

**STATE OF MICHIGAN  
IN THE SUPREME COURT**

**Appeal from the Michigan Court of Appeals**

*In re* Guardianship of ANNA-MARIE MARGARET  
BAZAKIS.

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CHRISTY BOMBA, Coguardian of ANNA-MARIE  
MARGARET BAZAKIS, a legally protected person,  
Appellant,

v

ANDREW BAZAKIS, Coguardian of ANNA-  
MARIE MARGARET BAZAKIS,  
a legally protected person, and ANNA-MARIE  
MARGARET BAZAKIS,  
Appellees.

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SC: 164652  
COA: 358276  
Saginaw PC: 20-140294-DD

**CHRISTY BOMBA'S, COGUARDIAN  
OF ANNA-MARIE MARGARET BAZAKIS,  
A LEGALLY PROTECTED PERSON,  
SUPPLEMENTAL BRIEF**

**ORAL ARGUMENT REQUESTED**

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Appellant*

**TABLE OF CONTENTS**

INDEX OF AUTHORITIES..... ii

INDEX OF APPENDICES..... vi

STATEMENT OF JURISDICTION OF THE SUPREME COURT..... vii

QUESTIONS PRESENTED..... vii

JUDGMENT APPEALED FROM AND RELIEF SOUGHT .....1

INTRODUCTION .....1

STATEMENT OF FACTS .....4

STANDARD OF REVIEW .....7

ARGUMENT .....7

    I.    The Probate Court’s August 4, 2021 Order Required AM’s Social Security Benefits to be Placed into a New Account, a Joint Account, to be Established in both Mother’s and the Appellee’s Names.....7

    II.   The Probate Court’s August 4, 2021 Order, ¶¶ 2, 5, Requiring AM’s Social Security Benefits to be Placed into a “Joint” Account, is Prohibited by the Principles of Federal Preemption.....10

        A.  The Social Security Act and the Social Security Administration .....11

        B.  The SSA’s Stated Position is “Don’t Use Joint Accounts” .....13

        C.  The Probate Court’s Order Conflicts with Procedural Requirements of the Act .....17

CONCLUSION AND RELIEF SOUGHT .....20

CERTIFICATE OF WORD COUNT.....20

ADDENDUM TO BRIEF.....21

CERTIFICATE OF SERVICE .....25

## INDEX OF AUTHORITIES

### *Cases*

<i>Anomnachi v SSA</i> , 290 FSupp3d 30, 32 (DDC, 2017).....	19
<i>Cleveland Trust Co v Scobie</i> , 114 Ohio St 241; 151 NE 373 (1926) .....	17
<i>Denius v Dunlap</i> , 330 F3d 919 (CA 7, 2003).....	6
<i>Esling v City Nat’l Bank &amp; Trust Co</i> , 278 Mich 571; 270 NW 791 (1936) .....	17
<i>Foster v Foster</i> , 505 Mich 151; 949 NW2d 102 (2020).....	2, 7, 10, 11, 13
<i>Free v Bland</i> , 369 US 663 (1962).....	10
<i>Garling v United States EPA</i> , 849 F3d 1289 (CA 10, 2017).....	6
<i>Gent v Cuna Mut Ins Society</i> , 611 F3d 79 (CA 1, 2010).....	6
<i>Heckler v Ringer</i> , 466 US 602; 104 S Ct 2013; 80 L Ed 2d 622 (1984) .....	19
<i>In re Bazakis</i> , ___NW2d___; 2022 Mich. App. LEXIS 3705; 2022 WL 2276951 (Ct App, June 23, 2022).....	1, 10, 20
<i>In re Guardianship of Smith</i> , 17 A3d 136; 2011 ME 51 (2011).....	17
<i>Jacques v Jacques</i> , 352 Mich 127; 89 NW2d 451 (1958) .....	16
<i>Laurie Q. v Callahan</i> , 973 F Supp 925 (ND Cal 1997).....	18, 19
<i>La Valley v Pere Marquette Employees’ Credit Union</i> , 342 Mich 639; 70 NW2d 798 (1955).....	16
<i>Lopez v Washington Mut Bank, FA</i> , 302 F 3d 900 (CA 9, 2002) <i>opinion amended on denial of reh’g sub nom Lopez v Washington Mut Bank, FA</i> , 311 F 3d 928 (CA 9, 2002) .....	8
<i>Michalik v JP Morgan Chase Bank</i> , 2012 Mich. App. LEXIS 1931; 2012 WL 4801078 (Ct App, Oct. 9, 2012) .....	15
<i>Mathews v Eldridge</i> , 424 US 319; 96 S Ct 893; 47 L Ed 2d 18 (1976) .....	19
<i>Schweiker v Wilson</i> , 450 US 221 (1981) .....	12
<i>Sierra Club v United States DOI</i> , 899 F3d 260 (CA 4, 2018).....	6
<i>South Bay United Pentecostal Church v Newsom</i> , 985 F3d 1128 (CA 9, 2021).....	6

*Sykes v Bank of Am*, 723 F3d 399 (CA 2, 2013).....12

*Ter Beek v City of Wyoming*, 495 Mich 1; 846 NW2d 531 (2014).....7

*Univ of Med & Dentistry v Corrigan*, 347 F3d 57 (CA 3, 2003) .....19

*Van v Zahorik*, 460 Mich 320; 597 NW2d 15 (1999).....18

***United States Constitution***

US Const, art. VI, cl. 2.....10

***Federal Statutes***

5 USC, Inspector General Act of 1978 § 3 .....19

31 USC 3332 .....8

38 USC 101 .....10

38 USC 5301(a)(3)(A).....10, 11, 13

42 USC 405(a).....13

42 USC 405(j)(1)(A).....9, 17, 18, 19

42 USC 405(j)(1)(B)(i)(I-VII).....9, 18, 19

42 USC 407(a).....13

42 USC 407(g).....19

42 USC 407(h).....19

42 USC 901(a).....12

42 USC 901(b).....12

42 USC 1381 .....12

42 USC 1383(a)(2)(A)(ii)(I).....17, 18

42 USC 1383(a)(2)(B)(i).....16

42 USC 1383(a)(2)(B)(i)(I).....16

42 USC 1383(a)(2)(B)(ii).....16

42 USC 1383(a)(2)(B)(ii)(I).....16

42 USC 1383(a)(2)(B)(ii)(II) .....16

42 USC 1383(a)(2)(B)(ii)(I-VII) .....9, 18, 19

42 USC 1383(a)(2)(B)(xi) .....19

42 USC 1383(d).....12

42 USC 1383(d)(1) .....12, 13

***Federal Administrative Rules***

20 CFR 404.2021 .....3, 18

20 CFR 404.2035 .....1, 19

20 CFR 408.621 .....3, 18

20 CFR 416.621 .....3, 18

***Federal Registry***

87 FR 35651 - Reducing Burden on Families Acting as Representative Payees of Social Security Payments.....3, 18

***Michigan Constitution***

Const 1963, art 6, § 15 .....13

***Michigan Compiled Laws***

MCL 487.703 .....16

MCL 722.21 et seq. ....18

***Michigan Court Rules***

MCR 7.212(B)(1).....20

MCR 7.305(B)(3)..... vii

MCR 7.312(E)..... vii

**Michigan Rule of Evidence**

MRE 902(5) .....6

**Other Authorities**

BLACK’S LAW DICTIONARY, p. 838 (6th Ed. 1990) .....14, 15

Consumer Financial Protection Bureau, Bank account key terms, *available at*  
<https://www.consumerfinance.gov/consumer-tools/bank-accounts/answers/key-terms/> .....15

