

No. _____

In the Supreme Court of the United States

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RACHAEL EUBANKS AND TERRY STANTON, IN THEIR
PERSONAL CAPACITIES; STATE OF MICHIGAN, APPLICANTS

v.

DENNIS O'CONNOR, AND ALL THOSE SIMILARLY SITUATED

**APPLICATION TO STAY THE MANDATE OF THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT PENDING DECISION ON THE STATE OF MICHIGAN'S
PETITION FOR A WRIT OF CERTIORARI**

**To the Honorable Brett M. Kavanaugh,
Associate Justice of the Supreme Court of the United States
and Circuit Justice for the Sixth Circuit**

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INTRODUCTION

Michigan administers an unclaimed property statute under which it takes possession of presumptively abandoned property and returns the principal if the owner claims it. But, like 42 other States, Michigan does not return interest earned while it possessed the property (except for unclaimed property that was interest bearing at the time of abandonment). The Sixth Circuit nonetheless held that Michigan would apply the federal rule of “interest follows the principal” to presumptively abandoned property held by the State. According to the Sixth Circuit, because Michigan law treats the State as custodian of the principal rather than its owner, the accrued interest also remains the owner’s property—despite Michigan law to the contrary—and withholding it gives rise to a due-process claim.

Plaintiff Dennis O’Connor owned three non-interest-bearing debt obligations that the holder transferred to the State as presumptively abandoned. Years later, O’Connor filed an administrative claim with the State for return of his principal, and the State returned the equivalent value of the principal without interest, consistent with state law. The Sixth Circuit concluded that O’Connor retained a property right to the interest generated while the principal was in the State’s possession and that the failure to pay that interest therefore gives rise to a due process claim.

In reaching its conclusion, the Sixth Circuit ruled directly contrary to a recent, published decision of the Michigan Court of Appeals, *Kemerer v. State of Michigan*. In *Kemerer*, the Michigan Court of Appeals (1) construed Michigan’s unclaimed property laws, (2) rejected the doctrine of “interest follows the principal,” and (3) held that

an owner has no right to interest under state unclaimed property law. Nevertheless, the Sixth Circuit disregarded this authoritative state interpretation based on the federal rule that “interest follows the principal” where the original owner retains the ability to reclaim the principal.

Certiorari is warranted at this stage in the litigation because the question whether the general maxim “interest follows the principal” is a federal property right established by federal case law that can displace state law joins a question for which there is a circuit split, implicates the laws of Michigan and 42 other States governing interest on presumptively abandoned property, and arises from a conflict between a federal court ruling and a controlling state court ruling on the same state law process. The federal Constitution does not mandate a one-size-fits-all approach to unclaimed property law. Nor does it provide a right to interest on abandoned property that was not otherwise interest bearing at the time of abandonment, when the former owner later returns and claims the principal.

The question presented will be as follows:

Michigan has an unclaimed property statute under which it takes possession of presumptively abandoned property. The State returns the principal if it is later claimed by the owner. But, like dozens of other States, Michigan does not pay interest earned while it possessed the property (except for unclaimed property that was interest bearing at the time of abandonment). The Sixth Circuit, however, held that the general maxim that interest follows the principal applies to presumptively abandoned property held by the State. Under the Sixth Circuit’s decision, this common-law maxim overrides Michigan’s unclaimed property statutes and means that the interest is the property of the owner of the previously unclaimed property.

The question presented is:

Does the general maxim that interest follows the principal apply in the face of a state property law and precedential state court ruling explicitly rejecting its application for the interest generated by abandoned or unclaimed property?

Absent this Court's intervention, the Sixth Circuit's dismissal of the state court's analysis in *Kemerer* creates an irreconcilable conflict between them.

