . ,'* contain few guidelines for apportionment, and no specific procedures for bringing claims." Page 481 U.S. 619 And continuing, *"it seems certain that Congress would have been more explicit had it meant the VA's apportionment power to displace state court authority."* Pages 619-620 Those sparse guidelines were resolved in 1998 when **IM-98-03** was issued nationwide, with congressional oversight, to every state and commonwealth Title IV-D Agency. Four specific instructions for proper submission of a VA Apportionment claim application, **Form 21-0788**, by the states are now to be followed:

1. The IV-D agency (state child support enforcement office) should write the Department of Veterans Affairs using agency letterhead to request an apportionment review. The letter should be signed by both the appropriate IV-D official and the custodial parent. The letter should be addressed to the VA Regional Office servicing that veteran's benefits. Use the toll free number to determine which regional VA office is appropriate (1-800-827-1000).
2. Complete and attach **VA Form 21-4138 "Statement in Support of Claim."** The normal VA procedure is to request this after receiving an apportionment application, so time can be saved by doing this as part of the first step. This is where information regarding income and net worth may be provided.
3. **Attach a copy of the current support order**, to assist VA in the development of the apportionment award.

4. **Attach a copy of the arrearage** determination sheet, payment ledger, payment records, etc.

What's more and from 1997, the **VA Office of General Counsel Precedent Opinion 4-97** holds that a regional office must not consider a state court support order as an apportionment claim.

Additional findings of OGC 4-97, "*11. Pursuant to 38 U.S.C. § 7104(a), the Board has jurisdiction to review [a]ll questions in a matter which under section 511(a) of this title is subject to decision by the Secretary. Section 511(a) authorizes the Secretary to 'decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents or survivors of veterans.'* See also 38 C.F.R. § 20.101(a) (Board's jurisdiction extends to review of all decisions 'under a law that affects the provision of benefits by the Secretary to veterans or their dependents or survivors.'). Thus, the Board's appellate jurisdiction is generally coextensive with the Secretary's authority under 38 U.S.C. § 511(a) to render initial decisions."

Since the 1987 Rose decision, U.S. Congress has actively legislated to preclude both the state and it's officials from overriding Apportionment rulings between family claimants. However, this is now my instant case question presented to the state of Texas, in affidavit form, that must be answered without disregard and contempt of presented post 1987 federal laws, regulations, directives and high court rulings.

It must be reiterated here that the Rose v. Rose SCOTUS ruling was based upon the fact that disabled veteran Charlie Wayne Rose was never afforded a proper VA Apportionment claim review. "*Those questions are not before us, since the Administrator has made no such ruling.*" **A VA Apportionment Claim ruling was never before the 1987 Court!** However, in my evidence and assertions before you, I demand that I be afforded my VA Apportionment claim review pursuant to **IM-98-03**.

6) Again, **38 U.S.C. § 511** is the **Decisions of the Secretary; finality**, and such decisions lie solely with the Secretary of the Department of Veterans Affairs, not the state of Texas. Section 511(a) was signed into the U.S. Code in 1991. Pursuant to the Secretary's authority in **38 U.S.C. § 103, § 511(a), § 3104, § 3702, § 3710, & § 5307** and **38 CFR Sections 3.450-3.458** and **§ 36.4322**, "*The Secretary shall decide all questions of law and fact necessary to a decision by the Secretary under a law that affects the provision of benefits by the Secretary to veterans or the dependents ... of veterans.*" ... "*the decision of the Secretary as to any such question shall be final and conclusive and may not be reviewed by any other official or by any court, whether by an action in the nature of mandamus or otherwise.*"

7) Under **38 USC § 3104** I have been found with a "*serious employment handicap*" hindering my abilities to find gainful employment and am eligible for services of vocational rehabilitation under the

Secretary of Veteran Affairs. **5 CFR § 581.104(f)** indicates that education and vocational rehabilitation benefits for veterans and eligible persons under chapters 30, 31, 32, 35, and 36 of Title 38, United States Code, and chapters 106 and 107 of Title 10, United States Code are not subject to garnishment. These benefits are also "*not remuneration for employment*" and therefore, by definition, not EARNINGS.

