Nos. 22O145 & 22O146

IN THE

Supreme Court of the United States

DELAWARE,

Plaintiff,

v.

PENNSYLVANIA AND WISCONSIN,

Defendants.

ARKANSAS, *et al.*,

Plaintiffs,

v.

DELAWARE,

Defendant.

On Exceptions to First Interim Report of the Special Master

BRIEF OF *AMICUS CURIAE* AMERICAN BANKERS ASSOCIATION IN SUPPORT OF NEITHER PARTY

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	iii
INTEREST OF *AMICUS CURIAE*	1
BACKGROUND	4
1. The Need For Clear Priority Rules For Unclaimed Financial Instruments	4
2. This Court's Priority Rules	5
3. Enactment Of The FDA	7
4. Cashier's Checks	9
5. Promulgation And Adoption Of The 1981 Model Uniform Unclaimed Property Act	10
6. Recent Litigation Involving Unclaimed Cashier's Checks	11
7. The Special Master's First Interim Report	12
SUMMARY OF ARGUMENT	13
ARGUMENT	15
I. THE COURT SHOULD DEFINITIVELY INTERPRET THE PHRASES "MONEY ORDER" AND "OTHER SIMILAR WRITTEN INSTRUMENT" IN THE FDA	15
II. THE FDA SHOULD NOT APPLY TO FINANCIAL INSTRUMENTS LIKE CASHIER'S CHECKS, WHICH EXISTED IN 1974 BUT ARE NOT NAMED IN THE STATUTE AND DO NOT POSE THE SAME "WINDFALL" CONCERNS	17
A. The Text Of The Statute	18

TABLE OF CONTENTS—continued

Page

1. Defendants' dictionary definitions do not justify a broad reading of "money order." 19
2. Other textual evidence shows that the FDA does not apply to cashier's checks and other financial instruments commonly used in 1974 21

B. Legislative History 23

C. Statutory Context 24

D. The 1981 Uniform Unclaimed Property Act And Various State Laws Confirm That The FDA Does Not Reach Cashier's Checks 27

CONCLUSION 28

TABLE OF AUTHORITIES

CASES Page

Dill v. *JP Morgan Chase Bank, N.A.*, No. 1:19-cv-10947 (S.D.N.Y. filed Nov. 26, 2019) 11
Harrison v. *PPG Indus., Inc.*, 446 U.S. 578 (1980) 20
Illinois ex rel. Elder v. *JPMorgan Chase, N.A.*, No. 1:21-cv-00085 (N.D. Ill. filed Jan. 6, 2021) 11
INS v. *St. Cyr*, 533 U.S. 289 (2001) 20
Marbury v. *Madison*, 5 U.S. (1 Cranch) 137 (1803) 13, 17
Merit Mgmt. Grp., LP v. *FTI Consulting, Inc.*, 138 S. Ct. 883 (2018) 18
Minnesota ex rel. Elder v. *U.S. Bank, N.A.*, No. 0:21-cv-01753 (D. Minn. filed Aug. 2, 2021) 11
Missouri v. *Illinois*, 200 U.S. 496 (1906) 17
New Jersey ex rel. Elder v. *JPMorgan Chase Bank, N.A.*, No. 2:21-cv-19462 (D.N.J. filed Oct. 29, 2021) 11
Niz-Chavez v. *Garland*, 141 S. Ct. 1474 (2021) 18
Pennsylvania v. *New York*, 407 U.S. 206 (1972) 6, 7, 10, 24
State ex rel. Elder v. *J.P. Morgan Chase, N.A.*, No. CGC-19-5-79144 (Cal. Super. Ct., San Francisco Cnty. filed Sept. 10, 2019) 11
State ex rel. Elder v. *U.S. Bank, N.A.*, No. 2019-L-013262 (Ill. Cir. Ct., L. Div., Cook Cnty. filed Dec. 13, 2019) 11
State ex rel. Elder v. *U.S. Bank, N.A.*, No. CGC-19-581373 (Cal. Super. Ct., San Francisco Cnty. filed Dec. 9, 2019) 11

TABLE OF AUTHORITIES—continued

Page

Texas v. *New Jersey*, 379 U.S. 674 (1965) 2, 6, 26
Torres v. *Lynch*, 136 S. Ct. 1619 (2016) 18
W. Union Tel. Co. v. *Pennsylvania*, 368 U.S. 71 (1961) 4, 5
Whitman v. *Am. Trucking Ass'ns*, 531 U.S. 457 (2001) 20
Will v. *Mich. Dep't of State Police*, 491 U.S. 58 (1989) 12
Yates v. *United States*, 574 U.S. 528 (2015) 18

STATUTES AND REGULATIONS

12 U.S.C. §§ 2501-03 1
12 U.S.C. § 2501 .... 8, 22
12 U.S.C. § 2503 .... 2, 8, 24
26 U.S.C. § 6311 21
31 U.S.C. § 5325(a) 21
Unif. Unclaimed Prop. Act (1981) 10
Ala. Code § 35-12-74 28
Alaska Stat. § 34.45.150 27
Alaska Stat. § 34.45.240 4
Alaska Stat. § 43.05.220(a) 5
Ariz. Rev. Stat. § 44-301(15) 4
Ariz. Rev. Stat. § 44-304 28
Ark. Code Ann. § 18-28-204 28
Cal. Civ. Proc. Code § 1577 5
Colo. Rev. Stat. § 38-13-106, *repealed by* Revised Uniform Unclaimed Property Act, Colo. Sess. Laws 2019, ch. 110, at 407 (eff. July 1, 2020) 27
Colo. Rev. Stat. § 38-13-306 28
Colo. Rev. Stat. § 38-13-602 5
Del. Code Ann. tit. 12, § 1183(b) 5