Program Operations Manual System, GN 02402.001 Direct Deposit as a Form of Electronic  
 Payment) .....8

Rebecca C. Morgan *et al.*, Elder Law in Context, § 8 Representative Payee (2017) .....13

Social Security Administration, A Guide for Representative Payees, available at  
<https://www.ssa.gov/pubs/EN-05-10076.pdf> .....6, 8, 13, 14

**Other Resource**

Franklin D. Roosevelt, Message to Congress (June 8, 1934) available at  
<http://www.fdrlibrary.marist.edu/daybyday/resource/june-1934/> .....12

**Other Citations**

<https://www.linkedin.com/in/andrew-m-bazakis-md-facep-06008322/> .....4

<https://www.cmich.edu/academics/colleges/college-of-medicine/education/residency/emergency-medicine/faculty-staff> .....4

## INDEX OF APPENDICES

<b>APPENDIX</b>	<b>DESCRIPTION</b>	<b>NOS.</b>
<b>1</b>	<i>In re Bazakis</i> , ___NW2d___; 2022 Mich. App. LEXIS 3705; 2022 WL 2276951 (Ct App, June 23, 2022)	<b>001-11</b>
<b>2</b>	August 4, 2021 Order	<b>012-14</b>
<b>3</b>	July 22, 2020 Hearing Transcript, Excerpt	<b>015-24</b>
<b>4</b>	August 17, 2020 Order	<b>025-27</b>
<b>5</b>	June 8, 2021, Hearing Transcript	<b>028-56</b>
<b>6</b>	Mother's Response in Opposition to Father's Motion to Compel Compliance with Court Orders and Set Up Forms of Communication and Orderly Treatment for the Protective Person; Motion for Sanctions, with Exhibit N only	<b>057-80</b>
<b>7</b>	Father's Motion to Compel Compliance with Court Orders and Set Up Forms of Communication and Orderly Treatment for the Protective Person	<b>081-85</b>
<b>8</b>	A Guide for Representative Payees	<b>086-109</b>
<b>9</b>	April 28, 2023, Our Family Wizard Communication from Appellee	<b>110</b>
<b>10</b>	Order Striking ¶ 10 of the August 4, 2021 Order	<b>111-112</b>
<b>11</b>	<i>Michalik v JP Morgan Chase Bank</i> , 2012 Mich. App. LEXIS 1931; 2012 WL 4801078 (Ct App, Oct. 9, 2012)	<b>113-115</b>

**STATEMENT OF JURISDICTION OF THE SUPREME COURT**

This Court has jurisdiction over Mom’s application for leave to appeal under MCR 7.303(B)(1).

**QUESTIONS PRESENTED<sup>1</sup>**

1. Whether the probate court’s order requires appellant to place AM’s social security benefits into a joint account held by both the appellant and the appellee

Mom Answers:	Yes
Bazakis’s Answers:	Yes
Probate Court Answers:	Yes
Court of Appeals Answers:	N/A
This Court should Answer:	Yes

2. Whether such order is prohibited by principals of federal preemption?

Mom Answers:	Yes
Bazakis’s Answers:	No
Probate Court Answers:	No
Court of Appeals Answers:	No
This Court should Answer:	Yes

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<sup>1</sup> This Court’s April 21, 2023, set forth the two questions to which the parties are to address in their supplemental briefs in accordance with MCR 7.312(E) and only those two questions are addressed in Appellant’s supplemental brief.



## JUDGMENT APPEALED FROM AND RELIEF SOUGHT

Christy Bomba (“mother”), co-guardian of Anna-Marie Margaret Bazakis (“AM”), an adult and legally protected person, Appellant, seeks leave to appeal the portion of the June 23, 2022, Court of Appeals’ published opinion that “in all other respects” affirmed the probate court’s order. *In re Bazakis*, \_\_\_NW2d\_\_\_; 2022 Mich. App. LEXIS 3705, at \*20; 2022 WL 2276951 (Ct App, June 23, 2022). A copy of the opinion issued on June 23, 2022, is attached as (Appendix 1). A copy of the probate court’s August 4, 2021 Order appealed is attached as (Appendix 2).

WHEREFORE, Appellant Christy Bomba requests this Honorable Court to grant her application for leave to appeal, and that the Court of Appeals’ opinion affirming the probate court’s order “in all other respects”, *In re Bazakis*, 2022 Mich. App. LEXIS 3705, at \*20, including paragraphs 2 and 5 of the probate court’s Order, is reversed.

### INTRODUCTION

Paragraphs 2 and 5 of the probate court’s August 4, 2021 Order, require Christy Bomba, the appellant and AM’s mother and co-guardian, to establish an account at a bank, other than the bank where mother’s personal accounts are, for AM’s social security benefits (Supplemental Security Income “SSI”) to be deposited in, and for that account to be a “joint” account in the name of mother and Andrew Bazakis, the appellee and AM’s Dad<sup>1</sup> and co-guardian. (Appendix 2, **013 ¶¶ 2, 5**).

Under the principles of federal preemption, paragraphs 2 and 5 of the probate court’s Order were in error as: (1) the Social Security Administration, (“SSA”), the federal agency tasked with implementing the Social Security Act, its A Guide for Representative Payees, unequivocally states

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<sup>1</sup> On Father’s Day, June 16, 2002, one month after mother gave birth to AM, the appellee personally served mother with divorce papers. Their divorce was finalized in 2003.

“[d]on’t use joint accounts”; (2) The anti-transfer provision provided for in 42 USC 407(a) is similar to Title 38’s anti-assignment prohibition regarding veteran’s benefits this Court addressed in *Foster v Foster*, 505 Mich 151, 172-73; 949 NW2d 102, 109 (2020) (citing 38 USC 5301(a)(3)(A)); and (3) the Order is inconsistent with the Act’s procedural requirements of the designation of one “representative payee”, the safeguards in vetting the “representative payee” and the investigation and enforcement powers of the Act over the “representative payee” if any wrongdoing regarding the recipient’s SSI benefits is suspected. The probate court’s stated position on the issue was that supremacy clause was that “I don’t want to get into all of that . . . that doesn’t bother me.” (Appendix 5, **033**, Hearing Tr. 6:1-21).

The probate court appears has a personal interest in the outcome on the second question this Court has ordered supplemental briefing on. (Appendix 5, **049**, Hearing Tr. 22:24 (“I have to do the same thing”; *id.*, **034**, Hearing Tr. 7:16-21):

THE COURT: . . . you’re dealing with a different social security than I do. I deal with the same thing. I’ve got a DD relative and we can share the information on the web. I don’t go to the local here and I’ve been fighting with them all over the Unites States when there’s a problem.

