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Calif. Seizing Too Much Property Too Fast, High Court Told

By **Daniel Langhorne**

Law360, New York (August 14, 2015, 10:55 PM ET) -- The plaintiffs in an unlawful seizure action against the California State Controller has asked the [U.S. Supreme Court](#) to review a Ninth Circuit decision holding that provisions in the California Unclaimed Property Law do not violate the Fifth and Fourteenth Amendments.

Lead plaintiff Chris Lusby Taylor said in an Aug. 5 petition that the notice provisions in the Unclaimed Property Law — which allows the state controller to appropriate property of purportedly unknown persons, auction or otherwise sell it off and keep the proceeds — is meager and unconstitutionally inadequate.

“The UPL is a recipe for abuse,” the petition said. “It interferes with the statutory scheme of other states and authorizes the seizure and appropriation of private property that is auctioned off for the state’s benefit, rather than returned to its rightful owners.”

Under the law’s escheat process, a banking organization identifies property that is statutorily defined as unclaimed when there is no activity on an account and the bank has had not contact with the owner for a certain period of time, after which the state controller automatically takes ownership. Since the law’s enactment in 1959 this time period has dropped from 15 years to three years, according to the petition.

“Once this property is auctioned off or destroyed by the operation of the UPL scheme, at most the rightful owner will be offered a 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 heirloom jewelry in a safe deposit box) far exceeds its commercial value,” the petition said.

In December 2001, Taylor and his fellow petitioners filed a putative class action in California federal court against the state controller. U.S. District Judge John A. Mendez dismissed the case on Eleventh Amendment grounds, but the Ninth Circuit reversed that decision in 2005, according to the petition.

After another two years of proceedings, the district court issued a preliminary injunction enjoining the

controller from taking, selling or destroying any property under the Unclaimed Property Law until it revised its notification process, according to the petition.

California S.B. 86 in 2007 was intended to bring the Unclaimed Property Law into compliance with the Constitution, but the amount of property seized by the state had grown from about \$1.9 billion at the time the case was filed to \$7.6 billion after the Legislature passed the new regulations, the petition said.

The district court then dissolved the injunction in light of S.B. 86.

The plaintiffs filed a second amended complaint in July 2012 saying the controller continued to seize property without adequate notice. A judge tossed the suit in November 2012, the Ninth Circuit affirmed, and now the plaintiffs have appealed to the high court.

William Palmer, counsel for the plaintiffs, told Law360 on Friday he decided to petition the high court after briefing 20 cases over the UPL since 2001.

“There are 49 states watching what California does [in this case] because its going to set the standard,” Palmer said. “Every day I get one to two calls from people who were hurt [by the UPL].”

Palmer hopes he has a decent chance of the high court agreeing to hear the case, because he has fine-tuned the petition with the help of constitutional scholar Laurence H. Tribe of Harvard Law School.

John Hill, press secretary for the California State Controller’s Office, said the state looked forward to ending the case. “The state controller is hopeful that this costly litigation will finally come to end after 13 years,” he said. “She is confident that the courts will continue to rule in the state’s favor.”

The plaintiffs are represented by William W. Palmer of Palmer Law Group, Laurence H. Tribe of Harvard Law School and Jonathan S. Massey of [Massey & Gail LLP](#).

The state is represented by Robin Bradle Johansen and Margaret Prinzing of [Remcho Johansen & Purcell LLP](#).

The case is Chris Lusby Taylor et al. v. Betty Yee et al., case number 15-169, in the Supreme Court of the United States.

—Editing by Brian Baresch.

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