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Minnesota Supreme Court Misses the Mark on Abandoned Property Rights—Hall v. State, 908 N.W.2D 345 (Minn. 2018)

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MINNESOTA SUPREME COURT MISSES THE MARK ON ABANDONED PROPERTY AND PROPERTY RIGHTS – HALL V. STATE, 908 N.W.2D 345 (MINN. 2018)

Jake Morgan

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I. INTRODUCTION

In its recent holding in *Hall v. State,* the Minnesota Supreme Court ruled on two separate issues related to the Minnesota Unclaimed Property Act (MUPA). The first issue was whether owners of unclaimed property taken into the custody of the State pursuant to MUPA were entitled to the interest the property accrued while it was in the State’s custody. The court held that if the unclaimed property was not interest-bearing at the time of its transfer to the State, no constructive interest would be due from the State, and no taking had occurred under the Fifth Amendment of the Constitution. If, however, the property was interest-bearing prior to its transfer to the State’s custody, the owner of that property would be entitled to the actual interest that would have been earned had the property remained in his or her possession.

The second issue was whether the owners received sufficient notice that their property was being transferred to the State’s custody. The court held that the notice provided by and under MUPA to owners of interest-bearing property valued over $100 is sufficient to inform owners that their property is subject to transfer to the custody of the State. Thus, MUPA comports with the due process requirements of the Fourteenth Amendment. In so holding, the court reversed in part, and affirmed in part, the court of appeals’ answers to the two certified questions. Following the Supreme Court’s decision, the case was remanded to the district court for further proceedings.

This case note first explores the history of unclaimed property law in Minnesota and other states. Second, it addresses the history of abandoned property law and how states’ authority to take and use

2. *Id.* at 349.
3. *Id.* at 348.
4. *Id.* at 349; see also U.S. CONST. amend. V ("No person shall . . . be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.").
5. *Hall,* 908 N.W.2d at 349.
6. *Id.* at 348.
7. *Id.*
8. *Id.; see also U.S. CONST. amend. XIV, § 1 ("[N]or shall any State deprive any person of life, liberty or property without due process of law . . . ").
9. *Hall,* 908 N.W.2d at 349.
10. *Id.*
11. *See infra* Part II.B–D.
abandoned property has evolved. Following this historical discussion, this case note will discuss the facts of the Hall case and how the court reached its conclusion. Fourth, it argues that all four Plaintiff-Appellants in Hall are entitled to interest from the State of Minnesota under the Takings Clause of the Fifth Amendment, and it will advocate for a change to the MUPA so that the State may avoid such takings claims in the future.

II. HISTORICAL BACKGROUND

A. Introduction

This section describes in detail the history of unclaimed and abandoned property laws in the United States with a particular focus on Minnesota. It begins with a brief discussion of the medieval origins of unclaimed property and escheat. Next, it examines the beginnings of formal unclaimed property laws in the United States, specifically the Uniform Disposition of Unclaimed Property Act. It also will examine the Minnesota Unclaimed Property Act—Minnesota's version of the Uniform Disposition of Unclaimed Property Act. Then, it considers the history of the law of abandonment, particularly the intent element that has long been essential for a court to find actual abandonment. Finally, it discusses the history of the Takings Clause of the Fifth Amendment of the Constitution of the United States, and the long-held view of property rights as a "bundle of sticks" comprising an individual's specific rights to, and interests in, property.

12. See infra Part II.E–F.
13. See infra Part III.
14. See infra Part IV.E–F.
15. See infra Part IV.B–E.
16. See infra Part IV.B.
17. See infra Part IV.C.
18. See infra Part IV.D.
19. See infra Part IV.E.
20. See infra Part IV.F–G.
B. Origins of Unclaimed Property Laws

Unclaimed property laws originated in medieval England and were primarily applied to real property.21 The king could grant land to his lords, who could in turn make grants to tenants upon the land.22 If those subsequent tenants or the granting lord died, the lands would escheat23 back to the original grantor; for example, if a lord died, the lands granted to him would escheat back to the king.24 The vast majority of wealth in medieval times was found in real property and consequently, little attention was given to unclaimed personal property.25 However, as personal property become more valuable, escheat laws evolved to include personal property.26 The doctrine of bona vacantia27 gave a state priority title to all unclaimed property over the finder of abandoned or unclaimed property.28 The state then “assumed the power of bona vacantia as an incident of [its] police powers.”29 Eventually, upon the early adoption of unclaimed property laws in the United States, the doctrines of escheat and bona vacantia merged into one doctrine referred to simply as escheat.30

Under the early system of government in the post-colonial United States, states viewed themselves as the rightful owners of unclaimed property under the doctrine of parens patriae.31 Using this doctrine,

22. Id.
23. Escheat, BLACK’S LAW DICTIONARY (10th ed. 2014) (“Hist. The reversion of land ownership back to the lord when the immediate tenant dies without heirs.”); see also Escheat, BLACK’S LAW DICTIONARY (10th ed. 2014) (“Reversion of property (esp. real property) to the state upon the death of an owner who has neither a will or any legal heirs.”).
24. See Sanguiliano, supra note 25 (outlining the historical process of escheat of real property in medieval England, and the evolution of escheat laws to include personal property).
25. Id.
26. Id.
27. Bona – Bona Vacantia, BLACK’S LAW DICTIONARY (10th ed. 2014) (Latin for vacant goods, and further defined as “[p]roperty not disposed of by a decedent’s will and to which no relative is entitled under intestacy laws[]” and “[o]wnerless property; goods without an owner.”).
29. 1 DAVID J. EPSTEIN, UNCLAIMED PROPERTY LAW AND REPORTING FORMS § 1.04 (2018).
30. Id.
31. See id. at § 2.01; see also Parens Patriae, BLACK’S LAW DICTIONARY (10th ed. 2014) (“1. Roman Law. The emperor as the embodiment of the state. 2. The state regarded as a sovereign; the state in its capacity as a provider of protection for those
states asserted their right to unclaimed property over both the true owner and the federal government. The rationale was that if ownerless or unclaimed property was located in a particular state, then that state should have claim to that property. This view is similar to the doctrine of *ratione soli*, under which a property owner has rights to all personal property—particularly wild animals in old common law—located on his or her land, even if he or she is not the rightful owner. In recent years, however, advances in technology have allowed property owners who are domiciled in one state to own property that is located in a different state or states, or so-called intangible property that may flow freely between states. Because of this change in property ownership, the doctrine of *parens patriae* is no longer relevant, and states have ceased using it to claim ownership of unclaimed property.

C. The Uniform Disposition of Unclaimed Property Act

Following the adoption of English Common Law into the American legal system, many jurisdictions adopted escheat laws to cover certain categories of tangible and intangible property. Because of the myriad of conflicting state laws on this subject, the 1954 Uniform Disposition of Unclaimed Property Act (1954 Act) was unable to care for themselves ... 3. A doctrine by which the government has standing to prosecute a lawsuit on behalf of a citizen, esp. on behalf of someone who is under a legal disability to prosecute the suit ...”).

