No. 21-934

In The
Supreme Court of the United States

LANA WEINBACH,

Petitioner,

v.

THE BOEING COMPANY; COMPUTERSHARE, INC.,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Eighth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

This question is of national importance, with constitutional rights challenges and ties to escheat laws that impact a wide swath of United States citizenry. The question presented is:

Whether, without meaningful analysis and substantive evidence, the Eighth Circuit exceeded its scope in determining a capable of ascertainment criterion, and in so doing, infringed upon constitutional rights, particularly with regard to the Fourth, Fifth, Ninth, and Fourteenth Amendments.

RULE 29.6 STATEMENT

Pursuant to Rule 29.6 of the Rules of this Court, petitioner Lana Weinbach hereby states that it is neither owned by a parent organization, nor is there a publicly held corporation owning ten percent (10%) or more of its shares.

RELATED PROCEEDINGS

The following proceedings are directly related to this petition:

Weinbach v. The Boeing Company; Computershare, Inc., No. 20-1906, United States Court of Appeals for the Eighth Circuit, judgment entered July 29, 2021 (6 F.4th 855).

Weinbach v. The Boeing Company; Computershare, Inc., No. 4:18-CV-00381-JAR, United States District Court, judgment entered March 30, 2020.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Lana Weinbach respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Eighth Circuit in this case.

OPINIONS AND ORDERS BELOW

The decision of the court of appeals (App.1-10) is reported at 6 F.4th 855. The decision of the district court (App.11-25) is reported at No. 4:18-CV-00381-JAR.

JURISDICTION

The court of appeals entered judgment on July 29, 2021 App.9. On October 22, 2021, Justice Kavanaugh extended the time within which to file a petition for writ of certiorari sixty days to and including December 26, 2021 (a Sunday). This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The relevant statutory provisions are: § 447.543.2 RSMo, § 516.100 RSMo, § 516.120 RSMo, 15 CSR 50-3.070.

INTRODUCTION

The question presented has national importance.

This case, which has elements of infringement upon constitutional rights, especially with regard to escheat laws and due process, can be a touchstone for remedies to some of the problems inherent in the generally elusive discovery by rightful owners of escheated property.

Only a small percentage of rightful owners receive their escheated property back. It may be many years before property that has been escheated is discovered by its rightful owners, if it is discovered at all.

The "capable of ascertainment" criterion which sets the "when" for the commencement of a statute of limitations is at issue in this case and is tied to an escheat of property. The question presented is an important one for all United States citizenry and for the integrity of our constitutional rights.

STATEMENT OF THE CASE

This case concerns whether the Eighth Circuit exceeded its scope, without meaningful analysis and substantive evidence, and in so doing infringed upon constitutional rights, in particular the protections of the Fourth, Fifth, Ninth, and Fourteenth Amendments.

This matter concerns the Eighth Circuit overstepping in making a determination regarding the "when"

of a "capable of ascertainment" criterion where there was literally something not there to be seen or known.

Cognitive scientists have demonstrated in their findings what is called the "inattentional blindness" effect, which contradicts the Eighth Circuit's judgment. Even where something is visible and in plain sight, even experts well-trained in looking and searching did not perceive what was in plain sight, let alone what was not there at all. Eighty-three percent of radiologist-subjects did not see what was in clear view.

The cognitive scientists found that even experts had limitations in cognition and perception, and that occurred even where they were "put on notice" of something to look for. Trafton Drew & Jeremy Wolfe, "The Invisible Gorilla Strikes Again: Sustained Inattentional Blindness in Expert Observers" Psychological Science (September 2013) Vol.24 No.9 pp.1848-1853.

1. The Eighth Circuit infers that a reasonable person should have a method of monitoring her mail and gathering and collecting and keeping tax documents before filing tax returns such that the method(s) would lead to "capable of ascertainment."

The Eighth Circuit is effectively imposing on petitioner or any other reasonable person a way of doing something that would "put on notice" petitioner or anyone, even more pointedly "put herself on notice" although others whose due diligence was legally required to provide notice did not do so.

In this instance the Eighth Circuit says that petitioner should have been "put on notice" that annual 1099-DIVs (a tax document that reflects dividends paid) from Boeing for the years 2010, 2011, and 2012, were not there. Further the Eighth Circuit says she should have noticed that the 1099-DIVs were not there at any time during those years, not only when she was preparing and filing her father's tax returns (App.5) for a respective year, using three-year extensions for both her father's and her own returns. For example, the tax return for tax year 2009 whose original filing due date was April, 2010, was filed in April, 2013.