8) **38 U.S.C. § 5301** is the *Nonassignability and Exempt Status of Benefits*. My VA service connected disability benefits award is protected by **38 U.S.C. § 5301**. **38 U.S.C. § 5301(a)** states that: "*(1) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary.*"

From the **VA Office of General Counsel, Precedent Opinion 2-2002** Nonassignability of Benefits—38 U.S.C. § 5301(a) Citation:

"4. An **ASSIGNMENT** is a transfer of property or some other right from one person to another that confers a complete and present right to the assignee in the subject matter of the assignment. 6 Am. Jur. 2d Assignments § 1 (1999); see also Black's Law Dictionary 115 (7th ed. 1999) (transfer of rights or property). The term 'assignment' ordinarily refers to a transfer of intangible rights in property, as opposed to transfer of property itself, 6 Am. Jur. 2d Assignments § 1 (1999), i.e., a transfer of a right to receive payments, rather than a transfer of the funds themselves. An assignment is by its nature a voluntary transfer. 6 Am. Jur. 2d Assignments § 2 (1999)."

"(3)(A) This paragraph is intended to clarify that, in any case where a beneficiary entitled to compensation, pension, or dependency and indemnity compensation enters into an agreement with another person under which agreement such other person acquires for consideration the right to receive such benefit by payment of such compensation, pension, or dependency and indemnity compensation, as the case may be, except as provided in subparagraph (B), and including deposit into a joint account from which such other person may make withdrawals, or otherwise, such agreement shall be deemed to be an **ASSIGNMENT** and **IS PROHIBITED**."

"(3)(C) Any **AGREEMENT** or arrangement for collateral for security for an agreement that is prohibited under subparagraph (A) is also **PROHIBITED** and is **VOID** from its inception." [emphasis is mine]

9) From *Veterans for Common Sense v. Shinseki*, 678 F.3d 1013, 1016 (9th Cir. 2012), "*We conclude that we lack jurisdiction to afford such relief because Congress, in its discretion, has elected to place judicial review of claims relate to the provision of veterans' benefits beyond our reach and within the exclusive purview of the United States Court of Appeals for Veterans Claims and the Court of Appeals for the Federal Circuit... Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause.*' *Ex parte McCardle*, 74 U.S. (7 Wall.) 506, 514, 19 L.Ed. 264 (1868) ... we conclude that granting VCS its requested relief would transform the adjudication of veterans' benefits into a contentious, adversarial system--a system that Congress has actively legislated to preclude. See *Walters v. Nat'l Assn. of Radiation Survivors*, 473 U.S. 305, 323-24, 105 S.Ct. 3180, 87 L.Ed.2d 220 (1985). *The Due Process Clause does not demand such a system.*"

Anestis v. United States, No. 13-6062, 8 (6th Cir. 2014), "*In 2012, the Ninth Circuit synthesized the case law and concluded that '[38 U.S.C.] § 511 precludes jurisdiction over a claim if it requires the district court to review "VA decisions that relate to benefits decisions," including "any decision made by the Secretary in the course of making benefits determinations.*"

Rankin v. Howard, No. 78-3216. 633 F.2d 844 (9th Cir.1980) "*...when a judge knows that he lacks jurisdiction, or acts in the face of clearly valid statutes or case law expressly depriving him of jurisdiction, judicial immunity is lost. See Bradley v. Fisher*, 80 U.S. (13 Wall.) at 351 (*'when the want of jurisdiction is known to the judge, no excuse is permissible*'); *Turner v. Raynes*, 611 F.2d 92, 95 (5th Cir.1980) (*Stump is consistent with the view that 'a clearly inordinate exercise of unconferrred jurisdiction by a judge-one so crass as to establish that he embarked on it either knowingly or recklessly-subjects him to personal liability*')."