32. *See Epstein, supra* note 33, at § 2.01; *see also* Am. Loan & Tr. Co. v. Grand Rivers Co., 159 F. 775, 780 (W.D. Ky. 1908) (“When this country achieved its independence, the prerogatives of the crown devolved upon the people of the states. And this power still remains with them except so far as they have delegated a portion of it to the federal government. The sovereign will is made known to us by legislative enactment. The state, as a sovereign, is the parens patriae.”).

33. *See Epstein, supra* note 33, at § 2.01.

34. *Property Ratione Soli*, BLACK’S LAW DICTIONARY (10th ed. 2014) (“The common-law right to take wild animals found on one’s own land.”); *see also* Payne v. Sheets, 55 A. 656, 657 (Vt. 1903) (“Property *ratione soli* is the common-law right which every owner of land has to kill and take all such animals *ferae naturae* as may from time to time be found on his land, and as soon as this right is exercised the animal so killed or caught becomes the absolute property of the owner of the soil.”).

35. *See Epstein, supra* note 33, at § 2.01; *see, e.g.*, Texas v. New Jersey, 379 U.S. 674 (1965). This case dealt with escheat, and specifically a state’s right of escheat of intangible property. *Id.* The court determined that the property should escheat to the state in which the owner of the property was last known to have been domiciled. *Id.*


passed in an attempt to bring uniformity to unclaimed property laws in the United States. The 1954 Act was initially adopted by fifteen states. Subsequently, the 1954 Act has been amended and revised on various occasions, with more states choosing to adopt the revisions in whole or in part, providing relatively consistent jurisprudence regarding unclaimed property around the country. Minnesota adopted the revision of the law promulgated in 1966. Today, all fifty states, the District of Columbia, Puerto Rico, and Guam have adopted some form of unclaimed property law.

Unclaimed property laws in the United States have, perhaps intentionally, become a major source of revenue for the States. Unclaimed property can come in many forms including “uncashed checks, unapplied accounts receivable credit balances, ‘lost’ stock shares, and many other types of intangible property.” States conduct regular audits in an effort to find unclaimed property, particularly belonging to larger companies which often have a difficult time keeping track of the vast array of property they own. The reality is that the overwhelming majority of true property owners are never found, meaning states can retain the unclaimed property indefinitely, effectively raising state revenue. The U.S. Court of Appeals for the Sixth Circuit has held that raising revenue is a legitimate state purpose, and any changes to unclaimed property laws—such as shortening dormancy periods—in an effort to raise revenue are rationally related to that legitimate purpose.

D. The Minnesota Unclaimed Property Act

The current MUPA, like most state statutes concerning unclaimed property, addresses the disposition of property that is presumed

38. Id.
39. Id.
40. Id. at 24–25.
41. Id.
42. See Epstein, supra note 33, at § 2.05.
44. Id. at 25.
45. Id. at 24.
46. Id.
47. Am. Express Travel Related Servs. Co. v. Kentucky, 641 F.3d 685 (6th Cir. 2011) (holding that under rational basis review, the change in Kentucky’s unclaimed property laws which shortened the dormancy period for unclaimed property in an effort by the State to raise revenue was a legitimate state purpose).
abandoned rather than actually abandoned. Before the holder of the property—often a bank or an insurance company holding unclaimed insurance proceeds—turns the property over to the State, the holder is required to make one last effort to give the true property owner notice that their property has been unclaimed for the requisite amount of time and will soon be turned over to the custody of the State. Upon the presumption of abandonment, the property is initially turned over to county officials. The county officials may then sell the property at auction if the property is tangible, or turn over the proceeds directly to the Minnesota Department of Commerce. The Department of Commerce must then make a reasonable effort to find the last known owner and give them reasonable notice that their property has been taken into State custody. If the property remains unclaimed, it is deposited into Minnesota’s General Fund. Because the property taken into custody by the State is only presumed abandoned, and not conclusively or actually abandoned, owners of the property may reclaim it from the State at any time. Any funds remaining unclaimed stay in the General Fund as non-dedicated revenue, presumably for general use by the State. The MUPA specifically provides, however, that no

49. Minn. Commerce Dep’t, Unclaimed Property Process Report (2018), https://www.leg.state.mn.us/docs/2018/mandated/180230.pdf [https://perma.cc/563D-CLG7]; see also Minn. Stat. §§ 345.32–39 (2016). The required amount of time that the holder must have the property before reporting it to the State ranges from six months to up to seven years, depending on the type of property at issue. Id.
51. Id.
52. Id. Under the Supreme Court’s decision in Mullane, notice that is reasonably calculated to inform parties of the proceedings that affect their interest is sufficient to provide effective notice. Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). The Court in Mullane also recognized that “publication alone” is generally insufficient notice. Id. at 315. However, publication can be sufficient when there are no other reasonable means of notifying the parties of an action. Id. at 316.
53. Fiscal Analysis Dep’t, supra note 54; see Minn. Stat. § 345.48, subdiv. 1 (2016) (“All funds received . . . including the proceeds from the sale of abandoned property . . . shall forthwith be deposited . . . in the general fund of the state.”).
54. Minn. Stat. § 345.49, subdiv. 1(a) (2016) (“Any person claiming an interest in any property delivered to the state . . . may file a claim thereto or to the proceeds from the sale thereof.”).
55. See Fiscal Analysis Dep’t, supra note 54.
interest earned during the time the property is in the custody of the State is to be paid to the property owners upon their reclamation of the property.\textsuperscript{56} If and when an owner makes a claim for the property, the owner is compensated out of the General Fund.\textsuperscript{57}

Minnesota is fairly successful at returning unclaimed property to true owners.\textsuperscript{58} However, a large portion of the unclaimed property taken into custody each year is not returned to the true owners.\textsuperscript{59} By law, the State only is required to give reasonable notice to owners in an effort to return their property.\textsuperscript{60} Unclaimed property, therefore, is a source of revenue for the State of Minnesota.\textsuperscript{61}

\textbf{E. The Law of Abandoned Property}

Under Minnesota law, it has long been held that in order for property—real or personal—to be considered abandoned, two critical elements must be present: act and intent.\textsuperscript{62} Without the owner’s intent to fully divest themselves of all rights to the property, courts generally will not find that the owner has actually and

\begin{quote}
\textsuperscript{56} \textit{Minn. Stat.} § 345.45 (2016) ("When property is paid or delivered to the commissioner … the owner is not entitled to receive income or other increments accruing thereafter.").
\end{quote}

\begin{quote}
\textsuperscript{57} \textit{See Fiscal Analysis Dept’t, supra note 54; see also Minn. Stat.} § 345.49 (2016).
\end{quote}

\begin{quote}
\textsuperscript{58} \textit{See Minn. Commerce Dept’t, supra note 53.}
\end{quote}

\begin{quote}
\textsuperscript{59} \textit{Id. at 4. Every year since 2012, the State of Minnesota has taken custody of anywhere from $60 million to almost $100 million in unclaimed property. Id. Even in its most successful year in terms of returning unclaimed property to the true owner, however, the State was only able to return fifty-five percent of the property it took into custody. Id. This was in 2013, when $34 million was returned out of $61 million taken into custody. Id. While this note does not focus on the efficacy of the notice of custody given to property owners in Minnesota, the State is certainly profiting significantly from unclaimed property. See generally id.}
\end{quote}

