No. _____

In the Supreme Court of the United States

JENNIFER I. SYKES AND ALEXANDER COTE,
Individually and on Behalf of All Others Similarly Situated,
Petitioners,

v.

OFFICE OF THE CALIFORNIA STATE CONTROLLER; BETTY T. YEE, in Her Official Capacity as California State Controller,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Every State has enacted laws requiring unclaimed property to be held by the states and used for public purposes until it is reclaimed by the property owners. Under the California Unclaimed Property Law, Cal. Civ. Proc. Code § 1540(c), like virtually every other state's unclaimed property law, when unclaimed property is returned, no just compensation is paid to the property owners.

The Takings Clause of the Fifth Amendment, made applicable to the States by the Fourteenth Amendment, requires that just compensation be paid whenever private property is used for public purposes. *See Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2074 (2021); *Murr v. Wisconsin*, 582 U.S. 383, 392 (2017); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980). Just compensation must be paid whether the public use of private property is permanent or merely temporary. *See Cedar Point Nursery*, 141 S. Ct. at 2074 (citing *United States v. Dow*, 357 U.S. 17, 26 (1958)); *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302, 322, 122 S.Ct. 1465 (2002); *Loretto v. Teleprompter Manhattan CATV Corp*., 458 U.S. 419, 436-37 (1982). Here, the court of appeals reached a contrary conclusion.

The question presented is:

Does the Ninth Circuit's decision that California's Unclaimed Property Law does not require the payment of just compensation for the temporary taking of unclaimed private property it puts to public use conflict with the Takings Clause?

LIST OF PARTIES TO THE PROCEEDINGS

Petitioners Jennifer I. Sykes and Alexander Cote were the plaintiffs in the district court and the appellants in the court of appeals.

Respondents Office of the California State Controller and Betty T. Yee, in her official capacity as California State Controller, were the defendants in the district court and the appellees in the court of appeals.

RELATED PROCEEDINGS

This case arises out of the following proceedings:

- *Sykes v. Office of the California State Controller*, No. 23-15375 (9th Cir. Mar. 14, 2024)
- *Cote v. Office of the California State Controller*, No. 23-15377 (9th Cir. Mar. 14, 2024)
- *Sykes v. Office of the California State Controller*, No. 22-cv-04133-HSG (N.D. Cal. March 13, 2023)
- *Cote v. Office of the California State Controller*, No. 22-cv-04056-HSG (N.D. Cal. March 13, 2023)

This case is related to *Cole-Kelly v. Office of the California State Controller, et al.* (9th Cir. March 14, 2024) (No. 23-15413), *reh'g denied* (9th Cir. April 23, 2024).

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INTRODUCTION

California holds unclaimed private property – typically stocks, bonds, uncashed checks, insurance benefits, and dormant accounts held by banks and other financial institutions – that it uses for public purposes until the proceeds are returned to the property owners. When the unclaimed property, or the cash proceeds therefrom, is returned to the owners, California's Unclaimed Property Law ("UPL") prohibits the payment of interest to the owners. In practice, only the value of the property itself is returned, and no just compensation is paid to the property owners. Nearly every State has a similar unclaimed property law that likewise prohibits (or makes no provision for) the payment of just compensation to the owners of property used for public purposes.

In the decision below, the Ninth Circuit held that a State's public use of unclaimed private property, which it holds in custody for safekeeping, is not a taking that requires just compensation under the Takings Clause of the Fifth Amendment. The Seventh Circuit has reached the opposite conclusion, holding that the Takings Clause requires States to pay just compensation to the owners of unclaimed property for the time their property is in the State's possession and used for public purposes. *See Kolton v. Frerichs*, 869 F.3d 532, 533 (7th Cir. 2017). The result is a growing circuit split that already has produced divergent decisions by district courts in two other circuits as well as conflicting decisions in various State courts.

The constitutional question presented here is indisputably important. The Takings Clause plays a crucial role in protecting property rights and setting the boundaries of government authority in the United States. It strikes an important balance between the States' power to pursue public works and the constitutional rights of private property owners. The Takings Clause prevents the government from abusing its

authority by taking property without just compensation. For those reasons, as the Congressional Research Service has noted, since the late 1970s, the Court "has turned its attention to the takings issue with vigor." Robert Meltz, Conf. Research Serv., *Takings Decisions of the U.S. Supreme Court: A Chronology*, Report No. 7-5700 (July 20, 2015).

