

No. 23-____

In the
Supreme Court of the United States

Sammie Todd Moser,
Petitioner,

v.

The Halifax County Board of Supervisors
and
The Virginia Retirement System,
Respondents.

**Petition for a Writ of Certiorari to the
Virginia Supreme Court**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Eighth Amendment's Excessive Fines clause was violated in the forfeiture of Petitioner's vested retirement benefits.
2. Whether the Virginia statute limiting appeals of Petitioner's case to a Virginia Circuit Court deprived Petitioner of Due Process of law under the Fifth and Fourteenth Amendments.

PARTIES TO THE PROCEEDINGS

The Petitioner is Sammie Todd Moser. The Respondents are The Halifax County Board of Supervisors and the Virginia Retirement System. The Halifax County Board of Supervisors has the power to hire and fire county employees pursuant to § 15.2-1503.B of the Code of Virginia, as amended. It also has the power to establish retirement systems, § 15.2-1510 of the Code of Virginia, as amended. The Virginia Retirement System governs the Virginia Law Officers Retirement System under § 51.1-211, et. sec., of the Code of Virginia, as amended.

RELATED PROCEEDINGS

Circuit Court of Halifax County, *Sammie Todd Moser v. The Halifax County Board of Supervisor, et al.*, Case No. CL23000285-00

Virginia Supreme Court, *Sammie Todd Moser v. Halifax County Board of Supervisors, et al.*, Record No. 230308

TABLE OF CONTENTS

Questions Presented	i
Parties to the Proceedings	ii
Related Proceedings.....	ii
Table of Contents	iii
Table of Authorities	iv
Petition for Writ of Certiorari.....	1
Opinions Below	1
Jurisdiction.....	1
Constitutional Provisions Involved	1
Statement of Case	3
Reasons for Granting the Writ	4
Argument I: The Retirement Forfeiture Proceedings Employed Denied Sammie Todd Moser of His Rights to Due Process of Law	4
Argument II: Section 51.1-124.13 of the Code of Virginia Unconstitutionally Imposes an Excessive Forfeiture.....	7
Conclusion	8

TABLE OF AUTHORITIES

CASES

<i>Austin v. United States,</i> 509 U.S. 602 (1993)	5-6, 8
<i>Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.,</i> 492 U.S. 257 (1989)	6
<i>Morrissey v. Brewer,</i> 408 U.S. 471 (1972)	6
<i>Perry v. Sindermann,</i> 408 U.S. 593 (1972)	6
<i>Timbs v. Indiana,</i> 586 U.S. ____ 171091 (2019)	7, 8
<i>Toth v. U.S.,</i> 597 U.S. ____ 22177 (2023)	6
<i>United States v. Halper,</i> 490 U.S. 435 (1989)	6

CONSTITUTIONAL PROVISIONS

United States Constitution, Amend. V	1-2, 3
United States Constitution, Amend. VIII ...	1, 2, 3, 7, 8,
United States Constitution, Amend. XIV	1, 2, 3

STATUTES

18 U.S.C. § 242	1, 3
28 U.S.C. § 1254	1
§ 18.2-111 of the Code of Virginia of 1950, as amended.....	4
§ 18.2-112 of the Code of Virginia of 1950, as amended.....	4
§ 19.2-386.22.A of the Code of Virginia of 1950, as amended.....	8
§ 51.1 - 124.13 of the Code of Virginia of 1950, as amended.....	1, 3, 4, 6, 7

PETITION FOR WRIT OF CERTIORARI

The Petitioner Sammie Todd Moser respectfully Petitions for a Writ of Certiorari to review the statutory basis of his appeal to the Supreme Court of Virginia and the forfeiture of his entire police retirement.

OPINIONS BELOW

The Circuit Court of Halifax County, Virginia upheld forfeiture of Petitioner's retirement benefits in an order entered on August 19, 2023, which is reproduced in Petitioner's Appendix (App. A). The Virginia Supreme Court denied Mr. Moser's petition for hearing on August 17, 2023. (App. B).

