No. 25-

IN THE

Supreme Court of the United States

JAN PETERS,

Petitioner,

v.

MALIA M. COHEN, INDIVIDUALLY AND IN HER OFFICIAL CAPACITY AS STATE CONTROLLER OF THE STATE OF CALIFORNIA, AND AS TRUSTEE OF THE UNCLAIMED PROPERTY FUND,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Controller's actions under color of the California Unclaimed Property Law, Cal. Civ. Proc. Code §§ 1300, et seq. ("UPL"), violate the Due Process Clause of the Fourteenth Amendment because they deprive owners of their property without affording constitutionally adequate notice.

2. Whether the Controller's actions under color of the California UPL violate the Takings Clause of the Fifth Amendment because state employees and their commissioned private auditors seize, sell, and destroy private property without just compensation.

PARTIES TO THE PROCEEDING

Petitioner (Plaintiff-Appellant below) is Jan Peters.

Respondent (Defendant-Appellee below) is Malia M. Cohen, in her official capacity as State Controller of the State of California and as Trustee of The Unclaimed Property Fund.

RELATED CASES

Vial, et al. v. Muoio, et al., U.S. District Court District of New Jersey Case No. 24-cv-11301-RK-JBD

Garza, et al. v. Wood, et al., U.S. District Court District of Arizona, Case No. CV-22-01310-PHX-JJT; U.S. Court of Appeals Case No. 24-1064

Mousseau, et al. v. Crum, et al., U.S. District Court District of Alaska, Case No. 3:23-cv-00075-SLG; U.S. Court of Appeals Case No. 24-1802

Schramm v. Mayrack, U.S. District Court District of Delaware, Case No. 22-1443 (MN)

Vial, et al. v. Mayrack, et al., U.S. District Court District of Delaware Case No. 1:24-cv-01313-UNA

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PETITION FOR WRIT OF CERTIORARI

Petitioner Jan Peters respectfully petitions for a Writ of Certiorari to review the judgment of the U.S. Court of Appeals for the Ninth Circuit in this case.

OPINIONS BELOW

The opinion of the U.S. Court of Appeals for the Ninth Circuit dated March 7, 2025 (Pet. App. 3a-8a) is unreported.

JURISDICTION

The U.S. Court of Appeals for the Ninth Circuit issued its order denying rehearing on April 17, 2025. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides, in relevant part: "[N]or shall private property be taken for public use, without just compensation."

The Due Process Clause of the Fourteenth Amendment to the United States Constitution provides, in relevant part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

The Eleventh Amendment to the United States Constitution provides, in relevant part: "The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State, or by Citizens or Subjects of any Foreign State."

STATUTORY PROVISIONS INVOLVED

Relevant portions of California's Unclaimed Property Law, Cal. Civ. Proc. Code §§ 1300, *et seq*., are reprinted in the Appendix (Pet. App. 20a–49a).

STATEMENT

After seven conferences of the Court, on the day following the passing of Justice Antonin Scalia, two Justices addressed the California Unclaimed Property Law, Cal. Civ. Proc. Code §§ 1300, *et seq*. ("UPL") in a prior case. These Justices opinioned that "the constitutionality of current state escheat laws is a question that may merit review in a future case." *Taylor v. Yee*, 136 S. Ct. 929, 930 (2016) (Alito, J., joined by Thomas, J., concurring in the denial of certiorari). The Justices expressed their concern that states are "doing less and less to meet their constitutional obligation to" reunite property owners with their property before seeking escheatment, even as they more aggressively classify property as "abandoned." *Id.* The Justices added:

> This trend—combining shortened escheat periods with minimal notification procedures—raises important due process concerns. As advances in technology make it easier and easier to identify and locate property owners, many States appear to be doing less and less to meet their constitutional obligation to provide adequate notice before escheating private property. Cash-strapped States undoubtedly have a real interest in taking advantage of truly abandoned property to shore up state

> budgets. But they also have an obligation to return property when its owner can be located. To do that, States must employ notification procedures designed to provide the pre-escheat notice the Constitution requires.

Id.

The concerns expressed by Justice Alito, joined by Justice Thomas, were well founded, and the time has come for this Court to grant review to examine the constitutionality of California's UPL scheme. This case is the ideal vehicle for doing so.

This case presents the stark legal question of whether the government can seize private property under an unclaimed property statutory scheme without providing any notice at all. This Court should grant plenary review over this case to put constitutional limits on a California scheme which is a recipe for abuse, resulting in millions of instances of deprivation of property without due process and unconstitutional takings of property.

California has become emboldened and is now falsifying the addresses of foreign shareholders in order to seize and to sell their property as "revenue" for the State's Unclaimed Property Fund and its General Fund. In this case, Jan Peters' German address was changed from "D-80804 Munich, Germany" to "Munich, CA 00000." Notice was then mailed to the knowingly falsified address so that Mr. Peters never received it. The internal emails of the California government employees and the private auditor involved in the seizure of stock from foreign shareholders and the falsification of their addresses were produced to the lower court. The district court

and the Ninth Circuit Court of Appeals concluded that the Eleventh Amendment shields state workers and the California Controller from all claims.

The private funds generated from the unnoticed seizures and sales are "loaned," interest free, from California's Unclaimed Property Fund ("UPF"), which contains private property held in trust for the owners, to California's failing General Fund. In most instances, the loan is permanent because the property owner receives no constitutional or statutory notice of any kind. Despite this Court's admonition to California in *Taylor v. Yee*, 136 S. Ct. 929, 930 (2016)) and federal injunction issued by the Ninth Circuit panel in *Taylor v. Westly*, 488 F.3d 1197 (9th Cir. 2007) ("*Taylor II*"),[1] California accelerated the seizures to the point where the unnoticed property seizures are now the fifth largest source of revenue behind the four streams of California tax revenue.[2] Other cash-strapped states have begun to mimic this behavior.

The private property that was to be held in trust for the property owner or shareholder is now referred to as "revenue" for the financially troubled State. Three panels of the Ninth Circuit held that this "new

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[1] The link to the emergency oral argument held by the Ninth Circuit Panel in Seattle, Washington (Judges R. Beezer, A. Kleinfeld, M. Hawkins) on a federal holiday in *Taylor II* is found at: https://www.ca9.uscourts.gov/media/audio/?20060731/05-16763/.