Mother’s *pro bono* counsel deficiently has a personal interest in the outcome the second question this Court has ordered supplemental briefing on of as the probate court stated that he would “check on my own . . . and if you’re wrong, then I’m going to award sanctions because I shouldn’t have to be doing this on my own.” (*Id.*, **049-50**, Hearing Tr. 22:22 – 23:16). Currently, upon remand, he will be sanctioned by the probate court, even though he contacted Chase Bank who, just as it told the appellee, stated a “joint” account cannot be done with an SSI account. (*Id.*)

Most importantly, mother has a personal interest in the outcome the second question this Court has ordered supplemental briefing on as if the Order is not reversed, it places the appellee in a position of complete control as unfettered access to AM’s SSI benefits, including remote login

and password access to the SSI account and if anything happens to the SSI monies in the AM's account, mother is the one who is accountable to the SSA because she is the "representative payee" vetted and approved by the SSA. Given the appellant's prior abuse of the court system in making false accusations and false claims against mother that she alone was required to provide the SSA a copy of the co-guardianship Order and that she did not do it, when in fact either co-guardian could submit the co-guardianship Order and she did in fact submit the Order to SSA, to drag her into court and make other demands such as unilateral control over scheduling all of AM's medical appointments, e.g. Father's Motion to Compel Compliance with Court Orders, (compare Appendix 7 to Appendix 8), sets the stage for a chamber of horrors to occur.

Finally, beyond the co-guardians here, the published Court of Appeals Opinion establishing first in the nation law that a "joint" account on a SSI account and the login and password needs to be shared, can be ordered by a state court, needs to be reversed, as it simply violates the principles of federalism treading on the space that the SSA occupies, to the potential detriment of every "representative payee" who is the person accountable to the SSA under the Act. Notably, "[i]t is important for us [the Commissioner of Social Security] to select the best possible representative payee to ensure that the benefits are used in the best interest of the beneficiary and in accordance with other responsibilities and requirements discussed in our regulations." 87 FR 35651 - Reducing Burden on Families Acting as Representative Payees of Social Security Payments (citing 20 CFR 404.2021, 408.621, and 416.621). The probate court's order and the Court of Appeals' opinion simply ignores the SSA's space. Wherefore, the petition should be granted, and the Court of Appeals' Opinion as to at least ¶¶ 2 and 5 of the probate court's Order, should be reversed.

## STATEMENT OF FACTS

With AM reaching the age of majority, and her autism bringing her within the statutory definition of an individual with a developmental disability, AM, through Mother, applied to the SSA for Supplemental Security Income (“SSI”), with mother requesting to be appointed by the SSA as AM’s “representative payee.” (see Appendix 3, **018**, Hearing Tr 8:8-15; cf. Appendix 4, **027** ¶ 27, see also Appendix 5, **031-33**, Hearing Tr. 4:19-5:16; 6:1 - 8)

Mother, though her attorney at the time, likewise petitioned the probate court to be AM’s plenary guardian, and for the appellee to be the standby guardian, wherein, the appellee objected to Mother’s petition and requested that he be appointed as AM’s sole guardian, to the exclusion of Mother. (Appendix 3, Hearing Tr 2:6-14). On August 17, 2020, the probate court appointed Mother and the appellee as co-guardians. (Appendix 4, **026** ¶ 14a.).

On March 19, 2021, the appellee, emailed mother, indicating in part, that he spoke “multiple times” with “Janis Hall, the banker at Chase”, explaining that he was informed that, “only one of us is assigned to be on the account with [AM] as per the rules of setup”, and that, “[AM] cannot have a separate login” and requested that mother “share [her] logon (sic) and password”. (Appendix 6, **079**). Mother, as the “representative payee” appointed to that fiduciary position by the SSA, did not acquiesce.

On April 27, 2021, a date after mother had terminated her prior counsel, the appellee, a person with a significant annual income<sup>2</sup>, filed a motion styled as a “MOTION TO COMPEL COMPLIANCE WITH COURT ORDERS AND SET UP FORMS OF COMMUNICATION

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<sup>2</sup> See <https://www.linkedin.com/in/andrew-m-bazakis-md-facep-06008322/> (“Physician at Covenant HealthCare”) (visited May 21, 2023); <https://www.cmich.edu/academics/colleges/college-of-medicine/education/residency/emergency-medicine/faculty-staff> (“Co-Director EM [Emergency Medicine] Simulation Curriculum” at Central Michigan University) (visited May 21, 2023).

AND ORDERLY TREATMENT FOR THE PROTECTED PERSON” and sought “actual costs and attorney fees for having to bring this matter before the Court. (Appendix 7, **081, 084 ¶ G**). The motion stated, in part, as a fact that, “Social Security refuses to discuss [AM’s] benefits or disbursements directly with Father” and “Father can gain no information relating to his daughter’s social security benefits or payments from the Social Security office directly because Mother initially signed [AM] up and is listed as the sole protected (sic) payee.” (Id. **081 103 ¶ 4, 082 ¶ 5**).

On June 8, 2021, the probate court heard oral arguments on the appellee’s motion to compel compliance with court orders and set up forms of communication and orderly treatment for the protective person, (Appendix 4), and without citing any law to support his decision, crafted a remedy under which the appellee could obtain access to AM’s SSI account by requiring mother to set up a new bank account for AM’s SSI monies to be deposited in, and provide the appellee unfettered access to the account by making him a “joint” account holder. (Appendix 5, **043**, Tr. 16: 6-7, 21-22).

On August 4, 2021, to resolve mother’s and the appellee’s proposed orders under the seven-day rule, the probate court settled the order, entering instructions that included that are being appealed:

2. If there is portal access, Christy Bomba is to provide any time of access she is given to father Andrew Bazakis. *{In the meantime Mother, Christy Bomba, is to set up a new account at a new bank so that a new password to that new account can be made and given to Father Andrew Bazakis so that both parties have access to a new account with a new password that only reflects the account of Anna Marie Bazakis}{.}*

\* \* \*

5. All of Anna Bazakis’ bank accounts are to be joint with the Co-Guardians.

(Appendix 2, **013 ¶¶ 2, 5**) (emphasis by the probate court).

The Social Security Administration makes publicly available on a Government website<sup>3</sup>, A Guide for Representative Payees, that unequivocally states, “[d]on’t use joint accounts” and provides further guidance:

that you title the account in one of the following ways:

- (Beneficiary’s name) by (your name), representative payee.
- (Your name), representative payee for (beneficiary’s name).

Your bank will provide help if you have more questions.

A Guide for Representative Payees, p. 7 available at <https://www.ssa.gov/pubs/EN-05-10076.pdf> (visited May 18, 2023) (Appendix 8, **096**).

The Social Security Administration’s A Guide for Representative Payees likewise states:

The checking or savings account title must show the beneficiary’s ownership of the funds and show you as the financial agent. *Neither you as the payee, nor another third party, can have any ownership of the account.*

*Id.*, **095**, at p. 6 (emphasis added).