\begin{quote}
\textsuperscript{60} \textit{See Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 315–17 (1950) (discussing reasonable notice requirements generally, particularly the constitutionality of notice through publication when all other reasonable avenues for giving notice have been exhausted or are not practical).}
\end{quote}

\begin{quote}
\textsuperscript{61} \textit{See generally Minn. Commerce Dept’t, supra note 53.}
\end{quote}

\begin{quote}
\textsuperscript{62} \textit{See, e.g., City of St. Paul v. Vaughn, 306 Minn. 337, 345–46, 237 N.W.2d 365, 370 (1975); Rogrud v. Zubert, 282 Minn. 430, 437, 165 N.W.2d 244, 250 (1969); Hediger v. Zastrow, 174 Minn. 11, 11, 218 N.W. 172, 172 (1928); Shepard v. Alden, 161 Minn. 135, 142, 201 N.W. 71, 72 (1925); Rowe v. City of Minneapolis, 49 Minn. 148, 157, 51 N.W. 907, 908 (1892); see also Abandonment, Black’s Law Dictionary (10th ed. 2014) ("the relinquishing of a right or interest with the intention of never reclaiming it … [t]he relinquishing of or departing from a homestead, etc., with the present, definite, and permanent intention of never returning or regaining possession.").}
\end{quote}
Property that is not in the possession of the owner but has not been conclusively abandoned will more likely be considered mislaid or lost. Abandoned property is defined as “property that the owner voluntarily surrenders, relinquishes, or disclaims.” Lost property, on the other hand, is defined as “property that the owner no longer possesses because of accident, negligence, or carelessness, and that cannot be located by an ordinary, diligent search.” Mislaid property is somewhere in the middle, defined as “property that has been voluntarily relinquished by the owner with an intent to recover it later—but that cannot now be found.”

Even if property is neglected for the requisite amount of time according to an unclaimed property statute, it still cannot be actually and conclusively abandoned because of the owner’s lack of intent. Many state unclaimed property statutes incorporate this view of abandonment by using the phrase “presumably abandoned,” allowing the property owner to claim ownership for very long periods of time, often indefinitely. Presumably abandoned property and lost
property seem to have very similar definitions and connotations, specifically that the true owner is unaware that they are no longer in possession of the property, or that the property existed in the first place.69

F. History of The Takings Clause of the Fifth Amendment

In North American colonial times, the government was not required to provide compensation when it took property for public use.70 At that time, the vast majority of wealth was held in real property.71 Prior to the formation and ratification of the Fifth Amendment of the U.S. Constitution, the right of the government to take personal and real property was not questioned.72 Interestingly, however, the concept of government compensation to citizens for the taking of private property was not unheard of at the time the Constitution was drafted.73 Nonetheless, none of the colonial charters had provisions related to just compensation for takings of property, so any determination of compensation was generally left to the political process.74 During the Constitution’s ratification process, delegates to state ratifying conventions “sought as amendments . . . every provision of the Bill of Rights except the Takings Clause.”75 This relative lack of concern for compensation of citizens perhaps is

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69. See Property – Lost Property, supra note 69; see also Hall, 908 N.W.2d at 351 (discussing presumed abandonment and how the presumption of abandonment affects the status of the property).


72. Treanor, supra note 74, at 785.

73. See Bridget C.E. Dooling, Take it Past the Limit: Regulatory Takings of Personal Property, 16 FED. CIR. B.J. 445, 454–55 (2007) (discussing the origins of the Takings Clause, which can be found in the Magna Carta). The Magna Carta discusses the government’s obligation to pay compensation for takings of both “an estate in lands” (real property) and “corn and chattels” (personal property). Id.; see also Magna Carta Translation, NAT’L ARCHIVES & RECORDS ADMIN. (2015), https://www.archives.gov/exhibits/featured-documents/magna-carta/translation.html [https://perma.cc/P5DZ-DKAU].

74. Treanor, supra note 74, at 785–86.

75. Id. at 791.
illuminative of the strong view of the importance of state sovereign immunity.\textsuperscript{76}

There is a long history of takings jurisprudence in the United States following the ratification of the Fifth Amendment, and the definition of a constitutional taking has evolved significantly.\textsuperscript{77} There are generally two categories of takings recognized by courts.\textsuperscript{78} First, and perhaps most obviously, “when the government physically invades or appropriates property[,]” a taking has occurred that requires compensation.\textsuperscript{79} The second category of takings occurs when “government regulation goes ‘too far’ and deprives property owners of the beneficial use of their property.”\textsuperscript{80} Generally, a physical taking or appropriation of property requiring just compensation occurs when “someone has been deprived of the economic benefits of ownership . . . .”\textsuperscript{81} Further, the “Supreme Court has stated that, a taking, within the meaning of the Takings Clause, includes any action the effect of which is to deprive the owner of all or most of his or her interest in the subject matter, such as destroying or damaging it.”\textsuperscript{82} While takings jurisprudence was generally focused on only real property for much of the early history of the United States, the law has evolved to encompass all types of property, including intangible property, so that any time a citizen is deprived of “a group of rights that a so-called owner exercises in his or her dominion of a physical

\textsuperscript{76} See U.S. Const. amend XI (codifying the sovereign immunity of the States against suits brought by citizens of another state); Hans v. Louisiana, 134 U.S. 1, 20–21 (1890) (extending protection to the states from suits of its own citizens); see also Chisholm v. Georgia, 2 U.S. 419 (1793) (reaching a seminal decision in the history of Constitutional Law that effectively led to the ratification of the 11th Amendment). Shortly after the Supreme Court ruled in Chisholm that private citizens had a right to bring suit against individual states, the 11th Amendment was ratified to prevent such action in the future. See id; see also Hamilton v. Brown, 161 U.S. 256, 268–69, 274 (1896) (confirming that escheat privileges are part of state sovereignty and states, therefore, are allowed to exercise their right to regulate the succession of property).


\textsuperscript{79} Id.

\textsuperscript{80} Id.; see generally Lucas v. S.C. Coastal Council, 505 U.S. 1003, 1029 (1992) (discussing the issue of confiscatory regulations).

\textsuperscript{81} Wooster, \textit{supra} note 81, at § 2.

\textsuperscript{82} Id. (citing United States v. Gen. Motors Corp., 323 U.S. 373 (1945)).
thing, such as the right to possess, use, and dispose of it,” a taking generally has occurred. Over the course of the last half-century, the definition of and requirements for constitutional takings have been fairly constant, and the law fairly well settled. There are, however, exceptions to the general rule that the government cannot take private property for public use.