The Ninth Circuit's decision that the Takings Clause does not require just compensation even though the unclaimed private property is liquidated and transferred to the California General Fund, the principal operating fund for the majority of State's activities, where it is used for public purposes leaves the States uncertain about whether they must pay just compensation to the property owners. The Ninth Circuit's decision risks exempting not just unclaimed property in California, but in nearly every State that has enacted a similar statute based upon the Revised Uniform Unclaimed Property Act.

This Court repeatedly has held, most recently in *Cedar Point Nursery*, that "a physical appropriation is a taking whether it is permanent or temporary; the duration of the appropriation bears only on the amount of compensation due." 594 U.S. at 140 (citing *Dow*, 357 U.S. at 26). *See also Tahoe-Sierra Preservation Council*, 535 U.S. at 322; *Loretto*, 458 U.S. at 436-37. California's UPL, like the unclaimed property laws in most other States, prohibits the payment of interest or just compensation on unclaimed property for the time it is held by the State Controller and used for public purposes, and the California Controller pays no just compensation to the owners of the property when it is returned to them. The Ninth Circuit's decision upholding California's UPL is squarely at odds with this Court's prior holdings.

This case is a suitable vehicle for resolving this important issue, and there is no need for the Court to delay review of this case. The petition presents a legal question able to be resolved

without awaiting further factual development. Unclaimed property laws do not vary materially from State to State. Whether the Takings Clause requires the States to pay just compensation to the owners of unclaimed property is not dependent on any particular facts and will not vary materially from State to State. Therefore, this case offers the Court an opportunity to cleanly and definitively resolve a circuit conflict that is of vital importance. The Court should grant the petition to do so.

OPINIONS BELOW

The Ninth Circuit's decision (App. 1a) is unreported. The district court's decision (App. 6a) also is unreported.

JURISDICTION

The court of appeals entered judgment on March 14, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1). Petitioners timely sought a 45-day extension of deadline for making this Petition on June 3, 2024, which was granted on June 6, extending the deadline to July 28, 2024. On July 18, 2024, Petitioners timely sought an additional 15-day extension of the deadline for making this Petition, which was granted on July 23, 2024, extending the deadline to August 12, 2024.

STATUTORY PROVISIONS INVOLVED

Cal. Civ. Code § 1540. Filing of claim; form; consideration; interest; "owner" defined; state or local agency property

(a) Any person, excluding another state, who claims to have been the owner, as defined in subdivision (d), of property paid or delivered to the Controller under this chapter may file a claim to the property or to the net proceeds from its sale. The claim shall be on a form prescribed by the Controller and shall be verified by the claimant.

. . .

(c) Interest shall not be payable on any claim paid under this chapter.

STATEMENT

A. Statutory and regulatory background

1. Enacted in 1959 and substantially amended in 1968 to conform to the Uniform Disposition of Unclaimed Property Act promulgated by the National Conference of Commissioners on Uniform State Laws, California's UPL, Cal. Civ. Code § 1500, *et seq*., "establishes the conditions under which certain unclaimed personal property escheats to the state." *Azure Ltd. v. I-Flow Corp.*, 46 Cal. 4th 1323, 1328, 210 P.3d 1110, 1111-12 (Cal. 2009) (quoting *Harris v. Westly*, 116 Cal.App.4th 214, 219, 10 Cal.Rptr.3d 343, 346 (Cal. 2004)). The UPL "gives the state custody and use of unclaimed property until such time as the owner claims it." *Azure Ltd. v. I-Flow Corp*., 46 Cal. 4th 1323, 1328 (2009).[1] California's UPL serves two important purposes. *First*, it "protect[s] unknown owners" of unclaimed property "by locating them and restoring their property to them." *See id*. *Second*, it "give[s] the State . . . the benefit of the use" of the unclaimed property until the owners are reunited with their proper*ty*. *Id*. While in its possession, California uses unclaimed property "for the public good" until the owners are reunited with their property. *Id*. at 1328.

