

25-189

1/13/25

No. 24M58

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  
MASSACHUSETTS'  
SUPREME COURT AND COURT OF APPEALS

PETITION FOR WRIT OF CERTIORARI

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## QUESTIONS PRESENTED FOR REVIEW

### QUESTION ONE

A dozen States' Appellate Courts have issued opinions holding that Variable Separation Incentive (VSI) is a retirement benefit/pension. Subsequently, Massachusetts courts ruled VSI is not a retirement benefit/pension. Are States free to interpret federal laws however each prefers, or is Massachusetts incorrect? (Or are the dozen other states?)

### QUESTION TWO

Massachusetts altered a 1999 Judgment that had been final for 20 years. Does this violate U.S. Constitution Fourteenth Amendment Due Process?

## **PARTIES**

All parties appear in the caption on the cover.

## **PROCEEDINGS BELOW**

In Norfolk County, Mass. Family Court's Dkt. No. 98D0300, Ron Waterman, Plaintiff vs. Robyn Waterman, Defendant, Judgment of Divorce was final in 1999. Appendix, at 6 ("A/6"). Judgment of "Not Guilty" on Robyn Waterman's 2022 Complaint for Civil Contempt was final June 6, 2023. A/5; A/9.

Notice of Appeal timely filed on July 3, 2023.

Massachusetts Court of Appeals (COA), Case No. 2023P0905, 104 Mass.App.Ct. 1111 (2024), Ron Waterman, Appellant, v. Robyn Waterman, Appellee, on Appeal from Norfolk Family Court's Judgment on Complaint for Civil Contempt, appeal was denied on June 17, 2024. A/4 (COA Decision).

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

## **CITATIONS TO ORDERS / JUDGMENTS**

Norfolk Family Court's Dkt. No. 98D0300,  
Judgment on Complaint for Civil Contempt. A/6-7.

Massachusetts COA, 104 Mass.App.Ct. 1111  
(2024), Rule 23.0 Decision (Summary Judgment),  
denying appeal, June 17, 2024. A/2-4.

Massachusetts Supreme Judicial Court, No.  
FAR-29897, 494 Mass. 1107 (2024), denied Further  
Appellate Review (FAR) on Oct. 17, 2024. A/5.

## **JURISDICTION**

The Massachusetts Supreme Judicial Court  
denied Rehearing on Oct. 17, 2024. A/5.

Petitioner's Motion to File under Rule 33.1  
was denied by this Court on Feb. 24, 2025, triggering  
U.S Sup.Ct. R. 14.5's 60-days provision to re-file.

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).

## **CONSTITUTIONAL PROVIS. / 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 equal protection of the laws.”

10 U.S.C. § 1408, USFSPA, A/9 n.1.

10 U.S.C. § 12731, Service Req., A/9 n.2.

28 U.S.C. § 1257. State courts; certiorari: “(a) Final judgments or decrees rendered by the highest court of a state ... 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”) married in 1984; divorced 1999. A/7 (Judgment). Husband served in the U.S. Air Force from 1985 to 1993. A/7. This military service entitled him to a Variable Separation Incentive (VSI) pension of \$6,855 for 16 years; the parties divided this 1993 to 2008 military pension during divorce. A/6; A/10.

After divorce, husband obtained a new military Commission and in September 2021 first became “entitled to” military retired pay. A/9 n.2 (10 U.S.C. § 12731(a)(2)).

In 2022, ex-wife filed a Complaint for Civil Contempt claiming she was entitled to half of Ron's newly entitled, 2021 military retirement pay. A/6.

Norfolk County Family Court found husband “Not Guilty” of contempt, but then awarded wife half of husband's 2021 military retired pay. A/7.

Mass. COA denied husband's appeal. A/3-4.

Mass. Supreme Judicial Ct. denied FAR. A/5.

Both Questions presented were presented to each Massachusetts court.

Question One, Massachusetts' rulings on federal law conflicting with a dozen other States' decisions that VSI is "equivalent" to retired pay, thus a pension, divisible under 10 U.S.C. § 1408 (A/9), was presented to Norfolk Family Ct. A/9-10 n.3; to Mass. COA, A/10-12 n.4; Mass. Sup.Jud.Ct. A/13 n.5.

Question Two, claiming that altering a 20 year old, final Judgment violates US Const. XIV Amend. Due Process, was presented to the Norfolk Family Court, A/10, the Mass. COA, A/10-12 n.4, and to the Mass. Supreme Judicial Ct. A/13 n.5.

## ARGUMENT

### QUESTION ONE

Massachusetts is the lone State that has concluded VSI is not a military pension nor the functional equivalent to military retired pay, contradicting a dozen States that have decided it is. A/10-13. See Marriage of Menard, 42 P.3d 359, 364 (Or.App. 2002) (citing accord to cases in Florida, Arizona, Montana, Colorado & Oklahoma). A/12-13. Cf. Abernathy v. Fishkin, 638 So.2d 160, 163 (Fla.App. 5<sup>th</sup> Dist. 1994) (citing accord to appellate court cases in Alaska, Arkansas, Idaho, and Virginia), A/12-13. Cf. Kelson v. Kelson, 675 So.2d 1370 (Fla. 1996), A/12-13.

Florida courts cited U.S. Supreme Court precedent as favoring their 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).

Massachusetts has now dissented, conflicting with all other States' interpretation of federal law.

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 ... ." A/6. 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 completes 20 years of military service, A/9 n.2, as Petitioner Ron first did in 2009.

Husband's USAF Retirement Order affirms that husband is first "entitled" to retired pay only after September 2021; NOT entitled in June of 1999.

The 1999 Separation Agreement's clause is deliberately phrased in the present tense, exclusively 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 his divorce, and then only if he managed to find a new military position (which, after divorce, he did). A/10-12.

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/11, emphasis

added); and Blair, 271 Mont., at 196 ("husband's future ... military retirement pay.") A/11.

## QUESTION TWO

The parties' 1999 Judgment of Divorce was Final in 1999 and irrevocable in 2005.

No appeal was filed challenging that 1999 judgment. The statute of limits to complain about failing to comply with a judgment is six (6) years. M.G.L. Ch. 260 § 2. A/14. That six years expired in 2005, twenty (20) years ago.

To alter a final Judgment over 20 years later violates U.S. Const. XIV Amend. Due Process. A/13.

The 1999 Agreement divided the 1993 to 2008 VSI pension husband "is entitled to" in 1999, as of the date of the Agreement, A/11, and explicitly did NOT divide a "future" pension, that was improbable in 1999. *Cf. Kelson*, 675 So.2d, at 1371 fn.1. A/11.

"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").

"Once a judgment of (divorce) becomes final, the parties may be precluded from attacking the property settlement agreement on which judgment is based." Abernathy, 638 So.2d, at 163 fn.13. (1989).

Massachusetts courts decided that "is entitled to" right now actually means "may possibly become entitled to in the future, however improbable that potential future outcome may be at the time of divorce." This is an impermissible revision of the



actual 1999 Agreement, thus modifying a 25 year old Judgment, all made possible by concluding that a military VSI pension is not a military pension.

Courts' 2022 revision of this case's 1999 final judgment of divorce offends M.G.L. c. 260 § 2 (A/14), 10 U.S.C. § 1408(a)(2) (A/9), and U.S. Const. XIV Amend. Due Process. Aime v. Commonwealth, 414 Mass. 667, 674 (2000) ("Procedural due process requires ... governmental action ... be implemented in a fair manner."). A/13.

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 April 15, 2025 in Plymouth, Massachusetts.



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