No.

IN THE
SUPREME COURT OF THE UNITED STATES

Ron Waterman, ex-husband,

Petitioner pro se,

v.

Robyn Waterman, ex-wife,

Respondent pro se,

ON PETITION FOR WRIT OF CERTIORARI
TO THE
MASSACHUSETTS SUPREME JUDICIAL COURT and COURT OF APPEALS

# PETITION FOR WRIT OF CERTIORARI

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# QUESTIONS PRESENTED FOR REVIEW

## QUESTION ONE

Over a dozen States' Appellate Courts have issued opinions holding that Variable Separation Incentive (VSI), authorized by 10 USC § 1175, is a pension, thus divisible during divorce under 10 USC § 1408 (Former Spouse Protection Act, aka. USFPA). In this case, Massachusetts decided that VSI is not a pension. Is Massachusetts correct, or are the dozen other States correct?

## QUESTION TWO

Massachusetts courts modified a 1999 Judgment of Divorce that was final for over 20 years in order to garnish husband's 2021 military pension, when future pensions first "entitled to" after divorce were excluded by the 1999 Judgment. Does this modification of a 1999 Judgment that was final for over 20 years violate U.S. Constitution Fourteenth Amendment Due Process?

**PARTIES**

All parties appear in the caption on page 1.

**PROCEEDINGS BELOW**

In Norfolk County, Mass. Family Court, Docket No. 98D0300DX1, Ron Waterman, Plaintiff vs. Robyn Waterman, Defendant, Judgment of Divorce was final in 1999. Appendix, at 1 ("A/1"). Judgment of "Not Guilty" on Robyn Waterman's Complaint for Civil Contempt was final on June 6, 2023. A/2-4.

Notice of Appeal was timely filed on July 3, 2023.

Massachusetts Court of Appeals, Case No. 2023-P-0905, 104 Mass.App.Ct. 1111 (2024), Ron Waterman, Appellant, vs. Robyn Waterman, Appellee, on Appeal from Norfolk Family Court's Judgment on Complaint for Civil Contempt, appeal was denied on June 17, 2024. A/9-14 (Court of Appeals (COA) Decision).

Massachusetts Supreme Judicial Court, No. FAR-29897, 494 Mass. 1107 (2024), Ron Waterman, Petitioner vs. Robyn Waterman, Respondent. Petition for Further Appellate Review (FAR), filed July 5, 2024, was denied Sept. 5, 2024. A/15 (Notice); A/15a (Docket). Motion for Rehearing, filed Sept. 18, 2024, was denied on October 17, 2024. A/16 (Notice), A/15a (Docket list).

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

## CITATIONS TO COURT ORDERS AND JUDGMENTS

Norfolk Family Court's Dkt. No. 98D0300DX2, Judgment of Not Guilty on Complaint for Civil Contempt, dated July 29, 2022. Appendix, at 2-4 ("A/2-4").

Norfolk Family Court's Dkt. No. 98D0300DX2, File Ref. 132, Order Denying Defendant pro se Ron Waterman's Motion to Amend, June 27, 2023. A/8.

Massachusetts Court of Appeals, 104 Mass.App.Ct. 1111 (2024), Decision under Rule 23.0 (Summary Judg.), Denying Appeal, on June 17, 2024. A/9-14.

Massachusetts Supreme Judicial Court, 494 Mass. 1107 (2024), denied Further Appellate Review, by email Notice. A/15-16.

## JURISDICTION

The Massachusetts Supreme Judicial Court denied discretionary Further Appellate Review (FAR) on Sep. 5, 2024; and denied Rehearing on Oct. 17, 2024. A/15-16. U.S. Supreme Court Rule 13(3) allows 90 days to file after rehearing is denied, so this petition for a writ is timely when filed before January 15, 2025.

Jurisdiction for this Court is provided by U.S. Const. Art. III sec. 2; by U.S. Sup.Ct. R. 10(b); and by 28 U.S.C. § 1257(a) (conflicting decisions among States).

## CONSTITUTIONAL PROVISIONS, STATUTES

Constitution of the United States, Article III, sec. 2; in relevant part: "The judicial Power shall extend to all Cases, ... arising under this Constitution, the Laws of the United States, ... Controversies between two or more States; ...".

Constitution of the United States, Fourteenth Amendment, relevant part: "... 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."

