

Nos. 19-1279 and 19-1285

In the Supreme Court of the United States

JAKE LATURNER, KANSAS STATE TREASURER,
PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ANDREA LEA, ARKANSAS STATE AUDITOR,
PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

*ON PETITIONS FOR WRITS OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT*

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

Congress authorized the U.S. Department of the Treasury (Treasury) to establish the terms and conditions of the U.S. savings-bond program, under which Treasury sells savings bonds to raise revenue for the federal government. 31 U.S.C. 3105(c). Treasury's regulations do not impose any time limit for bond owners to redeem their bonds, which never expire. The owners may redeem the bonds at any time by presenting the physical bonds for payment.

Kansas and Arkansas enacted state laws deeming a U.S. savings bond to be abandoned property if the owner does not redeem the bond within five years after it matures. Those States also enacted laws providing that such a bond shall escheat to the State two or three years after becoming abandoned property. Based on those laws, the States claimed title to an unknown number of absent bonds—*i.e.*, bonds not in their possession. After Treasury denied their requests to redeem those bonds, the States brought these actions, alleging that they are the rightful owners of the bonds and are entitled to payment. The questions presented are as follows:

1. Whether federal law preempts the state laws on which Kansas and Arkansas relied in claiming ownership of the absent bonds.
2. Whether, if the States are the rightful owners of the absent bonds, they can redeem the bonds without the physical bonds or the bonds' serial numbers.
3. Whether, if the States are the rightful owners of the absent bonds, Treasury's regulations effect a Fifth Amendment taking.

(I)

ADDITIONAL RELATED PROCEEDINGS

United States Court of Federal Claims:

LaTurner v. United States, No. 13-cv-1011 (Dec. 1, 2017)

Lea v. United States, No. 16-cv-43 (Dec. 1, 2017)

United States Court of Appeals (Fed. Cir.):

LaTurner v. United States, No. 18-1509 (Aug. 13, 2019), petition for reh'g denied (Dec. 11, 2019)

Lea v. United States, No. 18-1510 (Aug. 13, 2019), petition for reh'g denied (Dec. 11, 2019)

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OPINIONS BELOW

The opinion of the court of appeals (*LaTurner* Pet. App. 1a-23a; *Lea* Pet. App. 1a-22a¹) is reported at 933

¹ References to “*LaTurner* Pet.” and “*LaTurner* Pet. App.” are to the petition for a writ of certiorari and the appendix to the petition in No. 19-1279. References to “*Lea* Pet.” and “*Lea* Pet. App.”

(1)

F.3d 1354. The opinions of the Court of Federal Claims (*LaTurner* Pet. App. 34a-100a; *Lea* Pet. App. 23a-57a) are reported at 133 Fed. Cl. 47 and 132 Fed. Cl. 705.

JURISDICTION

The judgment of the court of appeals was entered on August 13, 2019. Petitions for rehearing were denied on December 11, 2019 (*LaTurner* Pet. App. 141a-142a; *Lea* Pet. App. 87a-88a). On February 26, 2020, the Chief Justice extended the time within which to file a petition for a writ of certiorari in No. 19-1279 to and including May 8, 2020, and the petition was filed on that date. On March 2, 2020, the Chief Justice extended the time within which to file a petition for a writ of certiorari in No. 19-1285 to and including May 8, 2020, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Constitution empowers Congress “[t]o borrow Money on the credit of the United States.” U.S. Const. Art. I, § 8, Cl. 2. Exercising that power, Congress has “authorized the Secretary of the Treasury, with the approval of the President, to issue savings bonds in such form and under such conditions as he may from time to time prescribe.” *Free v. Bland*, 369 U.S. 663, 667 (1962); see 31 U.S.C. 3105. Pursuant to that authority, the U.S. Department of the Treasury (Treasury) has issued several series of savings bonds (*e.g.*, Series E).

A U.S. savings bond is a contract between the United States and the bond owner, and regulations promulgated by Treasury are incorporated by reference into the bond

are to the petition for a writ of certiorari and the appendix to the petition in No. 19-1285.

contract. *LaTurner* Pet. App. 2a-3a; see 31 U.S.C. 3105(c) (authorizing Treasury to establish the terms and conditions that govern the U.S. savings-bond program). Under those regulations, U.S. savings bonds are “issued only in registered form,” to owners named on the bonds. 31 C.F.R. 315.5(a) (2014). U.S. savings bonds “are not transferable and are payable only to the owners named on the bonds,” except as specifically provided in the regulations. 31 C.F.R. 315.15 (2014).