Mansell v Mansell, 490 U.S. 581 (1989) U.S. Supreme Court "*We realize that reading the statute literally may inflict economic harm on many former spouses. But we decline to misread the statute in order to reach a sympathetic result when such a reading requires us to do violence to the plain language of the statute and to ignore much of the legislative history. Congress chose the language that requires us to decide as we do, and Congress is free to change it.*" Page 490 U.S. 581

10) **Social Security Act § 207** states at **42 U.S.C. § 407 (a)**: "*The right of any person to any future payment under this subchapter shall not be transferable or assignable, at law or in equity, and none of the moneys paid or payable or rights existing under this subchapter shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law.*"

11) My Social Security Disability Insurance (SSDI) payments are benefits based upon a complex weighted formula scheme of my past average covered earnings over a period of years specifically termed "*average indexed*

monthly earnings" (AIME). The formula applied to my AIME to calculate my primary insurance amount (PIA); the base figure that Social Security Administration (SSA) uses in setting my monthly insurance benefit payment. By legal definition, I am disabled and physically unable to render any service, of whatever nature, as an '*employee*'. Neither the SSA nor the VA are my '*employers*'. I have no employment. Therefore, all my disability benefits are not remuneration for employment & do not count toward my '*aggregate disposable earnings*'.

It must be noted here that the following Texas Family Code definitions are preempted, in my specific child support case, by the prevailing federal U.S. Codes previously cited. Specifically, **TFC § 101.010, § 101.011, & § 101.012**. Therefore, reflecting on the noted definitions in **5 CFR § 581.401 & 15 U.S.C. § 1672** and reading the CCPA "*Withholding Limits*" warning, "*For state orders, the employer/income withholder may not withhold more than the lesser of: 1) the amounts allowed by the Federal Consumer Credit Protection Act (15 USC §1673(b)); or 2) the amounts allowed by the state of the employee/obligor's principal place of employment.*", **42 U.S.C. § 659(a)** in tandem indicates that because both my VA Disability Compensation Award and Social Security Disability Insurance (SSDI) benefits are not paid to me as an '*employee*', they are not '*compensation paid or payable for personal services*'.

12) In addition to previously cited federal civil rights, any spousal or child support calculation must not take into consideration any of my VA award as this would violate numerous potential **18 U.S. Code** violations, including **Sections 241, 246, 249(a)(2), 371, 641, & 666**.

15 U.S.C. § 1681 establishes accuracy and fairness of credit reporting known formally as the ***Fair Credit Reporting Act***. Section 1681n is the Civil liability for willful noncompliance and Section 1681o is the Civil liability for negligent noncompliance of this Act. Section 1681p states "An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy..."

National Security implications may well be indicated if the state of Texas unjustly utilizes my VA disability benefits award in establishment calculations regarding my divorce decree including division of property, child and/or spousal support as discussed in ***McCarty v. McCarty, 453 U.S. 210 (1981)***. The refusal of a Texas court judge to accept higher federal court rulings on the limitations of their jurisdiction in matters of National Security can be seen as a treasonous act under the color of law. For in doing so, such disregard of federal laws and regulations interferes with the current Congressional veterans disability benefit scheme which serves as an important inducement for the nation's voluntary military service structure.

18 U.S.C. Section 2381 - Treason must be noted in examining the engrossed language found in **§ 154.062(b)(5)** of the Texas Family Code. It totally disregards any procedural due process rights each Texas disabled veteran must be granted in every judicial or administrative child support proceeding.

13) Pursuant to **5 C.F.R. § 581.401**, my true "aggregate disposable earnings" are not to include my VA benefits award, for demonstrated lack of subject matter jurisdiction by the family court, in both establishment or attachment in any legal process.