TABLE OF AUTHORITIES—continued

Page

Fla. Stat. § 717.105 27
Fla. Stat. § 717.134(1) 5
Ga. Code Ann. § 44-12-196 27
Haw. Rev. Stat. § 523A-5 28
Idaho Code § 14-505 27
765 Ill. Comp. Stat. 1026/15-501 4
Ind. Code § 32-34-1.5-19(b) 5
Iowa Code § 556.2B 27
Kan. Stat. Ann. § 58-3936 28
20 Ky. Admin. Regs. 1:080(2) 4
Mich. Comp. Laws § 567.226 27
Mont. Code Ann. § 70-9-805 28
N.H. Rev. Stat. Ann. § 471-C:5 27
N.J. Stat. Ann. § 46:30B-16 27
N.M. Stat. Ann. § 7-8A-4 28
Nev. Rev. Stat. § 120A.530 28
N.C. Gen. Stat. § 116B-56 28
N.D. Cent. Code § 47-30.1-01(10), *repealed by* 2021 N.D. Laws ch. 337 27
N.D. Cent. Code § 47-30.1-05, *repealed by* 2021 N.D. Laws ch. 337 27
N.D. Cent. Code § 47-30.2-01(20) 28
N.D. Cent. Code § 47-30.2-04 28
Okla. Stat. Ann. tit. 60, § 651.2 27
Or. Rev. Stat. § 98.308 27
R.I. Gen. Laws § 33-21.1-5 27
S.C. Code Ann. § 27-18-60 27
S.D. Codified Laws § 43-41B-5 27
Tex. Prop. Code Ann. § 72.102 28
Tex. Prop. Code Ann. § 74.508 28
Va. Code Ann. § 55.1-2505 27
Vt. Stat. Ann. tit. 27, § 1486 28
Wash. Rev. Code § 63.29.050 27
W. Va. Code § 36-8-4 28
Wis. Stat. § 177.05 27

TABLE OF AUTHORITIES—continued

Page

Wyo. Stat. Ann. § 34-24-105(f) 27
Wyo. Stat. Ann. § 34-24-106 27

LEGISLATIVE MATERIALS

S. Rep. No. 93-505 (1973) 23, 24
119 Cong. Rec. 17,047 (1973) 7

SCHOLARLY AUTHORITY

Personal Money Orders and Teller's Checks: Mavericks Under the UCC, 67 Colum. L. Rev. 524 (1967) 9, 24

OTHER AUTHORITIES

Black's Law Dictionary (4th ed. 1968) 19
Black's Law Dictionary (5th ed. 1979) 19
F. L. Garcia, *Glen G. Munn's Encyclopedia of Banking and Finance* (6th ed. 1962) 9
Webster's Seventh New Collegiate Dictionary (1963) 19

INTEREST OF *AMICUS CURIAE*[1]

The American Bankers Association (ABA) is the principal trade association of the financial services industry in the United States. ABA members are located in all fifty states, the District of Columbia, and Puerto Rico, and include financial institutions of all sizes that collectively hold a majority of the domestic assets of the U.S. banking industry. The ABA frequently appears as *amicus curiae* in litigation involving issues of widespread importance to the industry.

ABA banks are the holders of substantial amounts of unclaimed property, annually reporting hundreds of millions of dollars in unclaimed property to various States. As mere custodians, banks are indifferent as to which State is entitled to escheat, or take custody of, these unclaimed funds. But banks are keenly interested in having clear rules of priority for resolving competing State claims to unclaimed property: banks can remit particular funds only to a single State, and they face penalties, administrative burdens, and potential liability if ambiguities in the priority rules permit States and others to challenge the banks' good faith determinations of the proper recipient. The ABA submits this brief to ensure that, in resolving this action, the Court interprets the Federal Disposition of Abandoned Money Orders and Traveler's Checks Act, 12 U.S.C. §§ 2501-03 (the "FDA") in a manner that

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[1] Pursuant to Supreme Court Rule 37, *amicus* states that no counsel for any party authored this brief in whole or in part, and that no entity or person other than *amicus*, its members and its counsel made any monetary contribution toward the preparation and submission of this brief. Counsel for the parties to this action have consented to the filing of this brief.

eliminates, rather than exacerbates, uncertainties in those rules.

Historically, this Court has established federal common law priority rules to determine which State is entitled to escheat unclaimed financial instruments. See *Texas* v. *New Jersey*, 379 U.S. 674 (1965). In doing so, the Court has stressed the need for clear and easily administered rules that avoid "case-by-case" or fact-specific determinations. *Id.* at 680. This is critically important to banks and other holders of such instruments.

Different States apply varying dormancy periods to establish when unclaimed financial instruments are presumed to be abandoned. They also impose differing conditions governing the reporting and remitting of such property. If a holder fails to report unclaimed property to a State in accordance with that State's requirements, the holder may be subject to interest and penalties.

In 1974, the FDA created an exception to this Court's priority rules for sums "payable on a money order, traveler's check, or other similar written instrument," 12 U.S.C. § 2503. The ABA's members have generally understood this exception to be narrow, and to be inapplicable to instruments, like cashier's checks, that were widely used before the FDA and are not mentioned in that Act.[2] This same understanding is reflected in the 1981 Model Uniform Unclaimed Property Act, which has been adopted by nearly half of all States.

[2] Given the size of its membership, the ABA cannot represent that all member banks have followed the same practice in escheating such unclaimed financial instruments. All member banks, however, benefit from a clear rule.

In recent years, however, qui tam relators have sued certain member banks under State false claims acts, alleging that cashier's checks fall within the scope of the FDA's "other similar written instrument" clause. These suits—filed in the name of individual states—claim that, by disposing of unclaimed cashier's checks in accordance with this Court's priority rules, banks have acted improperly, and should be subjected to treble damages and statutory penalties.

The Special Master's First Interim Report, if accepted, would perpetuate and exacerbate uncertainties about the FDA's scope. The Special Master recognized that the phrase "other similar written instrument" in the FDA is inherently ambiguous, and he suggested an interpretation that would make clear it does not apply to instruments such as cashier's checks. But the Special Master refrained from adopting a definitive interpretation of this clause, and urged this Court to do the same. In addition, the Special Master suggested that the statutory term "money order" might *itself* cover cashier's checks, but he again refrained from resolving the question.

The ABA thus has a substantial interest in ensuring that the Court rejects these destabilizing aspects of the First Interim Report. The ABA urges the Court to interpret the FDA narrowly, in accordance with Congress's limited purpose in enacting that statute, and in a definitive manner, so that holders of unclaimed financial instruments are not subject to litigation by qui tam relators and States that seek to exploit uncertainties in the relevant priority rules. In particular, the ABA urges the Court to make clear that instruments such as unclaimed cashier's checks fall outside the FDA's scope.