On April 28, 2023, the appellee sent an Our Family Wizard communication to mother, which in part stated:

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<sup>3</sup> Federal websites, including those of governmental agencies like the Social Security Administration are considered to be self-authenticating under MRE 902(5). MRE 902(5) (emphasis original) (“**Official Publications.** Books, pamphlets, or other publications purporting to be issued by public authority.”) Likewise, the Court can take judicial notice of the SSA’s website. See *South Bay United Pentecostal Church v Newsom*, 985 F3d 1128, 1132 n 1 (CA 9, 2021) (citation omitted); see also *Sierra Club v United States DOI*, 899 F3d 260, 276 n 4 (CA 4, 2018) (citation omitted); see also *Garling v United States EPA*, 849 F3d 1289, 1297 n 4 (CA 10, 2017) (citing *Denius v Dunlap*, 330 F3d 919, 926-27 (CA 7, 2003)); *Gent v Cuna Mut Ins Society*, 611 F3d 79, 84 n 5 (CA 1, 2010) (citation omitted).

4. Please share the online banking and password for Anna’s account used exclusively for her public monies. ***I do not feel the need to be a joint holder***<sup>4</sup> but in the interest of transparency, as Anna’s Co-Guardian, I would appreciate being to see what is happening.

(Appendix 9, 110) (emphasis added).<sup>5</sup>

### STATNDARD OF REVIEW

“Whether federal law preempts state action is a question of law that this Court reviews de novo.” *Foster v Foster*, 505 Mich 151, 165, 949 NW2d 102, 109 (2020) (citing *Ter Beek v City of Wyoming*, 495 Mich 1, 8; 846 NW2d 531 (2014)).

### ARGUMENT

#### I. **The Probate Court’s August 4, 2021 Order Required AM’s Social Security Benefits to be Placed into a New Account, a Joint Account, to be Established in both Mother’s and the Appellee’s Names**

The probate court’s August 4, 2021 Order, in pertinent part provides:

2. . . . ***{In the meantime Mother, Christy Bomba, is to set up a new account at a new bank . . . so that both parties have access to a new account with a new password that only reflects the account of Anna Marie Bazakis}[,] \* \* \****

5. All of Anna Bazakis’ bank accounts are to be joint with Co-Guardians.

(Appendix 2 013 ¶¶ 2, 5) (emphasis by the Court).

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<sup>4</sup> Prior to the appellee’s post Order setting arguments on the petition stated lack of desire to be “joint” account holder, the appellee had demanded from the probate court and received equal possession of AM’s MI Bridge Card, (Appendix 2, 013 ¶ 10), only to later give the Card back to mother for her to exclusively use the Card to purchase food for AM. (Appendix 10, 111-112, Order striking ¶ 10).

<sup>5</sup> The appellee’s April 28, 2023 communication with mother is yet another example of the appellee’s *modus operandi* of attempting to create an issue to drag mother into court to satisfy his insatiable need for control, to spite mother for his personal gratification, and prior to mother obtaining *pro bono* counsel here, to inflict financial damages upon mother who over the years, has incurred tens of thousands of dollars in attorney’s fees.

Paragraph 5 of the Order expressly AM's SSI benefits account to be "joint" with both the appellee and mother, including the new bank account to be established for AM's SSI benefits for the Treasury to electronically deposit into, as set forth in paragraph 2. (Id.)

AM's only income is from Supplemental Security Income, commonly known as "SSI", her "social security benefits." "Federal law mandates that all Federal benefit payments – including Social Security and Supplemental Security Income benefits – must be made electronically", Social Security Direct Deposit, available at <https://www.ssa.gov/deposit/> (visited May 17, 2023), see also A Guide for Representative Payees, p. 6 available at <https://www.ssa.gov/pubs/EN-05-10076.pdf> (visited May 18, 2023) (Appendix 8, **095**); see also *Lopez v Washington Mut Bank, FA*, 302 F 3d 900, 905 (CA 9, 2002) (citing 31 USC 3332), *opinion amended on denial of reh'g sub nom Lopez v Washington Mut Bank, FA*, 311 F 3d 928 (CA 9, 2002), with limited exceptions that are not at issue here. See Program Operations Manual System, GN 02402.001 Direct Deposit as a Form of Electronic Payment, available at <https://secure.ssa.gov/poms.nsf/lnx/0202402001> (visited May 17, 2023) (emphasis added) (eg "2. Treasury may grant an exemption in instances when a beneficiary or recipient requests an exemption from the electronic funds transfer (EFT) requirement and the beneficiary or recipient [] has a mental impairment that prevents him or her from handling their payments electronically and he or *she is not assisted by a representative payee.*")

At the June 8, 2021 oral argument on appellee's motion to compel, mother's motion for sanctions and to quash appellee's subpoena to Chase for similar information the SSA refused to provide the appellee, the discussion with the probate court involved only the "representative payee" account into which AM's SSI benefits were directly deposited into:

MR. PICARD: As it relates to the social security, while one person may have to be the designated protected (sic) payee per the social security rules and regulations . . . we would



ask is that the Court direct that he [the appellee] be named as the protected (sic) payee<sup>6</sup> and change her (sic) [mother] and he'll access (sic) her the information. The [] same thing relates to the bank account[], by the way.

(Appendix 5, **031-32**, Hearing Tr. 4:19 – 5:11). \* \* \*

THE COURT: . . . I'm going to tell you what I'll order . . . Three, [] Anna's bank account[] [is] to be joint with both co-guardians.

(Id., **043**, Tr. 16: 6-7, 21-22). \* \* \*

MR. WARNER: . . . and the other part of the order says all bank accounts are to be joint with all co-guardians. I [] had contacted Chase Private Client services, and in fact they will not do that. There [can] only be one representative payee. They will not add another person to it, so that is problematic. (Id., **46**, Tr. 19:23 – 20:2). \* \* \*

THE COURT: Is that only for the representative payee social security account?

MR. WARNER: That is correct, Your Honor,

THE COURT: And nothing else in in there at all?

MR. WARNER: Correct, Your Honor. It is [] just an account that is set up for [AM] with Christy Bomba being the representative payee. It's a separate account", id., **047**, Tr. 20:14 – 22, \* \* \* [from mother's personal accounts at the bank]. [Id., **050**, Tr. 23:23-24].

The appellee, while failing to respect that mother's Petition here to this Court has requested leave to appeal the probate court's Order that requires mother to share the login and password of the representative payee account, (Appendix 2, **013 ¶ 2**), likewise believes that the probate court's order requires him to be named as a joint account holder of AM's SSI benefit account, as expressed in the appellee's April 28, 2023 Our Family Wizard communication:

4. Please share the online banking and password for Anna's account used exclusively for her public monies. *I do not feel the need to be a joint holder* but in the interest of transparency, as Anna's Co-Guardian, I would appreciate being to see what is happening.

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<sup>6</sup> Appellee's counsel's demand of the probate court to strip mother of her "representative payee" status, was without merit, as it is only the SSA who can make the determination who is the "representative payee" and only after that person is properly vetted by the SSA. 42 USC 405(j)(1)(A), (B)(i)(I-VII); 42 USC 1383(a)(2)(B)(ii)(I-VII).