This question is not unique to Michigan. Michigan's statute is more generous than those of most States, which do not provide for the payment of interest on property in their possession even when it was interest bearing at the time of abandonment.¹ At least 27 States appear to provide for no interest.² Another 16 States (including Michigan) and the District of Columbia appear to provide for the payment of interest only where the property was interest-bearing before its transfer to the State.³

¹ Some States pay interest accruing on the property at or before the state liquidates or converts the property into money, e.g., Cal. Civ. Proc. Code § 1540(c) (2019), and some also provide certain narrow exceptions on the prohibition against interest-payments. See, e.g., Mont. Code § 70-9-812(2) (securities listed on an established stock exchange); N.Y. Aband. Prop. Law § 1405(1)(a)(ii) (unclaimed deposits and refunds for utility services).

² See Ala. Code § 35-12-83(c) (2004); Ark. Code Ann. § 18-28-211 (1999); Cal. Civ. Proc. Code § 1540(c) (2019); Colo. Rev. Stat. § 38-13-606 (2019); Conn. Gen. Stat. § 3-65a(e) (2022); Del. Code Ann. tit 12, § 1154(a) (2017); Fla. Stat. § 717.121 (1987); Ga. Code Ann. § 44-12-220 (2020); Iowa Code §§ 556.15, 556.19 (1967); Ky. Rev. Stat. § 393A.530(1) (2018); Md. Laws § 17-319(c) (2023); Mont. Code Ann. §§ 70-9-812(2), 70-9-815(4) (1997); Neb. Rev. Stat. § 69-1314 (2023); Nev. Rev. Stat. § 120A.600 (2007); N.H. Rev. Stat. § 471-C:23 (1987); N.Y. Aband. Prop. Law §§ 1405(1)(a), 1407 (2016); N.C. Gen. Stat. § 116B-64 (2020); N.D. Cent. Code § 47-30.2-52(1) (2021); Okla. Stat. tit 60, § 60-665 (1967); Or. Rev. Stat. §§ 98.372(1), 98.396(2) (1957); 72 Pa. Cons. Stat. §§ 1301.15, 1301.17(d) (1982); S.D. Codified Laws §§ 43-41B-22, 43-41B-25(c) (2022); Tex. Prop. Code Ann. § 74.501(b) (2023); Utah Code Ann. §§ 67-4a-607(1)–(2), 67-4a-905(1)(a) (West 2017); Vt. Stat. Ann. tit. 27, §§ 1517, 1555(a) (2021); W. Va. Code § 36-8-11(a) (1997); Wyo. Stat. Ann. §§ 34-24-122, 34-24-125(c) (2020).

³ See Alaska Stat. § 34.45.380(d) (1986); Ariz. Rev. Stat. § 44-311(B) (2020); D.C. Code § 41-156.07(a) (2021); Haw. Rev. Stat. § 523A-12 (2022); Idaho Code § 14-524(3)(b) (2023); Kan. Stat. Ann. § 58-3954(b) (1994); La. Rev. Stat. § 163 (1986); Me. Stat. tit. 33, § 2117(1) (2019); Mich. Comp. Laws § 567.242 (1995); Minn. Stat. § 345.451 (2019); Mo. Rev. Stat. § 447.565(2) (1998); N.M. Stat. Ann. § 7-8A-11 (2006); R.I. Gen. Laws § 33-21.1-24(c) (1986); S.C. Code Ann. § 27-18-250(C) (1988); Tenn. Code Ann. § 66-29-137 (1997); Va. Code Ann. § 55.1-2533(C) (2020); Wash. Rev. Code § 63.30.380 (2022).

Only seven States appear to provide for the payment of interest on both interest- and non-interest-bearing property.⁴ Clarity on this question would benefit jurisdictions beyond the Sixth Circuit.

Despite this conflict and the important principles at stake, the Sixth Circuit denied the State’s motion to stay the mandate. Without a stay, the State will be forced to expend significant resources and continue litigating while state officials face two conflicting opinions on whether “interest follows the principal” applies to unclaimed property. This Court should stay the mandate to allow the State time to file a petition for a writ of certiorari on this important question impacting state sovereignty and property rights.