To redeem a U.S. savings bond, the owner generally must present the physical bond to Treasury for payment. 31 C.F.R. 315.39(a) (2014). Treasury’s regulations recognize an exception to that requirement when a bond has been lost, stolen, or destroyed. 31 C.F.R. 315.25 (2014). To invoke that exception, a claimant must present “satisfactory evidence” of the bond’s “loss, theft, or destruction,” and “[i]n all cases the savings bond must be identified by serial number.” *Ibid.* “If the bond serial number is not known, the claimant must provide sufficient information to enable [Treasury] to identify the bond by serial number.” 31 C.F.R. 315.26(b) (2014). “No claim filed six years or more after the final maturity of a savings bond will be entertained, unless the claimant supplies the serial number of the bond.” 31 C.F.R. 315.29(c) (2014).

Congress has authorized Treasury to “prescribe regulations providing that *** owners of savings bonds may keep the bonds after maturity or after a period beyond maturity during which the bonds have earned interest and continue to earn interest.” 31 U.S.C. 3105(b)(2)(A). Pursuant to that authority, Treasury’s regulations allow bond owners to keep their bonds after maturity, and the regulations impose no time limit on when owners must redeem their bonds. See, *e.g.*, 31 C.F.R. 315.35(c)

(2014) (“A series E bond will be paid at any time after two months from issue date at the appropriate redemption value.”).

Millions of outstanding savings bonds have matured but have not yet been redeemed. The proceeds from those bonds are not considered “unclaimed” under federal law because “th[o]se moneys are currently payable to the rightful owners upon presentation of a proper claim and without any time limitation.” U.S. Gen. Accounting Office (GAO), GAO/AFMD-89-44, *Unclaimed Money: Proposals for Transferring Unclaimed Funds to States* 17 (1989) (C.A. App. 431). In 1989, the GAO reported to Congress that Treasury was receiving claims amounting to \$7000 to \$10,000 each day for bonds that had matured many years earlier. *Id.* at 23 (C.A. App. 437). In 2004, Treasury informed various States that it had contacted approximately 25,000 owners of matured but unredeemed bonds, and that 90% of those owners had the bonds in their possession. C.A. App. 507-522.

2. The State of Kansas has enacted two statutory provisions that are relevant here. The first provides that, if a U.S. savings bond is not redeemed within five years after maturity, the bond is “presumed abandoned” and becomes “unclaimed” property. Kan. Stat. Ann. § 58-3935(a)(16) (2013). The second provides that “United States savings bonds * * * shall escheat to the state of Kansas three years after becoming unclaimed property.” *Id.* § 58-3979(a).

The State of Arkansas has enacted two similar statutory provisions. The first states that a U.S. savings bond “is presumed abandoned if the savings bond remains unclaimed for five (5) years after the date of maturity,” Ark. Code Ann. § 18-28-231(a) (2015), while the

second provides that a “United States savings bond shall escheat to the state two (2) years after becoming abandoned property,” *id.* § 18-28-231(b).

In 2013, pursuant to Kan. Stat. Ann. §§ 58-3935 and 58-3979 (2013), the Kansas state treasurer obtained a state-court judgment that purported to give Kansas title to certain “abandoned and unclaimed” U.S. savings bonds registered to owners with last-known addresses in Kansas. C.A. App. 251; see *id.* at 244-252. In 2015, pursuant to Ark. Code Ann. § 18-28-231 (2015), the Arkansas state auditor obtained a similar state-court judgment that purported to give Arkansas title to certain “abandoned” U.S. savings bonds that were registered to owners with last-known addresses in Arkansas. *Lea* Pet. App. 135a; see *id.* at 120a-136a.

Each state-court judgment encompassed “absent” bonds—bonds not in the State’s possession. *LaTurner* Pet. App. 7a; see *id.* at 5a-6a. The judgments did not identify, either by serial number or by the name of the original owners, the particular absent bonds that had escheated to the States. See *Lea* Pet. App. 123a-124a, 134a-136a; C.A. App. 246, 251-252. Rather, the state-court judgments purported to give the States title to all absent bonds that were “unredeemed,” “sufficiently past maturity,” and “registered to owners with last known addresses in Kansas or Arkansas.” *LaTurner* Pet. App. 5a; see *Lea* Pet. App. 136a; C.A. App. 251-252.

Kansas and Arkansas then sought to redeem those absent U.S. savings bonds, arguing that the state-court judgments had made the States the bonds’ owners. C.A. App. 337, 1246. Treasury denied the requests. *LaTurner* Pet. App. 6a. The agency explained that, “[u]nless some exception or waiver in [its] regulations applies, Treasury is only authorized to redeem a savings bond to the

registered owner,” who retains the right to redeem the bond “at any time, even after maturity.” C.A. App. 368-369; see *id.* at 1287-1294.

3. Kansas and Arkansas brought separate suits for damages against the United States under the Tucker Act, 28 U.S.C. 1491, alleging that Treasury’s denial of their requests to redeem the absent bonds constituted a breach of the contract underlying each bond and a taking of property without just compensation in violation of the Fifth Amendment. See C.A. App. 141-144, 155; *Lea* Pet. App. 112a-113a, 115a-116a. Kansas estimated the value of the absent bonds at issue in its suit to be more than \$151.8 million, C.A. App. 143, while Arkansas at one point estimated the value of the absent bonds at issue in its suit to be \$160 million, *LaTurner* Pet. App. 6a.