Petitioner did not receive 1099-DIVs in 2010, 2011, and 2012, from Boeing and its transfer agent Computershare because Boeing was no longer reporting and sending 1099-DIVs for that account which was attached to her father's social security number.

Petitioner holds firm that she first was spurred to investigation and inquiry after filing her father's 2009 tax return, filed after extensions in April, 2013, filed without a Boeing 1099-DIV in hand. The Eighth Circuit says she should have been aware at any time during 2010, 2011, 2012, not only when she was preparing and filing her father's 2009 tax return.

Petitioner's position is supported by a letter dated January 2014 (note the year 2014), from Computershare to petitioner in response to a phone inquiry and request by her regarding what exactly had been escheated, and generally, information about the escheat. Boeing no longer sent 1099-DIVs for that account as

an outcome of the escheat, and by later in 2013 she had become aware.

2. So there were no Boeing 1099-DIVs in 2010, 2011, and 2012. They were not there; they did not exist. They were nowhere to be found or seen.

Science has shown that even where something is there to be seen, that even a reasonable person and expert observers, may not be "put on notice." Even experts trained in observation, with a high percentage of eighty-three percent, were found to have limitations in cognition and perception.

3. Further, effectively the Eighth Circuit's opinion imposes and relies on a view that everyone should have a method of gathering and collecting their tax documents, in this case 1099-DIVs, such that everyone must have a method that certainly will lead to a "capable of ascertainment" test for determining when a statute of limitation commences.

4. Petitioner has made a careful review of official instructions for federal tax Form 1040 and Schedule B for tax-reporting of interest and dividends, and no rule or even guideline for gathering and collecting 1099-DIVs could be found.

The Eighth Circuit in its opinion does itself state that 1099-DIVs are "annual tax statements" and are "for tax-reporting purposes" (App.2). That is the purpose of a 1099-DIV. A 1099-DIV shows an amount. A 1099-DIV does not show number of shares held in a

particular account. A 1099-DIV does not show historical comparisons to prior year amounts.

The Eighth Circuit refers to a "motive to monitor the mail for 1099-DIVs." What about the taxpayer who identifies envelopes labeled "TAX DOCUMENT ENCLOSED," chooses not to open the envelopes until she/he is preparing and filing a tax return, and in the meanwhile, sets the envelopes (and there may be many) aside, and by her/his own choice puts all the envelopes, along with any other "tax stuff" in a shoebox in a closet or in a drawer?

5. For the Eighth Circuit to make a life-changing judgment based on what is not there, that is not seen or not known, and that science contradicts, presents important questions regarding challenges to our constitutional rights that are matters of concern for everyone. That is at the heart of this case.

6. This case originated with the escheatment by The Boeing Company and its transfer agent Computershare, Inc. of shares of Boeing. The shares when they were escheated (i.e., transferred to the state) in 2008 had been owned by plaintiff/petitioner and her father jointly for over forty years (repeating, forty years), first as McDonnell-Douglas beginning in 1967, and then as Boeing shares after the merger of Boeing and McDonnell-Douglas in August, 1997.

7. The escheat in 2008 was eleven years after the merger, even though the time frame for escheatment is five years.

8. Petitioner and her father also owned jointly another account of Boeing shares that was attached to her social security number and by which she knew they owned Boeing stock jointly.

9. Motivated by a television infomercial that said states held residents' property, petitioner phoned the Treasurer's office on March 8. 2013, and learned that she had so-called presumed unclaimed property. That office's policy was to give no other information over the phone than one has such property or not.

So it was not yet known to her that Boeing shares had been escheated and that the escheated shares had been jointly owned with her father's social security number attached. Her father passed away in January, 2009, and petitioner then became the sole rightful owner.

10. In the course of inquiries she made after April, 2013, petitioner learned that: the Boeing shares had been escheated; 1099-DIVs that her father had received since the merger with McDonnell-Douglas were identified clearly for The Boeing Company stock, and not for McDonnell-Douglas stock; and the state had sold the Boeing shares that had been escheated at substantially less than its increased value.