BACKGROUND

1. The Need For Clear Priority Rules For Unclaimed Financial Instruments

By virtue of their operations, banks and other financial institutions are holders of substantial amounts of unclaimed funds that must be reported and remitted to the States. And, as this Court recognized 60 years ago, the "rapidly multiplying State escheat laws, originally applying only to land and other tangible things but recently moving into the elusive and wide-ranging field of intangible transactions[,]" make it possible for multiple States to have competing claims to escheat the same unclaimed financial instruments. *W. Union Tel. Co.* v. *Pennsylvania*, 368 U.S. 71, 79 (1961). As holders, however, banks can deliver the funds only to one State.

Indeed, holders must look to a single State's law to determine the applicable dormancy period (the period after which unclaimed property is presumed abandoned), the date on which a report identifying the property must be filed with the State, and other requirements. For example, one State may exempt a type of property that would escheat in another State if the property owner resided there. Compare Ariz. Rev. Stat. § 44-301(15) (gift cards are not considered property and not subject to escheat laws), with Alaska Stat. § 34.45.240 (gift cards presumed abandoned and subject to escheat if unclaimed after three years). States also have different requirements regarding the notice, if any, that a property owner must receive before property is escheated. See, *e.g.*, 765 Ill. Comp. Stat. 1026/15-501 (notice by first class mail at least 60 days prior to escheat); 20 Ky. Admin. Regs. 1:080(2) (notice required only if property value exceeds $100). State requirements also differ on whether a holder must identify the specific property item, or can report property

items under certain dollar thresholds in the aggregate. See, *e.g.*, Ind. Code § 32-34-1.5-19(b) (property items with value less than $50 may be reported in the aggregate). Further, some States permit holders to deduct service charges or other fees, including charges related to providing notice, from the amount escheated to the State. See, *e.g.*, Colo. Rev. Stat. § 38-13-602.

Failure to timely report and remit unclaimed property may subject a holder to interest. State unclaimed property laws permit the assessment of interest from the date property should have been reported, ranging from the federal funds rate to as much as 12% per annum. See, *e.g.*, Cal. Civ. Proc. Code § 1577. States also may assess penalties for failure to timely or accurately report unclaimed property. See, *e.g.*, Del. Code Ann. tit. 12, § 1183(b) (5% of the amount not reported up to 50% of the aggregate); Alaska Stat. § 43.05.220(a) (imposing penalty up to 25%); Fla. Stat. § 717.134(1) (up to 25% penalty).

Uncertainty concerning the State entitled to escheat unclaimed property also may expose holders to double liability where two or more States seek to escheat the same property. Here, Pennsylvania and Wisconsin sued MoneyGram to recover unclaimed property that the company already had escheated to Delaware. Holders also have been subjected to competing claims for previously escheated unclaimed property during unclaimed property audits and other disputes. See *W. Union*, 368 U.S. at 74 ("New York had already seized and escheated a part of the very funds here claimed by Pennsylvania.").

2. This Court's Priority Rules

This Court has long recognized the critical importance of clear priority rules to govern competing State claims to abandoned intangible property. In

fashioning such rules, the Court expressly sought to create a test that would be "simple and easy to resolve" and that would fairly "tend to distribute escheats among the States in the proportion of the commercial activities of their residents." *Texas* v. *New Jersey*, 379 U.S. at 681. The Court recognized the importance of developing a "workable test" in which the outcome would not turn on "particular facts" and where new rules would not be required for "ever-developing new categories of facts." *Id.* at 679.

Under the priority rules the Court established in *Texas* v. *New Jersey*, holders look first to the State of residence of the creditor. *Id.* at 681-82. If the holder's books and records contain a last known address associated with the property for the creditor, then that State is entitled to escheat the property. If the holder's books and records do not contain that last known address, then the holder escheats the property to its State of domicile. Because the debts involved in *Texas* v. *New Jersey* were those of a corporation, the Court assumed that the secondary priority rule would "arise with comparative infrequency." *Id.* at 682.

The Court affirmed these rules in *Pennsylvania* v. *New York*, 407 U.S. 206, 211 (1972), which addressed the question of which State was entitled to escheat unclaimed money orders. Western Union, the primary issuer of money orders, did not "regularly record the addresses of its money order creditors." *Id.* at 214. Thus, the primary priority rule of *Texas* v. *New Jersey* did not apply to most unclaimed money orders and, under the secondary priority rule, Western Union escheated all unclaimed money orders to New York, its State of incorporation. See *id.* at 211-12.

Pennsylvania asserted that this resulted in an unfair windfall to New York and urged the Court to adopt a different priority rule for money orders based on

where they were purchased. The Court, however, rejected this argument, finding that it was essential to avoid uncertainty and further litigation by adhering to its precedent and not "decide each escheat case on the basis of its particular facts." *Id.* at 215 (quoting *Texas* v. *New Jersey*, 379 U.S. at 679).

3. Enactment Of The FDA

Congress enacted the FDA in direct response to the decision in *Pennsylvania* v. *New York*, and what it viewed as the inequity arising from application of the Court's priority rules to unclaimed money orders and traveler's checks.

Senator Scott of Pennsylvania, who was one of the sponsors of the Senate bill that became the FDA, stated that its purpose was to prevent the unfair "windfall" that resulted from allowing the seller's State of corporate domicile to escheat "large amounts of money" associated with "travelers checks and commercial money orders where addresses do not generally exist." 119 Cong. Rec. 17,047 (1973). As the Senate Report noted, there were only a few States entitled to escheat unclaimed travelers checks and money orders under the Court's priority rules. By enacting a new rule based on the place where the transaction took place, "the other 49 States where purchasers of travelers checks and money orders actually reside" would be able to claim those funds. *Id.*

The FDA recites these same concerns. It notes that "the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers," and that "as a matter of equity among the several States," the States "wherein the purchasers of money orders and traveler's checks

reside" should be entitled to the proceeds in the event of abandonment. 12 U.S.C. § 2501.

Section 2503 of the FDA sets forth the priority rules that apply to "any sum … payable on a money order, traveler's check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable." *Id.* § 2503. First, "if the books and records of such banking or financial organization or business association show the State in which such money order, traveler's check, or similar written instrument was purchased, that State shall be entitled exclusively to escheat or take custody of" the sum payable on such instrument. *Id.* § 2503(1). Second, if the books and records of the issuer do not show the State of purchase, then the "State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum." *Id.* § 2503(2). Finally, if the laws of the State in which the money order, traveler's check, or similar written instrument was purchased do not provide for the escheatment of sums payable on such instruments, then the State in which the issuer has its principal place of business can escheat the property. *Id.* § 2503(3).