The Court of Federal Claims (CFC) granted Kansas’s motion for partial summary judgment on liability. *LaTurner* Pet. App. 35a-100a. The court held that “Kansas is the owner of the absent bonds” and that “Treasury’s refusal to recognize Kansas’s ownership of the bonds is a breach of contract.” *Id.* at 72a. The court rejected the government’s contention that Treasury’s regulations preempted the state law on which Kansas’s ownership claim rested. *Id.* at 84a. The CFC further held that Kansas “is entitled to receive from the government the information necessary to allow it to make a request to redeem the bonds,” *id.* at 100a, “including the serial numbers of the absent bonds, or the names of their original owners,” *id.* at 83a. The court stated that, with such information in hand, Kansas may be able to show that the bonds have been “lost” and thus be able to redeem the bonds without producing the bonds themselves. *Ibid.*; see *id.* at 72a.

The CFC granted Arkansas's motion for partial summary judgment on the same grounds. *Lea* Pet. App. 23a-57a. The court then certified its order in each case for interlocutory appeal under 28 U.S.C. 1292(d)(2). *LaTurner* Pet. App. 24a-33a; *Lea* Pet. App. 58a-63a. The court of appeals permitted the appeals and consolidated them. 18-1509 C.A. Doc. 1-2, at 5 (Feb. 2, 2018).

4. The court of appeals reversed. *LaTurner* Pet. App. 1a-23a; *Lea* Pet. App. 1a-22a.

The court of appeals held that the States cannot redeem the absent bonds "for two independent reasons." *LaTurner* Pet. App. 2a. First, the court held that "federal law preempts the States' escheat laws." *Ibid.* The court explained that, whereas "Treasury regulations impose no time limit on the redemption of savings bonds," *id.* at 10a, the States' laws provide that, "if bond holders do not redeem their bonds promptly enough (as decided by the States), they lose ownership and the bonds will transfer to the state," *id.* at 11a. The court determined that, because "the federal law takes precedence," *ibid.* (citation omitted), "the bonds belong to the original bond owners, not the States, and thus the States cannot redeem the bonds," *id.* at 2a.

Second, the court of appeals held that, "even if the States owned the bonds, they could not obtain any greater rights than the original bond owners, and, under Federal law, 31 C.F.R. § 315.29(c), a bond owner must provide the serial number to redeem bonds six years or more past maturity, which includes all bonds at issue here." *LaTurner* Pet. App. 2a. The court observed that "the States do not have the physical bonds or the bond serial numbers." *Ibid.* The court therefore determined that, "even if the bonds here are considered lost," *id.* at 17a, "Treasury properly denied [the States']

request for redemption,” *id.* at 2a. The court further concluded that “requiring the government to disclose the bond serial numbers as a matter of discovery would impermissibly circumvent the requirement in 31 C.F.R. § 315.29(c) that the bond owner provide the serial number to redeem a bond six or more years past maturity.” *Id.* at 20a.

The court of appeals also rejected the States’ assertion that “Treasury’s denial of their redemption requests was a ‘taking’ of their property,” in violation of the Fifth Amendment. *LaTurner* Pet. App. 22a. The court explained that “[t]he States simply do not have a property interest in the bonds, and, even if they did, they can have no greater property interest than the original owners.” *Id.* at 23a. The court therefore held that “no property interest of the States has been impaired.” *Ibid.*

5. The court of appeals denied the States’ petitions for rehearing en banc. *LaTurner* Pet. App. 141a-142a; *Lea* Pet. App. 87a-88a.

6. After the States submitted their redemption requests to Treasury, Treasury amended its regulations through notice-and-comment rulemaking to clarify that it “will not recognize an escheat judgment that purports to vest a State with title to a bond that the State does not possess.” 31 C.F.R. 315.88(a) (2019); see 31 C.F.R. 315.20(b) (2019); 80 Fed. Reg. 80,258, 80,265 (Dec. 24, 2015). In a separate suit filed in federal district court, Kansas and four other States challenged the amended regulations under the Administrative Procedure Act, 5 U.S.C. 701 *et seq.*, as an allegedly unjustified departure from Treasury’s past practice. See *Estes v. U.S. Dep’t of the Treasury*, 219 F. Supp. 3d 17, 22 (D.D.C.

2016). The district court rejected that challenge, finding that the regulations clarified rather than changed Treasury’s practice. *Ibid.* The States appealed to the D.C. Circuit, but they voluntarily dismissed that appeal after the federal government filed its brief. See 17-5015 C.A. Order 1 (Nov. 21, 2017).