2. The Takings Clause mandates that "just compensation" must be paid to the owners of private property whenever their property is put to public use. *Cedar Point Nursery v. Hassid*,

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[1] Cal. Civ. Code § 1560(a) provides that "the state shall assume custody and shall be responsible for the safekeeping of the property." Ownership of unclaimed property is not transferred to the State.

141 S. Ct. 2063, 2074 (2021); *Murr v. Wisconsin*, 582 U.S. 383, 392 (2017); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980). This requirement applies whether the taking is permanent or only temporary. *See Cedar Point Nursery*, 141 S. Ct. at 2074 (citing *United States v. Dow*, 357 U.S. at 26); *Tahoe-Sierra*, 535 U.S. at 322; *Webb's Fabulous Pharmacies*, 449 U.S. at 162-65; *United States v. Petty Motor Co*., 327 U.S. 372, 66 S.Ct. 596, 90 L.Ed. 729 (1946); and *General Motors Corp*., 323 U.S. 373, 65 S.Ct. 357. The Takings Clause protects the time value of money or property as much as it protects the money or property itself. *Brown v. Legal Foundation of Washington*, 538 U.S. 216, 235 (2003); *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 165-72 (1998). !

A Fifth Amendment taking occurs as soon as private property is used by the state for public purposes without paying for it. *Knick v. Twp. of Scott, Pennsylvania*, 139 S. Ct. 2162, 2170 (2019) (Takings Clause is violated "as soon as a government takes [private] property for public use without paying for it").

B. Factual and procedural history

Plaintiffs Jennifer I. Sykes and Alexander Cote are California residents and are owners of unclaimed property held by the California Controller pursuant to the California Unclaimed Property Law. App. While their private property has been in the Controller's custody, it has been used for public purposes. Unclaimed property in California is "deposited in the Unclaimed Property Fund in an account titled 'Abandoned Property.'" Cal. Civ. Code § 1564(a). The balance remaining in the Unclaimed Property Fund at the end of each month is transferred to the California General Fund. *Id*. § 1564(c).

In accordance with the UPL, when the plaintiffs' property is returned to them, the Controller will not pay them interest or

any other compensation for the time it has been used for public purposes. App. 8a-9a.

The plaintiffs asserted taking claims under the Fifth and Fourteenth Amendments of the United States Constitution and Article 1, Section 19 of the California Constitution in two related cases in the Northern District of California. App. 7a n.1. The defendants moved to dismiss both cases, arguing that the State's use of unclaimed property is not a taking under the Fifth Amendment Takings Clause or the California Constitution. *See id.*

The district court granted the defendants' motions to dismiss in a single decision, following two prior Ninth Circuit decisions, *Turnacliff v. Westly*, 546 F.3d 1113 (9th Cir. 2008), and *Suever v. Connell*, 579 F.3d 1047 (9th Cir. 2009). App. 13a-14a. Those cases involved a prior version of California's UPL. Unlike the current version of the UPL, which prohibits the payment of interest to the owners of unclaimed property, the prior version of the statute required the Controller to pay interest to the owners when the property was returned.

The Ninth Circuit panel affirmed the dismissal in a short decision, concluding it was bound by the prior Ninth Circuit decisions in *Turnacliff* and *Suever*. App. 3a.

REASONS FOR GRANTING THE PETITION

I. The decision below creates a clear circuit split on an issue of fundamental importance to private property rights.

A. The decision below creates a circuit split.

1. Both the Seventh and Ninth Circuits have considered whether a state's public use of unclaimed private property is a taking that requires just compensation under the Takings Clause of the Fifth Amendment. Although the unclaimed

property laws before the courts were virtually identical, they reached different conclusions. The Seventh Circuit held that the Takings Clause requires a state to pay just compensation to the owners when it uses unclaimed private property for public purposes while in its possession. The Ninth Circuit held that California's virtually identical law, which prohibits the payment of interest and does not provide for the payment of just compensation on unclaimed property it uses for public purposes, does not violate the Takings Clause. The result is a clear and irreconcilable circuit split that only this Court can resolve.