10 U.S.C. § 1175, Variable Separation Incentive (in Appendix, at 51-52).

10 U.S.C. § 1408, Former Spouses Protection Act (in Appendix, at 53-54).

10 U.S.C. § 12731, Age and Service Requirements (in Appendix, at 55).

28 U.S.C. § 1257. State courts; certiorari: "(a) Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari ... where any ... right, privilege ... is ... claimed under the Constitution (of) the United States."

**STATEMENT OF THE CASE**

The parties, Ron Waterman ("husband") and Robyn Waterman ("wife") were married 1984; divorced 1999. A/1 (Judgment). Husband served in the U.S. Air Force from 1985 to 1993. A/56 (DD 214). His military service entitled him to a pension of $6,855 for 16 years. A/56 (DD 214); A/51 (10 USC 1175(a)(2)(A)).

The parties divided this 1993 to 2008 pension during divorce. A/19-20.

Years after divorce, husband obtained a new military Commission, and in September 2021 first became "entitled" to military retired pay. A/57 (Order); A/55 (10 U.S.C. § 12731(a)(2)).

In 2022, wife filed Complaint for Civil Contempt claiming she was entitled

to half of this new 2021 military retirement pay, and half of a Lockheed Martin pension that never existed. A/21 (Complaint).

Norfolk County Family Court found husband "Not Guilty" of contempt, but then awarded wife half of husband's 2021 pension (retired pay) for all the years they were married; and awarded none of the non-existent, claimed Lockheed Martin pension. A/2-4 (Judgment on Complaint for Civil Contempt).

Husband timely appealed; Mass. Court of Appeals (Mass. COA) denied appeal without a hearing. A/9-14 (Mass. COA decision).

Husband sought further appellate review in the Mass. Sup. Judicial Ct., and was denied. A/15 (Notice). Rehearing was denied. A/15a, A/16 (Notice).

Both Questions presented were presented to each Massachusetts court.

The precedents of a dozen other States finding VSI was "equivalent" to retired pay, thus a pension, and thus divisible under 10 U.S.C. § 1408 (USFSPA) was argued in Norfolk Family Court. A/29 (Motion to Amend, at 4, citing *In re: Marriage of Menard*, 180 Or.Ct.App 181, 183, 42 P.3d 359 (2002). (A/58-60).

When the Norfolk Family Court refused to acknowledge this precedent, it was presented again in Motion to Take Judicial Notice. A/34.

This same conflict between several other States finding VSI is a pension was presented to the Mass. COA, A/38-47, and the Mass. Sup. Judicial Ct. A/49.

Question Two, claiming that altering a 20 year old, final judgment violates US Const. XIV Amend. Due Process, was presented to the Norfolk Court, A/32, the Mass. COA, A/38-40, and to the Mass. Sup. Judicial Ct. A/50. The lowest

and highest Massachusetts courts completely ignored both Questions, and the Mass. COA doggedly kept referring to "his pension" in singular tense, as if there was only ever one – i.e. my 2021 military retirement. A/9-14 (Decision).

**ARGUMENT**

**QUESTION ONE**

Massachusetts is the lone State that has concluded VSI is not a pension nor a retirement benefit, contradicting a dozen States that have decided it is.

The Mass. COA repeatedly refers to my 1993 to 2008 VSI pension, plus my 2021 military retirement, as "his pension," singular tense, and VSI as a "benefit" but not a pension or equivalent to retirement pay. A/9-14 (Mass. COA decision).

But a dozen other States have ruled or decided that VSI is "equivalent" to retired pay, and is a pension, and therefore divisible as property. See Marriage of Menard, 42 P.3d 359, 364 (Or.App. 2002) (citing accord to cases in Florida, Arizona, Montana, Colorado and Oklahoma); A/58-60, Abernethy v. Fishkin, 638 So.2d 160, 163 (Fla.App. 5th Dist. 1994) (citing accord to appellate court cases in Alaska, Arkansas, Idaho, and Virginia). A/66-69. Kelson v. Kelson, 675 So.2d 1370 (Fla. 1996). A/61-65.

Florida courts cited U.S. Supreme Court precedent as favoring a decision to allow VSI benefits to be divided as a pension during divorce as property. Abernathy, 638 So.2d, at 163, citing Rose v. Rose, 481 U.S. 619 (1987). A/66-69.

Massachusetts has now dissented, conflicting with a dozen other States.

The clause at issue in the parties' 1999 Agreement reads: "To the extent

that the husband is entitled to any military or other pension up to the date of this Agreement the wife shall be entitled to receive 50% thereof via appropriate QDRO or other order." A/19-20. It reads, "is entitled," present tense. Just as the law, 10 U.S.C. § 12731, reads that a military member "is entitled" to retired pay only AFTER he or she or they completes 20 years of military service. A/55.