11. Petitioner persevered to try to find out more about what had happened. She phoned the author of the article "Wrongful Escheatment Cases Illustrate the Importance of Holder Due Diligence," John A. Biek, J. of Passthrough Entities (2010) Jan:pp.56ff. He offered on her behalf to contact the "right person" at

Boeing, saying he thought "Boeing would want to do the right thing by [her]." After months' delay and more phone communication, there was no progress.

12. In April, 2015, petitioner took the train to Chicago to attend the annual Boeing shareholders' meeting and addressed herself publicly to the then-Boeing Chairman and CEO. On the spot he assigned a senior executive to [her], whom the chairman publicly told to find [her] after the meeting and meet with [her]. He did and they talked in the meeting auditorium, a public space where there were still media people, some other shareholders, some Computershare people who later said they were the annual meeting organizers.

There were also several men in suits who came up at the same time as the senior executive, but stayed back while the two talked. The senior executive told her he was not familiar with the word "escheat" and had never heard it before. Petitioner/shareholder filled him in briefly and stated the problem. He said he would be in communication. After he left, the other men in suits introduced themselves, each mentioning his position at Boeing.

There were phone calls, mostly initiated by petitioner or a return call to her. There was no offer of resolution in a December communication from one of the men in suits to whom the senior executive had passed his assignment and with whom all phone conversations were had after the shareholders' meeting.

Since months had elapsed and there had been no participation by the senior executive with petitioner

and it was going into the next year, she set up a phone call with the senior executive, after having to make more than one attempt to do so.

It was the first time they had spoken since the shareholders' meeting. In that phone call, the senior executive was dismissive, said he was at the "end of [his] line" and "will not be doing more for [her]." She asked if she might try again another time to speak to him. She did try again not long after and learned that after thirty-eight years with Boeing, he was no longer with the company.

13. On March 7, 2018, after sending a letter of demand to Boeing and getting no response, petitioner filed a lawsuit against Boeing and Computershare for negligence and for conversion in connection with a wrongful escheat. Petitioner believes a fiduciary duty cause of action was added and dismissed by the eastern district judge.

14. This narrative above is, petitioner believes, an important part of the case and that other injuries followed the initial injury of the escheat.

15. Not long before the shareholders' meeting, in a phone call to Boeing that goes to a Computershare call center, petitioner unexpectedly learned that the account with her social security number attached, had eight shares of McDonnell-Douglas besides the Boeing shares in that account. It is even today a mystery to petitioner how those shares had been obscured.

That account had paid out dividends quarterly by check, and the stubs showed only Boeing shares in a space provided for "participating units." There was no mention of those eight shares of McDonnell-Douglas anywhere on the quarterly stubs.

The account with the later-to-be-escheated Boeing shares at no time, even before the escheat, had ever paid out dividends quarterly by check. The annual 1099-DIVs for both accounts, as stated earlier in this section, have never shown number of shares. The dividend amount is shown and reported, with no indication on the 1099-DIVs regarding number of shares or "participating units."

16. Much of this information was gleaned and learned in the unraveling by petitioner of what had happened. It is information looking back in time trying to piece everything together, not in real time.

17. Plaintiff/petitioner was age sixty-nine in March 2013, when the events unfolding with regard to Boeing's and Computershare's escheatment of stock that had been held for over forty years, first gradually came to light for petitioner. She never married and had lived always together with her parents and then her father after her mother died. She also had a daughterly relationship with a fine lady with whom her father partnered for over twenty-five years after his wife died. She died three months after petitioner's father, in 2009. Petitioner offers this so that the profound human element of this case is known and understood by the Court.

18. Petitioner's concerns are not only for herself in seeking restitution, but the judgment of the Eighth Circuit is a concern, keeping in mind all those whose property will likely never be discovered by them as rightful owners. These include the elderly and heirs of deceased relatives, who are among the most vulnerable. It is her goal that more attention through this case, will direct others to retrieving property which is now unknown to them and of which they are rightful owners, and to prevent other rightful owners from having to fight so hard for what is rightfully theirs.