2. On one side of the split is the Seventh Circuit, which twice has held that even the temporary taking of unclaimed private property is subject to the Fifth Amendment Takings Clause. In *Cerajeski v. Zoeller*, 735 F.3d 577, 583 (7th Cir. 2013), and again in *Kolton*, 869 F.3d at 533, the Seventh Circuit held that a state's temporary use of unclaimed private property for public purposes imposes a duty to pay just compensation when the property is returned to its owner. Like the plaintiffs here, the plaintiffs in *Cerajeski* and *Kolton* were owners of unclaimed property who, under the laws of Indiana and Illinois, respectively, were entitled to receive only the property or its principal value when the property was returned to them.

3. The Ninth Circuit below reached the opposite conclusion as to California's indistinguishable UPL. The Ninth Circuit made no attempt to distinguish the Seventh Circuit's contrary decisions, holding only that it was bound by prior Ninth Circuit authority to preclude relief in this case. App. 3a.

4. Absent this Court's intervention, this circuit split on whether the Fifth Amendment Takings Clause applies to unclaimed personal property used for public purposes will only deepen. For example, the District of Delaware recently sided with the Ninth Circuit in upholding Delaware's unclaimed

property law against an identical Fifth Amendment challenge. *See Light v. Davis, et al*., No. 22-cv-611-CJB, 2023 WL 6295387 (D. Del. Sept. 27, 2023). Delaware's law, like the California UPL and the virtually identical laws in Indiana and Illinois, requires unclaimed property to be used for public purposes while in the State's possession, but prohibits the Delaware State Escheator from paying interest or any other compensation when the unclaimed property is returned to its owners.

Light is currently on appeal in the Third Circuit. *Light v. Davis, et al*., *appeal docketed*, No. 23-2785 (3d Cir. Sept. 28, 2023). That appeal may not succeed because the Third Circuit previously held in *Simon v. Weissmann*, 301 F. App'x 107, 112 (3d Cir. 2008), that a state does not "take" the interest earned on unclaimed property while in its possession within the meaning of the Takings Clause. In any event, the Third Circuit can only take sides in the split; it cannot resolve it.

5. A second appeal also is pending in the Third Circuit. *Dillow v. Treasurer of the Commonwealth of Pennsylvania*, *appeal docketed*, No. 24-2004 (3d Cir. June 4, 2024). Citing *Simon*, the district court dismissed the plaintiff's claim that Pennsylvania's Disposition of Abandoned and Unclaimed Property Act, which does not permit interest or just compensation to be paid to the owners of unclaimed property, violates the Takings Clause.

6. In *Albert v. Franchot*, No. 1-22-CV-01558-JRR, 2023 WL 4058986 (D. Md. June 16, 2023), *on reconsideration in part*, 2024 WL 308937 (D. Md. Jan. 26, 2024), the District of Maryland recently reached the same conclusion as the Seventh Circuit, but differed from the Ninth Circuit's holding in this case and the District of Delaware's holding in *Light*, upholding an unclaimed property owner's claim that he is owed just compensation for the Maryland's public use of his private property. As California did in 2005, when Maryland amended

its unclaimed property statute in 2004, "the amendment deleted language requiring the Comptroller to pay claims for unclaimed property 'plus interest at a rate equal to that earned by the State Treasurer each year on invested state funds.'" 2023 WL 4058986 at *10 (quoting 2004 Md. Laws Ch. 110 (2004)). The district court also noted that the 2004 amendment "deleted language requiring claims of unclaimed property in the form of interest-bearing securities upon delivery to the State to be paid out with interest accrued on the security while in State custody." *Id*. (repealing Section 17-314).

The district court's decision in *Albert* is currently on appeal in the Fourth Circuit. *Albert v. Lierman*, *appeal docketed*, No. 24-1170 (4th Cir. Feb. 23, 2024).