14) Assertively, pursuant to **45 CFR 302.56(g)**, I refuse to pay any child support from my personal monthly Social Security Disability Insurance payments. In addition, I refuse to pay any child support from my VA benefits award until the state follows all the federal laws, regulations, and policy directives as contracted with the Federal Office of Child Support Enforcement and monitored by the Region VI Dallas, Texas office. I assert that my only legal support obligation will be and always continue to be strictly the TRICARE Standard Medical Insurance and monthly SSA payments provided directly to my son, until such a time my "*aggregate disposable earnings*" changes. U.S. Congress has seen to it that my son receives his monthly direct Social Security Administration payments and as evidenced in the attached recent certified copy of my son's **Acknowledgement of Benefits Letter** acquired from the SSA. **TFC §§ 154.132 & 154.133** clearly recognizes the federal prevailing laws and congressional scheme. They must be cited as such in my divorce decree.

Waco VA Regional Office will make an authorized ruling in accordance with the **Veterans Judicial Review Act of 1988** on any state alleged arrears based upon the child support order following a proper apportionment application submission by the Title IV-D Agency. The only jurisdiction for an appeal of the VA Apportionment ruling will be **Board of Veterans' Appeal** as stated in **VA Form 4107c**. Both the **Secretary of the Department of Health & Human Services** and the **Director of the Dallas Region VI OCSE** will receive a copy of this notarized affidavit, a copy of the attached **March 2016 Dear Colleague Letter** issued by DoJ. Along with a notification of the Texas Title IV-D Agency's intent of refusal to follow proper legal procedures, regarding this disabled veteran's federal civil rights.

15) Because Texas substantive due process totally disregards my federal procedural due process rights, and subsequently, denies me provisions of the Equal Protection Clause as asserted in this affidavit, I now demand that my divorce decree and subsequent child support orders be in accordance with my rights established in **38 U.S.C. § 5301(a)**. Until the state of Texas considers a 'just' and 'appropriate' child support order calculation with my VA award, I will be blatantly denied both unfettered full access to my VA disability benefits, SSDI payments and my protected federal civil rights from a contentious, adversarial system that U.S. Congress has actively legislated to preclude from such contempt."


[The person who has personal knowledge of this statement must sign it.
DO NOT SIGN this statement until you are in front of a notary.]

Micah Paul Lavigne

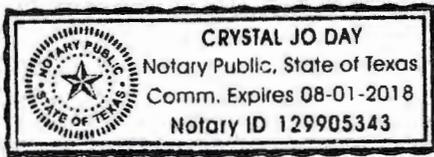
State of Texas

County of El Paso
[name of county where statement is notarized.]

SWORN to and SUBSCRIBED before me, the undersigned authority, on

the 15th day of September, 2016 year, by

Micah Paul Lavigne
[PRINT the first and last names of the person who is signing this affidavit.]



Notary Public, State of Texas [Notary's signature.]

Crystal Jo

[Notary's seal must be included.]

STYLED IN RE: SO EUN PARK VS MICAH PAUL LAVIGNE AN IN THE INTEREST OF S.J.I. A CHIIL

(e.g., John Smith v. All American Insurance Co; In re Mary Ann Jones; In the Matter of the Estate of George Jackson)

A civil case information sheet must be completed and submitted when an original petition or application is filed to initiate a new civil, family law, probate, or mental health case or when a post-judgment petition for modification or motion for enforcement is filed in a family law case. The information should be the best available at the time of filing.