The FDA does not define the terms "money order," "traveler's check," or "other similar written instrument (other than a third party bank check)." Notably, however, the FDA includes no reference to other financial instruments commonly used when the FDA was enacted, such as "cashier's checks." And the findings set forth in Section 2501 of the FDA do not refer to the priority given to the State of a creditor's residence, or

suggest that the effect of that priority rule is inequitable.

4. Cashier's Checks

At the time of the FDA's enactment in 1974, cashier's checks were more commonly used than money orders. These financial instruments differ from money order and traveler's checks in several important respects.

Most notably, many cashier's checks are not purchased, but instead are issued by banks to facilitate bank transactions. See F. L. Garcia, *Glen G. Munn's Encyclopedia of Banking and Finance* 110 (6th ed. 1962). For example, banks may issue cashier's checks to disburse funds to borrowers. They may also issue cashier's checks to a customer (or to the customer's estate) to facilitate an account closure. Banks also issue cashier's checks to settle their own obligations, such as a vendor payment, tax payment, or other government payment, or to compensate customers for a prior error, when there is no current account that can be credited with the remediation amount. In all these circumstances, a bank customer (or the customer's estate) is the creditor for the cashier's check, and the last known address for that creditor is ordinarily available. Thus, the primary priority rule of *Texas* v. *New Jersey* is easily applied to bank-issued cashier's checks.

By contrast, it was often difficult, if not impossible, to identify the creditor of a money order, much less the creditor's last known address. This was because the pay-to line for a money order was typically left blank and was filled out by the purchaser at a later date. See *Personal Money Orders and Teller's Checks: Mavericks Under the UCC*, 67 Colum. L. Rev. 524, 526 (1967) ("A prominent attribute of the personal money order is the purchaser's ability to postpone entering the payee's

name until he is certain that he wishes to complete the transaction."). Thus, the creditor could be either the sender or the recipient. And, as noted, Western Union, the primary issuer of money orders prior to enactment of the FDA, typically did not maintain addresses for either the sender or recipient of money orders. See *Pennsylvania* v. *New York*, 407 U.S. at 214.

5. Promulgation And Adoption Of The 1981 Model Uniform Unclaimed Property Act

Seven years after Congress enacted the FDA, the Uniform Law Commissioners promulgated the 1981 Model Uniform Unclaimed Property Act (the "1981 Uniform Act"). The 1981 Uniform Act, which has been adopted with revisions by 23 States, reflects the understanding that unclaimed cashier's checks are governed by this Court's priority rules, not those set forth in the FDA.

Section 3 of the 1981 Uniform Act incorporates the priority rules of *Texas* v. *New Jersey*, see Unif. Unclaimed Prop. Act § 3 cmt. (1981), and provides that those rules apply to property presumed abandoned in Sections 2 and 5 through 16 of the Act. Section 5, in turn, provides for the escheat of "[a]ny sum payable on a check, draft, or similar instrument, except those subject to Section 4, on which a banking or financial organization is directly liable, *including a cashier's check* and a certified check." *Id.* § 5 (emphasis added).

Section 4, by contrast, governs the escheat of "any sum payable on a travelers check," and "any sum payable on a money order or similar written instrument, other than a third-party bank check." *Id.* § 4(a)-(b). For these instruments, Section 4 prescribes the place-of-purchase priority rules set forth in the FDA. See also *id.* § 3 cmt. (expressly noting that "[t]here is a special

provision for travelers checks and money orders in Section 4"). Thus, the 1981 Uniform Act reflects a clear understanding that a cashier's check is not a "money order," "traveler's check," or "other similar written instrument" within the meaning of the FDA and remains subject to the common law priority rules.

6. Recent Litigation Involving Unclaimed Cashier's Checks

Despite the recognition embodied for four decades in the 1981 Uniform Act, some banks have been sued in actions alleging that the common law priority rules do not determine the State entitled to escheat unclaimed cashier's checks. These suits allege that banks improperly failed to escheat cashier's checks to the State of purchase, and instead escheated them to their States of domicile.[3] For example, in *Dill* v. *JP Morgan Chase Bank, N.A.*, No. 1:19-cv-10947 (S.D.N.Y. filed Nov. 26, 2019), plaintiffs alleged that cashier's checks are "other similar written instruments" under the FDA and were improperly escheated to the bank's State of domicile. See Class Action Complaint ¶¶ 1-10, *Dill* v. *JP Morgan Chase Bank, N.A.*, No. 1:19-cv-10947 (S.D.N.Y. Nov. 26, 2019), ECF No. 1. Notably, however, these plaintiffs did not allege that a cashier's check is a "money order" under the FDA.

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[3] *Illinois ex rel. Elder* v. *JPMorgan Chase, N.A.*, No. 1:21-cv-00085 (N.D. Ill. filed Jan. 6, 2021); *State ex rel. Elder* v. *J.P. Morgan Chase, N.A.*, No. CGC-19-5-79144 (Cal. Super. Ct., San Francisco Cnty. filed Sept. 10, 2019); *State ex rel. Elder* v. *U.S. Bank, N.A.*, No. CGC-19-581373 (Cal. Super. Ct., San Francisco Cnty. filed Dec. 9, 2019); *State ex rel. Elder* v. *U.S. Bank, N.A.*, No. 2019-L-013262 (Ill. Cir. Ct., L. Div., Cook Cnty. filed Dec. 13, 2019); *Minnesota ex rel. Elder* v. *U.S. Bank, N.A.*, No. 0:21-cv-01753 (D. Minn. filed Aug. 2, 2021); *New Jersey ex rel. Elder* v. *JPMorgan Chase Bank, N.A.*, No. 2:21-cv-19462 (D.N.J. filed Oct. 29, 2021).