7. In *Maron, et al. v. Patronis*, No. 4:22CV255-RH-MAF, 2023 WL 11891258, *4 (N.D. Fla. Sept. 5, 2023), the district court upheld the constitutionality of Florida's Disposition of Unclaimed Property Act. The Florida statute permits owners of unclaimed property to recover only the principal; it does not allow interest or just compensation to be paid "for the State's retention or use of the property prior to its return." *Id*. at *1. Citing this Court's decision in *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), *Simon*, and *Turnacliff*, as well state court decisions in *Dani v. Miller*, 374 P.3d 779, 793-94 (Okla. 2016), *Hooks v. Kennedy*, 961 So. 2d 425, 432 (La. Ct. App. 2007), *Clark v. Strayhorn*, 184 S.W.3d 906, 911-15 (Tex. App. Ct. 2006), and *McKenzie v. Fla. Dep't of Fin. Servs.*, No. 04 CA 755 (Fla. Cir. Ct. Apr. 27, 2005), the district court held that "the constitutional issue is controlled by who technically holds title, rather than by substantive considerations." *Id*.

The district court's decision in *Maron* is currently on appeal in the Eleventh Circuit. *Maron v. Patronis*, *appeal docketed*, No. 23-13178 (11th Cir. Sept. 28, 2023).

8. The appeals in *Light*, *Dillow*, *Albert*, and *Maron*, however, cannot resolve the circuit split, they can only add to

it. The lower court decisions have not varied based upon any factual differences or any minor differences in the statutes. Rather, the lower courts have reached different results based on fundamentally different understandings of whether the Takings Clause protects unclaimed property and applies to temporary takings.

Two circuits, the Seventh and Ninth Circuits, each have reached opposite conclusions on two occasions. The district courts are following their respective circuits. The pending appeals in the Third and Fourth Circuits may add weight to one side of the circuit split or the other, but they will not resolve the split. There is no reason for this Court to await further development in the lower courts before resolving this already entrenched split over these fundamental constitutional questions.

9. State courts decisions add to the conflict. For example, in *Sogg v. Zurz*, 121 Ohio St. 3d 449, 452-53 (Ohio 2009), the Ohio Supreme Court upheld a claim that Ohio's unclaimed property law violated the analogue to the Fifth Amendment's Takings Clause in the Ohio Constitution. Like the California UPL, the Ohio statute provides that title remains with the property owner "in perpetuity" and it requires Ohio to make public use of the unclaimed property while in state custody. *Id*. at 451. The Ohio Supreme Court held that the state could not control and use earnings on the unclaimed property without justly compensating the property owner. *Id*. at 452-53.

In *Cwik v. Giannoulias*, 237 Ill. 2d 409, 419 (Ill. 2010), the Illinois Supreme Court upheld the constitutionality of the Illionis Uniform Disposition of Unclaimed Property Act. Applying *Texaco*, the Illinois Supreme Court reasoned that if a state may "constitutionally enact a statute that divests a neglectful owner of *all* rights in certain property absent the performance of specified activities evincing a continued and possessory interest in the property . . . it could take the *less*

drastic measure of enacting a statute that operates to divest those owners of only certain incidents of ownership, without mandating divestiture of all rights in the property." *Id.* (emphasis original).

Cwik reached the opposite conclusion than the 7th Circuit reached seven years later in *Kolton* on the constitutionality of the Illinois statute.

The state court decisions in *Dani*, 374 P.3d at 793-94, *Hooks*, 961 So. 2d at 432, and *Clark*, 184 S.W.3d at 911-15, and the unreported state court decision in *McKenzie*, all of which upheld the constitutionality of their respective state unclaimed property laws, do not help clarify the important question presented in this case.

B. This case presents issues of exceptional importance to the States' unclaimed property system.

1. The issue in this case is of exceptional importance to the nation's unclaimed property system. Whether states must pay just compensation on unclaimed property they hold and use for public purposes affects most States. Only four States, Indiana, New Jersey, Ohio, and Wisconsin, provide for or permit any compensation to be paid to the owners of unclaimed property when it is returned to them.

Given the ubiquity of unclaimed property, the circuit split's immediate impact is huge. According to the National Association of Unclaimed Property Administrators, approximately 33 million people collectively have more than $70 billion worth of unclaimed property held by States across the country. *See* https://trustandwill.com/learn/us-unclaimed-property (last visited Aug. 12, 2024). State treasurers return more than $5 billion of unclaimed property to millions of people annually. *See* https://unclaimed.org/who-we-are/ (last visited Aug. 12, 2024). In nearly every State, when the

unclaimed property is returned, no just compensation is paid to the owners, which amounts to billions of dollars of cost-free financing for those States that preclude the payment of just compensation.