[2] *See* Mac Taylor, *Unclaimed Property: Rethinking the State's Lost & Found Program*, LEGISLATIVE ANALYST'S OFFICE (Feb. 10, 2015), "Fifth Largest Source of General Fund Revenue" at pp. 16–17, https://lao.ca.gov/reports/2015/finance/Unclaimed-Property/unclaimed-property-021015.pdf.

form of escheatment" is unconstitutional. (*See Taylor v. Westly*, 402 F.3d 924, 933 (9th Cir. 2005) ("*Taylor I*"); *Suever v. Connell*, 439 F.3d 1142 (9th Cir. 2006) ("*Suever I*"); *Taylor II*, 488 F.3d at 1201.) But four panels of the Ninth Circuit now find the same process is lawful and that any remedies are barred by application of the Eleventh Amendment. (*See Suever v. Connell*, 579 F.3d 1047, 1059 (9th Cir. 2009) ("*Suever II*"); *Taylor v. Westly*, 780 F.3d 928 (9th Cir. 2015) ("*Taylor V*"); *Turnacliff v. Westly*, 546 F.3d 1113 (2008); *Peters v. Cohen*, No. 24-1040, 2025 U.S. App. LEXIS 5343 (9th Cir. Mar. 7, 2025).)

Most troubling, the California State courts held that the State need not comply with any express statutory notice at all because the statute, standing alone and without compliance, provides "constructive notice." (*See Fong v. Westly* (2004) 117 Cal. App. 4th 841; *Harris v. Verizon Communications., Inc.,* 84 Fed. App. 958 (9th Cir. 2003) cited with approval in *Azure Ltd. v. I-Flow Corp*., 46 Cal. 4th 1323 (2009).) Therefore, three lines of legal authority now exist in the State of California and the Ninth Circuit is divided.

Other financially troubled states have taken notice of California's "new form of escheatment" as the Hon. Judge Andrew J. Kleinfeld captioned this process. (*See Taylor I*, 402 F.3d at 931 - discussing California's "new form of escheatment.") The unconstitutional property seizure process is proliferating.

The UPL authorizes the California State Controller to appropriate the property of purportedly "unknown" persons, to auction or otherwise sell it off, and to retain the proceeds. Under this scheme, the

Controller confiscates security deposits, uncashed money orders, unused life insurance benefits, shares of stock, and even safe-deposit boxes and bank accounts if those assets lie "dormant"—i.e., with no account activity by the rightful owner—for three years. Of course, a "buy-and-hold" investment strategy like Jan Peters' pension or a valuable stock like Berkshire Hathaway which does not issue dividends will often result in a substantial period of inactivity and thus trigger a finding of "dormancy." Therefore, the State's activities harm the savings and retirement accounts of the citizens that the many laws are intended to protect.

Unless the property's rightful owner can be located, the State of California liquidates the property and uses the funds in these accounts for its own benefit. The State's Controller is not required to provide any individualized notice at all to persons whose property is less than $50 in value—only a generic notice published in a newspaper or via its broken government website. As of 2015, the State, in its last publicly available valuation of the UPL fund, estimates that over fifty percent (50%) of the UPL fund is made up of cash amounts below $50.[3] For those whose property is above the $50 threshold, the UPL scheme provides for unconstitutionally inadequate notice. As in this case, the Controller seizes private property from foreign citizens with no notice whatsoever and these citizens do not reside

[3] Mac Taylor, *Unclaimed Property: Rethinking the State's Lost & Found Program*, LEGISLATIVE ANALYST'S OFFICE (Feb. 10, 2015), at pp. 16–17, https://lao.ca.gov/reports/2015/finance/Unclaimed-Property/unclaimed-property-021015.pdf.

in California. In order to do so, the state employees falsify the foreign addresses. The Controller and its third-party auditor Verus Analytics, LLC ("Verus") changed the owner Jan Peters' German address at "D-80804 Munich, Germany" to "Munich, CA 00000." Notice was then mailed by the state employees to the knowingly false address so that the German owner never received it.

Since the inception of the first *Taylor* case, the California Unclaimed Property Fund has grown from 5 million accounts to 76 million accounts belonging to citizens residing in California, Germany, France, England, the United Kingdom, other foreign countries and states. Under this scheme, tens of millions of persons are deemed to be "unknown" to the State of California, including LeBron James, former House Speaker Nancy Pelosi, former Governor Arnold Schwarzenegger, and former Presidents George W. Bush and Barack Obama.

Tellingly, when California seeks to locate the same citizens to force them to pay amounts that are due and owing, it is quick to resort to the Department of Motor Vehicles ("DMV") database and other readily available sources of information. Yet when it comes time to seize property under the UPL, the State is inexplicably unable to find millions of its own citizens and numerous persons of global renown and thus deems those same property owners "unknown." Millions of citizens are listed anonymously on the Controller's broken website as "Owner Unknown." The same government databases that are used to collect amounts owed on parking tickets, taxes, government fines and penalties, and even used by the Controller to verify the identity of the owners and to determine whether they may later – post seizure -

reclaim the property under this UPL scheme but are not used to provide notice to return this unclaimed private property.

In 2007, the Ninth Circuit rejected the State's defense of the UPL scheme and opined that it did not comply with the "requirement that notice be given *before* an individual's control of his property is disturbed." *Taylor v. Westly*, 488 F.3d 1197, 1201 (9th Cir. 2007) (*Taylor II*) (emphasis added). Following the Ninth Circuit's ruling in *Taylor II*, the federal district court issued a preliminary injunction against the application of this scheme. (*See Taylor*, 2007 WL 1628050, at *2.)

But the State effectively evaded and lifted the injunction with a verbal promise made by counsel in open court that the conduct would stop and by re-enacting the UPL and papering over its unconstitutional provisions.

Since then, California reverted to the pre-injunction conduct and has continued to seize billions of dollars' worth of private property. The private audit companies that administer the scheme have reaped hundreds of millions of dollars in commissions and fees. The federal injunction issued in the wake of *Taylor II* was rendered meaningless.