7. The Special Master's First Interim Report

Recognizing that some of the arguments raised in this case implicate the status of cashier's checks under the FDA, one member bank submitted a letter requesting that the Special Master avoid issuing a ruling that "could inadvertently affect the rights of entities not before the Court, including in other pending litigation." Letter from Beth S. Brinkmann, Counsel for JPMorganChase Bank, N.A., to Hon. Pierre N. Leval, Special Master (Apr. 22, 2020). "Like the guest who would not leave, however, [the status of cashier's checks under the FDA] lurks" in various aspects of the Special Master's First Interim Report. *Will* v. *Mich. Dep't of State Police*, 491 U.S. 58, 71-72 (1989) (Brennan, J., dissenting).

Most significantly, the Defendant States have proposed a broad definition of "money order" that, as Delaware has argued, would appear to capture cashier's checks. In response to that argument, the Special Master agreed that "Defendant's posited definition is indeed broad, and might perhaps be subject to narrowing refinement." First Interim Report of the Special Master ("Report") at 54. But in granting summary judgment to the Defendant States, the Special Master declined to adopt any refinement, and urged this Court not to do so either. *Id.* at 54-55. He then opined in dicta that "[i]t is not at all clear that the broad definition advanced by the Defendant States is broader than what Congress intended." *Id.* at 55 n.34.

With respect to the FDA's residual clause, the Special Master recognized that "the term 'similar' is unavoidably vague and susceptible of different meanings." *Id.* at 57. He explained that the "logical inference" of the phrase "other similar instrument" is that "Congress *was not aware of any such similar instrument*, [but] wanted to ensure that if, by reason of future

changes in State laws or business practices, or for any reason, such similar instruments came into existence in the future, they would be governed by the terms of the statute." *Id.* at 52 (emphasis added). That reading would exclude from the residual clause cashier's checks and other instruments that were used in 1974. But the Special Master did not definitively construe the residual clause either. See *id.* at 63-64.

SUMMARY OF ARGUMENT

1. The Court should reject the Special Master's indeterminate approach and render definitive interpretations of the terms "money order" and "other similar written instrument." Leaving the meaning of these terms unresolved would expose holders, such as banks, to undue burdens and penalties and invite further litigation—thereby frustrating this Court's longstanding efforts to provide clear and easily administered priority rules to resolve competing State claims to abandoned property. In addition to causing such harms, the Special Master's approach is inconsistent with the courts' duty "to say what the law is." *Marbury* v. *Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

2. The terms "money order" and "other similar written instrument" should be interpreted narrowly so that they do not reach financial instruments, such as cashier's checks, that were commonly used when the FDA was enacted but were not named in the statute and lack the features that can give rise to a "windfall" recovery by a single escheating State. The Defendant States rely on inapposite dictionary definitions of "money order" and the term "draft"—which does not even appear in the statute—to give the FDA an obviously overbroad reach. But the definitions they cite cannot justify a reading that would potentially encompass instruments such as cashier's checks. Because

cashier's checks were well-known and frequently used in 1974, Congress certainly would have identified them explicitly had it intended to change the priority rules for such a significant class of financial instruments.

Other statutory text makes clear that Congress had no such intent. The findings set forth in Section 2501 demonstrate that Congress chose a place-of-purchase priority rule because the record-keeping practices associated with money orders and traveler's checks led to an unfair windfall to a single escheating State. But many cashier's checks are not purchased at all. And banks that issue cashier's checks for bank transactions ordinarily can apply the primary priority rule of *Texas* v. *New Jersey*.

The legislative history confirms the FDA's limited scope. Congress adopted an amendment the Treasury Department proposed to ensure that the FDA did not sweep too broadly and cause unintended consequences—which is precisely what Defendants' definition would cause. More fundamentally, the statutory context makes clear that the FDA was intended to address an inequity attributable to two aspects of money orders and traveler's checks: the inability to determine the creditor (which rendered the primary priority rule inapplicable) and the limited number of issuers (which generated unfair windfalls under the secondary priority rule). But, for bank-issued cashier's checks, the creditors' state-of-residence can often be determined, and the banks that issue cashier's check are located throughout the country.

Finally, the 1981 Uniform Act reflects a 40-year old understanding that the FDA does not apply to financial instruments like cashier's check. The views of the Uniform Law Commissioners that promulgated that Act, and the States that have adopted it, are worthy of

consideration, and underscore the disruptive effects that the Defendant States' interpretation would generate.

ARGUMENT

I. THE COURT SHOULD DEFINITIVELY INTERPRET THE PHRASES "MONEY ORDER" AND "OTHER SIMILAR WRITTEN INSTRUMENT" IN THE FDA.

The Special Master has recommended that the Court resolve this dispute in an unconventional manner. He recognized that Defendants' definition of "money order" "has potential flaws" and "might perhaps be subject to narrowing refinement." Report at 40, 54. Yet the Special Master deemed it unnecessary to "adopt, or depend on the validity of, th[at] definition" in order to resolve the parties' dispute. *Id.* at 54. Instead, he concluded that the Defendants should prevail because their arguments for why the Disputed Instruments are "money orders" within the meaning of the FDA are "more persuasive." *Id.* at 54-55. While maintaining this agnostic approach to the term "money order," the Special Master went on to conclude that, "if the Disputed Instruments do *not* come within the FDA by *being* money orders, they *undoubtedly* come within the statute's coverage of 'other similar written instruments.'" *Id.* at 63-64 (last emphasis added). And the Special Master urged this Court to follow this same approach, arguing that, by *not* adopting a definitive definition of "money order," the Court will avoid adverse consequences for entities that are not parties in this case, but are involved in "the escheat of various categories of abandoned instruments." *Id.* at 54.

This approach may be well-intentioned. But it is mistaken both as a matter of practical realities and as a matter of law.

First, a failure to adopt definitive interpretations of the relevant statutory terms could have significant, adverse consequences for non-parties, such as banks. As discussed above, holders of unclaimed financial instruments need clear, certain rules so they can deliver such property to the proper State. Uncertainty invites litigation and exposes holders to penalties and other burdens.

The Special Master's conclusion that the FDA's ambiguous residual clause was intended to capture only those instruments created after enactment of the FDA in 1974 properly would exclude instruments such as cashier's checks from the scope of that clause, and provide certainty as to these and other instruments. But the Special Master declined to definitively adopt that interpretation. And the First Interim Report re-introduced the same uncertainty and risk for holders of cashier's checks by suggesting that the term "money orders" itself could capture cashier's checks. *Id.* at 55 n.34.