(Appendix 9, 110) (emphasis added).

Therefore, the probate court's August 4, 2021 Order required AM's social security benefits, SSI, to be placed into a new account, a "joint" in both mother's and the appellee's names.

**II. The Probate Court's August 4, 2021 Order, ¶¶ 2, 5, Requiring AM's Social Security Benefits to be Placed into a "Joint" Account, is Prohibited by the Principles of Federal Preemption**

The clear error of law presented here can be "resolved through a straight-forward application of conflict preemption." *In re Bazakis*, 2022 Mich. App. LEXIS 3705, at \*8-9 (Ct App, June 23, 2022). The doctrine of preemption is premised upon the constitutional mandate that federal, not state created law, is "the supreme Law of the Land." U.S. Const. art. VI, cl. 2. Any state law (or here a state court probate judge's Order) that "*interferes* with or is contrary to federal law is invalid." *Free v Bland*, 369 US 663, 666 (1962) (emphasis added). The probate court's order interferes with and is contrary to federal law.

This Court's holding in *Foster v. Foster* addressed a similar situation involving a lower court's order assigning federal benefits to another person, who was neither the "representative payee" of the individual nor an eligible spouse. In *Foster*, the contractual consent judgment in the divorce proceeding assigning military benefits, provided for in Title 38, to the ex-spouse was "under federal statute, an impermissible 'assignment.'" *Foster v. Foster*, 505 Mich 151, 172-73; 949 NW2d 102, 113 (2020) (citing 38 USC 5301(a)(3)(A)). Title 38 applies to veterans benefits only, *see* 38 USC 101, and 38 USC 5301(a)(3)(A) provides an explicit prohibition to the assignment that was at issue in *Foster*. *Id.*<sup>7</sup>

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<sup>7</sup> 38 USC 5301(a)(3)(A) provides, "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

Here, paragraphs 2 and 5 of the probate court’s Order, mandating that mother designate the appellee and her as a “joint” account holders on a new account to be established at a bank other than Chase, to which AM’s SSI benefits will be automatically deposited into, are in conflict with 42 USC 407(a)’s prohibition that, “[t]he right of any person to any future payment under this title shall not be transferable or assignable, at law . . . .” 42 USC 407(a). That prohibition in 42 USC 407(a) is similar to the Title 38 prohibition this Court addressed in *Foster*. *See Foster*, 505 Mich at 172-73 (citing 38 USC 5301(a)(3)(A)).

Additionally, having the appellee who is not the “representative payee” nor AM’s spouse, to be appointed by a state probate court to as “joint” account holder on a “representative payee” account for the benefit of AM, is contrary to the procedures of the Act having only one “representative payee” be responsible for the account, the vetting requirements of the “representative payee” by the Social Security Administration, and the investigation and enforcement actions that can be undertaken by the Office of the Inspector General into the “representative payee” if any wrongdoing regarding the “representative payee” account is suspected.

**A. The Social Security Act and the Social Security Administration**

With America in the deep throes of the Depression, and the traditional social safety net of work, savings, family and charity in tatters, Congress acted upon President Franklin D. Roosevelt’s June 8, 1934, message for it to, “place the security of the men, women and children of the Nation First” to “undertake the great task of furthering the security of the citizen and his family through

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(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.” 38 USC 5301(a)(3)(A).

social insurance”<sup>8</sup>, and exercised its power under Article I, Section 1 of the United States Constitution, to create the Social Security Act of 1935, currently codified at 42 USC 301 – 1397mm (the “Act”). 42 USC 901(a), (b) “established, as an independent agency in the executive branch of the Government, a Social Security Administration” ‘to administer the old-age, survivors, and disability insurance program under subchapter II’. 42 USC 901(a), (b).

“In 1974, Congress amended the Social Security Act to create the SSI program, which was intended to assist those who could not work because of age, blindness, or disability.” *Sykes v Bank of Am*, 723 F3d 399, 404 (CA 2, 2013) (citing *Schweiker v Wilson*, 450 US 221, 223 (1981)). “In so doing, Congress made § 407 applicable to SSI benefits ‘to the same extent as [that provision applies] to subchapter II.’” *Id.* (quoting 42 USC 1383(d)). 42 USC 1383(d) provides:

- (d) Procedures applicable; prohibition on assignment of payments; representation of claimants; maximum fees; penalties for violations
- (1) The provisions of section 407 of this title and subsections (a), (d), and (e) of section 405 of this title shall apply with respect to this part to the same extent as they apply in the case of subchapter II.

42 USC 1383(d), (d)(1).<sup>9</sup>

As to disabled individuals like AM, 42 USC 1381 sets forth Congress’s desire to establish a “national program” regarding SSI benefits as follows:

Statement of purpose; authorization of appropriations

For the purpose or the purpose of establishing a national program to provide supplemental security income to individuals who have attained age 65 or are blind or disabled, there are authorized to be appropriated sums sufficient to carry out this subchapter.

42 USC 1381.

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<sup>8</sup> See Franklin D. Roosevelt, Message to Congress, pp. 1-2 (June 8, 1934) available at <http://www.fdrlibrary.marist.edu/daybyday/resource/june-1934/> (visited May 21, 2023).

<sup>9</sup> Chapter XVI – Supplemental Security Income for Aged, Blind, and Disabled.

**B. The SSA’s Stated Position is “Don’t Use Joint Accounts”**

Paragraphs 2 and 5 of the probate court’s Order, mandating that mother designate the appellee and her as a “joint” account holders on a new account to be established at a bank other than Chase, to which AM’s SSI benefits will be automatically deposited into, are in conflict with 42 USC 407(a)’s prohibition that, “[t]he right of any person to any future payment under this title [42 USC §§ 401 et seq.] shall not be transferable or assignable, at law . . . .” 42 USC 407(a). That prohibition in 42 USC 407(a) is similar to the Title 38 prohibition this Court addressed in *Foster*. See *Foster*, 505 Mich at 172-73 (citing 38 USC 5301(a)(3)(A)).

While Title 42 does not explicitly say “[d]on’t use joint accounts”, the SSA though its power Congress provided to it to make rules and regulations and to establish procedures, has expressly instructed “representative payees” “[d]on’t use joint accounts”. A Guide for Representative Payees, p. 7 available at <https://www.ssa.gov/pubs/EN-05-10076.pdf> (visited May 18, 2023) (Appendix 8, **096**).<sup>10</sup>

42 USC 405(a) provides the SSA such regulatory power as follows:

(a) Rules and regulations; procedures

The Commissioner of Social Security shall have full power and authority to make rules and regulations and to establish procedures, not inconsistent with the provisions of this subchapter, which are necessary or appropriate to carry out such provisions, and shall adopt reasonable and proper rules and regulations to regulate and provide for the nature and extent of the proofs and evidence and the method of taking and furnishing the same in order to establish the right to benefits hereunder.

