GW LAW ADVOCACY PROGRAMS

VAN VLECK CONSTITUTIONAL LAW MOOT COURT COMPETITION

2016-2017

COMPETITION PROBLEM AND RULES

Mariel Murphy, Chair

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2016-2017 Van Vleck Competition Committee

THE GEORGE WASHINGTON UNIVERSITY LAW SCHOOL

ADVOCACY PROGRAMS

MOOT COURT BOARD 2028 G STREET, NW,

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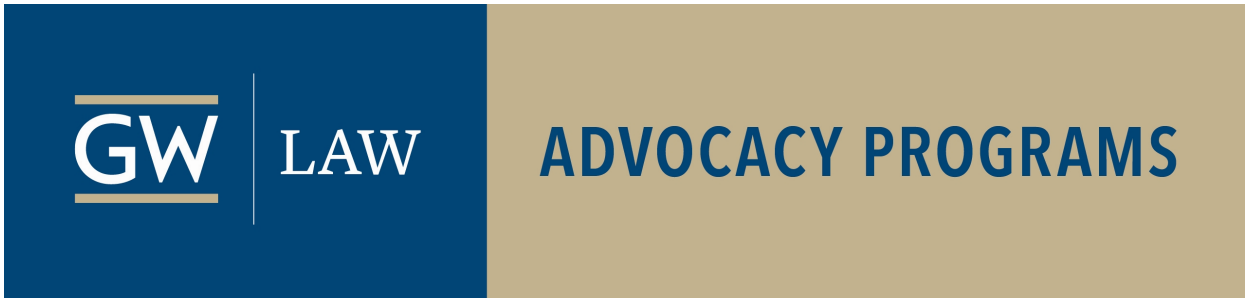
VAN VLECK CONSTITUTIONAL LAW MOOT COURT COMPETITION

2016-2017

** Thanks **

We would like to thank Dean Alan Morrison for his commitment, insight, and perseverance throughout the drafting of this problem.



VAN VLECK CONSTITUTIONAL LAW MOOT COURT COMPETITION

2016-2017

COMPETITION PROBLEM AND RULES

~ Problem Components ~

Competition Rules

◆

Supreme Court Order Granting Petition for Writ of Certiorari

◆

Petitioners' Appendix

2016-2017 VAN VLECK CONSTITUTIONAL LAW MOOT COURT COMPETITION RULES

INTRODUCTION

The problem is in the form of a United States Supreme Court order granting certiorari, an appellate decision from the fictional Thirteenth Circuit, and other supporting documents. The only binding law that applies to the Thirteenth Circuit is that of the Supreme Court.

The Thirteenth Circuit reviewed a ruling on cross motions for summary judgment issued by the fictional United States District Court for the District of New Columbia. Relevant materials from the proceedings below are included in the Petitioners' Appendix. These materials include:

1) An order granting certiorari to the Court of Appeals for the Thirteenth Circuit (1 page);
2) An order and opinion from the Court of Appeals for the Thirteenth Circuit (13 pages);
3) An order and opinion from the United States District Court for the District of New Columbia (2 pages);
4) The complaint (9 pages);
5) A public auction notice placed in the New Columbia Gazette (1 page);
6) A screenshot of the New Columbia Property Database (1 page);
7) A notice from the Controller of New Columbia to Petitioner Carmichael (1 page);
8) A notice from Goliath State Bank to Petitioner Carmichael (1 page);
9) A notice from the Controller of New Columbia to Phoebe Johanssen (1 page);
10) A notice from Goliath State Bank to Phoebe Johanssen (1 page);
11) The New Columbia Abandoned Property Act (5 pages);
12) The legislative history of the Act (2 pages);
13) The New Columbia Adverse Possession Act (1 page); and
14) Brief for MoneyGram Payment Systems, Inc. as Amicus Curiae Supporting Movant, Delaware v. Pennsylvania, No. 22O145 (S. Ct. May 31, 2016) (21 pages). This amicus brief is **not considered part of the problem**. It is simply to help competitors better understand the nature of the law at issue; **it does not necessarily supply arguments** for either Petitioners or Respondents.

Note that the screenshot of the New Columbia Property Database applies only to Petitioner Carmichael. The purpose of the screenshot is to provide competitors with a visualization of what the New Columbia Property Database looks like. Therefore, there is no equivalent item for Petitioner Johanssen, although his property was listed on the database.

The purpose of the Petitioners' Appendix is to provide a procedural and factual record, and to identify some of the legal arguments that competitors may wish to develop on appeal. Competitors will need to research and expand upon the legal arguments considered by the Thirteenth Circuit. Indeed, some of the legal conclusions in the opinion may be incorrect assertions of the law and/or valid conclusions taken out of context.

The Thirteenth Circuit's opinion cites several cases and lines of reasoning. While many of the leading cases for each issue are in fact cited, it is essential that competitors supplement these cases with independent research and analysis.

Each team will brief and present oral arguments for **both** the Petitioners' and Respondents' positions in the preliminary round of competition. Teams that advance should also be prepared to argue both positions, as preliminary rounds will be held on the same day, and teams that continue to the advancement rounds may be required to argue both positions.

COMPETITORS MUST CONFINE THEIR ARGUMENTS TO THE ISSUES THAT HAVE BEEN IDENTIFIED BY THE SUPREME COURT IN ITS ORDER GRANTING CERTIORARI.

Competitors are not allowed to argue challenges to the District Court proceedings that were not granted review in the Writ of Certiorari. **Competitors may not dispute the facts of the case**, but may challenge the legal conclusions that the district and circuit courts drew from these factual findings.

This is a challenging and novel problem, purposefully designed to allow for a wide variety of arguments. Because competitors have only a limited amount of time to research the issues and a word limit for each brief, it is suggested that each competitor carefully choose which arguments to advance and how to balance their time between competing legal theories. Furthermore, it is recommended that each team approach the problem as a unit and strive to develop its legal arguments together.

I. BRIEF

a. **Issues/Questions Presented:** Two distinct issues are presented for the competitors to argue. Competitors may not decide for themselves to divide these issues differently; they must be addressed as divided here.

i. Competitor teams must decide which teammate will address the procedural due process issue (Issue I) and which teammate will address the takings issue (Issue II). That is, Competitor 1 should argue the procedural due process issue for both Ms. Carmichael and Mr. Johanssen, and Competitor 2 should argue the takings issue for both Ms. Carmichael and Mr. Johanssen. Competitors may either be responsible for writing and arguing the same issue(s) on behalf of both the Petitioners and the Respondents, or may switch issues when they switch sides (example: Competitor 1 writes/argues due process for Petitioners and writes/argues takings for Respondents). Please note that the latter option will entail significantly more work, and teams are advised against utilizing the latter option. However, **no matter how the issues are divided, the competitor who briefs an issue for a particular party is responsible for arguing that issue for that party**.

b. **Limitations on Research:** Competitors are not allowed to cite materials (cases, articles, etc.) published after October 5, 2016 in their brief or at oral argument through the semi-finals. Updates through December 31, 2016 may be permitted for the finals.

c. **Brief Collection:**

i. **Petitioners' & Respondents' Briefs**: Both the Petitioners' and Respondents' briefs are due on Wednesday, October 5, 2016. Each team must submit two (2) hard copies of the Petitioners' brief and two (2) hard copies of the Respondents' brief. These copies must be in full compliance with all formatting and binding requirements listed in these rules. The briefs will be collected from 6:00 p.m. to 9:00 p.m. in LLC 011 (the official time shall be determined by the clock in that room). Any submission that does not include the proper number of briefs, with the required binding, will be considered incomplete until all required copies are delivered.

ii. **Electronic Submission**: In addition to hard copy submission of briefs, teams must also submit a PDF copy of each brief electronically. In addition to the "save as PDF" feature in many versions of Microsoft Word, there are several free programs that competitors can download off of the Internet to convert word documents to PDF format. We recommend www.primopdf.com or www.cutepdf.com. **ONE PDF COPY OF EACH BRIEF must be submitted to the Van Vleck Committee by using the student drop box on the class portal. The name of the document submitted to the portal must include which party it represents and each team member's competitor number.** (Example: Petitioner 25_50).

Electronic copies must be delivered by 9:00 p.m. on Wednesday, October 5, 2016. The late brief policy below will also apply to the electronic submission deadline.

iii. **Early Delivery**: If a team absolutely cannot make it to the brief collection room during the above specified time periods, the team must contact the Van Vleck Committee (VanVleck@law.gwu.edu) at least 48 hours before the deadline to arrange an alternative delivery time in Dean Johnson's office STU 207.

iv. **Late Brief Policy**: Petitioners' and Respondents' briefs must be submitted in hard copy by 9:00 p.m. on the respective dates they are due. Electronic submissions must also be made by 9:00 p.m. on Wednesday, October 5, 2016. Failure to submit any brief on time will result in a 10 point deduction, and briefs more than 15 minutes late will result in automatic disqualification from team advancement and consideration for Moot Court Board membership, barring exceptional and unanticipated circumstances. If a competitor or team is late and wishes to appeal the point deductions and/or disqualification, he or she must comply with the Moot Court Board's Appeal Process (see **Section IX** for Appeals).

d. **Service of Briefs**: Teams will be served with the briefs of their Preliminary Round opponents at least one week prior to the preliminary round of oral arguments on October 22. Both members of each team will receive an electronic copy of their morning and afternoon opponent's briefs.

e. **Content of Briefs**: All briefs must contain the following items –

- Cover Page
- Questions Presented *(note: no other information should appear on the same page as the Questions Presented)*
- Table of Contents
- Table of Authorities
- Opinions Below
- Statement of Jurisdiction
- Constitutional Provisions Involved
- Statement of the Case (i.e., the procedural history and material facts)
- Summary of the Argument
- Argument
- Conclusion
- Certification

f. **Font**: Unless otherwise noted in these Rules, all briefs are to be composed in 12-point, Times New Roman font. Footnotes should be composed in 12-point, Times New Roman font.

g. **Spacing**: The body of the brief must be double-spaced (excluding headings). Footnotes must be single-spaced.

h. **Justification**: All briefs must be left justified (excluding block quotes). This means that the right margin should appear ragged. This applies to both the body and footnotes.

i. **Margins**: All margins must be one-inch (1") wide (excluding block quotes).

j. **Paper Size**: Briefs must be composed on 8-inch x 11-inch paper. Competitors may print their briefs double-sided, but that is not required.

k. **Cover Page**: The cover page of the Petitioners' brief must be printed on **blue paper**. The cover page of the Respondent's brief must be printed on red/pink paper. The cover page must contain the following information, in the order listed (see sample appended to these Rules):

- The docket number of the case;
- The name of the court reviewing the case (in Old English Font);
- The caption of the case;
- The nature of the proceeding;
- The title of the document; and
- The competitor numbers of each of the competitors submitting the brief, in place of the names of the attorneys acting as counsel of record, and an indication of which Issue ("Issue I" or "Issue II") each competitor has addressed. **COMPETITORS' NAMES SHOULD NOT APPEAR ANYWHERE ON THE BRIEF.**
- No printing may appear on the back of the cover page.

l. **Certification**: Each brief must include a certification stating the number of words in the body of the brief, the number of words in each argument section, the font used, and the competitor numbers of each team member. This certification should also include the Law School academic honesty pledge below. Competitors should sign the honesty pledge using their competitor numbers, not their names.

Honor Pledge:

The Pledge of Honesty

On my honor, I submit this work in good faith
and pledge that I have neither given nor received
improper aid in its completion.

_____
Print competitor number clearly

m. **Binding**: Unless specifically permitted by these rules, all briefs must be bound. Any failure to submit the required number of 2 bound briefs, even if all briefs are otherwise on time, will be given a significant technical score deduction. Acceptable binding includes velo binding, comb binding, or spiral binding on the left margin.

n. **Page Numbering**: The briefs shall be paginated as follows –

i. Cover page – no page numbering.

ii. Front matter – the front matter of the brief consists of organizational and structural information (the questions presented, table of contents, and table of authorities). The front matter must be numbered using lower case Roman numerals (i, ii, iii, etc.).

iii. Body – the body of the brief is composed of the opinions below, statement of jurisdiction, constitutional provisions involved, statement of the case, summary of the argument, argument, and conclusion. The body must be numbered using standard Arabic numerals (1, 2, 3, etc.).

o. **Word Limit**:

i. Body – **THE TOTAL NUMBER OF WORDS FOR THE BODY MUST NOT EXCEED 7,000 WORDS.**

ii. Argument Sections – Each brief will contain two components within the argument section corresponding to the competitors' individual contributions to the brief (Issue I and Issue II). **EACH INDIVIDUAL COMPETITOR'S ARGUMENT SECTION MUST BE AT LEAST 2,000 WORDS LONG.** Failure to comply with the minimum word requirement will result in a substantial deduction of points from a competitor's individual score, possible disqualification, and may affect a competitor's ability to receive academic credit.