If allowed to stand, that suggestion inevitably would have a disruptive and destabilizing effect for holders of unclaimed financial instruments that seek only to determine which State is entitled to escheat that property. Qui tam relators, and possibly States, could seize on this dicta as a new basis for challenging the disposition of unclaimed instruments like cashier's checks. The fact that this dicta will not conflict with "future adjudications," *id.* at 55, is no solace to the banks that would face such potential claims (and the associated litigation costs) until this new uncertainty is resolved.

Second, and more fundamentally, the Special Master's approach is inconsistent with bedrock principles underlying Article III. As Chief Justice Marshall famously stated, it "is emphatically the province and *duty* of the judicial department to say what the law is.

Those who apply the rule to particular cases, must of necessity expound and interpret that rule." *Marbury*, 5 U.S. (1 Cranch) at 177 (emphasis added). See also *Missouri* v. *Illinois*, 200 U.S. 496, 519-20 (1906) (in resolving a dispute over State boundaries, "this court must determine the line, and *in doing so must be governed by rules explicitly or implicitly recognized*") (emphasis added). When, as here, a dispute over the meaning of a federal law falls within Article III's grant of jurisdiction, a federal court has a duty to say what the law means, and to announce an interpretation that will govern future cases arising under that law.

Accordingly, the Court should reject the indeterminacy of the Special Master's approach and adopt controlling and narrow interpretations of the terms "money order" and "other similar written instrument" that can be readily applied to a certain and limited universe of financial instruments. At a bare minimum, the Court should rule that these terms exclude instruments, like cashier's checks, that were commonly used when the FDA was enacted.

II. THE FDA SHOULD NOT APPLY TO FINANCIAL INSTRUMENTS LIKE CASHIER'S CHECKS, WHICH EXISTED IN 1974 BUT ARE NOT NAMED IN THE STATUTE AND DO NOT POSE THE SAME "WINDFALL" CONCERNS.

The ABA and its members do not take a position on the precise meanings of the disputed phrases "money order" and "other similar written instrument." Accordingly, the ABA takes no position on the ultimate outcome of this case. For the reasons set forth below, however, the foregoing phrases should be interpreted very narrowly to exclude financial instruments, such as cashier's checks, that were commonly used prior to 1974 and lack the characteristics that could gave rise

to a "windfall" recovery by a single escheating State. These conclusions follow from the statute's text, history, and purpose, and are confirmed by the post-enactment understandings of the Uniform Law Commission and State statutes that adopted the Uniform Act.[4]

A. The Text Of The Statute

Statutory interpretation "begins with the text," *Merit Mgmt. Grp., LP* v. *FTI Consulting, Inc.*, 138 S. Ct. 883, 893 (2018), and this Court often consults contemporaneous dictionary definitions to ascertain the ordinary meaning of statutory terms. "Whether a statutory term is unambiguous, however, does not turn solely on dictionary definitions of its component words. Rather, '[t]he plainness or ambiguity of statutory language is determined [not only] by reference to the language itself, [but as well by] the specific context in which that language is used, and the broader context of the statute as a whole.'" *Yates* v. *United States*, 574 U.S. 528, 537 (2015) (plurality opinion) (alterations in original) (quoting *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 341 (1997)). See also *Torres* v. *Lynch*, 136 S. Ct. 1619, 1625-26 (2016) (declining to rely on dictionary definitions); *Niz-Chavez* v. *Garland*, 141 S. Ct. 1474, 1481-82 (2021) (evidence can show that dictionary definitions are inapposite). In this case, the Defendant States relied on inconclusive and inapposite dictionary definitions to propose a broad definition of "money order" that is incongruous and inconsistent with the

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[4] The parties and Special Master appear to agree that the MoneyGram instruments at issue in this case (the "Disputed Instruments") are not "traveler's checks" within the meaning of the FDA. Amicus therefore does not address the meaning of that term. All of the arguments set forth below, however, demonstrate that this term also could not apply to instruments that, like cashier's checks, pre-dated the FDA and cannot give rise to "windfall" recoveries by a single State.

broader context of the FDA, including the statutory text explaining the purpose of the law.

1. Defendants' dictionary definitions do not justify a broad reading of "money order."

As the Special Master noted, Report at 38-39, Defendants relied on two dictionary definitions of "money order" that were extant when the FDA was passed. One relied on postal regulations to define a "money order" as a "species of a draft drawn by one post-office upon another" that enabled a purchaser to deposit money at one office for the purpose of redemption by the payee at a second office. *Black's Law Dictionary* 1158 (4th ed. 1968). The other defined the term as "an order issued by a post office, bank, or telegraph office for payment of a specified sum of money *at another named office*." *Webster's Seventh New Collegiate Dictionary* 547 (1963) (emphasis added).

Evidently recognizing the narrow scope of these definitions, Defendants also cited a definition from the 1979 version of Black's, which defined the term as a "type of negotiable draft issued by banks, post offices, telegraph companies and express companies and used by the purchaser as a substitute for a check." *Black's Law Dictionary* 907 (5th ed. 1979). Defendants then incorporated the definition of "draft" into the phrase "money order" to propose a sweepingly broad interpretation in which "money orders" are "[prepaid] written orders directing another person to pay a certain sum of money on demand to a named payee." Report at 39 (alteration in original) (quoting Defs.' Br. 22). This definitional gambit is unavailing.

Reliance on the 1979 version of Black's is improper, as it post-dates the FDA by five years. And the word

"draft" does not appear in the FDA. Indeed, as the Special Master recognized, Defendants' broad definition had "potential flaws" and was in need of "refinement." *Id.* at 40, 54. Most notably, it might be understood to encompass cashier's checks and other commonly used financial instruments, which also were "drafts." See *id.* at 55 n.34. Such a reading, however, is incongruous.

As noted above, cashier's checks were commonly used in 1974 and were often used to facilitate transactions by banks. Had Congress intended to extend the FDA's new priority rules to unclaimed cashier's checks, it surely would have said so explicitly, rather than rely on a different phrase—"money order"—that is not defined in the FDA. Congress "does not, one might say, hide elephants in mouseholes." *Whitman* v. *Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001) (collecting cases). See also *Harrison* v. *PPG Indus., Inc.*, 446 U.S. 578, 602 (1980) (Rehnquist, J., dissenting) ("In a case where the construction of legislative language such as this makes so sweeping and so relatively unorthodox a change as that made here, I think judges as well as detectives may take into consideration the fact that a watchdog did not bark in the night.") (citing A. Doyle, *Silver Blaze, in The Complete Sherlock Holmes* 335 (1927)); *INS* v. *St. Cyr*, 533 U.S. 289, 320 & n.44 (2001) (citing then-Justice Rehnquist's dissent).