42 USC 405(a).

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<sup>10</sup> The SSA’s A Guide for Representative Payees “[d]on’t use joint accounts” is quoted in *Elder Law in Context*, § 8 Representative Payee. Rebecca C. Morgan *et al.*, *Elder Law in Context*, § 8 Representative Payee (2017).

The Social Security Administration makes publicly available on a Government website, A Guide for Representative Payees, that unequivocally states, “[d]on’t use joint accounts” and provides further guidance:

that you title the account in one of the following ways:

- (Beneficiary’s name) by (your name), representative payee.
- (Your name), representative payee for (beneficiary’s name).

Your bank will provide help if you have more questions.

A Guide for Representative Payees, p. 7 available at <https://www.ssa.gov/pubs/EN-05-10076.pdf> (visited May 18, 2023) (Appendix 8, **096**).

The Social Security Administration’s A Guide for Representative Payees likewise states:

The checking or savings account title must show the beneficiary’s ownership of the funds and show you as the financial agent. ***Neither you as the payee, nor another third party, can have any ownership of the account.***

*Id.*, **095** at p. 6 (emphasis added).

42 USC 407(a) prohibition includes that, “[t]he right of any person to any future payment under this title shall not be transferable or assignable, at law . . . .” 42 USC 407(a); 42 USC 1383(d)(1) (section 407 applies to Chapter XVI, SSI). The SSA’ guidance to the representative payee is consistent with prohibitory language in 42 USC 407(a) due to the legal effect that a “joint” account has as discussed below. The probate court’s order requiring a “joint” account to be established simply ignores the formality on how the SSA has instructed “representative payees” to have the recipient’s account titled.

The nationwide understanding of the term “joint bank account” is “[a]n account in the names of two or more persons who have equal right to it, generally with the right of survivorship.”

See BLACK'S LAW DICTIONARY, p. 838 (6th Ed. 1990). "Generally, everyone whose name is on a joint account can write checks, withdraw money, make transactions, move funds, or close the account. If one of the account holders owes money, the creditor can try to collect from money in the joint bank account." Consumer Financial Protection Bureau, Bank account key terms, Joint account available at <https://www.consumerfinance.gov/consumer-tools/bank-accounts/answers/key-terms/> (visited May 19, 2023).

By definition, a "joint account" and the legal implications of such an account is incompatible with 42 USC 407(a) as each "joint" party named on the account has an ownership interest in AM's SSI monies the Treasury automatically deposits into that account. The probate court's order transfers, "[t]he right of any person [AM] to any future payment under this title" to the appellee and Mother. National Banks treat a "joint" account and a "representative payee" account differently and have a different set of rules that apply to them. "Defendant Bank's Account Rules and Regulations appear to differentiate between traditional joint accounts and representative-payee accounts" *Michalik v JP Morgan Chase Bank*, 2012 Mich. App. LEXIS 1931 at \* 9; 2012 WL 4801078 (Ct App, Oct. 9, 2012) (unpublished).<sup>11</sup>

Under Chase Bank's "joint account" rule, mother is required to "appoints each of the others as his/her agent and attorney in fact with the power to endorse and deposit items". *Id.* at \* 8. This provision in Chase Bank's policy has the effect of nullifying mother's responsibility as the "representative payee" to act on AM's behalf, instead giving a power of attorney not only to the appellee, but to AM as well. The powers granted to a "joint" account holder under Chase Bank's

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<sup>11</sup> *Michalik* is cited as it is the only Michigan case that provides any type of description of JP Morgan Chase Bank's rules regarding a "joint account" and a "representative payee" account. A copy is attached as (Appendix 11).

“joint account” rules (and presumably every other bank “joint account” rules) are likewise contrary to 42 USC 1383(a)(2)(B)(i), (i)(I), (ii), (ii)(I), (ii)(II).<sup>12</sup>

Likewise, under Michigan’s banking law, by operation of the probate court’s Order set forth in paragraph 5 of the order, title to AM’s SSI monies would instantaneously be transferred to appellee once the SSA electronically deposits those monies into the mandate “joint” account. Under the Payment of Deposits Act 248 of 1909, the SSI monies that are to be deposited in the ordered “joint” account, “shall become the property of such persons as joint tenants . . . shall be held for the exclusive use of the persons so named and may be paid to either”, MCL 487.703, and furthermore provides for the right of survivorship. *Id; Jacques v Jacques*, 352 Mich 127, 134; 89 NW2d 451 (1958) (“In Michigan the vesting of title to funds in another by the creation of a joint bank account with right of survivorship is a statutory method of transfer of title.”)

Mother being ordered to establish a “joint” account with appellee, as an operation of Michigan Law, would immediately transfer possession of the SSI monies to the appellee, and would place the appellee in the position of control over the SSI monies deposited in the “joint” account, with the power to unilaterally disperse them in any manner appellee so desires. See eg *La Valley v Pere Marquette Employees’ Credit Union*, 342 Mich 639, 643-644; 70 NW2d 798 (1955) (citing CL 1948, § 487.703)<sup>13</sup>.

Likewise, with a “joint” account, Michigan law grants appellee the power to prevent Mother, the other “joint” account holder and the one and only “representative payee” appointed

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<sup>12</sup> Consistent with the A Guide for Representative guidance, “[y]our bank will provide help if you have more questions”, (Appendix 8, **096** at p. 7), the appellee did ask Chase bank, where AM’s SSI account was established, and was properly denied access to AM’s SSI account as the appellee is not the “representative payee.” (Appendix 7, **079**).

<sup>13</sup> Now codified at MCL 487.703.



by the SSA, from disbursing the monies in the account for AM’s benefit, and furthermore grants appellee the power to cut AM off entirely from the SSI monies that are mandated to now be in a “joint” account. See *Esling v City Nat’l Bank & Trust Co*, 278 Mich 571, 579; 270 NW 791 (1936) (quoting *Cleveland Trust Co v Scobie*, 114 Ohio St 241; 151 NE 373 (1926)) (“The joint interest created by the opening of such an account was always subject to the right of the person who opened the account to terminate and revoke the authority to withdraw.”) Such transfer rights conflict with 42 USC 407(a) and therefore the probate court’s Order violated the principles of federal preemption.

**C. The Probate Court’s Order Conflicts with Procedural Requirements of the Act**

The probate court’s order that the appellee is to be added as a “joint” account holder, is likewise incompatible with procedural aspects of the Act.

Although SSI benefits are, in some cases, paid directly to the beneficiary, payments can be made to a duly certified fiduciary—called a ‘representative payee’—for the beneficiary’s use and benefit’ if the Commissioner of the SSA ‘determines that the interest of [the beneficiary] . . . would be served thereby.’ 42 U.S.C.S. § 405(j), (j)(1)(A); see also 20 C.F.R. § 416.610 (‘When payment will be made to a representative payee.’)

*In re Guardianship of Smith*, 2011 ME 51, ¶ 11; 17 A3d 136, 140 (Maine 2011).

The framework of the representative payee is expressly as follows:

[i]f the Commissioner of Social Security determines that the interest of any individual under this subchapter, would be served thereby, certification of payment of such individual’s benefit under this title may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual’s ‘representative payee....’)