--*NOTE* – Although no rule dictates the exact breakdown of pages between the two argument sections, teams should be guided by the other rules in determining the length of each section (specifically, the 7,000 WORD limit on the body, the requirement that the body include other components aside from the two argument sections, and the 2,000 minimum word requirement of each section).

p. **Order of Issues**: The argument portion of the brief should first address the procedural due process issue (Issue I), and then go on to address the takings issue (Issue II).

q. **Number of Briefs:**

i. Each team must submit two (2) hard copies of each brief (Petitioners and Respondents). These copies must be in full compliance with all formatting and binding requirements listed in these rules.

ii. If a team advances, additional brief submission may be required.

r. **Revisions:** Briefs submitted for the preliminary and advancement rounds of competition to the Moot Court Board are final and may not be revised. Preliminary round briefs are the only briefs scored for possible Moot Court Board membership. Competitors who advance to the semi-final round will have an opportunity to revise their briefs after the advancement rounds. Brief revision is **NOT** mandatory, and teams who choose not to edit their briefs will not be penalized. Teams are permitted to edit technical/typographical errors as well as the contents of their arguments.

i. Teams advancing to the semi-final round must submit three (3) hard copies of the brief they have been assigned to argue in the semi-final round. Drop off arrangements, including drop off date and time, will be made with those teams that are advancing. Teams must also submit electronic copies of their updated briefs at the time hard copies are due.

ii. Teams who advance to the final round will have a second opportunity to edit their brief after the semi-final rounds. Revised briefs for the final round will be collected in early January, 2017, date and time TBA.

s. **Citations**: All sources shall be cited in conformity with The Bluebook, 20th Edition.

i. When citing to the record, Competitors must give the citation for both the individual document and the Petitioner's Appendix. Example: (Letter from James N. Osterberg, Jr., Privacy Dep't Head, Horizon Wireless, to Kimberly Deal, Special Agent, Bureau of Alcohol, Tobacco, Firearms & Explosives (Mar. 6, 2012); P.A. at 17).

t. **Technical Requirements**: Technical requirements include proper Bluebook citation, font, margins, paper, construction, proper content (i.e., the title page, questions presented, table of contents, table of authorities, statements of jurisdiction, etc.) and timeliness. The technical detail score constitutes 20% of the brief score. Each brief will be checked by two members of the Moot Court Board for compliance with technical requirements.

II. PLAGIARISM AND ACADEMIC HONESTY

Plagiarism will not be tolerated. Any indication of plagiarism, including the failure to attribute credit to a source when required, will be referred to the Academic Integrity Committee for appropriate action.

Because the Moot Court Board is evaluating individual advocacy ability for Board membership, each individual competitor's argument section of his/her brief should reflect substantially his/her own analysis and writing. Additionally, briefs may be subjected to analysis by SafeAssign, a LexisNexis plagiarism checking service.

Competitors may collaborate with his/her teammate but may not seek assistance from ANYONE except for his/her teammate when drafting the briefs. Students are also prohibited from using either the Law School or University Writing Centers and may not use any other editing service. Soliciting assistance from anyone other than a competitor's teammate is grounds for disqualification. This rule does not apply to revisions made to finalist briefs.

Please note, however, that the prohibition on collaborating during the brief-writing stage of the competition does not preclude teams from practicing with other teams to prepare for oral arguments. Mooting with other teams is highly encouraged. However, a team may not practice mooting with a team it is scheduled to face.

III. ORAL ARGUMENTS

a. **Time**: Each team will have a total of 30 minutes to present its argument. The 30 minute time allotment is divided as follows:

i. **Division of time –** Each team member must argue for at least 12 minutes, but not more than 15 minutes unless directed to continue by the judges. Failure to adhere to these requirements will result in a substantial deduction of points.

ii. **Rebuttal –** During each argument round, one member of the Petitioner's team may rebut the Respondent's arguments.

1. Petitioner's team may reserve **up to 3 minutes** of rebuttal time to be deducted from their team's total 30-minute allotment. Petitioner's team may elect to have their entire rebuttal time deducted from one team member's 15 minute allotment, or may

spread the rebuttal time deduction between the two competitors in one minute increments. **ONLY ONE MEMBER OF THE PETITIONER'S TEAM MAY GIVE A REBUTTAL.**

2. In order to reserve rebuttal time, the member of the Petitioner's team who presents the first argument (i.e., Issue I), must, at the outset of oral argument, request of the judges that rebuttal time be reserved and indicate which competitor will give the rebuttal so that time may be deducted correctly. The team member must also notify the timekeeper in advance of his/her argument how they wish their rebuttal time to be deducted.

b. **Order of Arguments:** Oral arguments will proceed in the following order:

i. Petitioner – Issue I

ii. Petitioner – Issue II

iii. Respondent – Issue I

iv. Respondent – Issue II

v. Petitioner's Rebuttal (if requested)

c. **Content of Arguments**: Competitors must argue the issue that corresponds with the issue they he/she drafted in the brief (i.e., the competitor who briefed Petitioner's Issue I must argue Petitioner's Issue I). Competitors may not swap issues with their teammates once briefs are submitted.

i. Issue Overlap – Competitors should be on notice that the issues in this problem may overlap. It is possible that Judges will ask competitors questions that cannot be classified as purely Issue I or Issue II, but that include elements of both. As such, competitors are advised to be aware of the legal problems and arguments present in both issues.

IV. SCORING

a. **Use of Scores**: Competitors will be scored on the basis of both individual and team performance.

i. Individual scores are used for two purposes:

1. First, to determine each competitor's eligibility for Moot Court Board membership, and

2. Second, to rank the top individual competitors who will be recognized with awards for Best Oral Advocate and Best Overall Competitor at the end of the competition.

ii. Team scores are used to determine which teams will advance beyond the preliminary round of oral argument and to rank the teams that will be recognized for awards for Best Brief at the end of the competition.

b. **Score Tabulation and Advancement**: Competitors will be scored on each of their briefs and each of their oral arguments in the preliminary round.

i. Teams will advance beyond the preliminary round based on the aggregate score of each team member's briefs and oral arguments. In the preliminary round, briefs and oral arguments are weighted equally. In the event of a tie between teams, advancement will be based on the team's oral argument score.

ii. Advancement in later rounds is within the sole discretion of the judges who hear arguments for that round and determine which team they believe should advance. Only one team from each later round can advance. While it is each judge's choice to determine how to weigh the brief and oral argument, advancement does not depend on what the judges believe would be the outcome of the argument.

c. **Competition Awards**: Awards will be given at the competition's Final round, based on the following:

i. **Best Oral Advocate**: Best Oral Advocate will be given to the individual competitor with the highest aggregate oral argument score in the Preliminary round. Awards will also be given for second and third place. All competitors are eligible for these awards, unless disqualified.

ii. **Best Brief**: Best Brief will be given to the team with the highest aggregate written argument score in the Preliminary round. Awards will also be given for second and third place teams. All teams, including solo competitors, are eligible for these awards, unless disqualified.

iii. **Best Overall Competitor**: Best Overall Competitor will be given to the individual competitor who receives the highest aggregate score in the Preliminary round. Awards will also be given for second and third place. All competitors are eligible for these awards, unless disqualified.

V. CREDIT

a. One credit is awarded for complete participation in the competition, including writing the brief and participating in all oral arguments, including advanced rounds.

b. Credit is awarded on a Credit/No Credit basis.

c. A competitor is required to participate in any and all rounds to which they advance. Therefore, please take note of the dates of the advancement rounds (see Section XI, Competition Calendar).

d. Competitors must make a good faith effort in writing their briefs and performing their oral arguments. Teams who submit a brief that fails to comply with the 2,000 word requirement (see Section II(n), Brief, Page Limits), risk receiving a No Credit for the course.

e. In order to receive credit for participating in the competition, all competitors must have both Petitioner's and Respondent's briefs submitted in both hard copy and e-mail and must argue each side at least once. Any request to make a late submission after the regular brief submission time period must be made directly to Dean David Johnson (djohnson@law.gwu.edu) in STU 207. Note that those competitors who submit briefs more than 15 minutes after they are due are disqualified from the competition and will not be invited to join the Moot Court Board but may still receive credit for their participation.

VI. ELIGIBILITY FOR MOOT COURT BOARD MEMBERSHIP

Competitors will be invited to join the Moot Court Board on the basis of outstanding performance in the Van Vleck competition. The Moot Court Board generally invites between ten and fifteen percent of the total number of competitors in internal competitions in any given year. However, the Moot Court Board retains discretion to increase or decrease the total number of students invited for membership on the basis of several factors, including but not limited to:

a. Natural breaks in the scoring of the internal competition;

b. The positioning of current Moot Court Board members in the final scoring of the internal competition;

c. The current level of Moot Court Board membership; and

d. The level of advancement that the team achieves.

Invitations to join the Moot Court Board will be sent out to competitors before the final round.

VII. APPEALS

If a competitor fails to satisfy any of the competition requirements, he/she risks receiving no credit for his/her participation in the Competition. In addition, failure to satisfy any of the competition requirements may result in:

- Ineligibility for advancement to subsequent rounds and/or
- Ineligibility for Moot Court Board membership.

A competitor may appeal a penalty for an unfulfilled requirement. All appeals must be submitted in writing via e-mail to the President of the Moot Court Board, Caleb Raymond (mootcourtboard@law.gwu.edu), with the subject line "**APPEAL REQUEST: VAN VLECK"** within 48 hours of the deadline for complying with the requirement. Petitions for appeal must set forth the reasons for failure to comply with the petitioned requirement.

Appeals will be decided by the Executive Committee of the Moot Court Board in consultation with Dean Johnson. If necessary, a hearing may be held at which a petitioner may present his/her case to the Executive Committee. Hearings will be scheduled as soon as possible after the requirement's deadline has passed. Appropriate penalties will be decided at the Moot Court Board Executive Committee's discretion. The petitioner will be informed of the Moot Court Board's decision within 48 hours after a decision is made.

Petitions for appeals will be granted for good cause and in extraordinary circumstances only. Typically, family or medical emergencies are considered good cause, whereas computer or copying problems are not deemed sufficient reasons for granting an appeal.

VIII. COMMUNICATION

All questions related to the problem, the rules, and/or the administration of the competition should be directed to the Van Vleck Committee Chair, Mariel Murphy (**VanVleck@law.gwu.edu or via the Discussion Forum on the Course Portal**)

All questions related to grading of the course must be directed to Dean Johnson (djohnson@law.gwu.edu).

Please note that when questions are sent, the answer, along with the question, will likely be posted on the course portal for the benefit of all other competitors. The identity of the individual asking the question will be kept private. Should an individual question require additional confidentiality, please indicate such in the e-mail.

Announcements will be made to all competitors through the Course Announcements for the Van Vleck course on the Student Web Portal. Topics may include:

- Revisions to the problem
- Clarification of the rules or problem
- Meeting announcements
- Changes in team assignments
- Results of oral argument rounds

IX. COMPETITION CALENDAR

Friday, September 9, 2016

Problem and Rules distributed via course portal.

Wednesday, October 5, 2016

Petitioners' and Respondents' Briefs Due – hard copy collection from 6:00 p.m. to 9:00 p.m. in LLC 011; electronic version submitted via student drop box on the class portal.

Saturday, October 22, 2016

Preliminary Rounds of Oral Arguments (all competitors have 2 rounds of arguments).

Sunday, November 6, 2016

Sweet 16 and Quarter-final Rounds of Oral Arguments.

[Date TBA November 2016]

Revised semi-finalist briefs due.

Monday, November 14 - Friday, November 18, 2016

Semi-final Round of Oral Arguments.

[Date TBA January 2017]

Revised finalist briefs due.

Wednesday, January 25, 2017

Final Round of Oral Arguments.

X. JACOB BURNS AWARD

The winners of the competition will receive the Jacob Burns Award for their achievement, which is presented at the annual Awards Ceremony the day before graduation.

In The
SUPREME COURT OF THE UNITED STATES

SUSAN CARMICHAEL, *et al.* *Petitioners*, v. ELIZABETH THORNBERRY, *et al.* Controller of New Columbia *Respondents*.	Case No. 16-0026

Order Granting Petition for Writ of Certiorari

On petition for a writ of certiorari to the United States Court of Appeals for the Thirteenth Circuit:

The petition is hereby GRANTED, limited to the following questions:

1. Did respondent Controller of New Columbia violate the Due Process Clause of the Fourteenth Amendment of the United States Constitution by failing to provide petitioners adequate notice of the proposed escheat of their property?

2. Did respondent Controller of New Columbia violate the Takings Clause of the Fifth Amendment as incorporated through the Fourteenth Amendment of the United States Constitution by improperly treating petitioners' property as abandoned and hence subject to escheat by the State?

/s/ *Scott Harris*
Scott Harris
Clerk of the Court
September 1, 2016

UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

SUSAN CARMICHAEL, *et al.*, *Appellants*, v. ELIZABETH THORNBERRY, *et al.*, Controller of New Columbia *Appellees*.	Case No. 15-1776

OPINION

April 10, 2016

CLARKE, *Chief Judge*, joined by ANDERSON, *Circuit Judge*.

