

# United States Court of Appeals for the Federal Circuit

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**JAKE LATURNER, TREASURER OF THE STATE  
OF KANSAS, ANDREA LEA, IN HER OFFICIAL  
CAPACITY AS AUDITOR OF THE STATE OF  
ARKANSAS,**  
*Plaintiffs-Appellees*

v.

**UNITED STATES,**  
*Defendant-Appellant*

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2018-1509, 2018-1510

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Appeals from the United States Court of Federal  
Claims in Nos. 1:13-cv-01011-EDK, 1:16-cv-00043-EDK,  
Judge Elaine Kaplan.

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Decided: August 13, 2019

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DAVID CHARLES FREDERICK, Kellogg, Huber, Hansen,  
Todd, Evans & Figel, PLLC, Washington, DC, argued for  
all plaintiffs-appellees. Plaintiff-appellee Jake LaTurner  
also represented by SCOTT H. ANGSTREICH, KATHERINE  
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MO.

DAVID THOMPSON, Cooper & Kirk, PLLC, Washington,

DC, for plaintiff-appellee Andrea Lea. Also represented by JOHN DAVID OHLENDORF, PETER A. PATTERSON; JOSEPH H. MELTZER, MELISSA L. TROUTNER, Kessler Topaz Meltzer & Check, LLP, Radnor, PA.

ALISA BETH KLEIN, Appellate Staff, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellant. Also represented by MARK B. STERN, JOSEPH H. HUNT.

GEORGE W. NEVILLE, Office of the Mississippi Attorney General, Jackson, MS, for amici curiae State of Florida, State of Mississippi, State of Georgia, State of Indiana, State of Iowa, Commonwealth of Kentucky, State of Louisiana, Commonwealth of Pennsylvania, State of Ohio, State of South Carolina, State of Rhode Island, State of South Dakota.

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Before DYK, CHEN, and HUGHES, *Circuit Judges*.

DYK, *Circuit Judge*:

During the Great Depression, President Franklin D. Roosevelt signed legislation allowing the U.S. Department of Treasury (“Treasury”) to issue savings bonds, a type of debt security designed to be affordable and attractive to even the inexperienced investor. Under longstanding federal law, savings bonds never expire and may be redeemed at any time after maturity. *See, e.g.*, 31 U.S.C. § 3105(b)(2)(A); 31 C.F.R. § 315.35(c). Federal law also limits the ability to transfer bonds. 31 C.F.R. § 315.15. Kansas and Arkansas (the “States”) passed so-called “escheat” laws providing that if bond owners do not redeem their savings bonds within five years after maturity, the bonds will be considered abandoned and title will transfer (i.e., “escheat”) to the state two or three years thereafter. Kan. Stat. Ann. §§ 58-3935(a)(16), 58-3979(a) (2000); Ark. Code Ann. § 18-28-231(a)–(b) (2015).

Pursuant to these escheat laws, the States sought to redeem a large but unknown number of bonds, estimated to be worth hundreds of millions of dollars. When Treasury refused, the States filed suit in the Court of Federal Claims (“Claims Court”). The Claims Court agreed with the States, holding that Treasury must pay the proceeds of the relevant bonds—once it has identified those bonds—to the States. The cases were certified for interlocutory appeal to this court.

We reverse for two independent reasons. First, we hold that federal law preempts the States’ escheat laws. That means that the bonds belong to the original bond owners, not the States, and thus the States cannot redeem the bonds. Second, 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. Because the States do not have the physical bonds or the bond serial numbers, Treasury properly denied their request for redemption.

#### BACKGROUND

This case concerns the ability of states to acquire U.S. savings bonds through escheat, the centuries-old right of the states to “take custody of or assume title to abandoned personal property.” *Delaware v. New York*, 507 U.S. 490, 497 (1993). A savings bond is a contract between the United States and the bond owner, and Treasury regulations are incorporated into the bond contract. *See Treasurer of New Jersey v. U.S. Dep’t of the Treasury*, 684 F.3d 382, 387 (3d Cir. 2012), *cert. denied*, 569 U.S. 1004 (2013).