REASONS FOR GRANTING THE WRIT

I. ESCHEAT-RELATED INJURY IS INEXTRICABLY LINKED TO "CAPABLE OF ASCERTAINMENT" CRITERION AND WHEN STATUTE OF LIMITATIONS COMMENCES

Regarding its abandoned property fund, Mo. Rev. Stat. § 447.543.2 (2012) states:

> ". . . . At any time when the balance of the account exceeds one-twelfth of the previous year's total disbursement from the abandoned property fund, the treasurer may, and at least once every fiscal year shall, transfer to the general revenue of the state of Missouri the balance of the abandoned property fund which exceeds one-twelfth of the previous years' total disbursement from the abandoned property fund. . . . should any claims be allowed or refunds ordered which reduce the

> balance to one-twenty-fourth of the previous year's total disbursement from the abandoned property fund, the treasurer will transfer from the general fund of the state an amount sufficient to restore the balance to one-twelfth of the previous year's disbursement from the abandoned property fund."

In deposition, the director of the state's unclaimed property division stated that in the twenty-nine years prior [to his deposition], not more than once has the balance been so-reduced that it has been necessary to so-restore the balance of the abandoned property fund.

The small percentage, perhaps under five percent, of rightful owners reuniting with their property has a bearing on the "capable of ascertainment" question of this petition. Similar small percentages are reflected across the other states. The Cato Institute has, for example, reported that in one recent year $319.5 million was escheated to the state of Delaware while that state returned only $18.9 million of so-called unclaimed property to rightful owners.

The importance of these figures to this petition is that: if most of these rightful owners are believed to be "reasonable," only a small percentage got their property returned to them. Was this an outcome of wrongful escheatment, ineffective due process, or concern with regard to those first two injuries being "capable of ascertainment"?

This last may result in years elapsing before a rightful owner discovers her property has been escheated, if it is ever discovered at all.

II. THE "WHEN" OF THE CAPABLE OF ASCERTAINMENT CRITERION IS AT ISSUE AND THAT IS WHERE THE EIGHTH CIRCUIT WENT ASTRAY

Petitioner holds firmly that her claims accrued at the earliest on March 8, 2013, when, motivated by a television infomercial, she telephoned the Missouri Treasurer's office to inquire if she had unclaimed property. This date would make the filing of her lawsuit timely.

The lawsuit is against Boeing and its transfer agent Computershare for wrongful escheat of Boeing shares jointly owned by petitioner and her father in 2008, when the escheat occurred.

It has been generally agreed that a five-year statute of limitations is applicable by § 516.120, RSMo 2011, but the question is, when in this case did the running of its five-year limitation period commence?

What is pertinent here is § 516.100, RSMo 2011 which provides:

> The cause of action shall not be deemed to accrue when the wrong is done or the technical breach of contract or duty occurs, but when the damage resulting therefrom is sustained

> and capable of ascertainment, and if more than one item of damage, then the last item, so that all resulting damage may be recovered, and full and complete relief obtained.

Further, the Missouri Supreme Court defined the capable of ascertainment test such that "a reasonable person would have been put on notice that an injury and substantial damages may have occurred and would have undertaken to ascertain the extent of the damages." (Powel v. Chaminade College Preparatory, Inc., 197 S.W.3d 576, 584 (Mo. banc 2006), or, "the statute of limitations begins to run when the evidence was such to place a reasonably prudent person on notice of a potentially actionable injury." Id. at 582.

All of the actions petitioner/plaintiff undertook after March 8, 2013, conform to these criteria. In connection with filing her late father's 2009 tax return in April 2013, having used a three-year extension, she learned that Boeing shares had been "escheated" to the state. She already knew there was unclaimed property from the phone call she had made to the Treasurer in response to a television infomercial. Then the policy of the Treasurer was to give no other information other than if one has unclaimed property or not.

She then undertook to unravel what happened and to try to get her shares restored. She had conversations with John Biek, who wrote an article in 2010 long before he spoke to her, entitled "Wrongful Escheatment Cases Illustrate Importance of Holder Due Diligence." J. Passthrough Entities (2010) Jan: 56ff. He

emphasizes how unlikely are the odds that investors will ever discover their property has been escheated, and warns of corporations that fail to do their due diligence in sending notices to investors before escheats, and that investors "should be made whole."

Petitioner/plaintiff took a train to Chicago in April, 2015 to attend Boeing's annual shareholders' meeting where she addressed the then CEO and Chairman who espoused integrity and helpfulness, but she was sent down the garden path of more dismissive communications for nearly another year.