G. Property Rights as a “Bundle of Sticks”

The rights of property owners have long been viewed as a “bundle of rights” or more colloquially, a “bundle of sticks.” This bundle of rights is said to be rights the owner holds not in relation to the property itself, but in relation to all others, creating a “correlative duty not to interfere with [those ownership rights].” Property rights include “liberties, claim-rights, powers, and immunities.” The classic bundle of rights can be more specifically described as the rights of

83. Id. at § 4.
84. See Lingle v. Chevron U.S.A., Inc., 544 U.S. 528, 537 (2005) (“The paradigmatic taking requiring just compensation is a direct government appropriation or physical invasion of private property.”); see also id. at 538 (discussing the two categories of regulatory action that constitute per se takings). A per se taking occurs when the “government requires an owner to suffer a permanent physical invasion of his or her property” or when a regulation or regulations deprive an owner of all “economically beneficial use of” his or her property. Id.; see also Yee v. City of Escondido, 503 U.S. 519 (1992) (holding that where the government actually takes title to the property, the Takings Clause requires just compensation); Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426 (1982) (“[A] permanent physical occupation authorized by government is a taking.”).
85. See, e.g., Lynda J. Oswald, The Role of Deference in Judicial Review of Public Use Determinations, 39 B.C. Envtl. Aff. L. Rev. 243, 247 (2012) (discussing the eminent domain power of the states and federal government and its existence as an “inherent and essential attribute of sovereignty”). The article goes on to discuss states’ power to have stricter requirements for themselves in their own constitutions than the U.S. Constitution, which many do, and that these stricter requirements may make it more difficult for states to justify taking private property. Id. at 247–48; see also R.I. Econ. Dev. Corp. v. Parking Co., 892 A.2d 87, 96 (R.I. 2006) (“Simply stated, eminent domain is an exercise of the inherent power of the sovereign. The power of eminent domain refers to the right of the sovereign, or of those to whom the power has been delegated, to condemn private property for public use, and to appropriate the ownership and possession thereof for such use upon paying the owner a due compensation.”).
87. Id. at 712.
88. Id.
indefinite ownership of the property, use of the property, and disposition of the property, including the right to destroy or abuse the property.89

III. THE HALL DECISION

A. Facts and the District Court Decision

Between 2014 and 2015, four owners (Appellants) of various types of personal property had their property transferred to the custody of the State of Minnesota pursuant to the MUPA.90 Appellants Hall, Undlin, and Herron owned property that was not interest-bearing at the time of its transfer to the State’s custody.91 Appellant Wingfield’s property was in an interest-bearing bank account at the time of its transfer to the custody of the State.92 Evidence showed that Undlin and Herron had sought return of their property from the State, and that Hall apparently had not yet made an attempt to have his property returned.93 Appellant Wingfield—the owner of the interest-bearing bank account—had sought return of her property from the State.94 The State returned the principal sum to her, but did not return the interest that would have accrued had the property remained in Wingfield’s bank account.95

All four Appellants alleged in district court that the State owed them constructive interest for the time the funds were in the State’s

89. Id. at 714, 719–20 ("[T]he same bundle of rights does not attach to all forms of property. For a variety of policy reasons, the law limits or even forbids the exercise of certain rights over certain forms of property . . . . The limitation or prohibition diminishes the bundle of rights that would otherwise attach to the property, yet what remains is still deemed in law to be a protectable property interest.").

90. See Hall v. State, 908 N.W.2d 345, 349–50 (2018) (noting that appellant Hall’s property was a paycheck in an amount under $100 that Hall had never cashed or deposited; Appellant Undlin’s property was not identified as anything more than “funds” owed to him; Appellant Herron’s property was insurance proceeds in the amount of $236.57 that she was owed; Appellant Wingfield’s property was money from an interest-bearing account, the principal amount of which totaled over $100,000).

91. Id.

92. Id.

93. Id.

94. Id. at 350.

95. Id.
custody. The court in United States v. $7,990.00 in U.S. Currency defined constructive interest as "compensation for [the] loss of use of property." The district court denied a motion by the State to dismiss for lack of subject matter jurisdiction and failure to state a claim, and determined that all four Appellants had sufficiently alleged both a takings claim under the Fifth Amendment as well as a procedural due process claim under the Fourteenth Amendment.

B. Appellate Decision

Following the district court’s decision, the State filed a motion to certify the following constitutional questions to the court of appeals:

1. When presumptively abandoned property has been delivered to the Minnesota Commissioner of Commerce pursuant to the Minnesota Uniform Disposition of Unclaimed Property Act and thereafter placed into the general fund for use by the State, has the State effected an unconstitutional taking by failing to compensate owners for the loss of use of that property, including the ability to earn interest on the seized property?

2. Under the Minnesota Uniform Disposition of Unclaimed Property Act, is lack of pre-seizure notice (other than the statute itself) and the Commissioner’s postseizure method of providing notice to the owners of presumptively abandoned property (i.e., use of the website missingmoney.com and sporadic public events), sufficient to satisfy owners’ procedural due process rights?

The court of appeals answered the questions, finding that no taking had occurred that would require just compensation, and that procedural due process had been satisfied. In its analysis, the court

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96. Id. at 349, 355 ("Finally, appellants argue that because they were unable to use their property while the State had custody of it, they are entitled to compensation for that loss of use in the form of constructive interest."); see also Interest, BLACK’S LAW DICTIONARY (10th ed. 2014) (defining interest as "[a] legal share in something: all or part of a legal or equitable claim to or right in property. Collectively, the word includes any aggregation of rights, privileges, powers, and immunities; distributively, it refers to any one right, privilege, power, or immunity.").

97. United States v. $7,990.00 in U.S. Currency, 170 F.3d 843, 845 (8th Cir. 1999).

98. Hall, 908 N.W.2d at 350.


100. Id. at 732.

101. Id. at 735, 738.
of appeals reasoned that although the State placed the property in a general use fund, effectively making the State a borrower and the Appellants lenders, the Appellants did not argue that they were due interest on the property as lenders in the complaint. As for the notice issue, the court conducted a two-step analysis to determine if due process had been satisfied.

First, the court sought to determine whether the individuals had been deprived of a protected property right. If they had not, then there was no due process violation. Second, if the property owners had been deprived of such a right, the court would then determine if “the procedures used by the government [to give appellants notice] were constitutionally sufficient.” Here, the court of appeals determined that Appellants had not in fact been deprived of a protected property right, and that even if they had been, MUPA satisfied the constitutional requirements of procedural due process. Subsequently, Appellants petitioned the Minnesota Supreme Court for review.

C. Minnesota Supreme Court Decision

The Minnesota Supreme Court accepted the petition and ruled in favor of Appellant Wingfield on the takings claim, holding that because she had been earning interest on her property in her bank account prior to the State taking custody of the property, she should be entitled to that interest from the State. The court found it would be unconstitutional for the State to retain interest that would have been earned had the money remained in Wingfield’s bank account.

102. Id. at 735 ("[Appellants] allege that because the state uses the property, the owners essentially become lenders and the state a borrower and as such the owners are entitled to the equitable interest the state did not have to borrow from another source. But the interest that they claim they are now due for ‘lending’ their property to the state was not raised in the complaint.").

103. Id. at 737 (quoting Sawh v. City of Lino Lakes, 823 N.W.2d 627, 632 (Minn. 2012)) ("This court conducts ‘a two-step analysis to determine whether the government has violated an individual’s procedural due-process rights.’").