In 2009, another panel of the Ninth Circuit in *Suever II*, 579 F.3d 1047 reversed the reasoning of the four panels of the Ninth Circuit in *Taylor v. Westly*, 402 F.3d 924, 926 (9th Cir. 2005), reh'g and reh'g en banc denied (May 13, 2005) ("*Taylor I*") (Eleventh Amendment did not bar due process clam); *Suever I*, 579 F.3d 1047; *Taylor II*, 488 F.3d 1197; *Taylor v. Westly*, 525 F.3d 1288, 1291 (9th Cir. May 12, 2008) ("*Taylor III*") (awarding interim legal fees) to find that

California's unnoticed property seizure program is constitutional and that California may use the $13 Billion in private funds as a free "no interest" loan to its bankrupt General Fund. These unnoticed property seizures under color of the UPL are now the fifth largest source of revenue behind the State's tax revenue streams.[4]

A. Background

As this Court recognized more than 64 years ago, "rapidly multiplying State escheat laws, originally applying only to land and other tangible things," have "mov[ed] into the elusive and wide-ranging field of intangible transactions." *W. Union Tel. Co. v. Pennsylvania*, 368 U.S. 71, 79 (1961). According to California's Controller, today the most common forms of unclaimed property are bank accounts and safe deposit box contents; stocks, mutual funds, bonds, and dividends; uncashed cashier's checks and money orders; certificates of deposit; matured or terminated insurance policies; estates; mineral interests and royalty payments; trust funds and escrow accounts; and utility account deposits.[5]

Following California's "new form of escheatment" the Unclaimed property statutes have become significant sources of state revenue nationwide, as illustrated by the recent dispute over escheatment

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[4] Mac Taylor, *Unclaimed Property: Rethinking the State's Lost & Found Program*, LEGISLATIVE ANALYST'S OFFICE (Feb. 10, 2015), at pp. 16–17, https://lao.ca.gov/reports/2015/finance/Unclaimed-Property/unclaimed-property-021015.pdf.

[5] CALIFORNIA STATE CONTROLLER, *About Unclaimed Property*, found at (last visited June 3, 2023): https://www.sco.ca.gov/upd_about_unclaimed_property.html.

proceeds before this Court in *Delaware v. Pennsylvania*, 143 S. Ct. 696, 707 n.7 (2023). In 2001, for instance, California's Controller had seized property worth approximately $2.7 billion; by 2007, the amount seized had grown to $4.1 billion. Today, the Controller holds property valued at over $13 billion, taken from over 76 million accounts[6] (more than a four-fold increase in two decades) for a program that was initiated in 1950.

B. Statutory Framework

Under the California UPL, the escheatment process is triggered when there is no activity with respect to an account or when the owner has had no contact with the Holder (such as a bank) for a fixed period of time (known as the "dormancy period"). Thus, a bank customer who opens a savings account and deposits wedding gifts but leaves the account untouched for three years, or an investor who buys and holds stocks without engaging in subsequent sales or purchases for three years, will trigger the "dormancy" definition. After three years of dormancy, the property is statutorily defined as "abandoned" or "unclaimed," and the Controller through contingent fee private auditors is automatically authorized to take title to the property. When the UPL was enacted in 1959, the dormancy period was fifteen years. In 1976, it was reduced to seven (7) years; in 1988 to five (5) years, and in 1990 to three (3) years. *See* Statutory Notes, 2007 Main Volume, Cal. Civ. Proc. Code § 1513; *see also* Stats. 1976, c. 648, § 1 & c. 1214, § 1;

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[6] CALIFORNIA STATE CONTROLLER, *Press Release* found at: https://www.sco.ca.gov/eo_pressrel_26217.html.

Stats. 1988, c. 286, § 2; Stats. 1990, c. 450 (S.B. 57), § 4.[7]

Holders of property have a strong incentive to report "unclaimed" property because failure to timely report and remit such property subjects a holder to significant financial sanctions. The UPL permits the assessment of interest from the date property should have been reported up to as much as 12% per annum. Cal. Civ. Proc. Code § 1577. Therefore, a failure to remit $1 Million in Unclaimed Property, for example, may result in a fine levied against the Holder of $2 - $3 Million.

The property owner receives neither interest for use of his money (all property is sold and monetized) which is then used as an interest free loan from the UPF to California's General Fund. Nor does the owner receive any portion of the fine for the Holder's retention and use of the private property in violation of the UPL. Following the final ruling in *Taylor V* after 16 years of litigation by the citizens, the California General Fund was allowed to keep the property seized without notice as a permanent interest free loan.

Holders of property are regularly audited by private companies hired by the State to ensure they have reported unclaimed property. These private auditors are incentivized to increase the amount of property seized because they are paid an 11% commission from the seized property, which may even

[7] A later amendment extended the dormancy period back to five years only for "any other written instrument on which a banking or financial organization is directly liable," such as a certified check. Stats. 1990, c. 1069 (S.B. 1186), § 1.

increase with the rate of seizures.[8] In this case, the private auditor firm Verus was paid approximately $120,000 for the seizure of the German citizen's Amazon stock. These commissions are paid from the private funds without notice to the owners of the property who are paying them.

The carrots used with private auditors and the sticks used with Holders of property not only lubricate the funnel for unclaimed property to slide into the coffers of the state but also increase the risk of erroneous seizures. As noted in this case, the auditors have begun to assume the functions of the government and the Holder. In other states like Delaware, the auditors operate the unclaimed property program including providing notice to the owners and managing the government websites.

Further, there are no published state regulations governing this process—only constantly changing internet "guidelines" found on the Controller's website (*e.g.*, "State of California Unclaimed Property Holders Handbook").[9] This absence increases the risk of error.

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[8] *See, e.g.*, David G. Savage, *Is California doing enough to find owners of 'unclaimed' funds before pocketing the money?*, L.A. Times (Jan. 7, 2016, 3:00 A.M. PT), https://www.latimes.com/nation/la-na-court-california-cash-20160107-story.html.

[9] CALIFORNIA STATE CONTROLLER, *Laws, Regulations, and Guidelines*, https://sco.ca.gov/upd_lawregs.html (last visited June 3, 2025).