III. THE EIGHTH CIRCUIT'S DETERMINATION OF THE "CAPABLE OF ASCERTAINMENT" CRITERION IS WRONG AND INFRINGES ON CONSTITUTIONAL RIGHTS: FOURTH, FIFTH, NINTH, AND FOURTEENTH AMENDMENTS

The brief summary of petitioner's actions after March 8, 2013 (the earliest date), and not before, demonstrates that she pursued with perseverance her efforts to restore losses resulting from a wrongful escheat, even in the face of dismissiveness, intimidation, and derision. Her actions followed the "when" of the capable of ascertainment criterion and continue to this day.

1. It should be emphasized that the due diligence requirement for escheatment was never done by Computershare and Boeing, including: not checking for another active account (that did exist) when the Code of

Regulations regarding unclaimed property states: "If the owner has an active account other than the property subject to the abandonment period, that property shall not be considered abandoned and the holder shall update its records accordingly." Also, defendants/respondents did not mail notice of a pending escheat. They assert that a due diligence letter was sent in September 2007, yet all Computershare has to show is a "sample" of a kind of due diligence letter from another company for another person, with redactions, and a spreadsheet with no connection to petitioner or her shares.

2. Petitioner presents direct, concrete evidence that she was receiving *and* acting upon mail from Computershare in September-October 2007 on another, unrelated stock matter. Two letters from Computershare to petitioner describe a series of mailings and transactions between petitioner and Computershare between September 20, 2007 and October 19, 2007, and which are from Computershare's own records and which substantiate that petitioner was attending to *and* acting upon mail specifically from Computershare during the precise period defendants/respondents contend they sent notice, and there was no notice to be had regarding an escheat of Boeing shares.

3. This summary is important because the Eighth Circuit, in coming to a wrong determination of "when" the statute of limitations commenced to run, says that petitioner would have monitored her mail. (App.4-5). She did check incoming mail before and after her father's death.

The Eighth Circuit goes too far, however, in stating that she, or any reasonable person, should have been put on notice when there was no Boeing 1099-DIV in 2010, 2011, and 2012. "[T]he reason we find persuasive is that [she] did nothing to inquire about the status of the account despite not receiving 1099-DIVs in 2010, 2011, and 2012." (App.4). Further, "[l]ike the district court, we think a reasonable person in her shoes, after gathering her father's tax documents for 2008 and becoming sole owner of the relevant account, would have investigated why she didn't receive 1099-DIVs in 2010, 2011, and 2012. In short, she was 'on notice to inquire further,' making the existence of a wrong and the scope of damages, if any, 'capable of ascertainment.'" (App.5). And "[s]he argues that it was not until she tried to file his return that she would have realized that 'there was something going on with the' account. But the absence of the 1099-DIVs during this three-year period would have spurred a reasonable person who owned the shares to inquire further at that time, not just when filing the return." (App.5).

4. The Eighth Circuit itself writes of the "gathering" of tax documents. (App.5). It writes also: "she was familiar with how 1099-DIVs facilitate the completion of tax returns." (App.5). It also states: "she was no stranger to the role that annual 1099-DIVs served for tax-reporting purposes." (App.2). And it states: "[her] father received annual tax statements, called 1099 DIVs,". (App.2).

This language reflects the purpose of 1099-DIVs, which, as the Eighth Circuit itself points out is: "for

tax-reporting purposes," "the completion of tax returns." (App.5, 2). There is no other purpose 1099-DIVs are intended to serve, and the envelopes for 1099-DIVs are imprinted in bold, capital letters: "IMPORTANT TAX RETURN DOCUMENT ENCLOSED" or "TAX RETURN DOCUMENT ENCLOSED."

The 1099-DIV for BOEING for tax year 2008 shows an amount. There is no reason when completing the tax return to compare the amount to the prior year nor, in petitioner's instance, to the account attached to her social security number, the account by which she knew she owned Boeing stock jointly with her father.

Petitioner's father had done his own taxes. He passed away in January 2009, and the daughter took over the filing of his tax returns.

The 1099-DIVs do not show number of shares held or any information which, for the 2008 return, reflected any decrease in amount and no reasonable person would be spurred to believe anything required further investigation.

In fact, quite to the contrary: the BOEING 1099-DIV clearly shows it is for Boeing stock and at the time of filing, there would not have been any reason to question anything about the 1099-DIV. It was an official document from a well-known corporation and it served its intended purpose, that of being a part of filing her father's 2008 tax year return, which she did in 2012 and her own 2008 return, both after a three-year extension.