OPINIONS BELOW

The Sixth Circuit’s order denying the State’s motion to stay the mandate is attached as an Appendix to this Application, App’x A. The United States Court of Appeals for the Sixth Circuit’s two opinions in *O’Connor v. Eubanks*, attached as an Appendix to this Application, App’x B and C are, respectively, not reported but available at 2026 WL 2517167 and reported at 83 F.4th 1018 (6th Cir. 2023). The United States District Court for the Western District of Michigan opinion and order granting Defendants’ motion for reconsideration and denying as moot Plaintiff’s motion to re-open class discovery in *O’Connor v. Eubanks* is not reported but is available at 2025

⁴ See 765 Ill. Comp. Stat. 1026/15-607(a) (2018); Ind. Code § 32-34-1.5-33(b), (c) (2021); Mass. Gen. Laws ch. 200A, § 10(e) (2022); Miss. Code Ann. § 89-12-39 (2019); N.J. Stat. Ann. § 46:30B-79 (2023); Ohio Rev. Code Ann. § 169.08(A), (D) (2021); Wis. Stat. § 177.0607(2), (3) (2022). Two of these States, Illinois and Indiana, amended their statutes to provide for interest generated while in the State’s custody following the Seventh Circuit’s decision in *Goldberg v. Frerichs*, 912 F.3d 1009 (7th Cir. 2019), which found a constitutional right to that interest under the Takings Clause of the U.S. Constitution.

WL 3651906. The United States District Court for the Western District of Michigan order adopting the magistrate judge's report and recommendation and granting Defendants' motion to dismiss is unreported but is available at 2022 WL 4009175. The United States District Court for the Western District of Michigan report and recommendation is not reported but is available at 2022 WL 6576955.

On September 17, 2026, the Sixth Circuit denied the State of Michigan's motion to stay the mandate.

JURISDICTION

This Court has jurisdiction to review the Sixth Circuit's order denying a stay under Supreme Court Rule 23 and 28 U.S.C. § 2101(f).

STATEMENT OF THE CASE

At the heart of the dispute is whether the "interest follows the principal" rule this Court has applied several times overrides state law to the contrary, such that individuals who abandoned property have a property right to interest generated and retained by the State of Michigan on statutorily presumed abandoned property. The UUPA permits individuals who abandoned property to file a claim, and if successful, recover from the State the property's original value, but not interest if the presumptively abandoned property was not interest-bearing. Forty-two other States likewise do not pay interest on property that was not interest-bearing when abandoned. (See p. 3, ns 2 and 3 above.) This application implicates the laws of these States as well.

There is no factual dispute that Respondent O'Connor had a property right in three debt obligations. He failed to claim them, and the holders remitted the property

to the State. He later filed an administrative claim with the State, and the State paid him, as required by statute, the exact value it received from the holders of the abandoned property.

O'Connor then filed a putative class action lawsuit in the Eastern District of Michigan against the State of Michigan and two state employees in their individual capacities, alleging various takings and due-process violations based on the failure to pay him interest the State earned while it held the abandoned property. The district court dismissed the claims based on sovereign immunity and qualified immunity, concluding that any right to accrued interest on abandoned property was not clearly established.

In the first appeal, the Sixth Circuit held not only that a property right to interest on abandoned property exists under the federal common law maxim that “interest follows principal,” but also that the right is clearly established by this Court’s precedent. The court found that the right attached in this context, even after abandonment as defined by Michigan law, and that the rule of “interest follows the principal” applies despite the State obtaining the property from the holder, not the abandoning owner. The Sixth Circuit thus deemed O'Connor’s due-process claims, which exist only if there is a property right in the first instance, cognizable and remanded the case to the district court for further proceedings. *O'Connor v. Eubanks (O'Connor I)*, 83 F.4th 1018 (6th Cir. 2023).

O'Connor filed a petition for a writ of certiorari (No. 23-1167) addressing whether the State was entitled to sovereign immunity on his takings claim and

whether the state officials were entitled to qualified immunity on that claim. The State also filed a cross-petition for a writ of certiorari (No. 23-1227) addressing whether a former owner retains a constitutional right to accrued interest on abandoned property regardless of state law to the contrary. On October 15, 2024, this Court denied both petitions.