Prior to escheating the property to the State, and subject to an exception,[10] banks and other financial institutions holding property valued at $50 or more for deposit, account, shares, or other interest, "shall make reasonable efforts" to notify property owners—by mail, or, if the owner has consented to electronic notice, electronically—that the owner's property will escheat. (Cal. Civ. Proc. Code § 1513.5, subds. (a), (b)). The UPL provides that Holders *need not give notice* to owners of "deposits, accounts, shares, or other interests of less than fifty dollars ($50)." Cal. Civ. Proc. Code § 1513.5, subd. (c); *see also id.* at § 1514, subds. (a), (b) (notice for safe deposit box or repository); § 1516, subds. (a), (b), (d) (notice for dividends and securities); § 1520, subds. (a), (b) (notice for tangible and other intangible personal property valued at $50 or more). Notice is inadequate even for property worth $50 or more;[11] but for

[10] The exception is that the holder need not mail notice to an owner whose address the holder's records disclose to be inaccurate. Cal. Civ. Proc. Code § 1515.5, subd. (a).

[11] If the Notice Report provides the Controller with the owner's SSN, Section 1531 requires the Controller to send the owner's name and SSN to the Franchise Tax Board ("FTB") to determine whether the FTB has a Current address for that person. Section 1531(d). Citizens residing in other states and those who do not pay taxes in California would have no record of their correct address at the FTB. If the FTB has no address, then the Controller sends notice to the address reported by the Holder (*i.e.*, "the Last Known Address" or "LKA"), which is already known to be a stale address and is the reason for the UPL report to the Controller in the first place. If the Holder does not provide an SSN, which is not a mandatory requirement under the UPL, then the Controller does not request information from the FTB, or any other electronic database accessible to her. She merely sends notice to the stale address reported by the Holder.

property worth less than $50, there is no individualized notice at all.

In *Jones v. Flowers*, 547 U.S. 220, 228 (2006) ("*Jones*") the Supreme Court cites *Plemons v. Gale*, 396 F.3d 569, 577-578 (2005) ("*Plemons*"), which in turn held:

> [I]t is, at the very least, reasonable to require examination (or reexamination) of all available public records when initial mailings have been promptly returned as undeliverable. . . . 'Extraordinary efforts typically describe searches *beyond* the public record, not searches *of* the public record.')

Plemons, 396 F.3d at 577 (citations omitted) (emphasis in original).

But California makes no effort to search readily available public records to locate the owner and to provide the best possible notice to them.

Holders are required to send the Controller an annual notice report ("Notice Report") listing the "unclaimed" and "abandoned" properties in question, the owners' names, and their last known addresses. Cal. Civ. Proc. Code § 1530(d). Holders are not required to report the owner's Social Security Number (SSN) for any type of escheated property, even if the holder possesses the SSN. Notably, any person who does not have a Social Security Number and does not reside in the State of California like Petitioner Jan Peters in Germany will receive neither direct mail nor publication notice of any kind. In this case, the "Holder Report" was prepared by the private auditor Verus, which received its 11% fees based on the property contained in the report.

Moreover, the UPL provides that items under $25 in value may be aggregated into a single lump sum on the Notice Report received by the Controller. Cal. Civ. Proc. Code § 1530, subd. (b)(2), (b)(5). Examples of such aggregation are contained in the Appendix at 55a, e.g., "State Farm Insurance Policyholders - $6 Million." The State never learns the owners' names for these accounts, and the Controller maintains no owner identification and no records whatsoever for these property owners. Therefore, it is impossible for these property owners to reclaim their property from the Controller.

No more than 165 days after the Notice Report is filed with the Controller, "the Controller shall mail a notice to each person having an address listed in the report who appears to be entitled to property of the value of fifty dollars ($50) or more escheated under this chapter." Cal. Civ. Proc. Code § 1531, subd. (b). No sooner than seven (7) months and no later than seven (7) months and fifteen (15) days after the Notice Report is filed, Holders are required to pay or deliver to the Controller "all escheated property specified in the report." Cal. Civ. Proc. Code § 1532.

Section 1531(a) of the UPL provides that, "[w]ithin one year after payment or delivery of escheated property," "the Controller shall cause a notice to be published in a manner that the Controller determines to be reasonable, which may include, but not be limited to, newspapers, Internet Web sites, radio, television, or other media." (Cal. Civ. Proc. Code § 1531(a)). The Controller has implemented this requirement through a practice of generic, inconspicuous 3" x 5" "block" publication notices in newspapers that do not provide actual notice to the owners that their specific property has been

appropriated by the State. (Sample advertisements are contained in the Appendix at 50a-54a.) The generic "advertisements" are often published only in California on dates calculated to reduce readership, e.g., Thanksgiving Day. It is overwhelmingly likely that only a miniscule fraction of affected property owners will happen upon these generic advertisement notices. The Petitioner in Germany and those citizens in other countries and states would have no reason to scan California newspapers. The vast majority would have no notice that their property rights have been lost.

The Controller has also created a website (https://sco.ca.gov/search_upd.html) which, in theory, allows property owners to search online for property appropriated by the Controller. Owners who locate their property online may submit a claim form to the Controller and engage in the claim process of seeking to retrieve their property.

But the website has been broken for years. And, even when it is operational, its efficacy is hampered by the fact that no identifying information is listed on the website (or maintained by the Controller) in the case of amounts under $50, or for aggregated amounts, or for "Owners Unknown" so that it is impossible for the owners of those sums to locate or claim their property.

For items under $25 in value,[12] the Controller does not know the identity of the property owners and

[12] Section 1530(b)(5) notes: "The nature and identifying number, if any, or description of any intangible property and the amount appearing from the records to be due, except that items of value under twenty-five dollars ($25) each may be reported in aggregate."

does not post the property owners' names on the public website. In many instances, the property has already been sold by the time it appears on the website, which is merely a catalogue of sold property, though the website identifies the property as though it might still exist.

Further, the generic newspaper notice addressed to no one in particular and website notice under Section 1531(a) operate only after the fact – post deprivation - *after* the Controller has seized and sold the owner's property. Thus, the Controller has shifted the burden of conveying constitutional notice from the government to the citizens, who must ferret out their own property information by looking through newspapers or running queries on a broken government website. Common sense dictates that if property owners are not told ahead of time that the Controller is taking their property, then they would have no reason to search a website database and to file a claim form for return of their property. The theory of generic advertisements addressed to no one in particular and searchable website notice was rejected by three panels of the Ninth Circuit. But the same process continues to this day.