1. Contact information for person completing case information sheet:	Names of parties in case:	Person or entity completing sheet is:
Name: _____ Email: _____ Address: _____ City/State/Zip: _____ El Paso, TX 79915 Signature: _____ State Bar No: _____	Plaintiff(s)/Petitioner(s): Micah Paul Lavigne Defendant(s)/Respondent(s): S. _____ State of Texas, Ken Paxton, Attorney General of Texas [Attach additional page as necessary to list all parties]	<input type="checkbox"/> Attorney for Plaintiff/Petitioner <input checked="" type="checkbox"/> Pro Se Plaintiff/Petitioner <input type="checkbox"/> Title IV-D Agency <input type="checkbox"/> Other: _____ Additional Parties in Child Support Case: Custodial Parent: S. _____ Non-Custodial Parent: Micah Paul Lavigne Presumed Father: _____

2. Indicate case type, or identify the most important issue in the case (select only 1):

Civil			Family Law	
Contract	Injury or Damage	Real Property	Marriage Relationship	Post-judgment Actions (non-Title IV-D)
Debt/Contract <input type="checkbox"/> Consumer/DTPA <input type="checkbox"/> Debt/Contract <input type="checkbox"/> Fraud/Misrepresentation <input type="checkbox"/> Other Debt/Contract: Foreclosure <input type="checkbox"/> Home Equity—Expedited <input type="checkbox"/> Other Foreclosure <input type="checkbox"/> Franchise <input type="checkbox"/> Insurance <input type="checkbox"/> Landlord/Tenant <input type="checkbox"/> Non-Competition <input type="checkbox"/> Partnership <input type="checkbox"/> Other Contract:	<input type="checkbox"/> Assault/Battery <input type="checkbox"/> Construction <input type="checkbox"/> Defamation Malpractice <input type="checkbox"/> Accounting <input type="checkbox"/> Legal <input type="checkbox"/> Medical <input type="checkbox"/> Other Professional Liability: <input type="checkbox"/> Motor Vehicle Accident <input type="checkbox"/> Premises Product Liability <input type="checkbox"/> Asbestos/Silica <input type="checkbox"/> Other Product Liability List Product: <input type="checkbox"/> Other Injury or Damage:	<input type="checkbox"/> Eminent Domain/Condemnation <input type="checkbox"/> Partition <input type="checkbox"/> Quiet Title <input type="checkbox"/> Trespass to Try Title <input type="checkbox"/> Other Property: Related to Criminal Matters <input type="checkbox"/> Expunction <input type="checkbox"/> Judgment Nisi <input type="checkbox"/> Non-Disclosure <input type="checkbox"/> Seizure/Forfeiture <input type="checkbox"/> Writ of Habeas Corpus—Pre-indictment <input type="checkbox"/> Other:	<input type="checkbox"/> Annulment <input type="checkbox"/> Declare Marriage Void Divorce <input type="checkbox"/> With Children <input type="checkbox"/> No Children Other Family Law <input type="checkbox"/> Enforce Foreign Judgment <input type="checkbox"/> Habeas Corpus <input type="checkbox"/> Name Change <input type="checkbox"/> Protective Order <input type="checkbox"/> Removal of Disabilities of Minority <input type="checkbox"/> Other:	<input type="checkbox"/> Enforcement <input type="checkbox"/> Modification—Custody <input type="checkbox"/> Modification—Other Title IV-D <input type="checkbox"/> Enforcement/Modification <input type="checkbox"/> Paternity <input type="checkbox"/> Reciprocal (UIFSA) <input type="checkbox"/> Support Order Parent-Child Relationship <input type="checkbox"/> Adoption/Adoption with Termination <input type="checkbox"/> Child Protection <input checked="" type="checkbox"/> Child Support <input type="checkbox"/> Custody or Visitation <input type="checkbox"/> Gestational Parenting <input type="checkbox"/> Grandparent Access <input type="checkbox"/> Parentage/Paternity <input type="checkbox"/> Termination of Parental Rights <input type="checkbox"/> Other Parent-Child:
Employment <input type="checkbox"/> Discrimination <input type="checkbox"/> Retaliation <input type="checkbox"/> Termination <input type="checkbox"/> Workers' Compensation <input type="checkbox"/> Other Employment:	Other Civil <input type="checkbox"/> Administrative Appeal <input type="checkbox"/> Antitrust/Unfair Competition <input type="checkbox"/> Code Violations <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Intellectual Property <input type="checkbox"/> Lawyer Discipline <input type="checkbox"/> Perpetuate Testimony <input type="checkbox"/> Securities/Stock <input type="checkbox"/> Tortious Interference <input type="checkbox"/> Other:			
Tax <input type="checkbox"/> Tax Appraisal <input type="checkbox"/> Tax Delinquency <input type="checkbox"/> Other Tax	Probate & Mental Health Probate/Wills/Intestate Administration <input type="checkbox"/> Dependent Administration <input type="checkbox"/> Independent Administration <input type="checkbox"/> Other Estate Proceedings <input type="checkbox"/> Guardianship—Adult <input type="checkbox"/> Guardianship—Minor <input type="checkbox"/> Mental Health <input type="checkbox"/> Other:			