The split is particularly intolerable because it creates disparate treatment for private property owners in different States. Currently, the owners of unclaimed property in Illinois and Maryland enjoy the protection of the Takings Clause, but unclaimed property owners in California and Delaware do not. The Takings Clause has long been held to apply to the States through the Due Process Clause of the Fourteenth Amendment. *See Chicago, Burlington & Quincy R.R. Co. v. Chicago*, 166 U.S. 226, 239 (1897); *Barron v. Baltimore*, 32 U.S. 243, 250-51 (1833)). A private property owner's right to just compensation when his unclaimed property is taken for public use should not depend upon where he lives or where her property is located.

The cases that have upheld the constitutionality of a taking of unclaimed private property for public use without paying just compensation misunderstand or misapply the Court's decision in *Texaco*. *Texaco* was not a Taking case. Property was transferred from one private party to another private party. *Texaco*, 454 U.S. at 518 (unused lease to mineral rights reverted to current surface owner of the property). The mineral rights in question never passed into the State's custody, and they were never used for any public purpose. The question presented here, whether a State must pay just compensation for making public use of private property, even if the property came into the State's custody because of the owner's neglect, was not presented in *Texaco*.

Now that a clear split exists over this constitutional question, there is no reason for the Court to stay its hand.

2. Even setting aside the need for certainty, the question presented has enormous stakes for State treasurers across the

country. More than $70 billion worth of unclaimed property is held by State treasurers across the country. *See* https://trustandwill.com/learn/us-unclaimed-property (last visited Aug. 12, 2024). It is used for public purposes in nearly every State. As importantly, more than $5 billion of unclaimed property is returned to millions of people annually. *See* https://unclaimed.org/who-we-are/ (last visited Aug. 12, 2024).

The value of access to the unclaimed property – both what is returned and what remains in the hands of the States – is enormous. It is important for State treasurers across the country to have uniformity in the application of their laws. Until this Court decides whether the Takings Clause applies to the public use of unclaimed property, there will be no uniformity in whether the States must pay just compensation for the public use of that private property.

II. This case is a suitable vehicle.

A. This case gives the Court an opportunity to cleanly and definitively resolve an irreconcilable circuit split on an important issue of State power. The decision below, like all the decisions in the circuit courts, the district courts, and the State courts, addresses whether the States' use of unclaimed private property is a "taking." The outcome of these decisions is not dependent on differences in the facts or material differences in the law. The arguments for and against applying the Takings Clause to unclaimed property will be thoroughly set forth by the parties to this case in the arguments they make on their respective sides of the issue.

While not addressed in the Ninth Circuit's terse opinion, the parties below addressed ripeness, standing, exhaustion of administrative remedies, and the applicability of the Takings Clause to unclaimed property. They can and will do so in this appeal. If the Court grants certiorari, no pertinent arguments

will have been waived by any party. In addition, given the large size of California's Unclaimed Property Fund, as well as its large population and extensive economic activity, California likely has a large portion of the nation's unclaimed property.

B. In addition, there are no ancillary issues or factual disputes in play. The question is thus squarely presented by this petition. To avoid considerable uncertainty in the unclaimed property regime in every state, this Court should take this opportunity to answer it.

III. The Ninth Circuit's decision contradicts this Court's Precedent and lacks any constraining principle.

The Ninth Circuit's decision squarely conflicts with a plethora of prior decisions of this Court, most notably *Cedar Point Nursery*, *Tahoe-Sierra*, *Webb's Fabulous Pharmacies*, and *Loretto*. For that reason, it is clearly erroneous and should be overruled.