The absurdity of this situation dictates that when California seeks to locate residents to force them to pay taxes that are due and owing, it is quick to resort to all government databases to locate them, such as the DMV database and other readily available sources of information. Yet when it comes time to provide constitutional notice and to return property under the mandatory language of UPL that requires state officials to do so, i.e. to locate the owners and to return their property, the same property owners are

"unknown" to the State, which does not use the available databases.

Moreover, the Controller has ready access to all the government databases (*see* Cal. Civ. Proc. Code § 1531.5) and to private commercial databases such as Accurint to locate owners of unclaimed property. The Controller does not use either Accurint or any other commercial database to locate the purportedly "unknown" owners of "unclaimed" property and to provide them with the best possible notice before or after their property is taken by the State.

As the Controller was decreasing the amount spent on notice, the State was simultaneously spending increasingly large sums of money on private auditors to expand the amount of property seized. The auditors are paid on a percentage commission, which rises with the rate of seizures. This strategy predictably redounded to the State's financial benefit. In 2001, the Controller had seized property worth approximately $2.7 billion; by 2007, it had grown to $4.1 billion from 8.7 million persons. Today, the Controller holds property valued at over $13 billion, taken from over 76 million persons.[13]

The actual financial exposure to the State of California is far greater. For instance, Berkshire Hathaway stock was sold without notice by the state officials at $30,000 per share yet presently trades for $746,200 per share.[14] German citizen Jan Peters'

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[13] CALIFORNIA STATE CONTROLLER, *Search for Unclaimed Property,* https://www.sco.ca.gov/search_upd.html (last visited June 3, 2025) .

[14] *See* https://www.cnbc.com/quotes/BRK.A (last visited June 3, 2025).

Amazon stock was seized without notice and sold from his German pension fund in Germany by California for $1,603,737.46 and has a current value of $4,233,511.80.[15]

The California property seizures are growing at an exponential rate, and—as foreshadowed by Justices Alito and Thomas' concerns in *Yee*, 136 S. Ct. at 930—there is clearly little regard for "reuniting" "unknown" owners with their "unclaimed property" prior to its seizure and sale. Jan Peters is very well known to both Amazon and to his native Germany where he resides. He does not live in "Munich, CA 00000."

C. Procedural History

In June 2021, Petitioner brought this action alleging that the UPL is unconstitutional as applied by Respondent to him. The sole remedy sought in the complaint was declaratory and injunctive relief: a declaration that Respondent's actions with respect to Petitioner violated the Fifth and Fourteenth Amendments of the United States Constitution; injunctive relief enjoining Respondent from enforcing or administering the UPL in a similarly unconstitutional manner; injunctive relief requiring Respondent to return Petitioner's property; attorneys' fees and costs pursuant to 42 U.S.C. § 1988; and such other and further relief as the Court deemed just and proper. Respondent did not file a motion under Rule 12, and the parties engaged in discovery.

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[15] Amazon shares of 1,029 x 20 (split 1:20) x $205.71 (price as of June 3, 2025) = $4,233,511.80.

After discovery, the parties moved for summary judgment. Respondent moved for summary judgment, arguing that Petitioner lacked standing to bring his claim for injunctive relief and that the Eleventh Amendment precluded him from recovering anything more than the money he received for the sale of his Amazon stock in July 2020. Respondent admitted in this briefing that she did not give Petitioner notice before seizing and selling his Amazon stock.

On February 15, 2024, the district court granted Respondent's motion for summary judgment and entered a final judgment in Respondent's favor. The district court found that Petitioner lacked standing to seek an injunction protecting himself from further enforcement of the UPL and that Petitioner's other requested relief was barred by Respondent's Eleventh Amendment immunity. The court opined that, even if Respondent acted *ultra vires* and violated the Constitution, Petitioner was not entitled to the return of his stock or the present value of that stock, even though the UPL's ostensible purpose is to ensure that "property owners be reunited with their property," which "shall not permanently escheat to the state." § 1501.5(a), (c), and even though the statutory scheme itself allows such relief where there is a wrongful escheat of property. It is undisputed that Jan Peters' German address was falsified by the state employees.

Petitioner asserted claims of relief for: (1) declaratory and injunctive relief; (2) deprivation of the constitutional right to procedural due process in violation of 42 U.S.C. § 1983; (3) unconstitutional taking of personal property in violation of 42 U.S.C. § 1983.

REASONS FOR GRANTING THE WRIT

This case presents an excellent opportunity for this Court to revisit the constitutional concerns raised by Justice Alito, joined by Justice Thomas, in *Yee*, 136 S. Ct. at 930 (opinion concurring in the denial of certiorari). Justices Alito and Thomas explained that "process which is a mere gesture is not due process. Whether the means and methods employed by a State to notify owners of a pending escheat meet the constitutional floor is an important question." *Id.* (citations omitted). The Justices concluded that "the constitutionality of current state escheat laws is a question that may merit review in a future case." *Id.*

It is now time for this Court to review the longstanding refusal of the courts in California and other states like Delaware, New Jersey, New York, and elsewhere to properly apply federal constitutional standards to the UPL. In a series of rulings, including the decision by the U.S. Court of Appeals for the Ninth Circuit in this case, certain of the federal courts and the state courts of California have effectively immunized the Controller from scrutiny under the United States Constitution. For example, in *Harris v. Westly*, 116 Cal. App. 4th 214 (Cal. App. 2d Dist. 2004), the Court of Appeal invented the novel legal theory that constitutional notice is provided, even when none is admittedly given, because the mere existence of a statute constitutes "constructive notice" that property could be seized. *Id.* at 223 n.15.

In *Fong v. Westly*, 117 Cal. App. 4th 841 (Cal. App. 3d Dist. 2004), the Court of Appeal approved the Controller's action in seizing and selling Berkshire Hathaway stock without notice at a time when the value of the stock was $700,000 per share. 117 Cal.