42 USC 405(j)(1)(A); 42 USC 1383(a)(2)(A)(ii)(I) (same).

Notably 42 USC 405(j)(1)(A), 42 USC 1383(a)(2)(A)(ii)(I) provides that it is “the Commissioner of Social Security” alone who makes the determination of who should be the

“representative payee.” *Id.* And that appointment is discretionary. *See Laurie Q v Callahan*, 973 F. Supp. 925, 933 (ND Ca, 1997) (citation omitted). “It is important for us [the Commissioner of Social Security] to select the best possible representative payee to ensure that the benefits are used in the best interest of the beneficiary and in accordance with other responsibilities and requirements discussed in our regulations.” Reducing Burden on Families Acting as Representative Payees of Social Security Payments, 87 FR 35651-01 (citing 20 CFR 404.2021, 408.621, and 416.621).

This statement of the SSA is indicative of the SSA’s occupation of the space involving the “representative payee” and sets forth an important public policy that it alone is to determine whom “the best possible representative payee” is to ensure the “best interest of the beneficiary and in accordance with other responsibilities and requirements discussed in our regulations.” The Act and the SSA’s duties under the Act, are analogous to the Child Custody Act of 1970, MCL 722.21 et seq., which as “occup[ies] the field of child custody” in the State of Michigan. *See Van v Zahorik*, 460 Mich 320, 330-331; 597 NW2d 15 (1999). Absent any implication of the Hague Convention, the federal government and judiciary, under the principals of federalism, would stay in their lane and let the State of Michigan and its judiciary address matters within the space the Child Custody Act of 1970 occupies. Here the probate court should have stayed in its own lane when it came to ruling on matters occupied by federal law, regulations and policies involving the SSA and the federal Act.

Mother, when she applied to be AM’s representative payee was required to be vetted by the SSA and undergo a background check. 42 USC 405(j)(1)(A), (B)(i)(I-VII); 42 USC 1383(a)(2)(B)(ii)(I-VII). None of these provisions apply to the appellee, who by the probate court’s order making him a “joint” account holder places the appellee on the same legal footing as

mother, the “representative payee.” The probate court’s Order simply interferes with the procedural safeguarding requirements of the Act. Therefore, federal preemption should control.

Finally, what appellee sought from the probate court, to get information and access to information about AM’s SSI benefits by being added as a “joint” account holder, can be achieved under the Act itself which explicitly provides a procedure for another, like the appellee, to challenge the “representative payee’s” appointment, 42 USC 1383(a)(2)(B)(xi), which if successful he could then request the SSA to appoint him as the “representative payee”, and if unsuccessful could seek judicial review in federal court only. 42 USC 405(g) – (h); *Laurie Q*, 973 F Supp at 931; see *Heckler v Ringer*, 466 US 602, 627; 104 S Ct 2013; 80 L Ed 2d 622 (1984); see *Mathews v Eldridge*, 424 US 319, 327-28; 96 S Ct 893; 47 L Ed 2d 18 (1976). Federal law simply occupies this procedural space and the SSA has selected mother as the “best possible representative payee.”

The effect of the probate court’s Order is to negate the procedures of the SSA, by installing the appellee as a “joint” account holder, in a position of a watchdog over mother’s handling of AM’s “representative payee” account at the same time excluding the appellee from the SSA’s vetting procedures. 42 USC 405(j)(1)(A), (B)(i)(I-VII); 42 USC 1383(a)(2)(B)(ii)(I-VII). The probate court appointing the appellee as a “joint” holder on the “representative payee” account serves no legitimate purpose as the sole responsibility regarding AM’s SSI benefits has been placed on mother’s shoulders by federal law. 20 CFR 404.2035.

Furthermore, the SSA has the sole duty, under federal law to monitor and, if warranted, to take any enforcement action against mother, the “representative payee”, by and through the Office of the Inspector General – Social Security Administration. See *Univ of Med & Dentistry v Corrigan*, 347 F3d 57, 61 (CA 3, 2003) (quoting 5 USC, Inspector General Act of 1978 § 3); *Anomnachi v SSA*, 290 FSupp3d 30, 32 (DDC, 2017). Under the probate court’s Order, the

appellee has been elevated to a watchdog position over the SSI monies deposited in AM's account by the Treasury Department. Under the principles of federal preemption, it was in error for the probate court to oblige the appellee to a regulatory investigative position over mother by making him a "joint" account holder of and with full access to and ownership in AM's SSI account.

### **RELIEF REQUESTED**

WHEREFORE, Appellant Christy Bomba requests this Honorable Court to grant her application for leave to appeal, and that the Court of Appeals' opinion affirming the probate court's order "in all other respects", *In re Bazakis*, 2022 Mich. App. LEXIS 3705, at \*20, including paragraphs 2 and 5 of the probate court's Order, is reversed.

Respectfully submitted,  
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### **CERTIFICATE OF WORD COUNT**

I, Curtis C. Warner, certify that the Supplemental Brief for the Appellant complies with the word limitation set forth in MCR 7.212(B)(1) and the countable words in the Supplemental Brief, using Microsoft Word version 16.73, is 6,402 words.

Respectfully submitted,  
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**ADDENDUM TO BRIEF  
PURSUANT TO MCR 7.212(C)(7), (D)(1)**

**20 CFR 404.2035 What are the responsibilities of your representative payee?**

A representative payee has a responsibility to —

- (a) Use the benefits received on your behalf only for your use and benefit in a manner and for the purposes he or she determines, under the guidelines in this subpart, to be in your best interests;
- (b) Keep any benefits received on your behalf separate from his or her own funds and show your ownership of these benefits unless he or she is your spouse or natural or adoptive parent or stepparent and lives in the same household with you or is a State or local government agency for whom we have granted an exception to this requirement;
- (c) Treat any interest earned on the benefits as your property;
- (d) Notify us of any event or change in your circumstances that will affect the amount of benefits you receive, your right to receive benefits, or how you receive them;
- (e) Submit to us, upon our request, a written report accounting for the benefits received on your behalf, and make all supporting records available for review if requested by us; and
- (f) Notify us of any change in his or her circumstances that would affect performance of his/her payee responsibilities.

**42 USC 405 – Evidence, procedure, and certification for payments**

(j) Representative payees

(1)

(A) If the Commissioner of Social Security determines that the interest of any individual under this subchapter would be served thereby, certification of payment of such individual's benefit under this subchapter may be made, regardless of the legal competency or incompetency of the individual, either for direct payment to the individual, or for his or her use and benefit, to another individual, or an organization, with respect to whom the requirements of paragraph (2) have been met (hereinafter in this subsection referred to as the individual's "representative payee"). If the Commissioner of Social Security or a court of competent jurisdiction determines that a representative payee has misused any individual's benefit paid to such representative payee pursuant to this subsection or section 1007 or 1383(a)(2) of this title, the Commissioner of Social Security shall promptly revoke certification for payment of benefits to such representative payee pursuant to this subsection and certify payment to an alternative representative payee or, if the interest of the individual under this subchapter would be served thereby, to the individual.