Shortly thereafter, the Michigan Court of Appeals issued its decision in *Kemerer v. State of Michigan*, addressing the same issue as this case and holding that “application of the doctrine of interest follows principal to the present facts is unwarranted[.]” for two reasons: (1) the State “exercise[s] ownership over the presumptively abandoned property,” consistent with the principles of “dual ownership,” and (2) the maxim “interest follows the principal” does not apply here since the property at issue was “presumpt[ively]” “abandoned,” allowing the State to exercise ownership over it for the purpose of sale and disbursement. ___ N.W.3d ___, No. 362055, 2024 WL 4609911, at *8–*9 (Mich. Ct. App. Oct. 29, 2024). The Michigan Supreme Court denied leave to appeal. 21 N.W.3d 201 (Mich. 2025).

On remand after *O’Connor I*, the district court held that *Kemerer* controlled the interpretation of state law and that, under *Kemerer*, the State, not O’Connor, owned the interest generated on the principal held by the State, while O’Connor retained the right to reclaim his principal. (Appendix to this Application, App’x B [pp. 7–8].)

O’Connor again appealed. The Sixth Circuit determined that “*Kemerer* erred by concluding that the original property owner doesn’t own the interest generated

while the property is in state custody.” (Appendix to this Application, App’x B [p. 9].) In support, the court again cited the “longstanding common-law rule” from federal case law that “interest follows the principal” as controlling, relying on cases outside the unclaimed property context. (Appendix to this Application, App’x B [pp. 6–7] (citing *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 165 (1998); see also App’x B [p. 7] (“And the Supreme Court has repeatedly reaffirmed that interest generated by private property in state custody belongs to the original owner.”) (citing *City of New Orleans v. Fisher*, 180 U.S. 185, 197 (1901); *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161–62 (1980).) The court relied on this rule despite *Kemerer*’s holding that this maxim does not apply to interest generated by abandoned property under Michigan’s unclaimed property laws. The Sixth Circuit failed to consider the unique nature of unclaimed property—statutory frameworks specifically designed for the State to make beneficial use of the property until the owner seeks its return. The Sixth Circuit also determined that *Kemerer* is not binding because, in its view, the “available data clearly indicate” that the Michigan Supreme Court would reject the Michigan Court of Appeals’ interpretation of Michigan law and would hold that the original owner retains ownership of the principal during state custody, and that, following the maxim “interest follows the principal,” the owner is also entitled to any interest generated while in state custody. The court therefore declined to follow the intermediate appellate court’s published *Kemerer* decision. (Appendix to this Application, App’x B [pp. 8 – 9].) Judge Nalbandian authored a concurrence arguing

that “*Kemerer* has bound us since the day it was published.” (Appendix to this Application, App’x B [Concurring Op., p. 15].)

Planning to file a petition for certiorari in this Court, the State timely moved the Sixth Circuit to stay the mandate. On September 17, 2026, the Sixth Circuit denied the State’s motion. (Appendix to this Application, App’x A.) *Kemerer* conflicts with the Sixth Circuit’s opinion both in its interpretation of the UUPA and on whether a property right to interest on abandoned property exists under state law.

STANDARDS FOR GRANTING RELIEF

“To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.” *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). Further, “[i]n close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent.” *Id.*

REASONS FOR GRANTING THE STAY APPLICATION

- I. This case presents an ideal vehicle for deciding whether the general maxim that interest follows the principal applies despite a state property law that allows the recovery of abandoned property but not of interest on property that was not interest-bearing.**

Whether the maxim that interest follows the principal applies despite a state property law, including a precedential state court ruling explicitly rejecting its application to abandoned or unclaimed property, is an important question that merits this Court's review based on the disagreement of the circuits, its significance for the States in the disposition of non-interest bearing abandoned property, and the conflict between the Sixth Circuit and the Michigan Court of Appeals. This Court has not definitively answered whether "interest follows the principal" is a constitutional right such that *all* state abandoned property laws must adhere to it. Most of those laws do not. The unsettled state of law on this question and the conflict between state and federal courts' interpretations of state law raise important federalism concerns and present compelling reasons for this Court to grant review.