Petitioner/plaintiff had no affirmative duty at that time to double check the work of a professional (Martin v. Crowley et al. (1985)), in this instance, the 1099-DIV from Boeing and Computershare. Therefore nothing at that time indicated that plaintiff was "put on notice" that further inquiry was needed, so damages were NOT in 2012 "capable of ascertainment."

After filing her father's 2009 tax return and her own in April 2013, with a three-year extension for both father and daughter, and without a 1099-DIV for Boeing for her father's tax return, petitioner began to look into the Boeing account attached to his social security number.

The Eighth Circuit states that "[t]he reason we find persuasive" that her claims accrued earlier and makes her filing date for the lawsuit untimely is that not receiving Boeing 1099-DIVs in 2010, 2011, or 2012 "would've spurred a reasonable person who owned the shares to inquire further at that time, not just when filing the return." They added: "She also would have been obligated to report any dividend income from the account on her own returns at some point." (App.5).

5. This last point is not relevant to the "capable of ascertainment" test because plaintiff's timelines, with three-year extensions for both father and daughter, were the same; so the filing of returns and what was "capable of ascertainment" at any given tax year filing during this period were the same.

6. Without meaningful analysis and substantive evidence, the Eighth Circuit overstepped its scope. The

Eighth Circuit is asking plaintiff/petitioner to know and perceive what is not there as to what may motivate further inquiry and determine when something is "capable of ascertainment." That simply is not practicable and leads to infringement of petitioner's constitutional rights and the constitutional rights of any reasonable person.

The Eighth Circuit has recognized that the tax filer "gathers" tax documents. But the Eighth Circuit is effectively imposing any method that would require the person to put herself on notice.

Rather than choosing methods of "gathering" and of collecting tax documents as an individual choice, each person who files tax returns, in this instance the plaintiff/petitioner, must have a way of gathering and collecting which will lead to a "capable of ascertainment" test.

Whether one files electronically, personally, or with a third-party tax preparer, the filer must have such a method and even a place to put tax documents.

7. The Eighth Circuit effectively infringes on petitioner's Fourth Amendment rights "to be secure in their persons, houses, papers, and effects" and since this is, in this instance, ultimately associated with "a taking" with regard to a wrongful escheat, then "against all seizures" is violated and condoned.

Petitioner is effectively "deprived of life, liberty, or property without due process of law" as promised by the Fifth Amendment, and the Fifth Amendment's

clause "nor shall private property be taken for public use, without just compensation" is threatened. To allow the determination of what is a misdirected "capable of ascertainment" requirement to stand, these Fifth Amendment tenets regarding due process and "a taking" are at risk of infringement.

8. If the Eighth Circuit's judgment is allowed to stand, plaintiff/petitioner is not free to choose for herself her method of gathering and collecting: to choose, for example, not to open an envelope labeled "TAX DOCUMENT ENCLOSED" if that is her choice.

A reasonable person has an expectation to be free to choose to keep envelopes with 1099-DIVs in a stack on a desk, a shoebox in a closet, a drawer. But the Eighth Circuit would have a person gather and collect in such a way that a person must know what is there and what is not.

9. Interestingly there are rules, even very specific rules for a lot of things. The Rules of the Supreme Court, for example, are specific to the one-eighth inch for text dimensions for submitting this petition.

10. Petitioner has looked carefully at the 1040 Instructions, the instructions for Schedule B for interest and dividend reporting, and could not find general or specific instructions, or rules, or even guidelines on gathering tax documents, including 1099-DIVs. There appears to be no directive about this behavior; it is left up to the individual.

And yet, the Eighth Circuit is making its determination on a "capable of ascertainment" criterion, a decision for this petitioner that is life-changing, and would be for any reasonable person; and that decision is based on something that is not there and must be known or perceived not to be there "when" the Eighth Circuit says so.

11. Cognitive scientists have done important studies on cognition and perception which suggest otherwise.

Chief Justice Earl Warren in his opinion in Brown v. Board of Education (1954) drew on the social sciences to make his points. So petitioner here will humbly follow that example.

Daniel J. Simons and Christopher F. Chabris reported their findings in Gorilla in Our Midst: Sustained Inattentional Blindness for Dynamic Events (28 Perception 1059, 1999). This well-known "Invisible Gorilla" study shows that people can focus so hard on something that they become blind to the unexpected, even when it is staring them in the face. This effect is called "inattentional blindness."