(B) In the case of an individual entitled to benefits based on disability, the payment of such benefits shall be made to a representative payee if the Commissioner of Social Security determines that such payment would serve the interest of the individual because the individual also has an alcoholism or drug addiction condition (as determined by the Commissioner) and the individual is incapable of managing such benefits.

(C)

(i) An individual who is entitled to or is an applicant for a benefit under this subchapter, subchapter VIII, or subchapter XVI, who has attained 18 years of age or is an emancipated minor, may, at any time, designate one or more other individuals to serve as a representative payee for such individual in the event that the Commissioner of Social Security determines under subparagraph (A) that the interest of such individual would be served by certification for

payment of such benefits to which the individual is entitled to a representative payee. If the Commissioner of Social Security makes such a determination with respect to such individual at any time after such designation has been made, the Commissioner shall—

(I) certify payment of such benefits to the designated individual, subject to the requirements of paragraph (2); or

(II) if the Commissioner determines that certification for payment of such benefits to the designated individual would not satisfy the requirements of paragraph (2), that the designated individual is unwilling or unable to serve as representative payee, or that other good cause exists, certify payment of such benefits to another individual or organization, in accordance with paragraph (1).

(ii) An organization may not be designated to serve as a representative payee under this subparagraph.

(2)

(A) Any certification made under paragraph (1) for payment of benefits to an individual's representative payee shall be made on the basis of—

(i) an investigation by the Commissioner of Social Security of the person to serve as representative payee, which shall be conducted in advance of such certification and shall, to the extent practicable, include a face-to-face interview with such person, and

(ii) adequate evidence that such certification is in the interest of such individual (as determined by the Commissioner of Social Security in regulations).

(B)

(i) As part of the investigation referred to in subparagraph (A)(i), the Commissioner of Social Security shall—

(I) require the person being investigated to submit documented proof of the identity of such person, unless information establishing such identity has been submitted with an application for benefits under this subchapter, subchapter VIII, or subchapter XVI,

(II) verify such person's social security account number (or employer identification number),

(III) determine whether such person has been convicted of a violation of section 408, 1011, or 1383a of this title,

(IV) obtain information concerning whether such person has been convicted of any other offense under Federal or State law which resulted in imprisonment for more than 1 year,

(V) obtain information concerning whether such person is a person described in section 402(x)(1)(A)(iv) of this title,

(VI) determine whether certification of payment of benefits to such person has been revoked pursuant to this subsection, the designation of such person as a representative payee has been revoked pursuant to section 1007(a) of this title, or payment of benefits to such person has been terminated pursuant to section 1383(a)(2)(A)(iii) of this title by reason of misuse of funds paid as benefits under this subchapter, subchapter VIII, or subchapter XVI, and

(VII) determine whether such person has been convicted (and not subsequently exonerated), under Federal or State law, of a felony provided under clause (iv), or of an attempt or a conspiracy to commit such a felony.

(ii) The Commissioner of Social Security shall establish and maintain a centralized file, which shall be updated periodically and which shall be in a form which renders it readily retrievable by each servicing office of the Social Security Administration. Such file shall consist of—

(I) a list of the names and social security account numbers (or employer identification numbers) of all persons with respect to whom certification of payment of benefits has been revoked on or

after January 1, 1991, pursuant to this subsection, whose designation as a representative payee has been revoked pursuant to section 1007(a) of this title, or with respect to whom payment of benefits has been terminated on or after such date pursuant to section 1383(a)(2)(A)(iii) of this title, by reason of misuse of funds paid as benefits under this subchapter, subchapter VIII, or subchapter XVI, and

(II) a list of the names and social security account numbers (or employer identification numbers) of all persons who have been convicted of a violation of section 408, 1011, or 1383a of this title.

(iii) Notwithstanding the provisions of section 552a of title 5 or any other provision of Federal or State law (other than section 6103 of the Internal Revenue Code of 1986 and section 1306(c) of this title), the Commissioner shall furnish any Federal, State, or local law enforcement officer, upon the written request of the officer, with the current address, social security account number, and photograph (if applicable) of any person investigated under this paragraph, if the officer furnishes the Commissioner with the name of such person and such other identifying information as may reasonably be required by the Commissioner to establish the unique identity of such person, and notifies the Commissioner that—

(I) such person is described in section 402(x)(1)(A)(iv) of this title,

(II) such person has information that is necessary for the officer to conduct the officer's official duties, and

(III) the location or apprehension of such person is within the officer's official duties.

(iv) The felony crimes provided under this clause, whether an offense under State or Federal law, are the following:

(I) Human trafficking, including as prohibited under sections 1590 and 1591 of title 18.

(II) False imprisonment, including as prohibited under section 1201 of title 18.

(III) Kidnapping, including as prohibited under section 1201 of title 18.

(IV) Rape and sexual assault, including as prohibited under sections 2241, 2242, 2243, and 2244 of title 18.

(V) First-degree homicide, including as prohibited under section 1111 of title 18.

(VI) Robbery, including as prohibited under section 2111 of title 18.

(VII) Fraud to obtain access to government assistance, including as prohibited under sections 287, 1001, and 1343 of title 18.

(VIII) Fraud by scheme, including as prohibited under section 1343 of title 18.

(IX) Theft of government funds or property, including as prohibited under section 641 of title 18.

(X) Abuse or neglect, including as prohibited under sections 111, 113, 114, 115, 116, or 117 of title 18.

(XI) Forgery, including as prohibited under section 642 and chapter 25 (except section 512) of title 18.

(XII) Identity theft or identity fraud, including as prohibited under sections 1028 and 1028A of title 18.

The Commissioner of Social Security may promulgate regulations to provide for additional felony crimes under this clause.

(v)

(I) For the purpose of carrying out the activities required under subparagraph (B)(i) as part of the investigation under subparagraph (A)(i), the Commissioner may conduct a background check of any individual seeking to serve as a representative payee under this subsection and may disqualify from service as a representative payee any such individual who fails to grant permission for the Commissioner to conduct such a background check.

(II) The Commissioner may revoke certification of payment of benefits under this subsection to any individual serving as a representative payee on or after January 1, 2019 who fails to grant permission for the Commissioner to conduct such a background check.

#### **42 USC 407 – Assignment of benefits**

(a) In general

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.

(b) Amendment of section

No other provision of law, enacted before, on, or after April 20, 1983, may be construed to limit, supersede, or otherwise modify the provisions of this section except to the extent that it does so by express reference to this section.

(c) Withholding of taxes

Nothing in this section shall be construed to prohibit withholding taxes from any benefit under this subchapter, if such withholding is done pursuant to a request made in accordance with section 3402(p)(1) of the Internal Revenue Code of 1986 by the person entitled to such benefit or such person's representative payee.



**CERTIFICATE OF SERVICE**

On **May 25, 2023**, I filed via MiFILE, Christy Bomba's, Co-guardian of AM, a legally protected person, Appellant, **Supplemental Brief, Appendices, Certification of Word Count and the Certificate of Service**, which will automatically send a copy to all counsel who have appeared and are registered MiFILE users:

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