Indeed, the Special Master recognized that very incongruity elsewhere in his Report. In discussing the scope of the "other similar written instrument" clause, he recognized that, if Congress "had known of" instruments similar to money orders and traveler's checks, "it would have had every reason to name them explicitly, rather than rely on a vague invocation of similarity." Report at 52. That compelling reasoning demonstrates that Congress would not have used the term

"money order," or the phrase "other similar written instrument," to capture cashier's checks, which were commonly used prior to enactment of the FDA in 1974.[5]

This incongruity confirms that the definitions of "money order" that the Defendant States cite cannot justify a broad interpretation that sweeps in other financial instruments that were well-known when the FDA was enacted.

2. Other textual evidence shows that the FDA does not apply to cashier's checks and other financial instruments commonly used in 1974.

Other textual evidence demonstrates that Congress did not use "money order" or "other similar written instrument" to encompass any and all "[prepaid] written orders directing another person to pay a certain sum of money on demand to a named payee," including cashier's checks. In the FDA, Congress expressly found and declared that

> (1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments;
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> (2) a substantial majority of such purchasers reside in the States where such instruments are purchased;
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> (3) the States wherein the purchasers of money

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[5] It is also noteworthy that, in at least two statutes, Congress has referred separately to "money order[s]" and "cashier's check[s]." *See* 26 U.S.C. § 6311; 31 U.S.C. § 5325(a).

> orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment.

12 U.S.C. § 2501(1)-(3).

These findings identify additional features that, in Congress's view, made this Court's priority rules inequitable when applied to "money orders." Specifically, money orders are ordinarily purchased; they are ordinarily purchased in the State where the purchaser resides; and, as a matter of business practice, the underlying records do not show the last known address of the purchaser. These attributes are missing from many cashier's checks.

First, many cashier's checks are not purchased at all. Instead, as noted above, banks often issue cashier's checks to facilitate banking transactions. Because the central focus of the FDA is on a purchase—*i.e.*, whether the business records identify "the last known addresses of *purchasers* of such instruments" and where a "substantial majority of *such purchasers* reside," 12 U.S.C. § 2501(1)-(2) (emphases added)—it is implausible to conclude that the term "money order" reaches instruments that often issue without any purchase.

Second, when banks issue cashier's checks to facilitate banking transactions, the bank's creditor is the payee, and that creditor's last known address is ordinarily maintained by the bank. Thus, in stark contrast to the "business practice" associated with money orders, the practices associated with bank-issued cashier's check do not give rise to the uncertainty, and resulting inequities, that Congress identified in the FDA's findings.

For both of these reasons, therefore, it would be unreasonable to believe that Congress used either the term "money order" or the phrase "other similar written instrument" to include cashier's checks. Nor is it plausible that Congress used these terms to capture cashier's checks only when they were purchased, but not when they were issued without a purchase. To paraphrase the Special Master's Report, there is "no explanation as to why Congress would have chosen to target (in a highly indirect manner) [*a subset of*] cashier's checks." Report at 69 (emphasis added).

Further, a cashier's check is a well-recognized type of financial instrument that does not depend on this distinction. Indeed, drawing a distinction among cashier's checks, depending upon whether they were purchased by a customer or issued by a bank to facilitate banking transactions, would not be meaningful or useful for escheat purposes and would undermine the uniform application of the FDA. It also would impose unnecessary administrative burdens with respect to the collection and tracking of data in connection with cashier's checks. Again, therefore, if Congress had intended such an unusual result, it surely would have said so.

B. Legislative History

The legislative history confirms that Congress did not intend to alter the priority rules for a sweeping array of unclaimed financial instruments, including cashier's checks. As the Special Master notes, during consideration of the bill that became the FDA, the Treasury Department submitted a letter stating that the language of the "or similar written instrument" clause was "broader than intended," because it might be interpreted to cover "third party payment bank checks." See S. Rep. No. 93-505, at 5 (1973). Treasury therefore recommended excluding "third party payment bank checks" from the scope of this clause. The

committee responded by stating that it had adopted this "technical suggestion[]," *id.* at 6, although, as the Special Master notes, the final bill was enacted with a slightly different exception for "third party bank checks," see 12 U.S.C. § 2503.

Without weighing in on the meaning of this statutory language, amicus submits that this history confirms that Congress did not intend to alter the priority rules for unclaimed financial instruments on a broad basis. Treasury proposed the amendment to ensure that the legislation did not sweep too broadly, and Congress acceded to that amendment. This action reflects an intent to address a narrow problem while avoiding unintended consequences. It is inconsistent with the broad interpretation the Defendant States advance, which, as discussed above, would have disruptive consequences for holders of instruments such as cashier's checks.

C. Statutory Context

Finally, the context in which the FDA was enacted confirms that Congress did not intend to alter the priority rules for a broad array of then-existing financial instruments. As noted earlier, the FDA was enacted in response to this Court's decision in *Pennsylvania* v. *New York*. There were two features of Western Union's products and business that made the application of the priority rules set forth in *Texas* v. *New Jersey* inequitable, prompting both the three-Justice dissent, see 407 U.S. at 216-22, and ultimate enactment of the FDA. Neither feature was present in *Texas* v. *New Jersey*—a case that prompted no outcry—or in instruments like cashier's checks.

First, the pay-to line for a money order was typically left blank and was filled out by the purchaser at a later date. See *Personal Money Orders and Teller's Checks:*

Mavericks Under the UCC, *supra*, at 526 ("A prominent attribute of the personal money order is the purchaser's ability to postpone entering the payee's name until he is certain that he wishes to complete the transaction."). The purchaser could use the money order or make it payable to cash by returning it to the agent to redeem. For that reason, there was no single identified creditor. As a result, it was difficult to implement the first priority rule of *Texas* v. *New Jersey* (escheat to the creditor's State) because the creditor could be either the sender or the recipient and thus was not known.