A. There is a split in the circuits.

There is also a split among the circuits on this question as a general matter. Two approaches have emerged in determining whether a former owner has a constitutional right to interest on previously unclaimed property. The first, adopted by the Ninth and Third Circuits and many state courts, treats abandonment as an area of law with its own history and tenets, and thus follow *Texaco, Inc. v. Short*, 454 U.S. 516 (1982) in holding that a State is not required to compensate individuals for the

consequences of their own neglect, including by paying an abandoning owner interest the property may generate while in the State's custody. See *Turnacliiff v. Westly*, 546 F.3d 1113, 1119 (9th Cir. 2008); *Simon v. Weissmann*, 301 F. App'x 107, 114 (3d Cir. 2008); see also *Smolow v. Hafer*, 598 Pa. 561, 562; 959 A.2d 298 (2008) ("After review, we fully agree with the decisions of our sister courts, including the Eastern District of Pennsylvania looking at this case, that owners of presumptively abandoned property have no claim to the interest earned while the abandoned property is held in perpetual temporary custody of the state. The DAUPA procedures result not from a taking by overt act of the Commonwealth, but are triggered by the neglect of the owner."); see also *Morris v. Chiang*, 163 Cal App 4th, 753, 77 Cal Rptr 3d 799 (2008); *Rowlette v. North Carolina*, 188 N.C. App. 712, 656 S.E.2d 619 (2008); *Hooks v. Kennedy*, 961 So. 2d 425 (La. Ct. App. 2007); *Clark v. Strayhorn*, 184 S.W.3d 906 (Tex. App. 2006); *Dani v. Miller*, 2016 OK 35, 374 P.3d 779 (Okla 2016); *Hall v. State*, 908 N.W.2d 345 (Minn. 2018).

The second, adopted by the Seventh and Sixth Circuits, rejects this understanding of abandonment and follows the *Webb's* line of cases, holding that a State must pay interest earned on previously unclaimed property while the State holds it, because the interest follows the principal in ownership. See, e.g., *Goldberg v. Frerichs*, 912 F.3d 1009, 1011 (7th Cir. 2019).

As a result of this split, States in some circuits see their unclaimed property laws overridden and are required to pay interest when previously unclaimed property is claimed even though they chose not to do so, while States in other circuits are not.

But whether the Constitution or federal common law requires interest to follow the principal in the context of unclaimed property should not depend on the federal circuit in which a state is situated. Rather, it is a property question that turns on each state's laws and historical recognition of property rights. This inconsistency not only takes the choice away from certain States, contrary to *Texaco*, but also may incentivize States to exercise their full escheat powers by not providing any right to reclaim property at all. States that keep open the right to reclaim abandoned property, while using interest earned during the period of custody for the public good, should not be penalized for that choice.

In sum, absent this Court's intervention, the conflict Michigan officials face and the conflict among the circuits on this foundational property law issue present a reasonable probability that the State's petition would be granted, and a stay of the mandate is appropriate.

B. The Sixth Circuit decision directly conflicts with a precedential state court ruling, creating a conflict for state officials.

The Sixth Circuit decision is flawed. It held that the State must pay interest generated from property that is abandoned under operation of state law. In doing so, even though Michigan unclaimed property statutes return only the principal and not interest if the unclaimed property was not interest bearing when abandoned, the court concluded that the common-law rule that interest follows principal nevertheless governs. See, e.g., *Webb's Fabulous Pharmacies, Inc. v. Beck-with*, 449 U.S. 155, 161–62 (1980); *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 172 (1988).