104. Id. at 737.

105. Id.

106. Id.

107. Id.


109. Id. at 357.

110. Id. (quoting Cerajeski v. Zoeller, 735 F.3d 577, 580 (7th Cir. 2013)) ("If you own a deposit account that pays interest, you own the interest, whether or not state
However, the court ruled in favor of the State on the takings claim for Appellants Hall, Undlin, and Herron because their property had not been earning interest prior to the State taking custody, and it would be an unwarranted windfall for them to receive interest on the property following the transfer of custody.  

Finally, the Minnesota Supreme Court agreed with the court of appeals that due process had been satisfied because all four Appellants received sufficient notice that their property had been transferred to the custody of the State. To reach this conclusion, the Minnesota Supreme Court cited cases in which the mere existence of a statute was sufficient notice to owners of the status of their property. Moreover, the court determined that the notice standard from *Mullane v. Central Hanover Bank & Trust Co.*—a seminal case on notice requirements—was not applicable because that standard was appropriate only for proceedings which are to be accorded finality. Because Appellants could reclaim their property at any time, this was not a proceeding which was accorded finality and therefore, the court held that a lower notice standard was required.

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111. *Hall*, 908 N.W.2d at 354 ("As other states have recognized in somewhat similar circumstances, to require that the State pay interest to these owners of unclaimed property would reward their inattention and provide and inappropriate windfall.").

112. *Id.* at 360–61.

113. *Id.* at 360; see *Texaco, Inc. v. Short*, 454 U.S. 516, 532 (1982) ("Generally, a legislature need do nothing more than enact and publish the law, and afford the citizenry a reasonable opportunity to familiarize itself with its terms and to comply."); *see also Anderson Nat’l Bank v. Luckett*, 321 U.S. 233, 243 (1944) ("The statute itself is notice to all depositors of banks within the state, of the conditions on which the balances of inactive accounts will be deemed presumptively abandoned, and their surrender to the state compelled.").

114. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 315 (1950) ("But when notice is a person’s due, process which is mere gesture is not due process. The means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it. The reasonableness and hence the constitutional validity of any chosen method may be defended on the ground that it is in itself reasonably certain to inform those affected, or, where conditions do not reasonably permit such notice, that the form chosen is not substantially less likely to bring home notice than other of the feasible and customary substitutes.”) (citations omitted).

115. See *Hall*, 908 N.W.2d at 360.

116. *Id.* at 360–61.
IV. Analysis

A. The Minnesota Unclaimed Property Act

Under the MUPA, all presumably abandoned property is transferred to the custody of the State after a period of one to three years, depending on the type of property at issue.117 Of particular importance to the instant case is Minnesota Statute Section 345.45, entitled Income Accruing After Payment or Delivery.118 Under this section of the statute, even if property taken into State custody is interest-bearing, the property owner, upon demand for return of the property from the State, is not entitled to any interest or income that would have been earned on the property had it not been in the custody of the State.119

B. Elements of a Constitutional Takings Claim

In order for a takings claim to be proven, plaintiffs must demonstrate four elements: (1) they have a property interest protected by the Fifth Amendment; (2) the government took the

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117. See generally Minn. Stat. §§ 345.32–39 (2016) (identifying types of property covered by the Act, as well as the length of time required for the property to be presumed abandoned and subsequently transferred to the State); see, e.g., § 345.32 ("[P]roperty held or owing by a banking or financial organization or by a business association is presumed abandoned ... [after] three years."); § 345.33(b) ("Unclaimed funds, as used in this section, means all moneys held and owing by any life insurance corporation unclaimed and unpaid for more than three years..."); § 345.39, subd. 1 ("Presumed Abandonment. All intangible personal property, not otherwise covered by sections 345.31 to 345.60, including any income or increment thereon, excluding any charges that may be lawfully withheld ... [that] has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned. Property covered by this section includes, but is not limited to: ... (g) credit balances, accounts receivable, and miscellaneous outstanding checks"); § 345.39, subd. 3 ("Unpaid compensation. Notwithstanding subdivision 1, unpaid compensation for personal services or wages, including wages represented by unpresented payroll checks, owing in the ordinary course of the holder's business that remains unclaimed by the owner for more than one year after becoming payable are presumed abandoned.").

118. Minn. Stat. § 345.45 (2016) ("When property is paid or delivered to the commissioner ... the owner is not entitled to receive income or other increments accruing thereafter.").

property interest; (3) the property interest was taken for public use; and (4) just compensation for the taking of the property interest was not paid. The Takings Clause of the Fifth Amendment may apply to personal property, real property, or intangible property, and generally can be applied equally to all three types of property.

1. Protected Property Interest

The first element of a takings claim is the existence of a protected property interest. A protected property interest is “[that] to which the owner has an ‘entitlement,’ as opposed to a unilateral or mere expectation.” The threshold for determining whether a protected property interest exists is lower for takings claims than for procedural due process claims. The Supreme Court concluded that “property interests protected by due process extend well beyond actual

120. Hall, 908 N.W.2d at 352 (citing Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1000 (1984)); see also Johnson v. City of Plymouth, 263 N.W.2d 603, 605 (Minn. 1978) (“To be constitutionally compensable, the taking or damage need not occur in a strictly physical sense, and can arise out of any interference by the state with the ownership, possession, enjoyment, or value of private property.”); Hendrickson v. State, 267 Minn. 436, 445–46, 127 N.W.2d 165, 172–73 (1964) (“If the jury decides that the location of the proposed interchange substantially impairs plaintiffs’ right to reasonably convenient and suitable access to the main thoroughfare, plaintiffs are entitled to damages [under a takings claim].”); County of Anoka v. Esmailzadeh, 498 N.W.2d 58, 60–61 (Minn. Ct. App. 1993) (citation omitted) (“[I]t is still possible that the project can ‘deny an abutting property owner the right of reasonable access’ and give rise to a compensable taking.”).

121. See U.S. Const. amend. V (“[N]or shall private property be taken for public use without just compensation.”); see also Michael J. Hostetler, Intangible Property Under the Federal Mail Fraud Statute and the Takings Clause: A Case Study, 50 DUKE L.J. 589, 591 (2000) (“Thus, some types of intangible property are treated similarly under both the mail fraud statute and the Takings Clause, while a few are treated differently.”); Intangible Property, BLACK’S LAW DICTIONARY (10th ed. 2014) (“Property that lacks a physical existence. Examples include stock options and business goodwill.”).

122. See Hall, 908 N.W.2d at 352.

123. Michael A. Zizka et al., STATE & LOCAL GOVERNMENT LAND USE LIABILITY SCOPE INFORMATION § 13.6 (2017) (citation omitted).

124. Id. (“In takings claims . . . in order to overcome the finality requirement, the permitted uses must be established; the focus in the litigation, then, is on the economic impact of the government’s final position and the justifications for its action.”).
ownership of real estate, chattels, or money." The Court in Board of Regents of State Colleges v. Roth held that in order for a protected property interest to exist, a person must have a "legitimate claim of entitlement to it." This is more than simple expectancy of a property right. The owner must be able to demonstrate his ownership or entitlement to the property. For example, the Court in Roth was tasked with determining whether continued employment was a protected property interest. Because the plaintiff could not show a legitimate claim of entitlement to it and merely expected or hoped for his employment to continue, the Court decided the right to continued employment was not a protected property right. While property rights are not created by the U.S. Constitution, they are protected by it. The United States Code codifies this protection:

Every person who, under color of any statute of any State or Territory subjects, or causes to be subjected, any citizen of the United States or any other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in any action at law, suit in equity, or other proper proceedings.