3. Indicate procedure or remedy, if applicable (may select more than 1):

<input type="checkbox"/> Appeal from Municipal or Justice Court <input type="checkbox"/> Arbitration-related <input type="checkbox"/> Attachment <input type="checkbox"/> Bill of Review <input type="checkbox"/> Certiorari <input type="checkbox"/> Class Action	<input checked="" type="checkbox"/> Declaratory Judgment <input type="checkbox"/> Garnishment <input type="checkbox"/> Interpleader <input type="checkbox"/> License <input checked="" type="checkbox"/> Mandamus <input type="checkbox"/> Post-judgment	<input type="checkbox"/> Prejudgment Remedy <input type="checkbox"/> Protective Order <input type="checkbox"/> Receiver <input type="checkbox"/> Sequestration <input type="checkbox"/> Temporary Restraining Order/Injunction <input type="checkbox"/> Turnover
---	---	---

4. Indicate damages sought (do not select if it is a family law case):

Less than \$100,000, including damages of any kind, penalties, costs, expenses, pre-judgment interest, and attorney fees
 Less than \$100,000 and non-monetary relief
 Over \$100,000 but not more than \$200,000
 Over \$200,000 but not more than \$1,000,000
 Over \$1,000,000

Challenge to Constitutionality of a State Statute

This form must be completed by a party filing a petition, motion or other pleading **challenging the constitutionality of a state statute**. The completed form must be filed with the court in which the cause is pending as required by Section 402.010 (a-1), Texas Government Code.

Cause Number (For Clerk Use Only):

Court (For Clerk Use Only):

Styled: IN RE: S [REDACTED] VS MICAH PAUL LAVIGNE AND IN THE INTEREST OF S.J.L. A CHILD

(e.g., John Smith v. All American Insurance Co.; in re Mary Ann Jones; In the Matter of the Estate of George Jackson)

Contact information for party* challenging the constitutionality of a state statute. (*If party is not a person, provide contact information for party, party's representative or attorney.)

Name: MICAH PAUL LAVIGNE

Telephone: [REDACTED]

Address: [REDACTED]

Fax: N/A

City/State/Zip: EL PASO, TX

State Bar No. (if applicable): N/A

Email: m[REDACTED]

Person completing this form is: Attorney for Party Unrepresented Party Other:

Identify the type of pleading you have filed challenging the constitutionality of a state statute.

Petition Answer Motion (Specify type):

Other: DUE PROCESS AFFIDAVIT

Is the Attorney General of the State of Texas a party to or counsel in this cause?

Yes No

List the state statute(s) being challenged in your pleading and provide a summary of the basis for your challenge. (Additional pages may be attached if necessary.)