The Sixth Circuit thereby rejected a published decision of the Michigan Court of Appeals that (1) squarely construed Michigan’s UUPA and (2) held that the former owner has no right under state law to interest earned during the period of abandonment under state law. In holding that there is no property right to interest earned on abandoned property in the State’s custody, *Kemerer* determined the rule of law in Michigan that all state courts must apply. Mich. Ct. R. 7.215(C)(2). Absent this Court’s intervention, the Sixth Circuit’s opinion will leave an irreconcilable conflict regarding how the UUPA operates and what it requires. State officials who administer the UUPA, and the people affected by it, will face two conflicting rulings, each binding in their respective court systems.

Had the panel majority properly deferred to the on-point, precedential state appellate court opinion in *Kemerer*, there would be no deprivation of either the principal or the interest. O’Connor claimed the principal years later through the state law process, and the State returned its equivalent value. Under *Kemerer*, there is no state property right to interest on previously unclaimed property that was non-interest-bearing when it was abandoned.

A member of the panel agreed that *Kemerer* should control. Judge Nalbandian wrote separately that “*Kemerer* has bound us since the day it was published,” but concurred because the panel was constrained to follow *Hendershot v. Stanton*, 162 F.4th 625 (6th Cir. 2025), which held that the maxim that interest follows the principal applies to the UUPA. (Appendix to this Application, App’x B [Concurring Op., p. 15].) Because *Kemerer* continues to bind the Michigan Court of Appeals and Michigan

trial courts, state officials face competing, irreconcilable decisions governing the same state process. Only this Court can resolve that conflict.

II. The balance of harms weighs in the State’s favor.

Given the significant harm to the State absent a stay, and considering the lack of prejudice to O’Connor from a stay, the balance of the harms favors staying the mandate.

A. The State will be irreparably harmed absent the stay.

The Sixth Circuit’s ruling mandates a significant shift in how an important state law operates, and it directly conflicts with a controlling state court decision. Absent this Court’s intervention, state officials will face two conflicting opinions on whether the notion that “interest follows the principal” applies to unclaimed property. As a result, they would have to start identifying millions of unclaimed properties treated as abandoned under the statute and determine whether they generated interest while in the State’s possession, for what duration, and at what rates. And they would have to undertake this massive effort despite a controlling state appellate decision holding that state law does not require it.

In addition, if the mandate is not stayed, the State will expend significant time and resources litigating a putative class action in district court while the petition for certiorari is pending before this Court. The harm is not just the time and expense of litigation; it is that those efforts would be wholly unnecessary if this Court reverses

on the threshold question of whether the right recognized by the Sixth Circuit exists, which determines whether a due-process analysis is necessary in the first instance.

Beyond the burden on the parties, the district court may also spend substantial time adjudicating the remaining legal and procedural questions, which are ancillary to the question the State intends to present to this Court. The district court's resources are better spent allowing the appellate process to first resolve this important, threshold legal question, which implicates concerns about federalism and the States' ability to interpret their own property laws.

The State believes there is a substantial probability that the petition will be granted, and staying the mandate during its consideration will prevent the State from prematurely expending its resources on a complex, putative class action, including class discovery and certification, none of which will be needed if this Court grants review and reverses. This Court should stay the mandate to avoid placing this burden on the State.

B. O'Connor will not be prejudiced by the stay.

The State already paid O'Connor the principal of his formerly unclaimed property in the amount of \$237.62. The only question remaining is whether he is entitled to interest on that property. If O'Connor ultimately succeeds in creating a federal right to interest on abandoned property, then he may be entitled to interest, which would continue to accrue during the pendency of the case. And there is no dispute that the State is capable of satisfying such a judgment. Therefore, he will not suffer any prejudice if this Court grants the stay.

CONCLUSION

For these reasons, this Court should grant a stay of the Sixth Circuit's mandate.

Respectfully submitted,

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Application Appendix Index

A - 9/17/2026 (28) Sixth Cir No. 25-2104, Order denying stay

B - 8/26/2026 (25) Sixth Cir No. 25-2104, Opinion

C - 10/6/2023 (29) Sixth Cir No. 22-1780, Opinion