Property rights in particular are further codified in the Code which states, "All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, sell, hold, and convey real and personal property." Protected property rights are those that are "inseparably linked to liberty and freedom under the U.S.

125. Bd. of Regents of State Colls. v. Roth, 408 U.S. 564, 571–72 (1972) (attempting to define protected property interests; specifically, the right to continued employment in this particular case).
126. Id. at 577.
127. Id.
128. Id.
129. Id. at 578.
130. Id. at 578.
131. See U.S. Const. amend V ("No person shall be deprived of life, liberty, or property, without due process of law nor shall private property be taken for public use, without just compensation."); see also Jeff A. Woods, Constitutional Considerations, 14 E. Min. L. Found. § 10.08 (1993) (discussing the Constitution's protection, but not creation, of property rights and the fact that "intangibles" can be "afforded constitutional protection as property rights").
Constitution.” This includes the right to use property without infringement from another person or the government. Additionally, the U.S. Supreme Court has held that protected property rights include not only possession of property, but its “dynamic and profitable use by individuals.”

In the Hall case, all four Appellants were deprived of the “dynamic and profitable use” of their property during the time it was in the custody of the State. Furthermore, they did not discontinue the use or enjoyment of their property with the intent to garner interest from the government’s use of the property. Appellants had simply stopped using or maintaining the property in some way. Despite this, they still had the right to use the property, and when the government took that right away by using the property for public purposes, Appellants’ protected property right was infringed upon. All four Appellants had a legitimate claim or entitlement to the use and benefit of the property, and were deprived of that use when the government used the property while it was in the State’s custody. Therefore, the first element of a taking as articulated by the Hall court is satisfied.

2. Government Taking of Property Interest

The second element of a takings claim requires that “the government took the property interest.” Generally, where the government has simply taken custody of property, it cannot be said that the government has truly taken a property interest from the

135. Id. at 848.
137. See Hall v. State, 908 N.W.2d 345, 345 (Minn. 2018).
138. Id. at 349–50.
139. Id.
140. See Reply Brief of Appellants, supra note 71, at *7 (citation omitted) (“Under the Minnesota constitution, the State’s mere use of Plaintiff’s property constitutes a taking requiring just compensation.”).
141. Hall, 908 N.W.2d at 355.
142. Id. at 352.
143. Id.
plaintiff. However, if the government exercises any property right or title to the property, then it can become subject to a takings claim. Property rights include: indefinite ownership of the property, use of the property, and disposition of the property, including the right to destroy or abuse the property. If the government was to exercise any of these rights over private property, that exercise would be a deprivation of the owner's property right, and would require just compensation. Because the State here used the Appellants' property to fund state actions when it placed the property into a general use fund, the second element of a taking is satisfied.

3. Public Use of Private Property

The third element of a takings claim, according to the Hall court, is that the property interest to be taken for a public use. In order for this element to be satisfied, it must be shown that the State used

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144. See id.; see also Sogg v. Ohio Dep't. of Commerce, No. 06AP-883, 2007 WL 1812306, at *9 (Ohio Ct. App. June 21, 2007) (citing Smyth v. Carter, 845 N.E.2d 219, 222 (Ind. Ct. App. 2006)) ("Unclaimed property laws ... do not operate as a true escheat because the States take possession of, but not title to, property received from the holder. The passing of possession of property from the holder to the State under unclaimed property acts is generally referred to as ‘custodial escheat.’").

145. See Texaco, Inc. v. Short, 454 U.S. 516, 529–30 (1982) (discussing the State’s right to title and use of property only after the statutory period of actual abandonment had passed. This case dealt with an escheat statute under which property that was presumed abandoned after a certain period of time was then eligible for transfer of full possession and title to the State. This is not the case with the Minnesota Unclaimed Property Act, under which the State is never entitled to take full possession or title to unclaimed property in its custody).

146. See Penner, supra note 90, at 732.

147. See Dooling, supra note 77, at 454 ("It is sensible to have different remedies to address everyday property disputes, but the remedy is the same for all takings: just compensation. That different actions for personal and real property tort actions exist, therefore, does not support treating personal and real property differently in a takings analysis"); see also Lingle v. Chevron U.S.A., Inc., 544 U.S. 528, 536–37 (2005) (quoting First Eng. Evangelical Lutheran Church of Glendale v. City of Los Angeles, 482 U.S. 304, 315 (1987)) ("In other words, [the takings clause] ‘is designed not to limit the governmental interference with property rights per se, but rather to secure compensation in the event of otherwise property interference amounting to a taking.’").

148. See Hall, 908 N.W.2d at 351 (discussing the statutorily required practice of deposit of unclaimed funds into the general fund of the State).

149. Id. at 352.
the property while in its custody for the benefit of the public. Generally, resources placed into a government entity's general fund are subject to use for whatever purpose deemed necessary by that entity. Clearly then, once property is placed into a general fund, it can be used for whatever purpose, public or private, deemed necessary by the government. Here, the government, upon taking custody of unclaimed property or the proceeds from sale of property, places the funds directly into the general fund of the State. For this reason, the third element of a takings claim is satisfied.

4. Just Compensation

Finally, for the fourth element of a takings claim to be satisfied, the rightful owner must not have been paid just compensation upon the State's taking of the property. This element is fairly straightforward. If an owner can prove the first three elements of a takings claim and show that they have not been justly compensated for the loss of their property, then the fourth element of a takings claim has also been satisfied. Here, as demonstrated above, the first three elements of a takings claim are satisfied for Appellants Hall, Undlin, and Herron. Even though the State is willing to reimburse these three Appellants for the actual value of the property taken into the custody of the State, the State has not paid Appellants for the violation of their protected property interests. Therefore, the fourth element of a takings claim is satisfied.

150. Id.
151. See, e.g., Minn. Stat. § 430.02, subdiv. 6 (1997) ("Except in the case of motor vehicle parking lots, the city council may provide by the resolution appointing commissioners that a specified percentage ... must be payable out of the city's general funds."); 17 A Karen G. Schanfield, Minnesota Practice: Minnesota Employment Laws § 176.531, subdiv. 2 (2018 ed.) ("When the political subdivision or school district has issued an order or warrant for payment of compensation ... it is a preferred claim which shall be paid from the general fund ... "); 25 Eileen M. Roberts, Minnesota Practice: Real Estate Law § 3:25 (2017 ed.) ("The Torrens statute creates a specific cause of action in the district court for persons who sustain damages ... provided those persons do not contribute to the damages by their own negligence. Damages may be awarded from the state's general fund.").
152. See Hall, 908 N.W.2d at 351.
154. Hall, 908 N.W.2d at 352.
155. Id.
C. Actual Abandonment vs. Presumed Abandonment

If the government wishes to defend against a takings claim, the owner's intent to abandon the property becomes critically important. If the owner has no intent to abandon the property—even if there is actual relinquishment or cessation of use by the owner—there can be no abandonment. Intent is considered the key element in determining whether or not property has been actually abandoned.