Petitioner, SPC MICAH PAUL LAVIGNE U.S. ARMY, TDRL, a 90% disabled veteran now files a Challenge to Constitutionality of a State Statute Petitioning for a favorable DECLARATORY JUDGMENT that reflects his allegations and assertions stated within his supporting attached notarized DUE PROCESS AFFIDAVIT that Texas Family Code, TITLE 5 SUBTITLE B CHAPTER 154 SUBCHAPTER B. COMPUTING NET RESOURCES AVAILABLE FOR PAYMENT OF CHILD SUPPORT § 154.062. NET RESOURCES. (b) Resources include (5):

"all other income actually being received, including ... United States Department of Veterans Affairs disability benefits other than non-service-connected disability pension benefits, as defined by 38 U.S.C. Section 101(17), ... disability and workers' compensation benefits",

has been and continues to be an unconstitutional state statute because of the paltry substantive due process guidelines currently engrossed effectively denies any Texas disabled veteran appearing in any judicial or administrative child support proceeding his/her federal civil due process rights, protection of U.S. Congressional Acts and consequently, the provisions of the Equal Protection Clause. Petitioner also prays that a Writ of Mandamus will be issued for the State of Texas to immediately begin honoring a favorable Declaratory Judgment in all State of Texas judicial hearings, administrative proceedings and OAG conducted Child Support Review Process (CSRP) meetings. Petitioner also prays that the next legislature will be ordered to engross proper Texas Family Code language that is consistent with the Declaratory Judgment and grants all noted federal civil rights of Texas disabled veterans.

supporting cites: HAGEN v. HAGEN, Supreme Court of Texas No. 07-1065, Decided: May 1, 2009

GHRIST v. GHRIST, Court of Appeals of Texas, Third District, at Austin May 11, 2007

The Attorney General of the State of Texas in El Paso, a party to this cause, has been properly served this CHALLENGE with attached documentation.

NOTICE: THIS FORM CONTAINS SENSITIVE DATA.

Cause Number: _____
(The Clerk's office will fill in the Cause Number when you file this form.)

Petitioner/
Plaintiff

Micah Paul Lavigne

In the (check one):

388th
(Court Number)

- District Court
- County Court at Law
- Justice of the Peace

Respondent/
Defendant

S [REDACTED]

El Paso
(County)

County, Texas

Affidavit of Indigency (Request to Not Pay Court Fees)

Use this form to ask the court not to charge you for court fees. This form is also called an "Affidavit of Inability to Pay Court Costs" or a "Pauper's Oath." You can only use this form if: (1) you get public benefits because you are poor or (2) you can't pay court fees. The information you give on this form must be current, complete, true and correct.

You must either 1) sign this form in front of a notary public or 2) sign this form and sign and attach a completed "Unsworn Declaration" form. By signing in front of a notary, you swear under oath that the information provided is true and correct. By signing and attaching an "Unsworn Declaration" form, you declare under penalty of perjury that the information provided is true and correct.

You can be prosecuted if you lie on this form.

The court may or may not approve this request to not pay court fees. The court may order you to answer questions about your finances at a hearing. At that hearing you will have to present evidence to the judge of your income and expenses to prove that you have no ability to pay court fees.

① The person who signed this affidavit appeared, in person, before me, the undersigned notary, and stated under oath:

"My name is Micah Paul Lavigne My phone number is ([REDACTED])
 "My mailing address is [REDACTED]
 "My email address is micahlavigne@ [REDACTED] .in

"I am above the age of eighteen (18) years, and I am fully competent to make this affidavit. I am unable to pay court costs. The nature and amount of my income, resources, debts, and expenses are described in this form.
Check ALL boxes that apply and fill in the blanks describing the amounts and sources of your income.