Variations of this study resulted in similar findings.

One such study by researchers Trafton Drew and Jeremy Wolfe at Harvard Medical School showed inattentional blindness among experts well-trained in looking and searching. Eight-three percent of radiologist-subjects missed seeing the gorilla on a CT scan.

The radiologists were so focused on looking for cancer nodules, they missed visually and cognitively what was in plain sight. "Even this high level of expertise does not immunize individuals against inherent limitations of human attention and perception." "The Invisible Gorilla Strikes Again: Sustained Inattentional Blindness in Expert Observers" Psychological Science (September, 2013) Vol.24 No.9 pp.1848-1853.

12. The Eighth Circuit has exceeded its scope in determining a "capable of ascertainment" criterion which has built-in requirements bearing on perception and cognition. The expectation of freedom in managing one's personal papers and effects is threatened. There is a genuine infringement on our constitutional rights provided for in the Fourth, Fifth, Ninth, and Fourteenth Amendments.

13. In addition, there are issues here related to privacy rights, which the Supreme Court has dealt with: related privacy issues with important constitutional implications in, for example, Griswold v. Connecticut (1965), physical movement in Carpenter v. United States (2018).

14. Additionally, the Eighth Circuit may have subjected plaintiff/petitioner in this case to "reverse discrimination." More than once there was a descriptive phrase "in her shoes" used (App.5), as well as "in her position" (App.3). Petitioner believes and feels the antecedent is the pointed reference to her advanced degrees. Her level of education is the only personal description that the Eighth Circuit chose to

characterize her. She feels that she is being penalized for that and that the Equal Protection Clause of the Fourteenth Amendment is infringed upon. The Ninth Amendment may also be incorporated here.

15. Also as a constitutional challenge the Eighth Circuit is overstepping and as a result infringing on petitioner's protection under the Fourteenth Amendment's Equal Protection Clause. By comparison, for example, in a recent case in New Hampshire where the plaintiff admitted to not always looking at financial statements that had been received by him monthly over a decade, that plaintiff whose losses greatly exceeded those of petitioner here, was awarded a court-approved settlement of multi-millions (Benson v. Merrill Lynch (2020)).

In that case the documents were easily seen, by comparison to petitioner's situation where the Eighth Circuit imposed an expectation of awareness of what was not even there to be seen. Similarly, Bernie Madoff clients received financial statements regularly for over a decade, yet thankfully received restitution.

IV. THE QUESTION PRESENTED IS IMPORTANT AND THIS CASE IS AN EXCELLENT VEHICLE

The question presented has national importance. The "capable of ascertainment" criterion which sets the "when" of the commencement of the statute of limitations is at issue in this case and it is tied to an escheat of property. The Eighth Circuit overstepping

in its determination has significant implications for infringement on our constitutional rights: in, particular, the Fourth, Fifth, Ninth, and Fourteenth Amendments.

The question presented is an important one for all United States citizenry and for the integrity of our constitutional rights.

Only a small percentage of rightful owners receive their escheated property back. Since it may be many years before property that has been escheated is discovered, if it is ever discovered at all, the "when" of the "capable of ascertainment" test is important to everyone.

This case, which has elements of infringement upon our constitutional rights, especially escheatment laws and due process, and a threat to the Fourth, Fifth, Ninth, and Fourteenth Amendments, can be a touchstone for remedies to some of the problems inherent in the generally elusive discovery by rightful owners of their escheated property.

For the sake of raising in this petition what may become important to preserve, petitioner raises here also the possible application of equitable doctrines, especially but not only where there is fraud, which may be proved.

CONCLUSION

This petition for writ of certiorari should be granted.

Respectfully submitted,

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Pro Se Petitioner

December 21, 2021

App. 1

United States Court of Appeals
for the Eighth Circuit

No. 20-1906

Lana Weinbach

Plaintiff - Appellant

v.

The Boeing Company; Computershare, Inc.

Defendants - Appellees

Appeal from United States District Court
for the Eastern District of Missouri - St. Louis

Submitted: June 15, 2021
Filed: July 29, 2021

Before GRUENDER, ARNOLD, and STRAS, Circuit Judges.

ARNOLD, Circuit Judge.

Lana Weinbach sued The Boeing Company and Computershare, Inc., after, she claims, they wrongfully escheated her property to the state. When the defendants moved for summary judgment on the ground that