Generally, intent can be express or implied. In both instances, there must be some "clear and unmistakable affirmative act or series of acts indicating a purpose to repudiate ownership, or relinquish a right, or inconsistent with any further claim of ownership." In Shepard v. Alden, the Minnesota Supreme Court stated, "[t]here must be an actual relinquishment of the property, accompanied by an intent to part with it permanently, so that it may be appropriated by any one finding it or having it in his possession." More recently, the City of St. Paul v. Vaughn court explained, "[i]n the law of property, the question ... is whether the owner has voluntarily, intentionally, and unconditionally relinquished his interest in the property so that another, having acquired possession, may successfully assert his superior interest." Clearly, intent of the party is critical in determining whether property has been actually abandoned.

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156. See Rognrud v. Zubert, 282 Minn. 430, 437, 165 N.W.2d 244, 250 (1969).
157. CECILY FURH, 1 C.J.S. ABANDONMENT § 5 (2018) (The author here also discusses "mislaid" property, which she describes as "property left by oversight or inadvertence," concluding that mislaid property is not abandoned property because the lack of intent is on the part of the owner).
158. Id.
159. Id. at § 7.
160. Id.
161. See Shepard v. Alden, 161 Minn. 135, 139, 201 N.W. 537, 539 (1924). In this case, a tenant who operated a bowling alley in a building basement was evicted. Six months later, he claimed ownership of the bowling alley and wanted compensation. The building owner argued that the tenant had abandoned the alleys, but the court disagreed, saying, "... it cannot be held as a matter of law that the plaintiff intentionally abandoned the alleys." Id. (emphasis added).
163. MINN. STAT. §§ 345.31–.60 (2016) (while the statute at issue here never discusses intent of the parties in presuming abandonment of property, it is important to note the distinction between actual abandonment and presumed abandonment in
Only once actual abandonment is proven may the property have a chance of escheat to the State. In other words, until actual abandonment is proven, the State may only act as a custodian of the property. Escheat to the State requires a property owner to relinquish all rights to the property, and grants the State full property ownership. Custody, on the other hand, does not require a transfer of property rights. It is merely the holding of property for the true owner. This is an important distinction because while some state statutes allow or require property to escheat after a fixed period of time, Minnesota’s Unclaimed Property Act only allows the State to take custody of the property, without the possibility of the property ever escheating. Therefore, the State can never take full possession of the property and the property owner can never be fully divested of their rights to the property. The Appellants in Hall argued that because the property was merely dormant and not actually abandoned, the State had no right to permanently deprive them of their funds.

Property is generally presumed abandoned after a period set by statute. Each state’s unclaimed property law sets different periods of time for presumed abandonment, and the time varies based on the order to establish differences in protected property interests between the two types of abandonment).

164. See Anderson Nat’l Bank v. Luckett, 321 U.S. 233, 252 (1944) (“Escheat or forfeiture to the state may follow, but only on proof of abandonment in fact.”).

165. See Reply Brief of Appellants, supra note 71, at *2 (citing Anderson Nat’l Bank, 321 U.S. at 252) (“Dormancy without more is merely the basis for the state taking custody of money.”).

166. See Escheat, supra note 27.

167. Custody, BLACK’S LAW DICTIONARY (10th ed. 2014) (“[T]he care and control of a thing or person for inspection, preservation, or security.”).

168. Id.

169. MINN. STAT. § 345.44 (2016) (“Upon the payment or delivery of abandoned property to the commissioner, the state shall assume custody and shall be responsible for the safekeeping thereof and for payment of any claim successfully brought against any holder on account of any abandoned property paid or delivered to the commissioner.”). The statute only states that the state will assume custody and be responsible for safekeeping, but the statute never says the state will never take full possession of the property. See id.

170. Id.

171. See Reply Brief of Appellants, supra note 71, at *2.

kind of property at issue. A finding of presumed abandonment, therefore, does not take the owner’s intent into account, as taking the property into its custody is purely a statutory duty of the State. Because the property at issue here has clearly not been actually abandoned, but only presumably abandoned, it follows that the property may still be reclaimed by the owner. Indeed, MUPA specifically uses the “presumably abandoned” language, indicating that property owners are entitled to reclaim their property at any point upon request for reclamation to the State.

According to the Minnesota Supreme Court, Appellants Hall, Undlin, and Herron could not show entitlement to any interest on their unclaimed property as it was not interest-bearing in the first place. Appellant Wingfield, however, was able to clearly demonstrate her entitlement to the interest that would have accrued had the money not been turned over to the State. Further, although Wingfield did not respond to her bank’s request for contact regarding her account, it seems reasonable that Wingfield desired to retain possession of the account, particularly because it was still accruing interest. The Supreme Court in Loretto said that “[a]lthough deprivation of the right to use and obtain a profit from property is not, in every case, independently sufficient to establish a taking … it is clearly relevant.”

D. The Doctrine of Accession

The Doctrine of Accession says, in essence, that a good-faith improver of property may take title to such improved property as long as the true owner of the property is compensated for the value of the

173. See Minn. Stat. § 345.32–.39 (2016); see generally supra note 121.
174. See Millar & Coalsen, supra note 176, at 517.
176. Id.
177. Hall v. State, 908 N.W.2d 345, 355 (Minn. 2018).
178. Id. at 356 (“The right to earn interest was part of Wingfield’s unclaimed property, and she therefore has the right to receive that interest from the State if she is to be made whole.”).
179. Id. at 350.
source materials. The doctrine was originally articulated by the court in *Wetherbee v. Green*, which stated:

As a general rule, one whose property has been appropriated by another without authority has a right to follow it and recover the possession from any one who may have received it; and if, in the mean time, it has been increased in value by the addition of labor or money, the owner may, nevertheless, reclaim it, provided there has been no destruction of substantial identity . . . A man cannot generally be deprived of his property except by his own voluntary act or by operation of law; and if unauthorized parties have bestowed expense or labor upon it, that fact cannot constitute a bar to his reclaiming it, so long as identification is not impracticable.

Under the Doctrine of Accession, courts have opined that once things or pieces of property belonging to different owners are aggregated into one article that cannot be separated without injury to the new item, the new whole belongs to the owner of the principal part. Principal is defined as “[c]hief; primary; most important.” The principal part of an item that has been formed through investment of labor or money is the sum that makes up the largest part of the whole, and the original owner of that part is considered the rightful owner of the new item that has been formed. This is true unless the thing formed cannot be broken up without injury. Finally, courts have said that the doctrine was designed to “produce justice,” and should only be used when it produces a just result.