ARGUMENT

The States contend that they are the rightful owners of the U.S. savings bonds at issue here, and that they are entitled to redeem those bonds even though they do not possess the physical bonds or the bonds’ serial numbers. *LaTurner* Pet. 20-29; *Lea* Pet. 13-26. In addition, Arkansas contends that Treasury’s regulations effect an uncompensated taking of property, in violation of the Fifth Amendment. *Lea* Pet. 27-30. Those arguments lack merit, and the Federal Circuit’s decision does not conflict with any decision of this Court or another court of appeals. In any event, the decision below lacks prospective significance because Treasury amended its regulations in 2015 to clarify that it will not entertain redemption requests of the type made here, which involve bonds that are not in a State’s possession. The petitions for writs of certiorari should be denied.

1. The States challenge the court of appeals’ holding that federal law preempts the state laws on which they relied in claiming ownership of the absent U.S. savings bonds at issue here. *LaTurner* Pet. 20-26; *Lea* Pet. 13-24. That argument lacks merit and does not warrant this Court’s review.

a. Federal regulations governing the U.S. savings-bond program preempt inconsistent state laws. In *Free v. Bland*, 369 U.S. 663 (1962), for example, the Court held that “Treasury Regulations creating a right of survivorship in United States Savings Bonds pre-empt any

inconsistent [state] community property law by virtue of the Supremacy Clause.” *Id.* at 664; see U.S. Const. Art. VI, Cl. 2 (providing that the laws of the United States “shall be the supreme Law of the Land; * * * any Thing in the Constitution or Laws of any State to the Contrary notwithstanding”); *City of New York v. FCC*, 486 U.S. 57, 64 (1988) (“The statutorily authorized regulations of an agency will pre-empt any state or local law that conflicts with such regulations or frustrates the purposes thereof.”).

Here, in obtaining state-court judgments that purported to give them title to certain U.S. savings bonds not in their possession, the States relied on state laws that deem those bonds abandoned or unclaimed merely because their owners have not redeemed the bonds within a certain period after maturity. See Ark. Code Ann. § 18-28-231(a)-(b) (2015); Kan. Stat. Ann. §§ 58-3935, 58-3979 (2013). Treasury’s regulations, by contrast, allow bond owners to redeem their U.S. savings bonds at any time after maturity. See, e.g., 31 C.F.R. 315.35(c) (2014) (“A series E bond will be paid at any time after two months from issue date at the appropriate redemption value.”); see also 31 U.S.C. 3105(b)(2)(A) (authorizing Treasury to “prescribe regulations providing that * * * owners of savings bonds may keep the bonds after maturity”). Under those regulations, a bond is not considered abandoned or unclaimed merely because its owner has not redeemed it within a certain time.

The court of appeals thus correctly held that the States’ laws conflict with Treasury’s regulations. *La-Turner* Pet. App. 10a-11a. And because the regulations preempt the States’ inconsistent laws, the States cannot rely on those laws to deem the bonds at issue here aban-

doned or unclaimed and therefore subject to escheatment. Accordingly, “the bonds belong to the original bond owners, not the States,” and “the States cannot redeem the bonds.” *Id.* at 2a.

b. The States’ counterarguments lack merit. Kansas contends that the court of appeals applied “a far less demanding” test of preemption than this Court’s decisions prescribe. *LaTurner* Pet. 21. But in finding the States’ laws preempted, the court of appeals applied the same conflict-preemption principles that this Court has applied in *Free* and other decisions. See *LaTurner* Pet. App. 8a-9a. Under those principles, “any state law, however clearly within a State’s acknowledged power, which interferes with or is contrary to federal law, must yield.” *Free*, 369 U.S. at 666; see *Murphy v. National Collegiate Athletic Ass’n*, 138 S. Ct. 1461, 1476 (2018) (explaining that, “when federal and state law conflict, federal law prevails and state law is preempted”).

The States contend that the court of appeals disregarded the “assumption that the historic police powers of the States are not to be superseded by federal law unless that was the clear and manifest purpose of Congress.” *Lea* Pet. 23 (brackets and citations omitted); see *LaTurner* Pet. 21. But one way in which “[s]uch a purpose may be evidenced” is when “state policy * * * produce[s] a result inconsistent with the objective of the federal statute.” *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947). That is the case here. The States’ laws provide that, “if bond holders do not redeem their bonds promptly enough (as decided by the States), they lose ownership and the bonds will transfer to the state.” *LaTurner* Pet. App. 11a. That result is inconsistent with the objective of the federal statute and regulations, which provide that “owners of savings bonds may keep

the bonds after maturity.” 31 U.S.C. 3105(b)(2)(A); see, *e.g.*, 31 C.F.R. 315.35(c) (2014).