This case comes to the Court on appeal from the United States District Court for the District of New Columbia. Appellants, Susan Carmichael and Gerald Johanssen, filed suit on April 15, 2015 against the Controller of New Columbia, Elizabeth Thornberry, in her official capacity, and Viktor Vekelsberg, a private individual. Appellants seek a declaratory judgment and permanent injunction preventing the enforcement of the New Columbia Abandoned Property Act of 2010 (the "Act"), which permits the State of New Columbia to permanently escheat various types of personal property. Central to this litigation are the contents of an unused safe deposit box and a long-dormant savings account holding less than $2,000.

Individually, Ms. Carmichael asks the Court to void a third party sales contract between New Columbia and Mr. Vekelsberg for the sale of Ms. Carmichael's escheated Faberge Egg, and that the Egg be returned to her. Mr. Vekelsberg has agreed to be bound by this Court's ruling and will relinquish his claim to the Egg should we so order. Similarly, Mr. Johanssen separately seeks $2,149.05 in "just compensation" to repay him the funds that the State escheated from his

savings account plus the interest it accrued while in the State's possession. The parties have agreed that these remedies are appropriate for resolving the legal issues before this Court.

Appellants challenge the Act on two grounds. First, they claim that the Act and the Controller afford constitutionally inadequate notice to property owners under the Fourteenth Amendment. Second, they allege that the escheat program violates the Fifth Amendment, as applied to the states through the Fourteenth Amendment, because it exacts a "taking" of property without providing "just compensation." In addition, Mr. Johanssen claims that the State also owes him an amount equal to what the account would have earned if the State had not taken control of it. The parties stipulate that the Act poses no Eleventh Amendment issues. On November 2, 2015, the United States District Court for the District of New Columbia found that Appellants failed to raise any genuine issue of material fact and granted Appellees' motion for summary judgment. We accepted this appeal on an expedited basis and, for the following reasons, we affirm.

I. HISTORICAL BACKGROUND OF ESCHEAT LAW

Modern escheat law developed when courts were asked to decide what to do with property held by a third party when the property's owner appeared to have abandoned it. Under the English feudal system, sovereigns claimed that they had a stronger equitable right to unclaimed real property than the holder. *See* William S. King, *A Bridge Too Far: Due Process Considerations in State Unclaimed-Property Law Enforcement*, 45 SUFFOLK U. L. 1249, 1252 (2012). This principle percolated into early American jurisprudence whereby states assumed an "overlying title" to real property. *Id.*; *see, e.g.*, *In re Estate of O'Connor*, 252 N.W. 826, 827 (Neb. 1934). Over time, states also escheated both tangible and intangible personal property, which the Supreme Court upheld against due process challenges. *See Conn. Mut. Life Ins. Co. v. Moore*, 333 U.S. 541, 546–47 (1948).

Regardless of the property's type, states have consistently acted as custodians for their citizens' property. *See* King, *supra* at 1253. Notwithstanding the objective to reunite owners with their property, states have recently introduced laws to shorten dormancy periods and minimize notice requirements. *See Taylor v. Yee*, 136 S. Ct. 929, 930 (2016) (Alito, J., concurring with denial of cert.). The reasons vary and include replenishing the state fisc, *Am. Express Travel Related Servs. Co. v. Kentucky*, 641 F.3d 685, 692 (6th Cir. 2011), and protecting property owners' financial interests, *Am. Express Travel Related Servs. v. Sidamon-Eristoff*, 669 F.3d 359, 367 (3d Cir. 2012). Modern escheat statutes, such as the one at issue here, raise important questions regarding the power of the state to control citizens' property. Accordingly, we turn to the Appellants' case.

II. FACTUAL BACKGROUND

A. The New Columbia Abandoned Property Act of 2010

In 2010, the Legislature of New Columbia passed the New Columbia Abandoned Property Act. The Act empowers the Controller of New Columbia to take possession and claim ownership of abandoned property, if the prior owner does not make a timely claim and the Controller follows certain statutory procedures. Initially, once a bank determines it holds presumptively abandoned property, the bank must give written notice to owners that their property will soon escheat to New Columbia ("the State"). The bank then holds the property for a one-year period during which the owner may come forward to claim it through statutorily prescribed means. If the property remains unclaimed for such time, the bank transfers the property to the State. The Controller must then notify the owners that their property has escheated to the State and must list the property on the New Columbia Property Database (the "Website"). Owners can locate their property and file a claim through this Website. If no one claims the property while in the State's custody after two years, the State takes title and is not obligated to return it to its former owner. For transfers of money, the Controller deposits the

funds in a State account upon receipt, which the State may then use as its own. However, even if the actual owner makes a timely claim, the State is not obliged to pay for the use of the money; that is, the State need not compensate the owner for any interest the funds may have earned or any benefit the State received from using the funds.

B. Appellant Susan Carmichael's Faberge Egg

On January 1, 2012, Appellant Susan Carmichael's lease on her safe deposit box with Goliath State Bank, Inc. ("Goliath" or "the Bank") lapsed because she failed to pay the annual renewal fee. At the time the lease lapsed, the safe deposit box contained only one decorative Faberge Egg. Ms. Carmichael thought it was a fake curio her sister had bought while travelling, which she kept for sentimental reasons. As it turned out, the Egg was one of the missing Imperial Faberge Eggs belonging to the Romanoff family of Russian Tsars. Its value is approximately $25,000,000.

Ms. Carmichael discovered that her beloved Egg escheated to New Columbia when the nightly news reported that the State sold such an Egg at a public auction, and her daughter, with whom she was living, was reminded of Ms. Carmichael's precious heirloom. Upon investigating the matter, Ms. Carmichael was informed by Goliath that it had turned over the contents of her safe deposit box to New Columbia several years ago. Ms. Carmichael's daughter, Clara Thompson, then promptly filed this action on behalf of her mother, seeking to prevent the Act's enforcement and enjoin the sale of Ms. Carmichael's Egg.

C. Appellant Gerald Johanssen's Savings Account

Appellant Gerald Johanssen inherited a savings account containing $1,989.40 from the estate of his daughter, Mrs. Phoebe Heyerdahl. Mr. Johanssen is the undisputed sole heir to the estate. Mrs. Heyerdahl's estate was quite large, the savings account was in her maiden name—Phoebe Johanssen—and she had never mentioned the account to her father while she was living. As a result, Mr. Johanssen was unaware of its existence until 2015. In February 2012, after the

account was untouched for one year and no one came forward to claim it during the one-year statutory holding period, Goliath transferred the $1,989.40, plus $40.17 accrued interest, to the State. Both Goliath and New Columbia sent the statutorily required notice to "Ms. Phoebe Johanssen"—the only name Goliath and the State had on file—and to an outdated address. The Controller also listed the property under Phoebe's maiden name on the Website.

The State custodially held the funds for two years, using them as its own during that time, and took title to them in March 2015. Mr. Johanssen only became aware of the savings account's existence after watching the nightly news segment regarding the Faberge Egg sale, which prompted him to search the Website for any property his daughter may have left unclaimed. The parties stipulate that Mr. Johanssen did not request that New Columbia return the money until after March 6, 2015, well after the end of the two-year custodial period. Mr. Johanssen then joined this suit to recover the escheated funds, including the interest accrued while in the State's custody.[1]

III. NOTICE TO APPELLANTS SATISFIES DUE PROCESS

Appellants allege that the Act violates the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Specifically, they argue that the State did not provide notice reasonably calculated to inform them of the proposal to escheat their property. Rather, the State provided notice which was not tailored to actually inform them. The State also did not take sufficient additional steps to notify either appellant when it learned its efforts were to no avail. Under Appellants' interpretation of *Jones v. Flowers*, 547 U.S. 220, 230 (2006), the State knew its efforts were ineffective and therefore should have "consider[ed] unique information about [the] intended recipient[s]" to effect proper notice. Lastly, Appellants contend that the New Columbia Property Database, which they describe as an idle, largely unknown

[1] Although there are two plaintiffs, who have different facts applicable to their claims, the parties chose to brief the notice and takings issues together for both claims. We follow their lead in this opinion.

website, presented inaccurate or outdated information which prejudiced their efforts to secure their property before it escheated. This Court disagrees with Appellants' contentions and affirms the district court.

The Fourteenth Amendment provides that no state shall "deprive any person of life, liberty, or property, without due process of law." The Amendment requires that the State must simply provide "notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," which is neither a rigid nor onerous requirement. *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Indeed, the Supreme Court "has not committed itself to any formula achieving a balance between these interests in a particular proceeding or determining when constructive notice may be utilized or what test it must meet." *Id.* Further, "notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance . . . ." *Id.* (internal citations omitted).

The Act and the State's efforts satisfy the *Mullane* standard. We find that the Act provides adequate pre- and post-escheat notice through the cumulative efforts of the Bank and the Controller. Importantly, we emphasize that the Bank took extra-statutory measures to notify Appellants that their property might escheat by sending courtesy notices and attempting to telephone them at numbers they provided. Even if the Bank had not done so, the Bank still provided clear and adequate notice as required under the Act. Further, the State acted diligently to send not one, but two, written notices to Appellants. The State also posted to and updated the site when required.

Nonetheless, Appellants direct our attention to *Jones v. Flowers* where the Supreme Court held that when certified mail is returned unsigned and unclaimed, "the State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property." 547 U.S. at 225. Appellants assert that this edict requires that the Controller became

obliged to investigate further when she received no response to her initial notices. In particular, New Columbia should have identified the Appellants using government databases, such as the New Columbia Tax Board's database, which collects the Social Security numbers and related information of New Columbia's residents.

We disagree that the State was under such an obligation. *Jones v. Flowers* distinctively pertained to the tax sale of a taxpayer's personal residence—a very different exigency than the present issues. Thus, when the State of Arkansas received the returned letter, it should have taken the additional, simple step of sending a first-class letter to notify the taxpayer because it had knowledge of changed circumstances. *Id.* at 226, 231. Accordingly, we reiterate a key principle of *Jones v. Flowers*: "[d]ue process does not require that a property owner receive actual notice before the government may take his property." *Id.* at 226; *see also Dusenbery v. United States*, 534 U.S. 161, 168–69 (2002). All that is required is "notice reasonably calculated under all the circumstances," *Mullane*, 339 U.S. at 314, which the Controller accomplished.

Still, Appellants press upon this Court that, by virtue of being an online database, the Website does not furnish information to the public generally but only to members of the public with access to a computer and those who are aware of the Website's existence. New Columbia, according to Appellants, does nothing more to notify specific property owners, and therefore "[c]hance alone brings to the attention" of owners a posting akin to "small type inserted in the back pages of a newspaper." *Flowers*, 547 U.S. at 315.

But unlike a newspaper that circulates within a defined geographical area, the Website is available to all persons having access to a technological device—whether it be a laptop, a tablet, or a smartphone—including those outside New Columbia. Further, the Website supplies the property owner's first and last name, her last known address, the commercial entity which held the property, and an estimated value of the property. Therefore, we find the Website passes constitutional muster, similar to the system described in *Taylor v. Yee*, 780 F.3d 928 (9th Cir.

2015), where the court found California's Unclaimed Property Law also satisfied due process. *See also Taylor v. Westly*, 525 F.3d 1288 (9th Cir. 2008).

IV. STATUTORY ESCHEAT DOES NOT VIOLATE THE FIFTH AMENDMENT

Appellants argue that New Columbia has "taken" their property without just compensation in violation of the Fifth Amendment. They submit that New Columbia's escheat of their private property amounts to a Fifth Amendment taking under *Horne v. Department of Agriculture*, 135 S. Ct. 2419 (2015), because the State has permanently deprived them of all use of their property. Appellant Gerald Johanssen further argues that the State's escheat of the interest that the savings account generated is akin to the "regulatory" taking recognized by the Supreme Court in *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 324 (2002). Finding that the Act does not exact a Fifth Amendment taking on the Appellants, we affirm the district court.

The Fifth Amendment's Takings Clause requires that "private property [shall not] be taken for public use without just compensation" and restrains state action through its incorporation into the Fourteenth Amendment. *See Chicago, Burlington & Quincy Railroad v. Chicago,* 166 U.S. 226, 241 (1897). Takings analyses are extremely fact sensitive and necessarily must be considered on a case-by-case basis. The classic taking occurs when the "government directly appropriates private property for its own use." *Tahoe-Sierra*, 535 U.S. at 302. However, more subtle "regulatory takings" may occur when a state restricts the owner's viable use of their property. *Id*. The Supreme Court's takings jurisprudence, however, has evolved nuanced forms in cases like *Loretto v. Teleprompter Manhattan CATV Corp*, 458 U.S. 419 (1982), *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978), and *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992).

A. There Was No Taking Because Appellants Abandoned Their Property

It is a property maxim as old as the law itself that individuals who abandon their property give up their interest in it. *Zych v. Unidentified, Wrecked, and Abandoned Vessel*, 755 F. Supp. 213, 214 (N.D. Ill. 1990). The Appellants abandoned the property that was theirs prior to the one-year dormancy period—Appellant Johanssen's savings account sat dormant for decades and Appellant Carmichael failed to pay the safe deposit lease for an entire year. Because Appellants' disuse of their property satisfies the statutory requirements of abandonment, they have failed to demonstrate that *their* property was taken. *Delaware v. New York*, 507 U.S. 490 (1993); *Taylor v. Westly*, 402 F.3d 924 (9th Cir. 2005).