Second, resort to the secondary priority rule (escheat to the issuer's State of incorporation) led to an obvious windfall for a single State. Western Union dominated the money order business—it had offices in the 48 contiguous States and the District of Columbia, *id.* at 208-09 (majority opinion). That market dominance was not, however, a characteristic shared by other entities that issued financial instruments such as cashier's checks.

Instead, cashier's checks were issued by local, regional, and national banks across the country. As a result, even when the secondary rule of *Texas* v. *New Jersey* did apply, there would be no massive windfall to a single State of the kind that New York gained in *Pennsylvania* v. *New York*. Because banks were incorporated throughout the country, any "unfairness" that the secondary priority rule would have caused with respect to one bank effectively would be cancelled out over time by the application of that same rule to different banks incorporated in different States.[6]

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[6] To be sure, the banking industry is more consolidated today than it was in 1974. Even today, however, no single bank enjoys the market dominance that Western Union possessed with respect to money orders some 50 years ago. In all events, it is the

It is telling, therefore, that the FDA's text never once refers to a "creditor" or the "last known addresses of creditors," and focuses entirely on "purchasers" instead. As the primary priority rule of *Texas* v. *New Jersey* was not controversial, the FDA's failure to mention the creditor's State of residence indicates that Congress had no objection to—and did not seek to disturb—use of the priority rules in situations where the primary priority rule would control the disposition of the property. And cashier's checks issued by banks to facilitate bank transactions are ordinarily governed by the primary rule, because banks typically maintain payee address information for such cashier's checks. Rather, Congress was focused on money orders and traveler's checks because these financial instruments were rarely governed by the primary priority rule. This attribute gave rise to the inequitable windfall Congress sought to prevent.

Indeed, applying the FDA to instruments such as cashier's checks does not prevent large windfalls to a single State. Instead, it would have the anomalous result of requiring banks to disregard the address information for creditors in favor of the State of purchase. This Court recognized that, because "a debt is property of the creditor, not of the debtor, fairness among the States requires that the right and power to escheat the debt should be accorded to the State of the creditor's last known address." *Texas* v. *New Jersey*, 379 U.S. 680-81 (citation omitted). Extending the FDA to instruments such as bank-issued cashier's checks would thus undermine principles of fairness. This is yet another reason for recognizing that the terms "money order" and "other similar written instrument" do not encompass instruments such as cashier's checks.

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understanding of the 1974 Congress that determines the scope of the FDA.

D. The 1981 Uniform Unclaimed Property Act And Various State Laws Confirm That The FDA Does Not Reach Cashier's Checks.

Amicus recognizes that, in interpreting statutes, the views of others is often of little or no consequence. In this highly specialized area, however, we believe the views of the Uniform Law Commission and the States that have adopted the Uniform Act are worthy of consideration.

As discussed above, *supra* at 10-11, the text and structure of the 1981 Uniform Act make clear that the Uniform Law Commissioners, who are expert in the field of escheating financial instruments, have understood for four decades that instruments such as cashier's checks are not "money orders" or "other similar written instruments" within the meaning of the FDA. Nearly half of the States (23) have adopted the 1981 Uniform Act.[7] And 12 of the States that have not

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[7] Nineteen of the 23 states that adopted the 1981 Uniform Act enacted the precise provisions distinguishing between the place-of-purchase rules applicable to money orders and traveler's checks versus the common law priority rules applicable to cashier's checks and certified checks. *See* Alaska Stat. § 34.45.150; Colo. Rev. Stat. § 38-13-106, *repealed by* Revised Uniform Unclaimed Property Act, Colo. Sess. Laws 2019, ch. 110, at 407 (eff. July 1, 2020); Fla. Stat. § 717.105; Ga. Code Ann. § 44-12-196; Idaho Code § 14-505; Iowa Code § 556.2B; Mich. Comp. Laws § 567.226; N.H. Rev. Stat. Ann. § 471-C:5; N.J. Stat. Ann. § 46:30B-16; N.D. Cent. Code §§ 47-30.1-05, 47-30.1-01(10), *repealed by* 2021 N.D. Laws ch. 337; Okla. Stat. Ann. tit. 60, § 651.2; Or. Rev. Stat. § 98.308; R.I. Gen. Laws § 33-21.1-5; S.C. Code Ann. § 27-18-60; S.D. Codified Laws § 43-41B-5; Va. Code Ann. § 55.1-2505; Wash. Rev. Code § 63.29.050; Wis. Stat. § 177.05; Wyo. Stat. Ann. §§ 34-24-105(f), 34-24-106. Two of the states that originally adopted the 1981 Uniform Act recently enacted the 2016 Revised Uniform Unclaimed Property Act, which

adopted it have added provisions to their unclaimed property laws incorporating the place-of-purchase provisions of the statute, but only as to money orders and traveler's checks. These States did not incorporate the "similar written instrument" language or attempt to apply the statutory place-of-purchase provision to cashier's checks.[8]

These interpretations confirm what the text, legislative history, and context of the FDA demonstrate. They also demonstrate the undue disruptions that would flow from a determination that instruments such as cashier's checks are covered by the FDA.

CONCLUSION

For the foregoing reasons, the Court should render a definitive and narrow interpretation of "money order" and "other similar written instrument" that makes clear that these phrases exclude cashier's checks and other financial instruments that (like cashier's checks) were commonly used prior to 1974 and lack the characteristics that could gave rise to a "windfall" recovery by a single escheating State.

Respectfully submitted,

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simply states that traveler's checks, money orders, and similar written instruments escheat to the extent permitted by the FDA. *See* Colo. Rev. Stat. § 38-13-306; N.D. Cent. Code §§ 47-30.2-01(20), 47-30.2-04.

[8] *See* Ala. Code § 35-12-74; Ariz. Rev. Stat. § 44-304; Ark. Code Ann. § 18-28-204; Haw. Rev. Stat. § 523A-5; Kan. Stat. Ann. § 58-3936; Mont. Code Ann. § 70-9-805; Nev. Rev. Stat. § 120A.530; N.M. Stat. Ann. § 7-8A-4; N.C. Gen. Stat. § 116B-56; Tex. Prop. Code Ann. §§ 72.102, 74.508; Vt. Stat. Ann. tit. 27, § 1486; W. Va. Code § 36-8-4.

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