Kansas argues that the States’ laws do not conflict with federal law because, in Kansas’s view, the States’ laws determine “the *identity* of the bond owner, and not the time period within which the bond owner may redeem [the bond].” *LaTurner* Pet. 22 (citation omitted). But to the extent that the States’ laws determine “the identity of the bond owner,” *ibid.* (citation and emphasis omitted), they do so only by deeming a bond abandoned or unclaimed, thus authorizing a transfer of ownership to the State, when the original owner does not redeem the bond within a certain time, see pp. 4-5, *supra*. The States’ laws therefore do affect “the time period within which the bond owner may redeem [the bond].” *LaTurner* Pet. 22 (citation omitted).

Arkansas disputes the existence of a conflict between federal and state law, arguing that 31 C.F.R. 315.20(b) (2014) required Treasury “to recognize a transfer of ownership effected by * * * a valid judgment of escheatment” like the one each State obtained here. *Lea* Pet. 14. The court of appeals correctly rejected that argument. *LaTurner* Pet. App. 11a-15a. The version of Section 315.20(b) in effect here provided that Treasury “will recognize a claim against an owner of a savings bond * * * , if established by valid, judicial proceedings, but only as specifically provided in this subpart”—namely, Subpart E of 31 C.F.R. Part 315. 31 C.F.R. 315.20(b) (2014). The only judicial proceedings specifically referenced in that subpart were those for bankruptcy, divorce, and a gift causa mortis (*i.e.*, a gift made in contemplation of impending death). 31 C.F.R. 315.21-315.22 (2014).

“Escheat proceedings [we]re not mentioned.” *LaTurner* Pet. App. 14a. Thus, even before Treasury amended Section 315.20(b) to explicitly exclude escheat proceedings, see 80 Fed. Reg. at 80,264, such proceedings were not among the “judicial proceedings” that could transfer ownership under Section 315.20(b). And even if the term “judicial proceedings” in Section 315.20(b) encompassed escheat proceedings, Section 315.20(b) applies only to “valid” judicial proceedings, 31 C.F.R. 315.20(b) (2014), and the escheat proceedings at issue here rested on state laws that are preempted by Treasury’s regulations, see pp. 9-11, *supra*.

Arkansas contends that Treasury has taken inconsistent positions on whether the agency will recognize a transfer of ownership effectuated by a state-court judgment of escheatment. *Lea* Pet. 13-20. But Treasury has never determined that a State may deem a bond abandoned or unclaimed—and therefore subject to escheatment—merely because an owner has not redeemed the bond within a certain period of time. And the States have not identified a single instance in which Treasury has permitted a State to redeem a bond that the State did not possess but claimed to own through a process of escheat. See *Estes v. U.S. Dep’t of the Treasury*, 219 F. Supp. 3d 17, 29 (D.D.C. 2016); *LaTurner* C.A. Br. 40-41.²

² Although the fact that an owner has not redeemed a bond within a certain time is not “evidence that the owner has relinquished a claim over the bond,” “[t]he fact that a state possesses the bond” may be evidence that “the bond has been abandoned.” 80 Fed. Reg. at 80,261. Treasury therefore has permitted States to redeem escheated bonds in certain circumstances in which the States have both possession of and title to the bonds. See *LaTurner* Pet. App. 6a n.2. Treasury has done so as an exercise of its discretionary authority to waive the regulatory provisions that prohibit “transfers

As the States observe, the government’s brief in opposition to the petition for a writ of certiorari in *Director of the Department of Revenue v. Department of the Treasury*, 569 U.S. 1004 (2013) (No. 12-926), explained that, in order “to receive payment on a U.S. savings bond[,] a State must complete an escheat proceeding that satisfies due process and that awards title to the bond to the State.” *Lea* Pet. App. 176a; see *LaTurner* Pet. 8-9; *Lea* Pet. 1-2, 19-20. That brief did not state, however, that Treasury “would recognize *every* title escheat judgment” that satisfied those conditions. 80 Fed. Reg. at 80,262. It merely identified those conditions as necessary, though not sufficient, for the State to receive payment on an escheated bond.

The government argued in that brief, as it does here, that Treasury’s regulations preempt state laws that “declare the proceeds of [U.S. savings] bonds to be ‘unclaimed’ merely because ‘the registered owner has not come forward to redeem a bond at maturity.’” Br. in Opp. 15-16, *Director of the Dep’t of Revenue, supra* (No. 12-926) (citation omitted). And while *Director of the Department of Revenue* involved Treasury’s refusal to recognize a transfer of *custody* based on such laws, see *id.* at 5, nothing in Treasury’s brief suggested that a transfer of *title* based on such laws would be any less impermissible. See 80 Fed. Reg. at 80,259 (explaining that “title escheat statutes raise similar concerns” to “custody escheat statutes” because, under “title escheat

of ownership” and permit “only the registered owner [to] redeem a bond.” *Id.* at 18a n.8; see 31 C.F.R. 315.90 (2014). As amended in 2015, Treasury’s regulations provide that, under certain circumstances, Treasury “may, in its discretion, recognize an escheat judgment that purports to vest a State with title” to a U.S. savings bond that “is in the State’s possession.” 31 C.F.R. 315.88(a) (2019).

statutes,” States likewise “presume a savings bond to be abandoned if it has not been redeemed by a certain time”).