With scant analysis, the Ninth Circuit panel held that the Takings Clause does not apply to unclaimed property because the property is "abandoned" by its owners. The panel did not consider that unclaimed property does "not permanently escheat to the state." Cal. Civ. Code § 1501.5(a). It is *not* abandoned[2]; rather, it is merely held temporarily by the State subject to a statutory obligation to return the property to its owners. *See id*. § 1501.5(c) (declaring "intent of the Legislature that property owners be reunited with their property"). While in the State's custody, without any transfer of ownership, unclaimed property is deposited in the California General Fund, where it is used to pay for the State's

[2] Indeed, the California Controller admits that unclaimed property is merely "lost or forgotten property." *See* https://www.sco.ca.gov/search_upd.html (last visited Aug. 12, 2024).

general operation. Cal. Civ. Code § 1564(c). Nonetheless, the Ninth Circuit's decision insulates California's public use of unclaimed private property from the Takings Clause. The panel simply concluded it was bound by two prior Ninth Circuit decisions, *Turnacliff v. Westly*, 546 F.3d 1113 (9th Cir. 2008), and *Suever v. Connell*, 579 F.3d 1047 (9th Cir. 2009). App. 3a.[3]

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[3] In *Suever*, the Ninth Circuit held that the plaintiffs' claim to recover anything more than the original principal amount of their "escheated" property was barred by sovereign immunity. 579 F.3d at 1059.

Although not discussed at length in the Ninth Circuit's opinion, States are generally immune from suit under the terms of the Eleventh Amendment and the doctrine of sovereign immunity. *Whole Woman's Health v. Jackson*, 595 U.S. 30, 39 (2021) (citing *Alden v. Maine*, 527 U.S. 706, 713 (1999)). However, the Court has long recognized a state's ability to waive sovereign immunity. *Coll. Sav. Bank v. Fla. Prepaid Postsecondary Educ. Expense Bd.*, 527 U.S. 666, 670 (1999) (citing *Clark v. Barnard,* 108 U.S. 436, 447-48 (1883)). Importantly, the Court has held that sovereign immunity "may be waived even without a separate waiver provision." *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 43 (2024) (citing *Fin. Oversight & Mgmt. Bd. for Puerto Rico v. Centro de Periodismo Investigativo, Inc.*, 598 U.S. 339, 347 (2023)). The sovereign immunity defense was waived when private property was used for public purposes and the duty to pay just compensation was incurred. Otherwise, the duty to pay just compensation would be a nullity.

"Because of 'the self-executing character' of the Takings Clause 'with respect to compensation,' a property owner has a constitutional claim for just compensation at the time of the taking." In *Knick v. Township of Scott*, 588 U.S. 180, 192 (2019) (quoting *First English Evangelical Lutheran Church of Glendale v. Los Angeles Cty., Cal.*, 482 U.S. 304, 318 (1987)).

The current version of California's UPL, enacted in 2005, *prohibits* the Controller from paying interest when unclaimed private property is returned to its owners. Section 1540 of the UPL states, "Interest shall not be payable on any claim paid under this chapter." Cal. Civ. Code § 1540(c). Unlike the current version of the UPL, the prior version of California's unclaimed property law at issue in *Turnacliff* and *Suever*, enacted in 2002, *required* the Controller to pay interest when returning the unclaimed property: "The Controller shall add interest at the rate of 5 percent or the bond equivalent rate of 13–week United States Treasury bills, whichever is lower, to the amount of any claim paid the owner under this section for the period the property was on deposit in the Unclaimed Property Fund." *Suever*, 579 F.3d at 1051 (quoting UPL then in effect); *Turnacliff*, 546 F.3d at 1116 (same).

The narrow issue in *Turnacliff* was whether the Controller correctly computed the amount of interest owed on unclaimed property that had been returned to its owner. 546 F.3d at 1115. The issues in *Suever* were whether the plaintiffs received sufficient notice of their unclaimed property, whether the Controller mishandled their property while it was held by the State, and (like the issue in *Turnacliff*), whether the State's miscalculation of interest under the prior version of the UPL was itself another taking. 579 F.3d at 1050-51.

Here, the panel followed the decisions in *Turnacliff* and *Suever* with no analysis of this Court's precedent. Instead, the

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In *Knick*, the Court relied upon its prior decision in *Ruckelshaus v. Monsanto Co*., 467 U.S. 986, 1016 (1984), that a "suit for compensation can be brought against the sovereign subsequent to the taking." The holding in *Monsanto* acknowledges that a state's sovereign immunity does not protect it from a claim for just compensation under the Takings Clause.

panel found "no principled difference to be drawn between the statutes those decisions considered" and the current version of California's UPL. App. 3a-4a. Contrary to the decision below, the prior version of California's UPL at issue in both *Turnacliff* and *Suever*, unlike the current version of the statute, *required* the payment of interest when unclaimed property was returned to its owners. The narrow questions presented in those cases concerned the application of the prior version of the statute, not whether California's UPL denies the payment of just compensation to the owners of unclaimed private property.