Treasury “regulations do not impose any time limits for bond owners to redeem the[se] savings bonds.” *Id.* at 388; *see also* 31 U.S.C. § 3105(b)(2)(A) (authorizing Treasury to adopt regulations providing that “owners of savings bonds may keep the bonds after maturity”). In addition, Treasury

regulations provide that savings bonds are generally “not transferable and are payable only to the owners named on the bonds.” 31 C.F.R. § 315.15. When the sole owner of a bond dies, “the bond becomes the property of that decedent’s estate.” 31 C.F.R. § 315.70(a). Federal law imposes no time limit on the redemption of savings bonds, and numerous savings bonds in the country have matured but have not yet been redeemed by their owners. Generally, in order to redeem bonds not in the physical possession of the owner—for example, bonds that have been lost or destroyed—the owner must supply the serial numbers of the bonds to Treasury. 31 C.F.R. §§ 315.25, 315.26(a), 315.29(c). The States do not have the serial numbers of the bonds in question.

This case is related to an earlier litigation that resulted in a decision by the Third Circuit. In the 2000s, several states attempted to acquire the proceeds of unredeemed savings bonds through so-called “custody escheat” laws. *See New Jersey*, 684 F.3d at 389–90. These laws provided that if bond owners with last known addresses in the state did not redeem their bonds within a certain time after maturity (such as five years), the bonds would be deemed abandoned property. The state could then obtain legal custody of (but not title to) the bonds. When several states asked Treasury to redeem bonds obtained through these custody escheat laws, Treasury refused. Treasury explained that for the bonds to be paid, a state “must have possession of the bonds” and “obtain title to the individual bonds”—neither of which the states had. J.A. 507 (2004 letter to North Carolina); *accord* J.A. 509 (letter to Illinois); J.A. 511 (letter to D.C.); J.A. 513 (letter to Kentucky); J.A. 515 (letter to New Hampshire); J.A. 517 (letter to South Dakota); J.A. 519 (letter to Connecticut); J.A. 521 (letter to Florida).

A number of states filed suit in the District of New Jersey, seeking an order directing the government to pay the bond proceeds. The district court upheld Treasury’s denial

of payment, holding that the states' custody escheat laws were preempted. See *New Jersey*, 684 F.3d at 394. The Third Circuit affirmed, explaining that the states' laws "conflict[ed] with federal law regarding United States savings bonds in multiple ways." *Id.* at 407. The court reasoned that unredeemed bonds are "not 'abandoned' or 'unclaimed' under federal law because the owners of the bonds may redeem them at any time after they mature." *Id.* at 409. "The plaintiff States' unclaimed property acts, by contrast, specify that matured bonds are abandoned and their proceeds are subject to the acts if not redeemed within a [certain] time period" after maturity. *Id.* at 407–08. "There simply is no escape from the fact that the Federal Government does not regard matured but unredeemed bonds as abandoned even in situations in which [state law] would do exactly that." *Id.* at 409. However, the Third Circuit declined to address whether the outcome would be different if states obtained *title* to savings bonds, as opposed to mere custody. *Id.* at 413 n.28 ("We simply are not faced with that possibility and thus we do not address it.").

After the *New Jersey* litigation, Kansas and Arkansas acted to obtain title to the bonds using "title escheat" laws—precisely the circumstance the Third Circuit's *New Jersey* decision did not reach. Kansas's title escheat law provides that a savings bond will be considered "abandoned" if it is not redeemed within five years of maturity. Kan. Stat. Ann. § 58-3935(a)(16). If the bond remains unredeemed for three more years—that is, for a total of eight years after maturity—Kansas may obtain a state court judgment that title to the bond has escheated to the state. *Id.* § 58-3979(a). Arkansas's law is similar, providing that savings bonds will be considered abandoned five years after maturity and that the state can obtain title to the bonds two years after that. Ark. Code Ann. § 18-28-231(a)–(b).

Kansas and Arkansas obtained state court judgments purporting to give them title to the category of bonds deemed abandoned under these title escheat laws—that is,

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