The States assert that the decision below effectively excuses the government from “honor[ing] its obligations.” *LaTurner* Pet. 5 (citation omitted); see *Lea* Pet. 3. That is incorrect. Federal law governs “the nature of the rights and obligations created by” U.S. savings bonds. *Free*, 369 U.S. at 669-670 (citation omitted). And federal law gives bond owners “the right to keep their bonds after maturity without the bonds expiring,” *LaTurner* Pet. App. 11a, while allowing the United States to make use of the revenue until a bond is redeemed, see 31 U.S.C. 3105(a). It is the States that seek to alter the terms of the U.S. savings-bond contract by depriving bond owners of their full redemption rights and the United States of its revenue. States are free to sell state bonds to raise revenue for their own operations, but they cannot demand the proceeds of the federal savings-bond program.

c. Contrary to the States’ assertion (*LaTurner* Pet. 15-20; *Lea* Pet. 31-34), the decision below does not conflict with either the Third Circuit’s decision in *Treasurer of New Jersey v. United States Department of the Treasury*, 684 F.3d 382 (2012) (New Jersey), cert. denied *sub nom. Director of the Department of Revenue v. Department of the Treasury*, 569 U.S. 1004 (2013), or the D.C. Circuit’s decision in *Arizona v. Bowsher*, 935 F.2d 332, cert. denied, 502 U.S. 981 (1991).

i. The Third Circuit’s decision in *New Jersey* supports, rather than conflicts with, the decision below. Like the state laws at issue here, the state laws at issue in *New Jersey* deemed U.S. savings bonds to be “abandoned” if the owners failed to redeem them within a

specified time. 684 F.3d at 407. And like the court of appeals in this case, the Third Circuit in *New Jersey* held that federal law preempted those state laws. *Id.* at 409. The Third Circuit explained that, under federal law, “the owners of the bonds may redeem them at any time after they mature.” *Ibid.* The court therefore concluded that the “States’ efforts to impose the status of ‘abandoned’ or ‘unclaimed’ on the Federal Government’s obligations” conflicted with federal law. *Ibid.*

As the States emphasize (e.g., *LaTurner* Pet. 3), the court in *New Jersey* noted a potential distinction between the state law at issue there, through which the States sought to take “custody” of the absent bonds, and an escheat law that would allow a State to take “title.” 684 F.3d at 413. But the *New Jersey* court did not hold that a title-based escheat law would actually be treated differently for preemption purposes. Rather, the court explained that, because it was not “confronted with a judgment of escheat under a title-based escheat act,” it had no occasion to decide whether a title-based law would be preempted. *Id.* at 413 n.28; see *LaTurner* Pet. App. 5a (explaining that the Third Circuit in *New Jersey* “did not reach” the precise question that is presented in this case). The Third Circuit’s mere reservation of that question does not conflict with the decision below.

Regardless of whether custody or title is ultimately transferred, the theory of escheatment rests on the same premise: that state law deems a bond abandoned or unclaimed if its owner has not redeemed it within a specified time. The Third Circuit in *New Jersey* found such a state law preempted, see 684 F.3d at 407, 409, and the court of appeals reached the same conclusion here. The Third Circuit’s decision thus supports rather than undermines the ruling below.

ii. The decision below likewise does not conflict with the D.C. Circuit's decision in *Bowsher*. *Bowsher* involved 31 U.S.C. 1322, which required Treasury to deposit specified types of unclaimed federal debts (such as funds owed to federal prisoners or Indian Tribes) into a federal trust account for unclaimed property. 935 F.2d at 333-334. The D.C. Circuit held that the federal statute preempted state unclaimed-property laws that purported to give States custody of such funds. *Id.* at 334-335. To the extent that the D.C. Circuit addressed the possibility of escheatment of the right to the unclaimed debts, the court stated that "escheat of the claimant's right might well substitute the state for the claimant and entitle it to payment," and that "nothing" in the court's decision "prevents state substitution for the claimant where that is consistent with § 1322 and other relevant federal statutes." *Id.* at 335.

Bowsher thus involved Section 1322, not the U.S. savings-bond program. And it addressed escheatment only in dicta, without resolving when "state substitution for the claimant" might be "consistent with * * * relevant federal statutes." 935 F.2d at 335. *Bowsher* did not address the question whether treating unredeemed savings bonds as abandoned would conflict with federal law, and the D.C. Circuit's finding of preemption in that case does not conflict with the court of appeals' finding of preemption here.

2. The States also challenge the court of appeals' holding that, even if the States were the rightful owners of the absent U.S. savings bonds, the States could not redeem those bonds because they do not have the physical bonds or the bonds' serial numbers. *LaTurner* Pet.