② "I receive these public benefits/government entitlements that are based on indigency:

- SSI WIC Food Stamps/SNAP TANF Medicaid CHIP AABD
- Needs-based VA Pension County Assistance, County Health Care, or General Assistance (GA)
- LIS in Medicare ("Extra Help") Community Care via DADS Low-Income Energy Assistance
- Emergency Assistance Child Care Assistance under Child Care and Development Block Grant
- Public Housing Other: (Describe) _____

if you receive any of the above public benefits, attach proof and label it "Exhibit: Proof of Public Benefits"

③ "My income sources are stated below. (Check all that apply)

Unemployed since: (date) January 1, 2016 -or-
 Wages: I work as a _____ for _____
Your job title *Your employer*

- Child/spousal support My spouse's income or income from another member of my household (if available)
- Tips, bonuses Military Housing Worker's Comp Disability Unemployment Social Security
- Retirement/Pension Dividends, interest, royalties 2nd job or other income: lease paying mortgage (1 year)
(describe)

④ "My income amounts are stated below.

(a) My monthly net income after taxes are taken out is: Total income after taxes → \$ 1,204.00
 (b) The amount I receive each month in public benefits is: Total amount received → + \$ 0.00
 (c) The amount of income from other people in my household is:* Total amount received → + \$ 0.00
 (d) The amount I receive each month from other sources is: Total amount received → + \$ 550.00
 (e) My TOTAL monthly income is Add all sources of income above → = \$1,754.00

**List this income only if other members contribute to your household income.*

⑤ About my **dependents**: "The people who depend on me financially are listed below:

	Name	Age	Relationship to Me
1	S [REDACTED]	23	Wife (seperated)
2	S [REDACTED]	[REDACTED]	Son
3			
4			
5			
6			

⑥ "My property includes:

	Value*
Cash	\$ 6.00
Bank accounts, other financial assets (List)	
Checking	\$ -507.77
Saving	\$ 0.00
	\$
Vehicles (cars, boats) (List make and year)	
	\$
	\$
	\$
Real estate (house or land) (Do not list the house you live in.)	
[REDACTED]	\$ 54.98
	\$
Other property (like jewelry, stocks, etc.) (Describe)	
	\$
	\$

⑦ "My monthly expenses are:

	Amount
Rent/house payments/maintenance	\$ 1747.00
Food and household supplies	\$ 400.00
Utilities and telephone	\$ 350.00
Clothing and laundry	\$ 20.00
Medical and dental expenses	\$ 0.00
Insurance (life, health, auto, etc)	\$ 110.00
School and child care	\$ 63.00
Vehicle payments	\$ 540.07
Gas, bus fare, auto repair	\$ 40.00
Child / spousal support	\$ 0.00
Wages withheld by court order	\$ 0.00
Debt payments	\$ 400.00
Other expenses (Describe)	\$
AER	\$ 108.94
Credit Card	\$ 31.00
	\$

Total value of property → = \$ -446.79

Total monthly Expenses → = \$ 7,149.15

*The value is the amount the item would sell for less the amount you still owe on it (if anything).

⑧ "My debts include: List debt and amount owed credit card: 850.06, Mortgage owed 121,945.02, Auto Lease: 22,000. AER 2,614.55
 2 months behind on mortgage totaling around 2,378.00, 3 months behind on car totaling 1607.00. child care for son ([REDACTED]) \$252.
 Proposed monthly expense next month 3,405.15-4,000 (higher if I cant fix auto lease and 2 back payments on phone/utilities)

To list any other facts you want the court to know, such as unusual medical expenses, family emergencies, etc., attach another page to this form and label it "Exhibit: Additional Supporting Facts." Check here if you attach another page.

⑨ "I am unable to pay court costs. I verify that the statements made in this affidavit are true and correct."

⑩ Your Signature. You must either: 1) sign this form in front of a notary public or 2) sign this form and sign and attach a completed "Unsworn Declaration" form.

▶ [Signature]
Your Signature



State of Texas
 County of EL PASO
 Print the name of county where this Affidavit is notarized.

Notary fills out this section if you are signing in front of a notary.

Sworn to and subscribed before me today, 09/13/16, by

MICHAEL P. LAVIGNE
 Print name of person who is signing this Affidavit. NOT the notary's name.

▶ [Signature]
Notary's Signature