JURISDICTION

On August 17, 2023, the Supreme Court of Virginia refused to review the decision of the Circuit Court of Halifax County, citing § 51.1-24.13(A) of the Code of Virginia, as amended, and declared the aforesaid Circuit Court's decision as final even though this case arises under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution and 18 U.S.C. § 242 (App. A & B). This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime,

unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be put twice in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VIII:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

United States Constitution, Amendment XIV:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF CASE

This case presents the questions of whether the forfeiture of Petitioner vested police retirement benefits to the Respondent Virginia Retirement System violated the Eighth Amendment's Excessive Fines Clause, and whether the truncation of Petitioner's procedural rights under Virginia statutes denied Petitioner Due Process of Law, as secured by the Fifth and Fourteenth Amendments and by 18 U.S.C. § 242.

Petitioner served for 26 years as a police officer in two police departments in Halifax County, Virginia and, was receiving gross retirement payments from the Respondent Virginia Retirement System amounting to \$1,208.69 per month at the time of the forfeiture.

The Respondent Retirement System is established pursuant to Article X Section II of the Constitution of Virginia and Title 51.1 of the Code of Virginia, as amended. That Code provides in § 51.1-124.13 that no Virginia state retiree is entitled to receive retirement benefits if he is convicted of a felony arising from his conduct while in any position in which the person was a member covered by retirement systems administered by the Board of Directors of the Virginia Retirement System. All of the Petitioner's vested retirement benefits were earned through payroll deductions for the Virginia Law Officers Retirement System, which is also administered by the Respondent Retirement System's Board. See Title 51.1, Chapter 2-1 of the Code of Virginia, as amended.

Petitioner was convicted of two felonies, theft of government funds and embezzlement, pursuant respectively to § 18.2-112 and § 18.2-111 of the Code of Virginia, as amended, the offenses were committed while he was employed as the Halifax County Animal Control Warden, which also is Retirement Systems covered. The funds he embezzled were receipts from animal adoptions from the Halifax County Animal Shelter.

Section 51.1-124.13 is constitutionally deficient in setting forth retirement and procedural rights in retirement forfeitures. The statue does not provide for a refund of paid-in benefits, makes no exception for benefits vested before a retiree's crimes were committed, and sharply limits a retiree's appellant remedies. (App. E). After termination of an employee his only appeal can be made to the Circuit Court of the jurisdiction. Its decision is "final" and there is no right to appeal decisions to any higher tribunal.

REASONS FOR GRANTING THE WRIT

ARGUMENT I

The Retirement Forfeiture Proceedings Employed Denied Sammie Todd Moser of His Right to Due Process of Law.

Virginia Code Section 51.1-124.13.A makes mandatory the forfeiture of all retirement benefits provided by the Virginia Retirement System, which is an agency of the Commonwealth, if the retiree committed any felony offense "in any position in

which the person was a member covered for retirement purposes under any retirement system administered by the Board (of the Virginia Retirement System).” Retirement benefits are determined by the employee’s length of service and are employee contributory in nature. The forfeiture statute does not limit the loss of benefits only to those accumulated during the period when a felony was committed, but rather mandates forfeiture of all benefits irrespective of whether or not the Commonwealth sustained loss as a result of the felonious conduct. In Mr. Moser’s case the loss to the Commonwealth has been ascertained by the Virginia State Police and full restitution ordered as a special condition of Moser’s sentence. The Ninth Edition of Black’s Law Dictionary (2009) defines punishment as, “A sanction—such as a fine, penalty, confinement, or loss of property, right, or privilege—assessed against a person who has violated the law.” Moser’s loss is indeed a forfeiture and the Retirement System’s form VRS-180, on which the Board of Supervisors is supposed to report its decision, is a “Request for Forfeiture”. (App. D)