B. No Regulatory Taking of Appellant Johanssen's Interest Occurred

Appellant Johanssen argues that New Columbia has "taken" the interest he *would have earned* had his money remained on deposit at Goliath State Bank. He claims that New Columbia has committed something akin to a regulatory taking of the interest he is owed because, in failing to allow him to earn interest he otherwise would have earned, the State has deprived him of any economically viable use of the savings account. *See Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 324 (2002); *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922). This is clearly not the case, however, because Appellant Johanssen never possessed the interest in the first place—*it had not yet been paid*—so the State could not have taken from him something he does not own. Further, it is proper that New Columbia retain Appellant Johanssen's interest in exchange for the costs the State incurred in assuming responsibility for the property that he neglected.

Even the "ad hoc" *Penn Central* analysis cannot justify requiring the State to pay Mr. Johanssen for the imputed interest on his daughter's saving account during the two-year custodial period when the State had full use of the funds from her savings account. *Penn Central*, 438 U.S. at 124. Under *Penn Central*, courts consider several factors, including "[t]he economic

impact of the regulation on the claimant and . . . the extent to which the regulation has interfered with distinct investment-backed expectations." *Id*. The economic impact on Mr. Johanssen is *de minimis*—the interest itself amounts to less than $200, and he has already inherited a multi-million-dollar estate. Second, he had no investment-backed expectations because he received the funds as the result of a gratuitous transfer from his daughter's estate.

For the foregoing reasons, the Court **AFFIRMS** the district court's grant of Appellees' motion for summary judgment.

DISSENT

QUIGGLEY, *Circuit Judge*

I largely dispense with a rehearsal of the facts, as my colleagues have already adequately described them. I should like to add, however, that both Appellants are advanced in age and were unaware that the property was declared abandoned and, in the case of Mr. Johanssen, that his daughter even had a savings account that might be subject to escheat. I respectfully dissent because I find that the notice provided by New Columbia is no more than a "mere gesture," *Mullane v. Cent. Hanover Bank & Trust Co*., 339 U.S. 306, 315 (1950), and that the majority has misdiagnosed the takings issue by ignoring *Horne v. Department of Agriculture*, 135 S. Ct. 2419 (2015).

I. INADEQUATE NOTICE VIOLATES APPELLANTS' DUE PROCESS

A recent opinion regarding the denial of certiorari has expressed alarm at the recent trend of "combining shortened escheat periods with minimal notification procedures[.]" *Taylor v. Yee*, 136 S. Ct. 929, 930 (2016) (Alito, J., concurring in the denial of cert.). The Act and its accompanying Website are a clear example of this trend because New Columbia barely attempted to provide notice reasonably calculated under *all* the circumstances. *Mullane*, 339 U.S. at 314. In fact, the Controller failed to regard the "practicalities and peculiarities" of this case and failed to employ means "desirous of actually informing the absentee," *id*. at 314–15, by (1)

taking insufficient steps to inform Appellants and (2) relying on a website that idly provides frequently outdated information to those who endeavor to scroll through its listings.

Importantly, the State erroneously relied on the Bank to provide adequate pre-escheat notice. *Taylor v. Westly*, 488 F.3d 1197, 1201 (9th Cir. 2007) (per curiam) ("[T]he State again cites no authority for the proposition that reliance on the likelihood that a *third party* will give notice is 'constitutionally adequate.'"). Further, the State's own notices were not likely to reach and inform the Appellants of their right to claim their property. The Controller, with knowledge that the intended recipients likely no longer resided at the addresses provided by the Bank, simply sent one certified letter and another by regular mail to these outdated addresses—all after the property had already been transferred to the State. *See Jones v. Flowers*, 547 U.S. 220 (2006); *Taylor v. Yee*, 780 F.3d 928, 938 (9th Cir. 2015), *cert. denied*, 136 S. Ct. 929 (2016).

Thereafter, the State hastily posted to the Website—which is not linked to the Office of the Controller's main homepage—the Appellants' property without verifying that the information was accurate. I find these actions analogous to the constitutional defects identified in *Taylor v. Westly*, 488 F.3d 1197 (9th Cir. 2007). In that case, the Ninth Circuit found California's escheat law procedurally inadequate because it only required that

> (1) the state place advertisements in the newspaper stating that people concerned about possible escheat may check a website to see if their names or property [were] listed; (2) [that] the state mail written notice to some, but not all, individuals whose property *had been* escheated; and (3) [that] corporations, banks and other holders of the property subject to escheat [were] themselves obligated to provide notice to the individual.

Id. at 1201. While the court was concerned with California's lack of pre-escheat notice in *Taylor II*, the Controller's efforts still fail here because she did not consult with any government-operated database, which would have revealed that the parties had either moved or deceased, and did not attempt further communication with Appellants. Instead, the Controller eagerly awaited the opportunity to take title to the unclaimed property when the time was ripe. The Controller

surely had to do more than was done here to afford Appellants—in particular Ms. Carmichael—the process to which they were entitled. The best evidence of what the State should have done is demonstrated by how Appellants responded to the nightly news segment which told the story of the Faberge Egg's sale. *See Mullane*, 339 U.S. at 314; *see also Mathews v. Eldridge,* 424 U.S. 319, 335 (1976).

II. NEW COLUMBIA'S ESCHEAT STATUTE EXECUTES A FIFTH AMENDMENT TAKING

My colleagues are mistaken from the beginning—Appellants never "abandoned" their property. If Appellants did not abandon their property, then a taking necessarily occurred because, while Appellants' property was in the State's possession they were unable to "possess, use, and dispose of it." *Loretto*, 458 U.S. at 435. It is obvious based on the facts of this case that Appellants never abandoned their property, therefore a taking occurred.

Mr. Johanssen was totally unaware that the property existed and Ms. Carmichael believed hers was safely tucked away in her safe deposit box, albeit because of her decreased mental capacities. The New Columbia Abandoned Property Act of 2010 must be struck because its continued existence permits the State to make an end run around the Fifth Amendment by arbitrarily establishing a "dormancy period" after which it may extra-judicially terminate an individual's property rights. Following my colleagues' logic, the Act could have a one-month dormancy period after which the property may be escheated and still stand. This cannot be!

Although the value of Mr. Johanssen's imputed interest is minimal, the State has exacted a large "taking" when the State aggregates the interest lost to those similarly situated to Mr. Johanssen. At oral argument, Appellant's counsel was asked why the Court should also rule on a lost interest claim that would amount to less than $200. Counsel informed the panel that there were thousands of these small accounts that had been transferred and eventually returned to the

rightful owner; thus, the lost interest adds up to a significant sum for other New Columbians whose property has been escheated. Accordingly, much is at stake.

For the foregoing reasons, I respectfully dissent.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW COLUMBIA

SUSAN CARMICHAEL, *et al.*, *Plaintiffs*, v. ELIZABETH THORNBERRY, Controller of New Columbia, AND VIKTOR VEKELSBERG, A private individual, *Defendants*.	Case No. 15-1776

OPINION AND ORDER

Plaintiffs Susan Carmichael and Gerald Johanssen, private citizens of New Columbia, have filed a Complaint for declaratory and injunctive relief challenging the constitutionality of the New Columbia Abandoned Property Act of 2010 ("the Act") under the Fifth and Fourteenth Amendments of the U.S. Constitution. Defendant Elizabeth Thornberry, the Controller of New Columbia, administers New Columbia's escheat program and maintains the New Columbia Property Database. Defendant Viktor Vekelsberg, a Russian citizen, entered into a sales contract with New Columbia when he purchased at auction a Faberge Egg, which previously belonged to Plaintiff Carmichael but had escheated to the State. Defendant Vekelsberg waived service of process and agreed to be bound by the judgment of this Court.

Before the Court are the Parties' cross motions for summary judgment. Defendants admit all facts alleged in Plaintiffs' Complaint. Further, the Parties stipulate that Plaintiff Carmichael filed her claim after the two year period ended on March 6, 2015 but during the 60-day escrow period as provided under N. Col. Civ. Code § 1200(a)(7).

Upon consideration of the Parties' submitted briefs and the relevant legal authorities, the Court finds that Plaintiffs have failed to show a genuine dispute as to any material fact. The Plaintiffs received all the process to which they are entitled, the State properly treated Plaintiffs' property as abandoned, and, accordingly, New Columbia lawfully escheated it. Therefore, Defendants' motion for summary judgment is hereby **GRANTED**. The Complaint is hereby **DISMISSED** with prejudice.

DATE: November 2, 2015

/s/ *Betsy Sandler*
Betsy M. Sandler
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW COLUMBIA

SUSAN CARMICHAEL, and GERALD JOHANSSEN, *Plaintiffs*, v. ELIZABETH THORNBERRY, Controller of New Columbia, and VIKTOR VEKELSBERG, A private individual, *Defendants*.	)	Case No. 15-1776

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs, by and through their attorney, allege as follows:

JURISDICTION

1. This action seeks a declaration that the New Columbia Abandoned Property Act of 2010 ("the Act") violates the Fifth and Fourteenth Amendments of the Constitution of the United States and an injunction preventing the State of New Columbia ("the State") from enforcing the Act against Susan Carmichael and Gerald Johanssen.

2. This case raises two federal questions under the Constitution of the United States and 42 U.S.C. § 1983. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3).

STATUTE AT ISSUE

3. In 2010, the New Columbia Legislature enacted the New Columbia Abandoned Property Act. The Act revises the authority of the Controller of New Columbia ("the Controller") to escheat abandoned private property held in custodial accounts by commercial entities, such as banks. Two aspects of the Act are at issue in this case.

4. First, the Act applies to the contents of any safe deposit box that have been "presumptively abandoned" and held by the bank for one year. A safe deposit box's contents are presumed abandoned if the box's lessee fails to pay the annual lease fee and fails to access the box during the prior calendar year. Once the deposit box's contents are presumptively abandoned, the bank is required to send written notice to the owner that the box's contents will escheat to the State if no action is taken. Thereafter, if no such action is taken to renew the lease, and if the owner fails to claim the property in the safe deposit box after one year, the bank is required to deliver the box's contents to the Controller. After the Controller follows certain procedures, and if the owner of the safe deposit box's contents fails to make a claim within two years, the State automatically becomes the owner of the property in the box.

5. Second, the Act applies to any savings account that has been "presumptively abandoned" and held by the bank for one year. A savings account is presumed abandoned when the owner has not made a deposit or withdrawal on the account during the prior calendar year. Once a savings account is presumptively abandoned, the bank is required to send written notice to the owner that the funds in the account will escheat to the State if no action is taken to revive the account. If the owner does not revive the account within one year from the date of the notice, the bank is required to transfer an amount equal to the current balance of the account to the Controller. The Controller is then required to send written notice to the owner of the account and to take other action to inform the owner that, unless a claim is filed within two years from the date of the notice, the amount in the account will permanently escheat to the State. The Act also provides that, even if a timely claim is filed by the owner of an account, the State is not liable for any losses suffered by the owner, or any benefits derived by the State, from the State's use of the savings account.

THE PARTIES

6. Susan Carmichael is a citizen of the State of New Columbia. She is eighty-nine years

old and has maintained a safe deposit box account at Goliath State Bank, Incorporated ("Goliath" or "the Bank") for approximately thirty years. The box contained what Ms. Carmichael believed to be an imitation Faberge Egg (the "Egg"), which the State claims was abandoned by her and which it claims was properly escheated to the State.

7. Gerald Johanssen is a citizen of the State of New Columbia. He is a seventy-five year old retired carpenter who was unaware of the savings account at the Bank belonging to his daughter, Phoebe Heyerdahl, at the time of her death.

8. Defendant Elizabeth Thornberry is the Controller of the State of New Columbia and is being sued in her official capacity as the State's Chief Financial Officer.

9. Defendant Viktor Vekelsberg, a Russian citizen, purchased the Egg at an auction held by the Controller for $25,000,000. He has deposited the purchase price in an escrow account and awaits possession of the Egg until this controversy can be resolved.

FACTS REGARDING PLAINTIFF CARMICHAEL'S CLAIM

10. On January 10, 1983, Ms. Carmichael signed a renewable lease agreement ("the Agreement") for a safe deposit box with Goliath State Bank. Goliath is headquartered in Newtown, New Columbia. The Agreement required an annual fee due by January 1st of each year if Ms. Carmichael wished to lease the safe deposit box for the following year. Upon signing the Agreement, Ms. Carmichael immediately placed an imitation Faberge Egg—or so she thought—into the safe deposit box because it was her only remaining heirloom from her much beloved sister. Ms. Carmichael thereafter never removed the Egg from the safe deposit box.

11. On December 1, 2011, as it had every year at about that time, Goliath sent Ms. Carmichael a notice via regular mail, informing her that her safe deposit box lease was nearing the end of its term and that the annual payment for the coming year must be received by January 1, 2012. As a result of her advanced age and dementia, however, Ms. Carmichael failed to pay the annual fee by that date. In fact, in early 2011, Ms. Carmichael had moved in with her

daughter, Clara Thompson, who lived several hundred miles away in New Columbia, so that her daughter could care for her. Ms. Carmichael did not inform the Bank of her move. In accordance with its statutory obligation, on February 1, 2012, Goliath sent written notice via regular mail to Ms. Carmichael's home address—which she had not changed since 1983—and which stated that payment for her safe deposit lease must be received within 30 days; otherwise, her property would be transferred to the Controller one year thereafter. Goliath also attempted to call Ms. Carmichael at the number she had initially provided, but the line was disconnected.