App. 4th at 847. The injured shareholders (small shop owners whose Blue-Chip Stamp stock converted to Berkshire Hathaway shares during an acquisition) discovered the seizure long after the fact and filed a constitutional claim against the Controller. The California courts rejected the claim on the grounds that the Controller was not required to provide constitutional notice or even to comply with Section 1531 of the UPL, and that the Controller is immune from liability under Section 1566 because the owners' claims supposedly arose primarily from the Controller's sale of their escheated property. 117 Cal. App. 4th at 851–54. Even though the stock had appreciated considerably in value (now worth over $700,000 per share), the Court of Appeal reasoned that the injured shareholders had received the full amount allowed under the law from the unnoticed seizures and sale because they had already recovered the proceeds from the unnoticed sale of their stock, *id.* at 852–54.

The Supreme Court of California has continued to cite both the *Fong* and *Harris* decisions with approval in the context of the UPL. *See, e.g., Azure Limited v. I-Flow Corp.*, 46 Cal. 4th 1323, 1328, 1330, 1336 (Cal. App. 4d Dist. 2009).

The instant case continues the pattern of the California courts' failure to properly apply federal constitutional standards to the UPL. The decision in this case and of the California courts cannot be squared with foundational precedent of this Court regarding the pre-deprivation notice required by the Due Process Clause, including *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306 (1950), and *Jones v. Flowers*, 547 U.S. 220 (2006). The instant decision in this case also conflicts with numerous

decisions by federal Courts of Appeals, which are reviewed below.

In addition, the California decision conflicts with precedent of this Court regarding the Takings Clause, including *Horne v. Department of Agriculture*, 135 S. Ct. 2419 (2015).

Review is also warranted because this case involves an important issue of law involving the property rights of millions of people. Every year, tens of thousands of California residents, including many elderly residents of limited means, suffer the appropriation of their property with no meaningful notice and no meaningful avenue of recourse. Such a blatantly unconstitutional system, which serves only the fiscal self-interest of California, warrants this Court's review. Moreover, because state unclaimed property laws spanning the states are intertwined, this Court's review of the decision at issue will guide other states in implementing their unclaimed property laws Constitutionally. By providing guidance on the constitutional standards such schemes must satisfy, review of this decision would enable this Court to protect the due process rights of millions of Americans throughout the country.

I. Certiorari Is Warranted To Review The Constitutionality Of The California UPL Scheme Under The Due Process Clause.

The decision below conflicts with this Court's foundational precedent establishing the notice requirements of Due Process, as well as with decisions by the federal Courts of Appeals faithfully applying that precedent.

A. The Decision Below Conflicts With This Court's Precedent.

In *Mullane*, this Court held that notice by newspaper publication was insufficient with respect to known present beneficiaries of a trust and did not satisfy due process. 339 U.S. 306. This Court observed that the "elementary and fundamental requirement of due process . . . is notice reasonably calculated, under all the circumstances, to apprise interested parties of the *pendency* of the action and afford them an opportunity to present their objections" before they are deprived of property. *Id.* at 313 (emphasis added). "[P]rocess which is a mere gesture is not due process," but rather the "means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.* at 315.

The California UPL falls far below the standards of *Mullane,* even though technological advances since 1950 make it vastly *easier* to locate individuals now than it was when *Mullane* was decided.

The UPL flouts this Court's teaching that "[t]he right to prior notice"—*before* the State seizes or appropriates property—"is central to the Constitution's command of due process." *U.S. v. James Daniel Good Real Property*, 510 U.S. 43, 53 (1993). "The purpose of this requirement is not only to ensure abstract fair play to the individual. Its purpose, more particularly, is to protect his use and possession of property from arbitrary encroachment—to minimize substantively unfair or mistaken deprivations of property. . . ." *Fuentes v. Shevin*, 407 U.S. 67, 80–81 (1972). In *Fuentes*, this Court held that the loss of kitchen appliances and household

furniture was significant enough to warrant a pre-deprivation hearing. In *Connecticut v. Doehr*, 501 U.S. 1 (1991), this Court held that a state statute authorizing prejudgment attachment of real estate without prior notice or hearing was unconstitutional, in the absence of extraordinary circumstances, even though the attachment did not interfere with the owner's use or possession and did not affect, as a general matter, rentals from existing leaseholds. "[E]ven the temporary or partial impairments to property rights . . . are sufficient to merit due process protection." *Id.* at 12; *see also Fuentes*, 407 U.S. at 86 ("The Fourteenth Amendment draws no bright lines around three-day, 10-day or 50-day deprivations of property. Any significant taking of property by the State is within the purview of the Due Process Clause."); *N. Ga. Finishing v. Di-Chem, Inc.*, 419 U.S. 601, 606 (1975) (state garnishment statute subject to constitutional where plaintiff's property "was impounded").

And in *Jones*, this Court reaffirmed that "[*b*]*efore* a state may take property and sell it for unpaid taxes, the Due Process Clause of the Fourteenth Amendment requires the government to provide the owner 'notice and opportunity for hearing appropriate to the nature of the case.'" 547 U.S. at 223 (emphasis added and quoting *Mullane*, 339 U.S. at 313). This Court held "that when mailed notice of a tax sale is returned unclaimed, the State must take *additional reasonable steps* to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Id.* at 225 (emphasis added). This Court concluded:

> There is no reason to suppose that the State will ever be less than fully zealous in its efforts to secure the tax revenue it needs. The same cannot be said for the State's efforts to ensure that its citizens receive proper notice before the State takes action against them.

Id. at 239.

In *Jones*, this Court reasoned that a State may not rely solely on mailed notice "when the government learns its attempt at notice has failed." *Id.* at 227. This case demonstrates that California's meager or nonexistent attempts at notice under the UPL scheme have predictably failed not once, but *millions of times* and that the State makes no attempt to provide individualized notice at all. The scheme has resulted in a situation where millions of people have been denied meaningful notice of the seizure of their property, just as the homeowner in *Jones* was not afforded meaningful notice. And just as in *Jones*, "the government's knowledge that notice pursuant to the normal procedure was ineffective triggered an obligation on the government's part to take additional steps to effect notice." *Id.* at 230.