More importantly, the panel misapplied this Court's decision in *Texaco*. There, the Court held that States could enact laws providing for the transfer of abandoned property from one private owner to another. 454 U.S. at 526. The Indiana Mineral Lapse Act at issue in *Texaco* provided that "a severed mineral interest that is not used for a period of 20 years . . . reverts to the current surface owner of the property." *Texaco*, 454 U.S. at 518. The case involved the transfer of property rights between private citizens, not rights transferred to the State.

The Court held in *Texaco* that States may create property interests of limited duration, conditioned on the owners taking "reasonable actions imposed by law," and that "the State may treat a mineral interest that has not been used for 20 years and for which no statement of claim has been filed as abandoned." 454 U.S. at 530. However, the Court carefully distinguished temporary property rights from those property rights that are subject to the Takings Clause: "We have no doubt that, just as a State may create a property interest that is entitled to constitutional protection, the State has the power to condition the permanent retention of that property right on the performance of reasonable conditions that indicate a present intention to retain the interest." 454 U.S. at 526. The facts before the Court in *Texaco* were materially different than the

facts before the Ninth Circuit here, in *Turnacliff*, and in *Suever* because *Texaco* did not involve an unclaimed property statute nor a taking of property by the government for public use.

The Ninth Circuit's decision conflicts with this Court's decisions in other, more relevant Takings cases which hold that even a temporary physical taking, as occurs with unclaimed property used for public purposes, requires just compensation. For example, in *Cedar Point Nursery*, 141 S. Ct. at 2074, the Court held that a "physical taking" occurs "when the government physically takes possession of property without acquiring title to it." Here, the UPL provides that California does not acquire title to the unclaimed property; it merely takes temporary custody of the property. Cal. Civ. Code § 1501.5(a) ("property received by the state under this chapter shall not permanently escheat to the state"). But California undeniably takes possession of the property. Indeed, Cal. Civ. Code § 1532(a) requires the holders of unclaimed property to deliver the property to the Controller and specifies the timing and means of delivery of the property to the Controller. Thus, the UPL falls squarely within the meaning of a "taking."

Once a taking of private property has occurred, the duty to pay just compensation arises if the property is put to public use. "[G]overnment action that works a taking of property rights necessarily implicates the 'constitutional obligation to pay just compensation.'" *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U.S. 304, 315 (1987). In so holding, the Court recognized "that the Fifth Amendment right to compensation automatically arises at the time the government takes property without paying for it." *Knick*, 588 U.S. at 191-92. In *Knick*, the Court added that a "property owner acquires an irrevocable right to just compensation immediately upon a taking" "[b]ecause of 'the self-executing character' of the Takings Clause 'with respect to compensation.'" 588 U.S. at 192 (quoting *First English*, 482

U.S. at 315).

The State's duty to pay just compensation under the Takings Clause "arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner." *Knick*, 588 U.S. at 181 (citing *Jacobs v. United States*, 290 U.S. 13 (1933)). In *Jacobs*, the Court held that "the compensation must generally consist of the total value of the property when taken, plus interest from that time." 290 U.S. at 17 (quoting *Seaboard Air Line R. Co. v. United States*, 261 U.S. 299, 306 (1923)).

As the Court just held, "'a property owner acquires an irrevocable right to just compensation immediately upon a taking' '[b]ecause of "the self-executing character" of the Takings Clause "with respect to compensation."' *DeVillier v. Texas*, 601 U.S. 285 (2024) (quoting *Knick v. Township of Scott, Pa*., 588 U.S.180, 192 (2019) (quoting *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles*, 482 U. S. 304, 315 (1987)).

In sum, there is no basis for concluding, as the Ninth Circuit did, that a state's public use of unclaimed private property is not a taking that requires just compensation under the Takings Clause of the Fifth Amendment. This Court should resolve the circuit split by reversing the Ninth Circuit's contrary conclusion.

CONCLUSION

This Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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