No. 18-809

IN THE

Supreme Court of the United States

CURTIS T. LOVELACE,

Petitioner,

v.

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for a Writ of Certiorari to the Illinois Supreme Court

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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STATUTES

I. This case is an ideal vehicle for adjudicating the questions presented: Petitioner has standing and the factual record is more than sufficient for review of the claims.

This case offers a clean presentation of the issues. The State concedes that there are no disputes of fact, that the constitutional issues were fully adjudicated below, and that no further review by the state courts is required. The petition offers the ideal vehicle for adjudicating the pressing constitutional questions presented.

A. Petitioner has standing.

Article III limits judicial power to "cases" or "controversies," meaning that to have standing, a petitioner must show, among other things, an "injury in fact." *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 20 (1998) (citation omitted). In *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1547-48 (2016), the Court held that "[t]o establish injury in fact, a plaintiff must show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" (citation omitted).

To be "particularized," the injury "must affect the plaintiff in a personal and individual way." *Spokeo*, 136 S. Ct. at 1548 (citations omitted). To be concrete, an injury "must actually exist"—in other words, it must be "real," and not "abstract." *Id.* But "concrete" is not "necessarily synonymous with

'tangible.'" *Spokeo*, 136 S. Ct. at 1548 ("Although tangible injuries are perhaps easier to recognize, we have confirmed in many of our previous cases that intangible injuries can nevertheless be concrete. *See, e.g., Pleasant Grove City v. Summum,* 555 U.S. 460, 129 S. Ct. 1125, 172 L.Ed.2d 853 (2009) (free speech); *Church of Lukumi Babalu Aye, Inc. v. Hialeah,* 508 U.S. 520, 113 S. Ct. 2217, 124 L.Ed.2d 472 (1993) (free exercise).").

Despite conceding standing below, the State now argues here for the first time that because the bond forfeiture was taxed against the bond paid by Petitioner's supporters on his behalf, the injury does not affect him in a "personal and individual way" in accordance with *Spokeo.* Brief in Opposition at 6. The State is simply incorrect. Petitioner was held in pre-trial detention for almost two years before he was able to convince the court to reduce his bail and then to secure supporters who were willing and able to post the $350,000 bail bond on his behalf. It was Petitioner who wore a GPS monitoring device, Petitioner who made every court appearance, and Petitioner who earned the right to have the bond returned. *See* C.229 (Petitioner's receipt for the appearance bond). Without question, the return of the bond and the forfeiture fee is personal to Petitioner.

Petitioner is also the only person authorized under Illinois law to the return of the bail bond. Recognizing that bail and, importantly, the satisfaction of the conditions of bail, are inherently personal to the defendant, Illinois law vests the right to the return of the bond exclusively with

defendants, while at the same time acknowledging that bonds are often posted by someone else. "When the conditions of the bail bond have been performed and the accused has been discharged from all obligations in the cause the clerk of the court *shall return to the accused or to the defendant's designee*…[the bond less the forfeiture retained]…." 725 ILCS 5/110-7(f). Because only the defendant can discharge the conditions of bail, the clerk of the court is authorized to return it to the defendant or the defendant's designee, regardless of who actually paid for the bond. The clerk's failure to do so in full after Petitioner's acquittal personally and concretely injured him.

Finally, Petitioner suffered an additional concrete injury because he still owes the money to his supporters for their payments on his behalf: as a result of the forfeiture, he is unable to repay the supporters who posted his bond for him.[1] This nonmonetary relationship affront supports a concrete injury in and of itself. *See, e.g., Trump v. Hawaii*, 138 S. Ct. 2392, 2416, (2018) (injury to familial relationships sufficient to support Article III standing); *Trafficante v. Metro. Life Ins. Co.*, 409 U.S. 205, 210 (1972) (standing supported by the loss of "important benefits from interracial associations"). Thus, Petitioner has concrete and particularized interests in the money retained by

[1] The record reflects, and the State acknowledges, that Petitioner seeks return of the forfeited funds to reimburse his supporters for their payments on his behalf.

the lower court, regardless of who paid it. Petitioner has standing.

B. The factual record is sufficiently developed for the questions presented.

The State suggests that the record is inadequate because there are no exact figures presented below about the costs of administering the bail bond system. That argument is specious. The question presented in this case is not whether the forfeiture fee actually compensates the state for the cost of administering the bail bond system. The question is whether funds obtained through bail bond forfeitures can be used for other purposes such as funding the clerk's office. Thus, there is no need to develop a record on the precise costs of administering the bail system in Illinois.

The State does not dispute that the money from the bond forfeiture taxed in this case was used to fund the clerk's office generally, rather than the administration of bail. *See* App. 7a ¶27 (the court explaining that the statutory 10% bond forfeiture allowance is "one of the ways the clerks basically fund their office."). The State also does not dispute that Petitioner was separately charged, and paid, the direct costs of administering his personal bond. *See* App. 7a ¶27 (the court imposed a $5,433.75 fee to cover the actual costs of administering Petitioner's bail, specifically, the cost of electronic monitoring).