The State' reliance on its unclaimed property website fails for at least three reasons. First, the website offers only *post-deprivation* notice *after* the State has already seized the property. This searchable post seizure notice is unconstitutionally inadequate. *See James Daniel Good Real Property*, 510 U.S. at 54 ("All that the seizure left [the property owner], by the Government's own submission, was the right to bring a claim for the return of title at some unscheduled future hearing"). Similarly, in *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791

(1983), this Court held that a "party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation" to provide meaningful pre-deprivation notice. *Id.* at 799.

Second, the website containing 76 million accounts is not meaningful notice because it is broken and inoperative. Property owners who have received no prior notice that their property has been seized have no reason to look at the State's busted website to try to identify their appropriate property. *Mullane* held that newspaper advertisements are not constitutionally adequate (except in special circumstances) because "[c]hance alone" brings a person's attention to "an advertisement in small type inserted in the back pages of a newspaper." *Mullane*, 339 U.S. at 315. The same is true of the Controller's website.

Third, vast numbers of property owners are listed namelessly as "Owner Unknown" or under falsified address information found with the fictional "00000" zip code, not listed at all, or "batched" with other nameless owners. Property worth less than $25 is aggregated rather than individually listed, so even if owners of property worth less than $25 happen upon the website, they will not find individually identifiable information for their property. In reality, the website conveys no notice at all to property owners and is nothing more than a catalogue of the owners' sold and destroyed property.

The results of this fatally flawed system speak for themselves. The ostensible statutory purpose of the UPL program is to protect citizens and to locate and return private property to "unknown" owners, and not to declare "known" citizens to be "unknown" simply

for purposes of seizing their property for use by the State. California's procedures have hardly produced "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." 339 U.S. at 313. Indeed, the opposite is true.

Where (as here) the government's own fiscal self-interest is involved, the requirements of due process should be even more stringent. This Court has warned that the government's financial interest (as well the financial interest of the private auditors the State has incentivized to administer its scheme) creates the danger of self-dealing that raises constitutional red flags. This Court has long expressed constitutional "concern with governmental self-interest" when "the State's self-interest is at stake." *United States v. Winstar Corp.*, 518 U.S. 839, 896 (1996) (quoting *United States Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 26 (1977)).

B. The Decision Below Conflicts With Decisions by Federal Courts of Appeals.

The California decisions upholding the UPL cannot be squared with decisions by other federal Courts of Appeals that have faithfully applied this Court's decisions establishing the pre-deprivation notice required by the Due Process Clause.

In *Garcia-Rubiera v. Fortuno*, 665 F.3d 261 (1st Cir. 2011), the First Circuit held that, under *Jones v. Flowers*, Puerto Rico failed to give constitutionally adequate notice to insureds in connection with reimbursements for mandatory automobile insurance, which would otherwise escheat to the

Commonwealth. The First Circuit explained that Puerto Rico had established a reimbursement procedure, but "has failed to give insureds notice of the contents of that procedure or where to find it. In fact, insureds will not find it unless they go in person to the proper office of government and make an 'appropriate request' for a copy of the regulation." *Id.* at 263–64. The California UPL scheme, which denies meaningful notice to millions of property owners, suffers from the same constitutional defect.

The Sixth Circuit found a due process violation where a state elevator inspector shut down a hotel's elevators without adequate advance notice, preventing it from renting rooms on five floors. *Sterling Hotels, LLC v. McKay*, 71 F.4th 463 (6th Cir. 2023): "When a deprivation of property 'occurs pursuant to an established state procedure'—as McKay acknowledges it did here—the state must provide adequate notice and an opportunity to respond before the deprivation." *Id*. at 467 (citation omitted); *see also Resnick v. KrunchCash, LLC*, 34 F.4th 1028, 1035 (11th Cir. 2022) (holding that temporary freeze on borrowers' bank accounts without prior notice amounted to deprivation of due process property interest; "even a temporary or partial deprivation of property without proper notice or a hearing violates due process").

See also Maron v. Chief Fin. Officer of Fla., No. 23-13178, 2025 U.S. App. LEXIS 11971, at *11-12 (11th Cir. May 16, 2025)("[t]he Fifth Amendment right to full compensation arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner"); *Cerajeski v. Zoeller*, 735 F.3d 577, 583 (7th Cir. 2013) ("The perversity of the state's position lies in the fact that

unclaimed property acts are primarily designed not to enrich the state directly but to 'return' the unclaimed property to the stream of commerce," [citation omitted] and to protect property owners against what's known as "lucrative silence"); *Knellinger v. Young*, 134 F.4th 1034, 1045 (10th Cir. 2025) ("[I]f Colorado wishes to avoid defending against § 1983 suits for unclaimed property, it may always decide voluntarily to revise its laws or practices with respect to unclaimed property.")

Review is especially warranted because the Ninth Circuit has taken a different view of the UPL's constitutionality, creating an untenable judicial divergence in the same State. Four separate panels of the Ninth Circuit have held either that the UPL is unconstitutional or that federal constitutional claims should be allowed to proceed. *See Taylor I,* 402 F.3d 924, 926; *Taylor II*; *Taylor III* (awarding interim legal fees); *Suever I*, 439 F.3d 1142 (following *Taylor I*). However, four recent decisions find the same UPL process to be perfectly lawful. *See Peters v. Cohen*, No. 24-1040, 2025 U.S. App. LEXIS 5343 (9th Cir. Mar. 7, 2025); *Turnacliff v. Westly*, 546 F.3d 1113 (2008); *Suever II*, 579 F.3d 1047; and *Taylor v. Yee*, 780 F.3d 928 (9th Cir. 2015)("*Taylor IV*").

In *Taylor II*, the Ninth Circuit opined, "California cites no authority for the proposition that due process is satisfied by a newspaper advertisement saying that a person concerned about his property can check a website to see whether he has already been (or soon will be) deprived of it." 488 F.3d at 1201. The Ninth Circuit noted the danger of "the permanent deprivation of [Petitioners'] property subsequent to California's sale of that property, which—pursuant to California's policy of *immediately* selling property

after escheat—would frequently occur even if plaintiffs were diligent about monitoring their property." *Id.* at 1200 (emphasis in original).