12. Ms. Carmichael did not submit the required fee within 30 days of the February notice. Accordingly, after the one-year holding period lapsed on March 2, 2013, Goliath filed a report with the Office of the Controller, stating that it was in possession of Ms. Carmichael's presumptively abandoned property and provided her name, home address, and phone number. Goliath also informed the Controller of its mailed notice and attempt to call Ms. Carmichael. Goliath did not have an e-mail address on file to report. The following day, the Controller instructed Goliath to access the safe deposit box's contents at the State's expense.

13. On March 6, 2013, Goliath opened Ms. Carmichael's safe deposit box, which contained only the Egg, and delivered the item to the Office of the Controller, thereby commencing the custodial period. The Controller, who also believed that the Egg was an imitation, estimated its value on that basis as being worth $350. The Controller then promptly mailed a written notice via certified mail to Ms. Carmichael, explaining that the State would become the owner of the Egg if she did not file a claim within 2 years, and listed Ms. Carmichael's property on its escheat Website, indicating that the item was valued at "less than $1,000."

14. One week after mailing the certified letter to Ms. Carmichael, the letter was returned to the Office of the Controller unsigned and unclaimed. The Controller then sent a second, identical written notice via regular mail to Ms. Carmichael's address and did not receive a

response.

15. Several months later, on September 1, 2013, an Office of the Controller employee charged with maintaining the State's escheated property archives noticed the Egg's distinctive features and thought that it might be more valuable than previously thought. Accordingly, the Controller instructed that the Egg be appraised. The appraisal revealed that the Egg was a genuine Romanoff Imperial Faberge Egg, estimated to be worth a "minimum of fifteen million dollars, but much more likely twenty or thirty million."

16. The Controller did nothing further with this information at that time, except to update the Website so that the value of the property was now listed as "greater than $1,000" and to insert an asterisk which denoted that the property would be sold at public auction. To that end, the Controller published a half-page advertisement in the New Columbia Gazette ("the Gazette") on December 8, 2014, explaining that the Controller would conduct a public auction in 90 days on March 8, 2015—two days after the two-year period expired—at the State Capitol. The advertisement described the property as "one Romanoff Imperial Faberge Egg" with an estimated value "in excess of $10,000." The advertisement also referred readers to the Controller's Website.

17. On February 4, 2015, thirty days before the 2-year custodial period expired, the Controller published the same half-page advertisement in the Gazette, informing the public of the scheduled auction. In mid-February, a local reporter, acting on a tip from the employee in the Controller's Office who knew that the Egg was real and not an imitation, published a front-page story describing the upcoming auction and the anticipated high bidder turnout.

18. The story attracted widespread attention throughout New Columbia and quickly reached Viktor Vekelsberg, a Russian billionaire and Faberge Egg enthusiast. At the auction, Mr. Vekelsberg outbid everyone and purchased the Egg for $25,000,000. In accordance with the Act and the sales contract, Mr. Vekelsberg placed that amount in an escrow account the day of the

sale, pending the expiration of the statutory holding period of 60 days.

19. The day that the auction took place, Ms. Carmichael's daughter, Clara, was watching the evening news and heard the story about Mr. Vekelsberg's purchase of a Faberge Egg for $25,000,000. She remembered that her mother, Ms. Carmichael, had once owned such an egg, which her mother believed to be an imitation and had stored in a safe deposit box at the Bank. Ms. Carmichael then contacted the Bank on March 9, 2015 and learned that the State had taken possession of the Egg under a claim that the Egg had been abandoned.

20. On March 15, 2015, Clara Thompson, on behalf of Ms. Carmichael, filed a claim of ownership of the Egg with the Controller via the Website, but she was informed that the two-year period had expired nine days earlier and that the Egg now belonged to the State. Because the 60 day post-sale period had not yet expired, the State and Mr. Vekelsberg agreed that the Egg would not be delivered to Mr. Vekelsberg until the claim of Ms. Carmichael was resolved.

FACTS RELATING TO PLAINTIFF JOHANSSEN'S CLAIM

21. Mr. Gerald Johanssen is seventy-five years old and the sole legal heir to the estate of his daughter, Phoebe Heyerdahl. Phoebe was a multi-millionaire tech entrepreneur who sadly passed away with her husband, Siegfried Heyerdahl, in a tragic Segway accident on January 15, 2010.

22. Phoebe—her maiden surname being Johanssen at the time—opened a savings account in 1985 with Goliath State Bank, Inc. while a student at New Columbia Tech. The account listed her then-off-campus apartment as the sole mailing address and included her landline phone that she used at the time. When she graduated in 1987, the account contained about $700, and thereafter Phoebe made no deposits or withdrawals. Phoebe quickly became a very successful entrepreneur and likely forgot about her modest savings account. As of January 1, 2011, her savings account, which had no deposits or withdrawals since 1987, remained under her maiden name and had grown to $1,989.40 due to accrued interest.

23. Under the former escheat statute, savings accounts valued at less than $10,000 were not escheatable. Further, Goliath charged no annual fees and did not send monthly statements—unless specifically requested by the customer—on accounts valued at less than $2,500. Under the new 2010 Act, *any* New Columbia savings account is subject to escheat.

24. On January 14, 2011, as required by the Act, Goliath sent a written notice to Phoebe's off-campus address, stating that a credit or debit must be made to the account within 30 days of the date of the notice; otherwise, the amount would escheat to the State after one year. Goliath also attempted to reach her by telephone, but the number had long since been changed to another party. On February 15, 2012, after the one-year holding period lapsed, Goliath notified the Office of the Controller that it was holding presumptively abandoned property and provided Phoebe's unmarried name, her off-campus address, and her old landline number as. Goliath also informed the Controller of its attempt to reach Phoebe. Further, Goliath reported that the savings account held $1,989.40 in cash as of January 1, 2011, plus $40.17 of earned interest for 2011.

25. On February 16, 2012, at the request of the Controller, Goliath transferred the $1,989.40, plus the $40.17 in interest, to the Controller. The Controller then promptly deposited the funds in the Treasury of New Columbia. The following day, February 17th, the Controller mailed a written notice via certified mail to Phoebe's off-campus address, stating that the amount in her account would permanently escheat to the State if she did not file a claim within 2 years. The Controller also posted the relevant information to its Website under Phoebe's maiden surname and indicated that the property was valued at "greater than $1,000." The Controller also attempted to reach Phoebe at the phone number Goliath provided, but the line was now disconnected.

26. One week after mailing the certified letter to Phoebe, the letter returned to the Office of the Controller unclaimed and unsigned. The Controller then sent a second, identical notice via regular mail to Phoebe's same address and did not receive a response.

27. Mr. Johanssen was unaware of the existence of Phoebe's savings account even after auditing her immense estate to ensure that all financial matters were settled. He happened to see the story about the Faberge Egg on the nightly news on March 8, 2015, which prompted him to look at the Controller's Website under Phoebe's name that evening. It was then that he discovered Phoebe's savings account. When he contacted the Office of the Controller the following day, he was advised that the money in Phoebe's account had permanently escheated to the State in 2014.

Count One
The New Columbia Abandoned Property Act Violates
Plaintiff Susan Carmichael's Procedural Due Process

28. The New Columbia Abandoned Property Act, as implemented by the Controller, violates Ms. Susan Carmichael's right to procedural due process as guaranteed by the Fourteenth Amendment. The written notices provided by Goliath, the State, and the Website were not "reasonably calculated" to notify Ms. Carmichael of the potential escheat of her $25,000,000 Egg.

Count Two
The New Columbia Abandoned Property Act Violates
Plaintiff Gerald Johanssen's Procedural Due Process

29. The New Columbia Abandoned Property Act, as implemented by the Controller, violates Mr. Gerald Johanssen's right to procedural due process as guaranteed by the Fourteenth Amendment. The written notices provided by Goliath, the State, and the Website were not "reasonably calculated" to notify Mr. Johanssen of the potential escheat of the funds in his deceased daughter's savings account.

Count Three
Permanent Escheat Constitutes a Taking of the Property of
Plaintiff Carmichael and Plaintiff Johanssen

30. The Act's mandate that banks deliver to New Columbia property belonging to their current or former customers, under the guise that the property has been abandoned, constitutes a

taking without just compensation under the Fifth Amendment. The Act deprived Ms. Carmichael of property through its escheat of her monetarily valuable, and sentimentally priceless, heirloom. Similarly, New Columbia has deprived Mr. Johanssen of a portion of his late daughter's estate consisting of her savings account at Goliath State Bank, plus the interest that the account would have earned. Both Plaintiffs would be the legal owners of the named property but for the New Columbia Abandoned Property Act, and neither have received any compensation from New Columbia for the escheat of their property.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

A. A declaration that the lack of meaningful notice afforded Plaintiffs prior to the escheat of their property violates the Due Process Clause of the Fifth and Fourteenth Amendments of the United States Constitution, and that the custodial and permanent escheat of Plaintiffs' property violates the Takings Clause of the Fifth Amendment of the United States Constitution;

B. An injunction prohibiting the Controller of New Columbia from enforcing the New Columbia Abandoned Property Act against Plaintiffs, voiding the contract between Defendants for the sale of the Faberge Egg, and directing the return of the Faberge Egg to Plaintiff Carmichael;

C. An award of just compensation in the amount of $2,149.05 to Plaintiff Johanssen to compensate him for the value of the savings account plus the interest it accrued in New Columbia's possession; and

D. Grant Plaintiffs any further relief that the Court deems just and proper.

Date: April 15, 2015

Respectfully Submitted,

/s/ *David Johnson*
David Johnson
2000 H Street
Newtown, New Columbia 00003

NOTICE OF PUBLIC AUCTION SALE

Under authority of the New Columbia Abandoned Property Act of 2010, § 1200 *et seq.*, the property described herein has been held by the Controller of New Columbia as abandoned personal property. The property will be sold at public auction at the New Columbia State Capitol, Room 307, on March 8, 2015 at 9:30 am. The item is one Romanoff Imperial Faberge Egg with an estimated value in excess of $10,000. The property is listed on the New Columbia Property Database, available at www.whereismyproperty.newcolumbia.org.

Pursuant to § 1200(a)(7) of the Act, any payment for the sale of said property shall be held in an escrow account for a period of sixty (60) days. All payments must be by cash, a certified check, cashier's check, treasurer's check, or money order. Make check or money order payable to the New Columbia Treasury. After the expiration of such 60 days, the owner shall be permitted to redeem the property at any time from the Controller of New Columbia.

All property is offered for sale "as is" and without recourse against the State of New Columbia. No claim can be filed to modify or rescind the sales contract based on failure of the property to conform with any expressed or implied representation or warranty. All sales are final.

Questions concerning the sale of the property should be directed to the Office of the Controller at (987) 654-3210 or escheat@controller.gov.

Welcome To
The New Columbia Property Database

www.whereismyproperty.newcolumbia.org

PROPERTY OF
OFFICE OF THE CONTROLLER
100 CENTRAL WAY
NEWTOWN, NEW COLUMBIA 00002
WWW.CONTROLLER.NCOL.GOV

Home | General Info | Resources | Help

SEARCH!

First Name	Last Name	Zip Code
Susan	Carmichael	00003

Please complete all fields.

NEXT LAST

Displaying 1-5 of 5 results

Name	Last Known Address	Reported By	Estimated Value
CARMICHAEL, SUSAN	PO BOX 1 Newtown, New Columbia 00003	GOLIATH STATE BANK, INC.	Greater than $1,000
CARMICHAEL, SUSAN	415 White Street, Apt. 104 Newtown, New Columbia 00003	MONTGOMERY INVEST. FUNDS	Less than $1000
CARMICHAEL, SUSAN	1405 Old Harbor Way Newtown, New Columbia 00003	GOLIATH STATE BANK, INC.	Greater than $1,000 *
CARMICHAEL, SUSAN	1 Black Bird Circle Newtown, New Columbia 00003	UNITED BANK CO.	Greater than $1,000
CARMICHAEL, SUSAN	PO BOX 199 Uptown, New Columbia 00003	GOLIATH STATE BANK, INC.	Less than $1000

Think you found your property? Click **here** to access the New Columbia Abandoned Property Claim Form to start the process. You can also access the New Columbia Abandoned Property Act **here**.

NEXT LAST

* The property is considered high-value and will be sold at public auction.

Updated as of December 8, 2014

Office of the Controller of the State of New Columbia

NOTICE TO OWNER OF ABANDONED PROPERTY

Via Certified Mail

March 6, 2013

ATTN: Susan Carmichael
1405 Old Harbor Way
Newtown, New Columbia 00003

Dear Susan Carmichael:

Be advised that the State of New Columbia has taken custodial control of one decorative egg formerly held in Safe Deposit Box #1256. We estimate the egg to be worth less than $1,000. Goliath State Bank, Inc., located at 123 One World Drive, Newtown, New Columbia 00001, transferred your property under the New Columbia Abandoned Property Act of 2010 on March 6, 2013, due to inactivity and failure to submit the required rent or lease payment.