Moreover, if the forfeiture statute were tied to the exact costs of administering the bail system, it would say so and not be a percentage of the bond

amount—it is absurd to suggest that the cost of administering bail is higher merely because higher bond is paid.

The State posits no reason why this Court needs to know the precise costs of administering the bail bond system generally to adjudicate the constitutionality of the bond forfeiture statute. There is none: the cost of the system has no bearing on the constitutionality of the statute. It is not a bar to certiorari.

II. Compelling national interests warrant consideration of the due process implications of modern bail bond forfeiture statutes.

The amicus briefs discuss the vital importance of the issues in this appeal and the burden that bond forfeiture fees impose on the accused, on tax-payers in general, and on the criminal justice system at large. Both the amicus briefs and the petition for certiorari detail the staggering impact of statutes such as Illinois' bail bond forfeiture statute. They also delineate how the world of criminal fines, fees, and forfeitures has changed dramatically in the almost half-century since this Court considered an Illinois court's $7.50 bail bond retention and concluded that the negligible assessment taxed by Illinois' bail bond forfeiture statute "smacks of administrative detail[.]" *Schilb v. Kuebel*, 404 U.S. 357, 365 (1971). Indeed, Petitioner's $35,000 forfeiture far exceeds "administrative detail."

In response, the State contends that *Schilb* inexorably forecloses reconsideration of the due process implications of a modern bail bond forfeiture statute. This contention is without merit.

First, the State ignores how *Nelson v. Colorado*, 137 S. Ct. 1249, 1257-58 (2017), extends due process protections well beyond those afforded in *Schilb*. This important advancement in the law defeats the State's contention that Petitioner would necessarily fail at negating every plausible rational basis for the State of Illinois' interest in retaining the bond forfeiture money. Brief in Opposition at 9.

In *Nelson*, the Court concluded that the costs and fees imposed on the acquitted defendants plainly violate due process. Thus, this Court could certainly find that the same is true of the bond forfeiture that acquitted people are charged under Illinois' statute. *Nelson* defeats the notion that it is irrefutably rational to force someone to defend himself and then charge him an exorbitant fee related to that prosecution after he is found innocent. Petitioner's due process challenge warrants consideration in light of *Nelson.*

Second, the State's overreliance on *stare decisis* is misplaced, given the profound changes to the criminal justice landscape over the last five decades. This Court recognizes that such dramatic changes warrant revisiting outdated precedent. *See, e.g., S. Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2096 (2018) (rejecting *stare decisis* in light of the changed circumstances of internet sales); *Direct Mktg. Ass'n v. Brohl*, 135 S. Ct. 1124, 1135, (2015)

(Kennedy, J., concurring) ("Given these changes in technology and consumer sophistication, it is unwise to delay any longer a reconsideration of the Court's [prior] holding[.]"); *Pearson v. Callahan,* 555 U.S. 223, 233 (2009) ("Revisiting precedent is particularly appropriate where … experience has pointed up the precedent's shortcomings."). The 1971 ruling in *Schilb* does not bar consideration of Petitioner's due process claims

The State's remaining contentions about Petitioner's due process claims address the underlying merits of the claims. This discussion merely underscores the compelling legal dispute presented by this case. Certiorari is warranted.

III. This Court should consider Petitioner's Eighth Amendment challenge to the Illinois statute in light of *Timbs v. Indiana.*

The State's cursory disregard of Petitioner's Eighth Amendment challenge to the Illinois bond forfeiture statute ignores entirely this Court's recent decision in *Timbs v. Indiana*, __ U.S. __, 139 S. Ct. 682 (2019). The State contends that *Schilb* decisively ruled that a bond forfeiture constitutes a fee, not a fine. Brief in Opposition at 15. But *Schilb* was decided 18 years before this Court was ever asked to review the Excessive Fines Clause, in *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989). *Timbs*, in contrast, sheds meaningful light on the issue.

Under both *Austin v. United States*, 509 U.S. 602 (1993), and *Timbs*, an assessment is a fine if it

is "at least partially punitive." 139 S. Ct. at 689-90. In this case, the State concedes that the only factor supporting Petitioner's high bail—and therefore high forfeiture—was the seriousness of the accusations against him. Accordingly, the Court could find that the forfeiture has a punitive element to it. This is particularly true given that the more serious the charges, the higher the resulting forfeiture will be.

Whether that partially punitive nature renders the forfeiture a fine is an issue ripe for consideration in the wake of *Timbs*. Without it, states may seek to circumvent the *Timbs* ruling by simply dubbing "fines" as "fees." *See Timbs*, 139 S. Ct. at 689 (recognizing that "fines may be employed 'in a measure out of accord with the penal goals of retribution and deterrence,' for 'fines are a source of revenue' while other forms of punishment 'cost a State money.'" (quoting *Harmelin* v. *Michigan*, 501 U.S. 957, 979, n.9 (1991) (opinion of Scalia, J.) ("it makes sense to scrutinize governmental action more closely when the State stands to benefit")). This case provides the ideal vehicle for conducting the corollary inquiry necessitated by *Timbs*.

CONCLUSION

For the reasons stated herein and in his petition for certiorari, Petitioner respectfully asks this Court to grant certiorari.

Respectfully submitted,

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