Husband's USAF Retirement Order affirms that husband is first ENTITLED to retired pay only after September 2021. A/57 (USAF Retirement Order).

The 1999 Separation Agreement's clause is deliberately phrased in the present tense, encompassing husband's 1993 to 2008 VSI pension; to exclude an improbable future military retirement to which husband could not possibly first become "entitled to" until over 20 years after divorce, if he managed to find a new military commission (which, years after divorce, he did). A/57.

Contrast this 1999 Agreement to other States' decisions quoting other Separation Agreements explicitly incorporating division of "***future*** retired pay". See *Menard*, 42 P.3d, at 363 (A/59, emphasis added); and *Kelson*, at 1371 fn.1 ("husband's ***future*** ... military retirement pay.") A/65 (emphasis added).

Husband argued this at a hearing on wife's Complaint for Civil Contempt, lamenting to an intractable lower court: "To the extent that the Husband IS ENTITLED, present tense, already existing in 1999; to any military or other pension UP TO THE DATE of this Agreement, the Wife shall be entitled to receive 50% of such pension. ... It says, 'IS entitled,' not 'will someday be entitled to'." A/26-27 (hearing transcript).

**QUESTION TWO**

The parties' 1999 Judgment of Divorce was Final and irrevocable in 2005. No appeal was filed challenging that judgment. The statute of limits to complain about failing to comply with a civil judgment is six (6) years. M.G.L. Ch. 260 § 2. That six years expired in 2005, twenty (20) years ago. *Cf.* A/22-23 (Answer to Complaint for Contempt).

To alter a final Judgment over 20 years later in order to seize and garnish husbands 2021 military retirement, never contemplated by the 1999 Agreement dividing a VSI pension husband was "entitled to" in 1999, violates U.S. Const. XIV Amend. Due Process.

The 1999 Agreement divided the 1993 to 2008 VSI pension husband "is entitled to" in 1999, as of the date of the Agreement, A/19-20, and explicitly did NOT divide a "future" pension, that was improbable in 1999. *Cf.* Kelson, 675 So.2d, at 1371 fn.1 citing Blair v. Blair, 271 Mont. 196 (1995) ("wife to share in husband's future net disposable military retirement pay.") A/65.

"Res judicata" doctrine means a judgment has a binding effect in future actions. Heacock v Heacock, 402 Mass. 21, 23 n.2 (1988) ("collateral estoppel").

"The term 'court order' means a final decree of divorce ... which – (A) is issued in accordance with the laws of the jurisdiction of that court; ... and (C) ... specifically provides for the payment of ... a percentage of disposable retired pay ...". The parties 1999 Judgment of Divorce was absolute in 2005, and divided a "pension," i.e. my 1993 to 2008 VSI (A/56 DD214), and not, as the

federal statute requires, "disposable retired pay." A/53 (10 U.S.C. § 1408(a)(2)).

"Once a judgment of dissolution becomes final, the parties may be precluded from attacking the property settlement agreement on which the judgment is based. Abernathy, 638 So.2d, at 163 fn.13. A/69 (citing " *In re Marriage of Mansell*, 217 Cal. App.3d 219, 265 Cal. Rptr. 227, 231-32 (1989), *cert. denied, mandamus denied*, 498 U.S. 806, 111 S.Ct. 237, 112 L.Ed.2d 197 (1990)).

Massachusetts courts decided that "is entitled to" actually means "will possibly become entitled to in the future, however unlikely or improbable at the time of divorce," a revision of the actual 1999 Agreement, thus modifying a 25 year old Judgment by finding that a VSI pension is not a pension.

Courts' revision of this case's 1999 judgment of divorce offends M.G.L. c. 260 § 2, 10 U.S.C. § 1408(a)(2), and U.S. Const. XIV Amend. Due Process. Aime v. Commonwealth, 414 Mass. 667, 674 (2000) ("Procedural due process requires that ... governmental action ... be implemented in a fair manner.").

Massachusetts' decisions are "contrary to the principle of fundamental fairness that underlies the concept of due process of law." Doe v. Atty. Gen., 426 Mass. 136, 147 (1997); *cf.* Mathews v. Eldridge, 424 U.S. 319, 332-335 (1976).
Done on January 13, 2025 in Manati, Puerto Rico.

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