You are entitled to the return of your property if you demonstrate proof of ownership to the Office of the Controller within **two years** from the date of the notice. After such time, the State shall take ownership of your property and shall dispose of it at the Controller's discretion. You may locate your property and file a claim at www.whereismyproperty.newcolumbia.org. You may also view a copy of the Act on the site.

Your immediate response is appreciated. If you have any questions about these proceedings, please call 987-654-3210 or email the Office of the Controller at escheat@controller.nc.gov.

Sincerely,

Elizabeth Thornberry

Elizabeth Thornberry
Controller of the State of New Columbia

GOLIATH STATE BANK, INC.

123 One World Drive
Newtown, New Columbia 000001
(989) 100-1000 ◆ GoliathBankInc@info.com

URGENT!

NOTICE TO OWNER OF ABANDONED PROPERTY

Via Regular Mail

February 1, 2012

ATTN: Susan Carmichael
1405 Old Harbor Way
Newtown, New Columbia 00003

Dear Susan Carmichael:

Please be informed that under the New Columbia Abandoned Property Act of 2010, N. Col. Code § 1200, you are hereby given Notice that the contents of Safe Deposit Box #1256, currently rented to you, may soon escheat to the State of New Columbia. A copy of the statute is enclosed.

Our records indicate that, as of February 1, 2012, you have abandoned your property due to inactivity within the previous calendar year and failure to pay the required annual lease fee due by January 1st. To reclaim your property, payment must be received within thirty days of the date of this Notice. If payment is not received, your property shall be transferred or delivered to the State of New Columbia one year from the date payment is due. At such time, you may request that your property be returned by filing a claim at www.whereismyproperty.newcolumbia.org.

If you believe this Notice is in error or if you have any questions, please immediately contact us at (989) 100-1000, or visit our Newtown location at 123 One World Drive between 9 a.m. and 5 p.m., Monday through Friday. Your response to this matter is greatly appreciated.

Sincerely,

Goliath State Bank, Inc.

Enclosure

Office of the Controller of the State of New Columbia

NOTICE TO OWNER OF ABANDONED PROPERTY

Via Certified Mail

February 17, 2012

ATTN: Phoebe Johanssen
21 University Drive, #201
Uptown, New Columbia 00002

Dear Ms. Phoebe Johanssen:

Be advised that the State of New Columbia has taken custodial control of the $1,989.40.00 formerly held in savings account #10005 at Goliath State Bank, Inc., located at 123 One World Drive, Newtown, New Columbia 00001. The Bank transferred your property under the New Columbia Abandoned Property Act of 2010 on February 16, 2012, due to account inactivity.

You are entitled to the return of your property if you demonstrate proof of ownership to the Office of the Controller within the next **two years** from the date of this Notice. You may locate your property and file a claim at www.whereismyproperty.newcolumbia.org. You may also view a copy of the Act on the site.

Your immediate response is appreciated. If you have any questions about these proceedings, please call 987-654-3210 or email the Office of the Controller at escheat@controller.nc.gov.

Sincerely,

Elizabeth Thornberry

Elizabeth Thornberry
Controller of the State of New Columbia

GOLIATH STATE BANK, INC.

123 One World Drive
Newtown, New Columbia 000001
(989) 100-1000 ◆ GoliathBankInc@info.com

URGENT!

NOTICE TO OWNER OF ABANDONED PROPERTY

Via Regular Mail

January 14, 2011

ATTN: Phoebe Johanssen
21 University Drive, #201
Uptown, New Columbia 00002

Dear Phoebe Johanssen:

Please be informed that under the New Columbia Abandoned Property Act of 2010, N. Col. Code § 1200, you are hereby given Notice that the $1,989.40 held in savings account #10005, bearing your name, may soon escheat to the State of New Columbia. A copy of the statute is enclosed.

Our records indicate that as of January 1, 2011, you have abandoned your property due to account inactivity during the previous calendar year. To reclaim your property, a deposit or withdrawal must be made within thirty days of the date of this Notice. If such activity does not occur on this account, your property shall be transferred or delivered to the State of New Columbia one year from the date such activity is required. At such time, you may request that your property be returned by filing a claim at www.whereismyproperty.newcolumbia.org.

If you believe this Notice is in error or if you have any questions, please immediately contact us at (989) 100-1000, or visit our Newtown location at 123 One World Drive between 9 a.m. and 5 p.m., Monday through Friday. Your response to this matter is greatly appreciated.

Sincerely,

Goliath State Bank, Inc.

Enclosure

New Columbia Abandoned Property Act of 2010
N. COL. CIV. CODE § 1200

(a) **SAFE DEPOSIT BOXES**

(1) It shall be the duty of any bank that rents, leases, or otherwise makes available for a fee a facility providing for safe deposit box services (the "Bank") to comply with the provisions of this Act.

(2) The duties of the Bank shall include, in addition to any other requirements imposed by law or under contract:

(A) To obtain and keep current information on the name, address, telephone number and email of the person(s) entitled to access each safe deposit box that it provides (the "Owner");

(B) To monitor access to the box and create a system by which the Bank can determine when there has been no activity in the box for one year or more;

(C) In January of each year, the Bank shall determine whether the Owner has accessed his or her safe deposit box during the prior calendar year and has paid the annual fee for the current calendar year.

(D) If there has been no access by the Owner during the prior calendar year, and if the fee for the current calendar year has not been paid by February 1 of that year, the Bank shall promptly notify the Owner in writing that the contents of the safe deposit box have been presumed abandoned and that if the safe deposit box fee for the current year is not paid within thirty (30) days of the date of the notice, the one year hold period provided for herein shall commence.

(E) If the Owner fails to pay the annual fee within the one year holding period, the Bank shall notify the Controller of New Columbia and provide to the Controller the information required to be obtained under subparagraph (A), including any attempts made by the Bank to notify the Owner. Additionally, the Bank shall make available to the Controller the contents of the safe deposit box, provided that the Controller pays any expenses incurred by the Bank in connection with providing the

Controller such contents.

(F) Provided that the Bank complies with the provisions of this section, it shall not be liable to the Owner for any claims made by the Owner relating to the contents of the safe deposit box.

(3) Upon taking possession of the contents of any safe deposit box pursuant to subsection (2), the Controller shall make a complete inventory of the contents. The Controller shall promptly provide written notice via certified mail to the Owner that, unless the Owner files a claim establishing proof of ownership with the Controller within two (2) years from the date of the notice, the deposit box's entire contents shall escheat to New Columbia; which thereafter shall own such property and may dispose of it as provided for herein.

(4) With respect to tangible personal property in any safe deposit box, the Controller shall determine the value of the property promptly and shall maintain it in a safe and secure place during the two-year period provided for herein. If no claim is made prior to the expiration of the two-year period, the Controller shall dispose of the property as provided herein and deposit the proceeds into the Treasury of the State of New Columbia.

(5) After having determined the value of the tangible personal property in the safe deposit box, the Controller shall promptly post to the New Columbia Property Database (the "Website") the name of the Owner, the Owner's address, the name of the Bank, and whether the property is valued as "greater than" or "less than" one thousand dollars ($1,000). If the deposit box contains multiple tangible items, their aggregate value shall be reported.

(6) With respect to personal property that the Controller determines has a value of less than ten thousand dollars ($10,000), the Controller may dispose of it by such means as he or she deems appropriate.

(7) With respect to personal property with a value in excess of ten thousand dollars ($10,000), the Controller shall dispose of such property by public auction after the expiration of the two-year period by the same method used to dispose of real property owned by the State or which it has seized to satisfy a debt owed to the State; PROVIDED however, that personal property sold pursuant to this provision shall not be transferred to the purchaser for a period of sixty (60) days

following the date on which the purchaser has paid the purchase price into an escrow account, to be held pending the passage of the sixty (60) days. If the Controller complies with the provisions herein, the Owner shall have no claim against the State regarding the personal property sold by the Controller.

. . . . [provisions regarding treatment of tangible property other than personal property omitted]

(b) **SAVINGS ACCOUNTS**

(1) It shall be the duty of any bank that provides savings accounts for its customers (the "Bank") to comply with the provision of this Act.

(2) The duties of the Bank shall include, in addition to any other requirements imposed by law or under contract:

(A) To obtain and keep current information on the name, address, telephone number and email of the person(s) entitled to access each savings account (the "Owner");

(B) To monitor access to the account and create a system by which the Bank can determine when there has been no activity in any savings account for one year or more;

(C) In January of each year, the Bank shall determine whether the Owner has made a deposit or withdrawal from a savings account during the prior calendar year.

(D) If there has been no activity by the Owner during the prior calendar year, the Bank shall promptly notify the Owner in writing that the account has been presumed abandoned and that if there is no activity in the account within thirty (30) days of the date of the notice, the one year hold period provided for herein shall commence.

(E) If there is no activity by the Owner within the one year hold period, the Bank shall notify the Controller and shall transfer to the Controller, for the benefit of the State of New Columbia, an amount equal to the then current value of the account and the information required to be obtained under subparagraph (A), including any attempts made by the Bank to notify the Owner.

(F) Provided that the Bank complies with the provisions of this section, it shall not be liable to the Owner for any claims made by the Owner relating to the savings account.

(3) After receipt from the Bank of the amount in the savings account, the Controller shall promptly provide written notice via certified mail to the Owner that, unless the Owner files a claim establishing proof of ownership with the Controller within two (2) years from the date of the notice, the amount of the account shall permanently escheat to the State of New Columbia and the Owner shall have no claim against the State regarding the account.

(4) After the Controller receives the transferred savings account, the Controller shall promptly post to the Website the name of the Owner, the Owner's address, the name of the Bank, and whether the property is valued as "greater than" or "less than" one thousand dollars ($1,000).

(5) During the two-year period provided for in (3), the State of New Columbia may use the amount in a savings account subject to these provisions as the property of the State and shall not be liable to the Owner for such use, even if the Owner makes a timely claim within the two-year period.

. . . . [similar provisions relating to checking accounts omitted]

(g) **NOTICE GENERALLY**

(1) For purposes of this chapter, each written notice caused by the Bank or the Controller shall—

(A) Be entitled "notice to Owner of abandoned property", written in boldface;

(B) Identify the Bank currently in possession of the property or, if the property has escheated to the State, the Bank which formerly held said property;

(C) Contain a concise statement describing the property and its estimated fair market value; and

(D) Provide a link to the New Columbia Property Database.

(2) For purposes of this chapter, each property posted to the Website shall include the following information:

(A) the Owner's first and last name;

(B) the Owner's last known address;

(C) the name of the Bank transferring the abandoned property; and

(D) the estimated value of the property described as either "greater than" or "less than" one thousand dollars ($1,000). In the case of personal property with a value in excess of $10,000, the State shall also indicate that the property will be sold at public auction.

(3) For purposes of this chapter, the State shall provide notice in a widely circulated publication no later than ninety (90) days prior to any auction of any piece of personal property with a value in excess of $10,000. The State shall also provide similar notice no later than thirty (30) days prior to the expiration of any custodial period. Such notices as described herein shall include the date, time, and location of the auction; provide a brief description of the property; and indicate that the property is valued in excess of $10,000.

(h) **CLAIMS**

(1) Subject to the provisions of this chapter, any person who claims to be the Owner of the property delivered, transferred, or paid to the State may file a claim with the Controller.

(2) Any claimant shall not be entitled to interest accrued on any property held by the State.

(i) **THE NEW COLUMBIA PROPERTY DATABASE.**

(1) The Controller is hereby instructed to establish, administer, and routinely maintain the New Columbia Property Database (the "Website") to provide reasonably accessible information regarding the possible existence of abandoned property escheated to the State under this chapter.

(2) The Website shall provide an online form for filing claims with the Controller.

(3) The Controller shall not impose any fee or charge to access the information made available on the Website.

Legislative History of the New Columbia Abandoned Property Act of 2010

Floor Speech from State Senator Maria Santana

I am proud to introduce the New Columbia Abandoned Property Act. This Act will help close our expected budget deficit without increasing the tax burden on hard-working New Columbians as well as support the economic success of our local financial institutions. Escheat of abandoned property has been a tried-and-true revenue generator for New Columbia for a century. New Columbia's current escheat statute, however, has not been updated in forty years, has grown antiquated, and is out-of-step with similar statutes in our sister states.

The New Columbia Abandoned Property Act will increase the efficiency with which our state escheats property by reducing from twenty to three years the period after which the abandoned property is escheated. Further, the contents of safe deposit boxes and small savings accounts will be subject to escheat for the first time. This supports local banks which frequently complain that the current statute is extremely onerous because it requires them to shoulder the costs of managing small unused accounts and property abandoned in bank vaults—which typically may not be disposed of absent a court order—for twenty years. Accordingly, this bill is a "no-nonsense" solution to both closing our state's budget deficit and cutting bureaucratic red tape strangling New Columbia businesses. That is why I am sponsoring the bill and why my colleagues should support it.