The Ninth Circuit opined that the Controller was required to notify property owners of the impending seizure of their property *prior to* the seizure, in a manner reasonably calculated under all the circumstances to apprise them of that impending seizure and afford them an opportunity to object: "[b]efore the government may disturb a person's ownership of his property, 'due process requires the government to provide notice reasonably calculated, under all the circumstances, to apprise the interested party of the pendency of the action and afford him an opportunity to present his objections.'" *Id.* at 1201 (cleaned up) (citation omitted). The Ninth Circuit held that the Controller's mailings "[did] not respond to the requirement that notice be given before an individual's control of his property is disturbed" (i.e. escheated). *Id.*; *see also Suever v. Connell*, 439 F.3d at 1148 (9th Cir. 2006) (noting that the plaintiff's complaint against the UPL alleges types of harm that, if proven, would amount to "ongoing violation[s] of federal law").

In *Taylor III*, 525 F.3d 1288, the Ninth Circuit Court of Appeals opined that a legislative amendment to the UPL "[o]n its face" brought the UPL into compliance with the Constitution's due process requirements, *id.* at 1289, although the Ninth Circuit cautioned that the issues before it were limited and that its "review in this case is confined by our limited standard of review and is not a definitive adjudication of the constitutionality of the new law and administrative procedure." *Id.* at 1290. In *Taylor v. Yee*, the Ninth Circuit rejected an as-applied

challenge that the Controller had failed to provide constitutionally adequate notice and failed to take adequate steps to locate and notify certain property owners. 780 F.3d 928 (9th Cir. 2015).

II. Certiorari Is Warranted To Review The Constitutionality Of The California UPL Scheme Under The Takings Clause.

Under the UPL scheme, the Controller physically appropriates private property and as a matter of course permanently divests owners of that property. Once this property is auctioned off or destroyed by operation of the UPL scheme, *the most* the rightful owner could recover is part of the monetary proceeds of the sale—which will afford little comfort or relief to the owner in circumstances where the sentimental value of the property (such as family heirloom jewelry in a safe deposit box) far exceeds its commercial value.

The Controller's physical appropriation of personal property under the UPL scheme effectuates a taking under this Court's decision in *Horne*. 135 S. Ct. 2419. *Horne* noted "the settled difference in our takings jurisprudence between appropriation and regulation" and held that the Ninth Circuit had erred in analyzing the seizure of raisins as a restriction on the use of personal property. *Id.* at 2428. This Court opined that the seizure was a physical appropriation of property, giving rise to a *per se* taking: "The Government's 'actual taking of possession and control' of the reserve raisins gives rise to a taking as clearly 'as if the Government held full title and ownership,' as it essentially does." *Id.* (internal citation omitted). This Court held that possible residual compensation offered to an owner,

after physical appropriation of the property itself, did not excuse the taking. *Id.*

The various Courts' insistence that the sale proceeds from the stock and other property listed on the website is "property" or that the Controller merely holds unclaimed property "in trust" does not withstand scrutiny. The UPL Section 1300(c) defines the term "Escheat" as "the vesting in the state of title to property the whereabouts of whose owner is unknown . . . subject to the right of claimants to appear and claim the escheated property or any portion thereof." Cal. Civ. Proc. Code § 1300(c). Thus, the Controller does not merely take "custody" but takes "title," which vests in the State as the owner of the property, which is then sold or otherwise used by the State without notice to the true owner. For example, the contents of safe deposit boxes are held for varying periods of time and then auctioned off on eBay.[16] Stock accounts are held for 18 months and then liquidated.[17] This is a classic taking of property under the Fifth Amendment without notice.

Various decisions in California and in other states cited *Texaco, Inc. v. Short*, 454 U.S. 516 (1982), but

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[16] ABC Good Morning America, *Not So Safe Deposit Boxes States Seize Citizens' Property to Balance Their Budgets,* YOUTUBE (May 12, 2008), http://www.youtube.com/watch?v=ZdHLIq0qHhU,http://abcnews.go.com/GMA/story?id=4832471&page=1#.Udhur5yLfCY.

[17] California State Controller's Office, *About the Unclaimed Property Program*, available at: http://www.sco.ca.gov upd_faq_about_q01.html ("Your investment accounts will be turned over to the State Controller's Office, which is required by law to sell the securities, no sooner than 18 months and no later than 20 months, after the due date for reporting the securities to the State Controller's Office.").

that case involved a mineral lapse statute and the specific state interests in the context of mineral development. 454 U.S. 516. "Certainly the State may encourage owners of mineral interests to develop the potential of those interests; similarly, the fiscal interest in collecting property taxes is manifest." *Id.* at 529. This Court explained that, "[t]hrough its Dormant Mineral Interests Act," "the State has declared that this property interest is of less than absolute duration; retention is conditioned on the performance of at least one of the actions required by the Act." *Id.* at 526. The distorted theory is that all private property rights ultimately revert to the government.

Private citizens who hold bank accounts and stock investment accounts, or store their valuables in safety deposit boxes, do not own their property at the sufferance of the government, and should not be required to "churn" their financial holdings or otherwise show periodic activity in their accounts, to prevent their property from reverting back to ownership by the government. This Court has never compared unclaimed property laws to rules governing mineral leases. *E.g., Delaware v. New York*, 507 U.S. 490 (1993); *Pennsylvania v. New York*, 407 U.S. 206 (1972); *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 433–34 (1951); *Texas v. New Jersey*, 379 U.S. 674, 675–77 (1965).

Under the just compensation requirement of the Fifth Amendment, the government must establish the existence of a "'reasonable, certain and adequate provision for obtaining compensation'" at "the time of [a] taking." *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 124–25 (1974) (quoting *Cherokee Nation*

v. Southern Kansas R. Co., 135 U.S. 641, 659 (1890)). Here, the UPL scheme offers no compensation at all and is squarely inconsistent with the commands of the Fifth Amendment.

III. This Case Is a Suitable Vehicle to Review the Constitutional Issues Presented.

Unclaimed Property Law litigation is now pending before courts around the nation. This case is an excellent vehicle for reviewing the constitutional questions presented. The facts of this case are extreme, and the constitutional issues are squarely before this Court. Moreover, Petitioner's brief to the Panel in the Ninth Circuit Court of Appeals specifically referenced Justices Thomas and Alito's opinion with respect to the denial of certiorari in *Taylor v. Betty T. Yee*, which was ignored.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted.

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