26-29; *Lea* Pet. 24-26. That independent ground for denying the States' redemption requests likewise does not warrant this Court's review.

a. To redeem a U.S. savings bond, the owner generally must present the physical bond to Treasury for payment. 31 C.F.R. 315.39(a) (2014). An owner who does not have the physical bond may still redeem the bond if he presents "satisfactory evidence" that the bond has been "los[t]," and if the bond can "be identified by serial number." 31 C.F.R. 315.25 (2014). "No claim filed six years or more after the final maturity of a savings bond will be entertained, unless the claimant supplies the serial number of the bond." 31 C.F.R. 315.29(c) (2014).

The bonds at issue here are not in the States' possession, and all of them are more than six years past maturity. *LaTurner* Pet. App. 16a. Thus, even if the States could show that those bonds have been lost, Section 315.29(c) would require them to "suppl[y] the serial number" of each bond they wish to redeem. 31 C.F.R. 315.29(c) (2014). Because the States cannot satisfy that requirement, the court of appeals correctly held that they could not redeem the bonds at issue even if they had validly acquired title to those bonds. *LaTurner* Pet. App. 17a.

The States do not contend that this alternative holding conflicts with any decision of this Court or another court of appeals. Rather, Kansas asserts that the court of appeals' holding was "premature" because, "[a]s the case reached the Federal Circuit, the parties had briefed, and the [CFC] had decided, only the question whether the plaintiff States could take title ownership of the savings bonds." *LaTurner* Pet. 27. The CFC, however, also had decided that the government was required to provide the States "the serial numbers of the

absent bonds.” *LaTurner* Pet. App. 83a; see *id.* at 100a; *Lea* Pet. App. 48a, 57a. And in reviewing that holding, the court of appeals appropriately considered whether Treasury’s regulations instead place the burden of supplying the serial numbers on the States. Kansas contends that the court of appeals should not have addressed that question without “discovery into how § 315.29(c) is applied in practice.” *LaTurner* Pet. 29. But no discovery is necessary to determine Section 315.29(c)’s meaning, which its text makes plain.

The States further contend that, even if Section 315.29(c) requires them to supply the serial number of each bond, Treasury should be required to help them to do so, by providing the serial numbers to the States. *LaTurner* Pet. 29; see *Lea* Pet. 26. Imposing that requirement on Treasury, however, would turn Section 315.29(c) on its head. Section 315.29(c) requires “the claimant,” not Treasury, to “suppl[y] the serial number of the bond.” 31 C.F.R. 315.29(c) (2014). And the regulation does so to “protect[] Treasury against the extraordinary cost and burden of locating bonds without the bond serial number.” C.A. App. 817.

In Kansas’s case, for example, Treasury projected that locating the serial numbers of absent bonds would require manually searching approximately 3.8 billion savings-bond records, at an estimated cost exceeding \$100 million and a level of effort exceeding 2000 years of employee time. C.A. App. 817. The burden on the federal agency would be especially onerous because the States have not identified, in any particularized way, the absent savings bonds that they believe have escheated to them. Rather, they have sought to impose on Treasury the task of determining which of the many millions of outstanding U.S. savings bonds satisfy the

relevant state-law criteria—*i.e.*, which bonds “were sufficiently past maturity and were registered to owners with last known addresses in Kansas or Arkansas.” *La-Turner* Pet. App. 5a. Accepting the States’ contention would require Treasury to endure an extreme version of the burdens that Section 315.29(c) was meant to avoid. *Id.* at 20a.

Arkansas’s remaining arguments likewise lack merit. Arkansas contends that, if it obtained ownership of the bonds pursuant to valid judicial proceedings under Section 315.20, it need not comply with “[t]he ordinary Treasury rules governing the presentation and redemption of bonds.” *Lea* Pet. 24. The court of appeals correctly found “no basis for th[at] contention in the regulations.” *LaTurner* Pet. App. 17a. Even if Section 315.20 encompassed the state-law escheatment proceeding that Arkansas invoked, so that the State validly acquired title to the absent bonds, Arkansas would still be subject to “the general requirements for redeeming a bond—such as presenting the physical bond, or, if the bond is lost, providing the serial number.” *Id.* at 18a.

Arkansas also contends that the “duty of good faith and fair dealing,” which is “implied in every Government contract,” requires the government to provide the serial numbers of the bonds to the States. *Lea* Pet. 26. But “the ‘implied duty of good faith and fair dealing cannot expand a party’s contractual duties beyond those in the express contract or create duties inconsistent with the contract’s provisions.’” *LaTurner* Pet. App. 18a n.8 (citation omitted). As explained above, requiring the government to provide the serial numbers to the States would be inconsistent with Section 315.29(c), which is incorporated by reference into the U.S. savings-bond

contract. The court of appeals therefore correctly rejected Arkansas's reliance on the implied duty of good faith and fair dealing. *Ibid.*

b. Although the court of appeals did not reach the question, see *LaTurner* Pet. App. 17a, the States' failure to show that the bonds at issue here were "lost" is an independent barrier to the States' current attempt to redeem them. The pertinent regulatory provision applies only to "the loss *** of a bond after receipt by the owner," and it requires the claimant to submit "satisfactory evidence" of such loss. 31 C.F.R. 315.25 (2014). The States did not submit such evidence here.