Floor Speech from Representative Bernadette Saunders

I rise to support my colleague's bill and to further expound on its benefits. Our current escheat law is fundamentally unjust. As my friend indicated, it permits banks to hold abandoned property for twenty years—profiting from it all the while. It requires only

that New Columbia publish its escheating practices in a newspaper and that it send a telegram to the owner's last known address.

Accordingly, this bill is of great importance because it will allow New Columbia's escheat regime to better protect all citizens. First, the bill removes property from the clutches of big banks— where it only enriches corporate bigwigs and shareholders—after one year and transfers it to the state's general fund where it benefits everyone. Second, the new law would require that the bank notify its customers that their property will be presumptively abandoned, that the State notify owners that their property has been escheated through an easily accessible, public website, and—in the case of high-value personal property—hold a public auction and place the proceeds of the property's sale in escrow for sixty days. Any legislator who cares about protecting their constituents' hard-earned property while weakening the power and resources of banks, should vote for this bill.

New Columbia Adverse Possession Act of 2010
N. COL. CIV. CODE § 1700

The State Legislature of New Columbia hereby enacts the following bill:

(a) **TITLE**

This Act shall be known as the New Columbia Adverse Possession Act of 2010.

(b) **LIMITATIONS PERIOD**

The period of time for which a person claiming the right to ownership of real property by adverse possession must adversely possess that property shall be reduced from twenty years to seven years effective as of January 1, 2012.

AUTHORS' NOTE: THE AMICUS BRIEF ON THE FOLLOWING PAGE IS NOT A PART OF THE OFFICIAL RECORD, BUT HAS BEEN ATTACHED TO GIVE COMPETITORS ADDITIONAL BACKGROUND INFORMATION REGARDING ESCHEAT LAW

No. 22O145, Original

IN THE

Supreme Court of the United States

STATE OF DELAWARE,

Plaintiff,

v.

COMMONWEALTH OF PENNSYLVANIA AND STATE OF WISCONSIN,

Defendants.

On Motion for Leave to File Bill of Complaint

BRIEF OF *AMICUS CURIAE* MONEYGRAM PAYMENT SYSTEMS, INC. IN SUPPORT OF THE MOVANT

MICHAEL RATO
Counsel of Record
MCELROY, DEUTSCH, MULVANEY & CARPENTER, LLP
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Counsel for Amicus Curiae MoneyGram Payment Systems, Inc.

July 6, 2016

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

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INTEREST OF *AMICUS CURIAE*

MoneyGram Payment Systems, Inc. ("MoneyGram") is a wholly-owned subsidiary of MoneyGram International, Inc., a global provider of money transfer, commercial payment processing, and consumer financial services.[1] Delaware's Motion for Leave to File a Bill of Complaint presents an interstate dispute over which state has superior authority to take custody of unclaimed MoneyGram "Official Checks." Specifically, the states dispute whether unclaimed, address-unknown MoneyGram Official Checks should be escheated[2] to the state of purchase pursuant to a federal statute governing the escheat of sums payable on a "money order . . . or other similar written instrument,"[3] or to MoneyGram's state of incorporation pursuant to the general priority rules of *Texas v. New Jersey*, 379 U.S. 674 (1965).

As described in greater detail below, MoneyGram's involvement here is much like Sun Oil's entanglement

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[1] All parties have consented to the filing of this brief. Rule 37.2. Pursuant to Rule 37.6, MoneyGram states that no counsel for a party authored any part of this brief, and no person or entity other than MoneyGram made a monetary contribution to the preparation or submission of this brief.

[2] A word about nomenclature: at common law, the sovereign took custody of unclaimed personal property pursuant to the doctrine of *bona vacantia*, rather than as an "escheat." *See Delaware v. New York*, 507 U.S. 490, 497 n.9 (1993). In modern parlance, however, the latter term is widely used to describe the process by which states take custody of unclaimed intangible property. Accordingly, the term is used in this brief. *See* Note, *The Origins and Development of Modern Escheat*, 61 Colum. L. Review 1319, 1319-20 (1961) (contrasting the modern law of escheat with its common law predecessor).

[3] The Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C. § 2501, *et seq*.

in the seminal *Texas v. New Jersey* case: MoneyGram has "disclaimed any interest in the property for itself, and asks only to be protected from the possibility of double liability." 379 U.S. at 676. As a result of this dispute among Delaware, Wisconsin, Pennsylvania, and more than a dozen other states, MoneyGram has been audited, threatened with millions of dollars in interest and penalties, and sued (twice) – all by states acknowledging that the funds they seek have already been escheated to Delaware. Adding insult to injury, when MoneyGram sought indemnification for these claims from Delaware (to which MoneyGram is entitled under Delaware's Escheat Act[4]), MoneyGram received no formal response other than a notice that Delaware intends to conduct its *own* audit of MoneyGram.

The Court's intervention in this case is necessary to resolve the issue of which state has a superior right to escheat the disputed funds. While MoneyGram concurs with the analyses proffered by the parties to support this Court's exercise of jurisdiction, MoneyGram respectfully submits this brief to raise additional facts gleaned from its status as a captive participant in this interstate tug-of-war, and to present further considerations supporting the exercise of jurisdiction that have not been addressed.

STATEMENT OF THE CASE

The interstate dispute presented by Delaware's motion concerns the characterization, for unclaimed property purposes, of a MoneyGram product known as an "Official Check." Delaware Mot. for Leave to File Bill of Compl. ("Del. Mot."), ¶ 10. MoneyGram's Official Check product is a prepaid payment item

[4] *See* Del. Code Ann. tit. 12, § 1203(c).

generally sold at a financial institution. *Id.*, ¶ 12. In exchange for a transaction fee and the value of the payment, the Official Check seller issues an instrument to the purchaser upon which MoneyGram is liable, and thus may be considered more creditworthy than a personal check. Del. Mot. App. at A-8, ¶ 17. Generally, the financial institution sellers of Official Checks "do not record the address of the purchaser of the instruments." *Id.* at A-10, ¶ 33.

In accordance with *Texas v. New Jersey*, MoneyGram escheats uncashed address-unknown Official Checks to its state of incorporation, Delaware. Del. Mot., ¶10. However, given the nature of the Official Check item – in some ways similar to a traditional teller's check, in other ways similar to a money order – questions arose as to whether the items should be escheated pursuant to the traditional *Texas v. New Jersey* priority rules, or the exception created by 12 U.S.C. § 2503 (addressing escheat of money orders and "similar written instruments"). *See* Mot. for Leave to File Complaint, *Texas v. Delaware*, S. Ct. Docket No. 22O146 at Ex. A (filed Jun. 9, 2016). In light of these questions, MoneyGram sent a letter to the Delaware Department of Finance seeking Delaware's confirmation that MoneyGram's handling of these unclaimed funds was correct. *Id.* MoneyGram's letter to Delaware described the Official Check product, explained MoneyGram's historical escheatment of the items, and noted other states' contentions that Official Checks were money orders or "similar written instruments" escheatable to the state of purchase.[5] *Id.*

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[5] In particular, MoneyGram's letter noted the other states' position that such items were escheatable pursuant to "Section 4(d) of the 1981 Uniform Unclaimed Property Act." *Id.* That provision adopts the priority rules set forth in 12 U.S.C.

Delaware's response was unequivocal. In a letter from the Department of Finance, Delaware advised that MoneyGram "has been properly reporting and delivering unclaimed property in accordance with the strict rules established by the Supreme Court of the United States." *Id.* at Ex. B. In light of Delaware's response, MoneyGram continued its practice of escheating address-unknown Official Checks to Delaware. Del. Mot., ¶ 10.

In May 2014, MoneyGram received notice from Treasury Services Group ("TSG"), a private auditing firm, that TSG had been retained to perform an unclaimed property audit of MoneyGram Official Checks on behalf of Pennsylvania, Wisconsin, and eighteen other states (the "Audit States"). *See* Del. Mot., Gregor Decl., at Ex. A. At the conclusion of that audit, TSG demanded that MoneyGram pay the Audit States tens of millions of dollars (including $9.6 million to Pennsylvania and $15.6 million to Wisconsin) that MoneyGram previously escheated to Delaware. *Id.* MoneyGram requested that the Audit States contact Delaware for resolution, as the funds were now in Delaware's custody. *See* Mot. for Leave to File Compl., *Texas v. Delaware*, S. Ct. Docket No. 22O146 at Ex. F (filed Jun. 9, 2016).

Ultimately, Pennsylvania filed suit against both MoneyGram and Delaware State Escheator David Gregor in the U.S. District Court for the Middle District of Pennsylvania. *See* Del. Mot. at A-5. Pennsylvania sought judgment against MoneyGram in the amount of $10.3 million, plus interest and penalties on that amount, all while explicitly acknowledging

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§ 2503. *See* Comment, 1981 Unif. Unclaimed Prop. Act. § 4 (noting that subsection (d) "adopt[s] the rules . . . provided by congressional legislation [in] . . . 12 U.S.C. §§ 2501, *et seq*.").

that the $10.3 million sought was escheated by MoneyGram "to the Delaware State Escheator." *Id.* at A-12, ¶ 43; A-23, ¶¶ 104-109. A similar situation played out in Wisconsin. The Wisconsin Department of Revenue sued MoneyGram and Delaware Escheator Gregor in the U.S. District Court for the Western District of Wisconsin for sums payable on Official Checks purchased in that state. *See id.*, A-27 to A-39. Again, MoneyGram was sued (this time for $13 million plus interest, penalties, attorneys' fees and costs) notwithstanding Wisconsin's acknowledgment that the amounts sought were "sent [by MoneyGram] to the Delaware State Escheator." *Id.* at A-31, ¶ 30; A38.

On May 26, 2016, Delaware filed the instant motion. On June 3, 2016, the State of Wisconsin filed a brief concurring in Delaware's request that the Court exercise jurisdiction, and seeking leave to file a counterclaim. Wisconsin Mot. for Leave to File Counterclaim (filed June 3, 2016). On June 14, 2016, the Commonwealth of Pennsylvania filed a brief seeking similar relief. Pennsylvania Br. in Resp. to Delaware's Mot. to File Bill of Complaint (filed June 14, 2016). The underlying Pennsylvania and Wisconsin district court matters have been stayed pending this Court's resolution of Delaware's motion. Del. Mot., ¶ 18; Order Staying Case (Dkt. No. 12), *Wisconsin Dep't. of Rev. v. Gregor*, Case No. 3:16-cv-00281-wmc (W.D. Wis. Jun. 21, 2016).

On June 9, 2016, the states of Arkansas, Texas, Alabama, Arizona, Colorado, Florida, Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Montana, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, South Carolina, Utah, and West Virginia filed their own Motion for Leave to File a Bill of Complaint raising precisely the same issue of priority to escheat

unclaimed MoneyGram Official Checks. *See* Mot. for Leave to File a Bill of Complaint, *Texas v. Delaware*, Docket No. 22O146 (filed June 9, 2016).

SUMMARY OF THE ARGUMENT

This case bears the quintessential attributes of a matter properly subject to the Supreme Court's original and exclusive jurisdiction. The controversy presents a conflict regarding the states' respective rights to escheat unclaimed property—rights that flow from the states' sovereign powers. The dispute is significant in scope and scale, potentially affecting all states and involving at least a quarter of a billion dollars. The case cannot be decided in an alternative forum; no other court could exercise jurisdiction over all the parties or grant the relief sought. In sum, this case is precisely the type of dispute that is in the "appropriate" original jurisdiction of this Court.

In addition, cases of this kind are within the core competency of this Court's original jurisdiction. The underlying dispute is primarily legal in nature, does not raise any significant technical, scientific, or political questions, and is not readily amenable to resolution absent this Court's intervention. Moreover, in light of the recent proliferation and expansion of state escheat laws, this Court's guidance is especially necessary to clarify the applicable priority rules and to reaffirm an unclaimed property holder's right to be free from duplicative escheat liabilities.

For these reasons, and as described in greater detail below, MoneyGram respectfully submits that the State of Delaware's Motion for Leave to File a Bill of Complaint and the State of Wisconsin's Motion for Leave to File a Counterclaim should both be granted.

ARGUMENT

I. THE COURT SHOULD EXERCISE JURISDICTION OVER THIS INTERSTATE DISPUTE

The Supreme Court has "original and exclusive jurisdiction of all controversies between two or more states." 28 U.S.C. § 1251(a). The present case – involving Delaware, Wisconsin, and Pennsylvania, all acting in their sovereign capacities – is precisely the type of matter that falls within that description. That said, the Court has repeatedly warned that its original jurisdiction is to be used "sparingly" and is "obligatory only in appropriate cases." *Mississippi v. Louisiana*, 506 U.S. 73, 76 (1992) (*quoting Illinois v. City of Milwaukee*, 406 U.S. 91, 93 (1972)). The determination of whether a case is "appropriate," in turn, focuses on "the seriousness and dignity of the claim" pressed by the state(s) and whether there is an alternative forum "where appropriate relief may be had." *City of Milwaukee*, 406 U.S. at 93. Here, both of these factors unquestionably demonstrate that this is an "appropriate" case for the exercise of the Court's original jurisdiction.