The Respondent cannot maintain that this forfeiture is not punitive in nature. As Justice Blackmon observed for the majority in *Austin v. United States*,

The Cruel and Unusual Punishments Clause is self-evidently concerned with punishment. The Excessive Fines clause limits the government’s power to extract payments, whether in cash or in kind ‘as punishment for some offense.’ (citing

Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc., 492 U.S. 257,256 (1989). ‘The notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law. *United States v. Halper*, 490 U.S.435, 447-448 (1989) ...’ Thus, the question is not, as the United States would have it, whether forfeiture under (21USC) Sections 88(a)(4) and (a)(7) is civil or criminal but whether it is punishment.” *Austin v. United States*, 509 U.S. 602, 610 (1993). See, also, Justice Gorsuch’s dissent to a denial of a writ of certiorari in *Toth v. U.S.*, 597 U.S. ____ 22177 (2023) (Slip Opinion 2)

There can be no doubt that Mr. Moser possessed a property interest in his retirement. The due process clause of the Bill of Rights applies to both procedural and substantive deprivations of “liberty” and “property”, and when a deprivation of a property interest is challenged the reviewing court makes a two-step inquiry. The first step is whether the property interest involved is protected by the due process clause, and the second, which is what is more at issue here, is whether the procedures applied by the Board of Supervisors were sufficient to satisfy the due process “fairness” standard. *Id.*, at 754-755. *See Perry v. Sindermann*, 408 U.S. 593, 596 (1972) and *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972).

Section 51.1-123.13 of the Code of Virginia is defective because it purports to declare final decisions that are decided on constitutional issues, depriving a litigant of appellate review by certiorari or otherwise.

ARGUMENT II

Section 51.1-124.13 of the Code of Virginia Unconstitutionally Imposes an Excessive Forfeiture.

The core issue in this Petition is whether the Virginia retirement forfeiture law imposes an excessive fine or amercement prohibited by our state and federal constitutions and prohibited in the English Common Law since the Magna Carta. The most pertinent decision on such excessive fines and forfeitures as Petitioner sustains is *Timbs v. Indiana* 586 U.S. __ 171091 (2019), and Appellant believes that decision is so close on the facts to his case that it requires a finding of unconstitutionality.

In *Timbs*, a rare unanimous decision of this Court authored by the late Justice Ginsburg, the Court noted that Timbs plead guilty to dealing in a controlled substance and conspiracy to commit theft. Thereafter the State of Indiana brought a forfeiture action of Timbs' \$82,000 vehicle on the grounds that it was used to transport heroin. Timbs presented clear proof that his vehicle was purchased from the proceeds of his late father's life insurance policy, of which he was the beneficiary. The trial judge denied the forfeiture under the Eighth Amendment, but the Supreme Court of Indiana reversed that decision. It came before the United States Supreme Court on a Writ of Certiorari.

Justice Ginsburg began by removing all doubt about the Eighth Amendment's application to the

states, noting in part that the amendment's antecedents were long a part of the Common Law. Her opinion also rejected Indiana's argument that the Eighth Amendment did not apply to in rem forfeitures, observing that to rule in the state's favor on that issue would require overruling the court's decision in *Austin, supra.*; *Timbs*, Slip Op.7.

Todd Moser further submits that unlike forfeiture of drug crime assets under Virginia Code § 19.2-386.22.A there is no connection between his crimes or their proceeds and his participation in Virginia's contributory retirement system Appendix (App. E). Although the statute does not require it, the fact that he was mandated in his criminal sentencing order to make full restitution to Halifax County makes his retirement forfeiture excessive in fact, since it is clear none of what he took from the County was required or proven to have been used to make his retirement contributions.

CONCLUSION

Accordingly, Mr. Moser prays that this court overrule and declare unconstitutional any forfeiture of his retirement benefits under the Virginia Retirement System.

Respectfully,

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