The States argue that, as a matter of state law, the bonds at issue here should be presumed abandoned by their original owners. But the bonds may well be in the possession of those owners and therefore not lost. See C.A. App. 507-508 (reporting that Treasury had contacted approximately 25,000 owners of matured but unredeemed bonds, and that 90% of the owners had the bonds in their possession). And because the States have not presented satisfactory evidence that the bonds have been lost, the States cannot redeem the bonds unless they present the physical bonds for payment, 31 C.F.R. 315.39(a) (2014)—which the States are unable to do. For that reason as well, Treasury correctly denied the States' redemption requests.

3. Arkansas contends that the interpretation of Treasury's regulations adopted by the court of appeals in its alternative holding effects an uncompensated taking of Arkansas's property, in violation of the Fifth Amendment. *Lea* Pet. 27-30. Arkansas argues that the court's alternative holding effects such a taking because it means that Arkansas may "never" redeem the bonds at issue, even if Arkansas owns them. *Id.* at 27. But the

court did not hold that Arkansas may “never” redeem its bonds. *Ibid.* Rather, it held that, even if Arkansas is the bonds’ owner, it may redeem the bonds only on the same terms as the original bond owners. The States have acknowledged that “they can have no greater property interest than the original owners.” *LaTurner* Pet. App. 23a; see *id.* at 15a. Because the original owners would be required to supply the serial numbers of any bonds they had lost, the States must do the same. 31 C.F.R. 315.29(c) (2014).

Arkansas argues that the court of appeals’ “alternative holding amounts to a taking not because States like Arkansas have any greater *rights* than the original owners but because Treasury’s regime imposes a unique *burden*” on States. *Lea* Pet. 29. That argument is mistaken. Treasury’s regime simply requires the States, like any other bond owner, to “suppl[y] the serial number of [a] bond” that is six years or more past maturity. 31 C.F.R. 315.29(c) (2014). To be sure, a State that has acquired ownership of an absent bond through escheatment (assuming that is permissible) may have greater difficulty supplying its serial number than will the original owner of the bond. See *Lea* Pet. 29. But that fact does not give the States any constitutional claim to an exemption from a requirement that applies to bond owners generally. The court of appeals therefore correctly rejected Arkansas’s takings argument, and its decision does not conflict with any decision of this Court or another court of appeals.³

³ Contrary to Arkansas’s assertion (*Lea* Pet. 30), the federal government has not impeded state efforts to inform bond owners of their right to redeem U.S. savings bonds. States are free “through advertising and other methods to persuade their citizens to redeem savings bonds that have matured.” 80 Fed. Reg. at 80,260. Unlike

4. Further review is unwarranted for the additional reason that the decision below lacks prospective significance. In 2015, Treasury amended its regulations to clarify that it will not consider redemption requests of the type at issue here. See 80 Fed. Reg. at 80,258-80,265. The amended regulations state that “[e]scheat proceedings will not be recognized” as “valid, judicial proceedings” under Section 315.20(b). 31 C.F.R. 315.20(b) (2019). The amended regulations further provide that, although Treasury retains “discretion” to “recognize an escheat judgment” under certain circumstances, Treasury “will not recognize an escheat judgment that purports to vest a State with title to a bond that the State does not possess.” 31 C.F.R. 315.88(a) (2019).

Kansas and other States challenged the amended regulations in federal district court, but the court rejected that challenge, and the States subsequently dismissed their appeal to the D.C. Circuit. See pp. 8-9, *supra*. The amended regulations went into effect on December 24, 2015, see 80 Fed. Reg. at 80,258, and they govern any redemption request that is submitted to Treasury after that date.

The amended regulations deprive the questions presented here of prospective significance. The first question presented concerns whether States may invoke escheatment proceedings to obtain ownership of bonds not in their possession, but the amended regulations make clear that they may not. See 31 C.F.R. 315.20(b), 315.88(a) (2019). And because the second and third questions presented arise only if the States are the rightful owners of such bonds, the amended regulations likewise

the States’ current attempts to acquire title to purportedly abandoned bonds, “[t]hese efforts can continue without impairing a bond owner’s title and rights under the savings bond contract.” *Ibid.*

deprive those questions of continuing importance. The questions presented therefore do not warrant this Court's review.

CONCLUSION

The petitions for writs of certiorari should be denied.
Respectfully submitted.

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