A. The Seriousness and Dignity of the Disputing States' Interests Warrant the Exercise of Jurisdiction

In assessing the "dignity" of a state's claim for purposes of original jurisdiction, the Court's inquiry focuses upon whether that claim "implicate[s] the unique concerns of federalism forming the basis of the [Court's] original jurisdiction." *Maryland v. Louisiana*, 451 U.S. 725, 743 (1981). A state's right to escheat arises directly from its status as a sovereign. *Delaware v. New York*, 507 U.S. at 502 (noting that the

"disposition of abandoned property is a function of the state, a sovereign exercise of a regulatory power over property and the private legal obligations inherent in property.")(*citing Standard Oil v. New Jersey*, 341 U.S. 428, 436 (1951) (internal quotations omitted)). When states' sovereign rights come into conflict, concerns of federalism are doubtlessly present. *See*, *e.g.*, *Wyoming v. Oklahoma*, 502 U.S. 437, 451 (1992) (where clashes of state sovereignty take place, "[i]t is beyond peradventure" that the dispute is "of sufficient seriousness and dignity" to warrant the exercise of original jurisdiction) (internal quotations and citation omitted). This is no less true when those conflicts involve competing escheat claims. *See Delaware v. New York*, 507 U.S. at 510; *Pennsylvania v. New York*, 407 U.S. 206 (1972); *Texas v. New Jersey*, 379 U.S. at 680.

In addition, the amounts involved here are substantial. According to Delaware's brief, the disputed unclaimed Official Checks have a value "in the hundreds of millions of dollars," and the potential loss of those funds would significantly impact Delaware's revenue. Del. Br. at 12; *see Wyoming*, 502 U.S. at 453 and n.11 (potential lost revenue of $500,000 per year "rose to a level suitable to our original jurisdiction"). Wisconsin and Pennsylvania similarly take the position that Delaware's possession of these funds is a sufficient affront to their sovereign dignity to warrant this Court's intervention. *See* Wis. Br. at 11-12; Pa. Br. at 12 (stating that "[w]ere Pennsylvania an independent sovereign, the annual thwarting of its [escheat] rights by an adjoining sovereign would certainly be a '*casus belli*'"). While that may be rhetorical flourish, there is no doubt that this is a situation where the Court may properly discharge its function "as a substitute for the diplomatic settlement

of controversies" among dueling sovereigns. *Kansas v. Nebraska*, __ U.S. __, 135 S. Ct. 1042, 1051 (2015) (*quoting North Dakota v. Minnesota*, 263 U.S. 365, 372-373 (1923)).

B. There is No Alternative Forum that Can Provide Complete Relief

No other forum can afford complete relief in this case. No state court could properly exercise jurisdiction over the parties to this dispute, and "the States separately are without constitutional power . . . to settle" escheat disputes among themselves. *Texas* 379 U.S. at 677; *see also* U.S. Const. art. III, § 2. As to the federal courts, the plain language of 28 U.S.C. § 1251 not only confers upon this Court the power to entertain interstate disputes, it also denies that power to the lower federal courts. *See Mississippi v. Louisiana*, 506 U.S. at 77-78 ("Though phrased in terms of a grant of jurisdiction to this Court, the description of our jurisdiction as 'exclusive' [in § 1251(a)] necessarily denies jurisdiction of such cases to any other federal court.").

Likewise, the constitutional and statutory hurdles to lower federal court jurisdiction cannot be overcome via clever pleading or artful defendant selection. To the extent that claims are brought by or against the officials responsible for the administration of state escheat laws, this Court has made clear that it will "look behind and beyond the legal form" in which the claims are presented and "determine whether in substance the claim is that of the State." *Arkansas v. Texas*, 346 U.S. 368, 371 (1953); *see also In re State of New York*, 256 U.S. 490, 500 (1921) ("As to what is to be deemed a suit against a State . . . it is now established that the question is to be determined not by the mere names of the titular parties but by the

essential nature and effect of the proceeding . . . ."). Here, of course, the pertinent state officials only have the power to assert custody over unclaimed property to the extent that federal common or statutory law gives the state (*qua* state) such power. *See Texas*, 379 U.S. at 682 (concluding that where holder has no owner address, property is "subject to escheat by the ***State*** of corporate domicile") (emphasis added); 12 U.S.C. § 2503(1) ("[I]f the books and records . . . show the State in which such money order . . . was purchased, ***that State*** shall be entitled exclusively to escheat.") (emphasis added).

Finally, though not for lack of trying, the claimant states are unable to permissibly obtain the relief they seek by suing MoneyGram for property that has already been escheated to Delaware. As this Court has repeatedly held, a state violates the Due Process Clause where it requires a private party "to pay a single debt more than once and thus take[s] its property without due process of law." *Western Union Telegraph Co. v. Pennsylvania*, 368 U.S. 71, 77 (1961); *Standard Oil*, 341 U.S. at 443 ("[T]he same debts or demands [taken by New Jersey] against appellant cannot be taken by another state."); *Texas*, 379 U.S. at 676 ("[T]he Due Process Clause of the Fourteenth Amendment prevents more than one State from escheating a given item of property.").

Accordingly, Delaware's motion should be granted, and the Court should exercise jurisdiction over this matter.

II. OTHER CONSIDERATIONS SUPPORT THE EXERCISE OF THE COURT'S ORIGINAL JURISDICTION

The Court has previously explained that whether the exercise of its jurisdiction is appropriate "in an original action between States must be determined on a case-by-case basis." *Maryland v. Louisiana*, 451 U.S. at 743. As such, in addition to the two-pronged test set forth in *Illinois v. City of Milwaukee*, the Court has often looked to other factors in order to determine whether the exercise of its original jurisdiction is warranted. In the present case, these additional factors likewise support the exercise of jurisdiction.

A. This Case Presents a Primarily Legal Dispute Between States Within the Court's Core Competency

Even where jurisdiction is present, the Court has expressed its reluctance to wade into disputes involving copious fact finding, presenting a dispute primarily technical or scientific (as opposed to legal) in nature, or representing only part of a larger public or political controversy. *See, e.g.*, *Ohio v. Wyandotte Chem. Corp.*, 401 U.S. 493, 503-04 (1971) (declining to exercise original jurisdiction over case raising primarily disputed factual and scientific issues).

The factual issues presented in this case, however, are not particularly complex, nor do they raise complicated political, technical, or scientific subjects. *See id.* at 498 (explaining the need to limit the exercise of Court's original jurisdiction "to those matters of federal law and national import as to which we are the primary overseers."). Indeed, the underlying facts relating to the MoneyGram instruments at issue (the characteristics of the items, the terms of payment, the

means of sale and issuance, etc.) are likely to be undisputed and could be the subject of a stipulation. *See United States v. Alaska*, 501 U.S. 1248 (1991) (allowing original jurisdiction action to be adjudicated on stipulated facts). While the parties dispute how those acknowledged facts apply to the underlying law, this case does not present the specter of complex or extensive fact-finding.

Moreover, the particular area of the law presented by the proposed complaint – the priority of states to take custody of unclaimed property – is one the Court has addressed on numerous occasions. *See Texas*, 379 U.S. at 677 (noting that the Court has "responsibility in the exercise of our original jurisdiction" to address unclaimed property priority disputes that "the States separately are without constitutional power . . . to settle."); *Delaware*, 507 U.S. at 500 (Escheat priority rules arise from the Supreme Court's "'authority and duty to determine for [ourselves] all questions that pertain' to a controversy between States.") (*quoting Kentucky v. Indiana*, 281 U.S. 163, 176 (1930)).

In sum, the dispute in this case is primarily one of law, rather than fact, and involves an area of jurisprudence well within the Court's historical métier. Accordingly, exercise of this Court's original jurisdiction is appropriate.

B. The Proliferation and Expansion of Escheat Laws Warrants Additional Guidance from This Court

More than fifty years ago, this Court noted that "[t]he rapidly multiplying escheat laws, originally applying only to land and other tangible things but recently moving into the elusive and wide-ranging

field of intangible transactions have presented problems of great importance to the States and persons whose rights will be adversely affected by escheats." *Western Union*, 368 U.S. at 79. Since this Court last addressed the topic of unclaimed property law,[6] the coverage of state escheat laws, the aggressiveness with which those laws are enforced, and the states' reliance on unclaimed property "revenues" to replenish the state fisc have increased exponentially. *See e.g.*, D. Lindholm & F. Hogroian, *The Best and Worst of State Unclaimed Property Laws*, Council on State Taxation (Oct. 2013), available at http://www.cost.org/WorkArea/DownloadAsset.aspx?id=85349 (last visited June 30, 2016); Note, *Inequitable Escheat? Reflecting on Unclaimed Property Law and the Supreme Court's Interstate Escheat Framework*, 74 Ohio St. L.J. 515 (2013).

Today, in many states, property need not even be abandoned to be subject to state escheat laws (hence the change in traditional nomenclature from "abandoned" property to "unclaimed" property). *See* Massachusetts Act of Aug. 3, 2011, Ch. 90, § 6 (Aug. 3, 2011) (changing statutory references from "abandoned" to "unclaimed"). For example, Pennsylvania recently amended its unclaimed property laws to shorten the "dormancy period" for most items to a mere three years, and to require an owner's affirmative "indication of interest" to prevent property from being deemed unclaimed. *See* Pennsylvania Act of Jul. 10, 2014, P.L. 1053, No. 126 (July 10, 2014). Thus, a brokerage firm with a Pennsylvania accountholder is required to turn over the assets in that client's account to Pennsylvania after three years of client inactivity,

[6] *Delaware v. New York*, 507 U.S. at 497.

even where (1) the broker knows the whereabouts of the owner; (2) the owner is receiving regular account statements; and (3) the account was established as part of a long-term investment strategy.

In addition to expanding the coverage of the unclaimed property laws through new legislation, states have also increased their unclaimed property collections through various "interpretations" of this Court's *Texas v. New Jersey* priority rules. The State of Delaware, for example, takes the position that *Texas v. New Jersey* establishes that property is escheatable to the holder's state of incorporation where the owner's address "is in a foreign country." Delaware Department of Finance, *Escheat Handbook* at p. 11 (2015 ed.) *available at* https://www.delaware.findyourunclaimedproperty.com/docs/Revhandbook15.pdf (last visited June 27, 2016). The State of Washington takes the position that the *Texas v. New Jersey* "backup" rule of escheat to the corporate domicile is controlling unless the holder has an owner address "sufficient for the purpose of the delivery of mail" (as opposed to simply indicating the owner's state of residence). Wash. Rev. Stat. §§ 63.29.010(13); 63.29.030(3). Other states, such as New Jersey, have tried to make the place where an item was purchased stand as a proxy for address information. *See N.J. Retail Merchants' Ass'n. v. Sidamon-Eristoff*, 669 F.3d 374, 393 (3d Cir. 2012) (striking down "place of purchase" address presumption for escheat of gift cards as preempted by *Texas v. New Jersey*).

As the scope of state escheat laws broaden, they increasingly come into conflict with the rights of other states, and no less importantly, the rights of holders. This case presents a prime example. Not only are some two dozen states fighting over which of them has

priority to escheat MoneyGram Official Checks, it has been MoneyGram that has been the recipient of state demands, threats of penalties, and lawsuits by states ***acknowledging*** that the property in question has already been escheated to a sister state.

For example, the Commonwealth of Pennsylvania seeks a judgment in the stayed district court matter "against MoneyGram, in an amount . . . [no] less than $10,293,869.50" plus interest and penalties. Del Mot. at A-25. Elsewhere in the Complaint, however, Pennsylvania explicitly acknowledges that "the Treasury Department learned MoneyGram **sent to the Delaware State Escheator** the sum of $10,293,869.50" between 2000 and 2009. Del. Mot at A-12, ¶ 43 (emphasis added). This admission makes clear that the $10.3 million Pennsylvania seeks from MoneyGram is precisely the same $10.3 million that Pennsylvania acknowledges is in Delaware's custody. Notwithstanding the fact that this demand runs afoul of this Court's ruling in *Western Union v. Pennsylvania*, Pennsylvania and other states persist in seeking to hold MoneyGram liable to more than one state for the same property.

It was precisely this threat of double liability, recognized by the Court in *Western Union*, which led to the recognition that

> Our Constitution has wisely provided a way in which controversies between States can be settled without subjecting individuals and companies affected by those controversies to a deprivation of their right to due process of law. Article III, § 2 of the Constitution gives this court original jurisdiction of cases in which a State is a party.

Western Union, 368 U.S. at 77. Moreover, because of the conflicting nature of state claims for the same property, the *Western Union* court noted that it was "imperative that controversies between different States over their right to escheat intangibles be settled in a forum where all of the States that want to do so can present their claims for consideration and final authoritative determination. **Our Court has jurisdiction to do that**." *Id.* at 79 (emphasis added).

CONCLUSION

For the foregoing reasons, MoneyGram respectfully requests that the Court grant Delaware's Motion for Leave to File a Bill of Complaint, and Wisconsin's Motion for Leave to File a Counterclaim.

Respectfully submitted,

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