183. See, e.g., *Sasia & Wallace, Inc. v. Scarborough Implement Co.* 316 P.2d 39, 41 (Cal. Ct. App. 1957) (citation omitted) (“When things belonging to different owners have been united so as to form a single thing, and cannot be separated without injury, the whole belongs to the owner of the thing which forms the principal part; who must, however, reimburse the value of the residue to the other owner, or surrender the whole to him.”).
185. See *Sasia*, 316 P.2d at 41.
186. Id.
187. *Capitol Chevrolet Co. v. Earheart*, 627 S.W.2d 369, 373 (Tenn. Ct. App. 1981) (Todd, J., concurring) (“Even though the owner of the stolen part should be allowed to follow and reclaim it, this does not mean that he should be entitled to claim the
The State in *Hall* could likely make a claim, albeit perhaps a weak claim, that the Doctrine of Accession should apply here.\(^{188}\) Specifically, the State could argue that when all unclaimed property is pooled together and the funds are used for the benefit of the public, they have improved upon the principal materials, and the original owners, if found, are only entitled to the value of the source materials.\(^{189}\)

This argument gets a little trickier and more tenuous when the source materials and the end result of the State’s labor and investment are both money.\(^{190}\) The general principle of the doctrine is that if the sum of the parts cannot be divided without injury, then the owners of the source materials are only entitled to compensation for the materials used that they originally possessed.\(^{191}\) Because money is the source material in this case, and the means by which the owners would be compensated would be monetarily, it seems that it would be impossible for the State to both retain and improve upon the funds, and also pay the original owners just compensation. Therefore, the Doctrine of Accession likely does not apply in this case. Indeed, no current case law applies the Doctrine of Accession when a matter involves the pooling of money to form a larger item. Much of the case law in this area is in fact focused on vehicles and vehicle parts, with plaintiffs suing to recover parts of their cars which were taken, and courts ruling that because the parts had not been used to create something that could not be destroyed without injury, the owners of the source materials were entitled to the materials taken from them.\(^{192}\)
E. Appellants Hall, Undlin, and Herron Are Entitled to Interest on Their Property

Although Hall, Undlin, and Herron were not earning interest on their property prior to its transfer to the State’s custody, they are now entitled to recover interest from the State along with the principal amount initially transferred to the State’s custody.\(^{193}\)

Both the United States Constitution and the Minnesota Constitution explicitly state that private property may not be taken for public use without just compensation.\(^{194}\) In *Short v. Texaco*, the Indiana Supreme Court said that Indiana could not revoke any property interest without a determination of actual abandonment.\(^{195}\) Principally, property interests include the right to possess, the right to use, the right to exclude, and the right to dispose of property.\(^{196}\) This bundle of rights varies based on the type of property at issue, but it is the underpinning of property rights generally.\(^{197}\) Under the MUPA, there is never actual abandonment, only presumed abandonment.\(^{198}\) Because the property is not actually abandoned, the owners have not intentionally relinquished their protected property rights.\(^{199}\) Therefore, Minnesota can never revoke any property interests under the MUPA.\(^{200}\)

\(^{193}\) See *Hall*, 908 N.W.2d at 354 (“Because it was not interest bearing before the State came into custody of it, these appellants had no property right to receive the payment of interest.”).

\(^{194}\) See U.S. Const. amend. V; see also Minn. Const. art. I, § 13.

\(^{195}\) See *Short v. Texaco*, Inc., 406 N.E.2d 625, 631 (Ind. 1980); see also Texaco, Inc. v. Short, 454 U.S. 516, 530 (1982) (the statute at issue in *Texaco* was different from the one at issue here in that it completely divested negligent property owners of their property rights. But the statute gave a much greater amount of time in order for the property to be deemed actually abandoned—twenty years—and so actual abandonment, in which the original owner has given up all rights to the property, was more appropriate than it would be in *Hall*); Anderson Nat’l Bank v. Luckett, 321 U.S. 233, 252 (1944) (discussing escheat of property to the State following a finding of actual abandonment).

\(^{196}\) See Penner, supra note 90, at 719–20.

\(^{197}\) Id.

\(^{198}\) Minn. Stat. §§ 345.31–.60 (2016).

\(^{199}\) Id.

\(^{200}\) § 345.49, subdiv. 1(a) (while the statute never specifically says that property can be reclaimed in perpetuity, it also does not specify a timeline under which the right to reclaim expires).
When the State places the funds in its custody into a general fund for public use, it exercises a property interest over those funds that it is not entitled to exercise. A general fund of a state is “the chief operating fund for an entire government.” General funds serve as catch-all funds for resources not designated for another use. Given this definition of a general fund, it would seem that the government would have free reign to use the funds as it sees fit, including for the benefit of the public.

The use of the property in its custody is a benefit to the State because the State, through its placement of the property into a general use fund, earns constructive interest on the property. In other words, by marking the funds for general use, the State is able to avoid borrowing money, saving the interest it would be required to pay on borrowed funds. Further, according to the court in Spaeth v. City of Plymouth, the mere use of property by the State constitutes a taking that requires compensation. Although the property at issue in

201. § 345.48, subd. 1 ("all funds received . . . including the proceeds from the sale of abandoned property . . . shall forthwith be deposited by the commissioner in the general fund of the state.").

202. See Texaco, Inc. v. Short, 454 U.S. 516, 530 (1982) (discussing property interests regarding abandoned property). Without a legal interest in property, use of that property is unwarranted. See id. In Hall, the State’s use of the property at issue would be such an unwarranted use, as the State did not have the requisite property interest in the unclaimed property to give the State the ability to use it. Hall v. State, 908 N.W.2d 345 (2018).


204. Id.

205. See id.

206. See United States v. $277,000 U.S. Currency, 69 F.3d 1491, 1492 (9th Cir. 1995) (holding that where the government has profited from the use of the funds, it must disgorge those earnings along with the property itself); see also Brooks v. United States, 980 F.Supp. 321, 321–22 (E.D. Mo. 1997) ("[E]ven if the money was in a Treasury account, rather than an interest-bearing account, the government constructively earned interest at its alternative borrowing rate . . . . Thus, the Court finds that the government is liable for the interest actually accrued, or if the funds were placed in a Treasury account, the constructively-earned interest at the government’s alternative borrowing rate from the time the currency was seized until it was returned.").

207. $277,000 U.S. Currency, 69 F.3d at 1495 ("[A]ll financial assets in the hands of the government are a means by which the government does not have to borrow equivalent funds.").

Spaeth was land and not money, the principle that the use of private property for public benefit, no matter the amount of benefit to the public, holds true here.209 The court in Spaeth illustrated this concept: [W]here there is a physical appropriation of property there is unquestionably a "taking" even where it is sought to avoid payment upon the ground that the appropriation was made in the exercise of the sovereign's police power. It is universally conceded that when land or other property is actually taken from the owner and put to use by the public authorities, the constitutional obligation to make just compensation arises, however much the use to which the property is put may enhance the public health, morals or safety.210

Additionally, as the Minnesota Supreme Court points out in Hall, Section 345.49 of the MUPA requires the Commissioner to refund all proceeds from the sale of the unclaimed property.211 The court further articulated that the interest that would have been earned on Wingfield’s account had the State not taken custody constituted “proceeds” under this section.212 If the court is willing to read the law this broadly, surely the proceeds the State garners from the use of Hall’s, Undlin’s, and Herron’s funds for public purposes should be taken into consideration when returning the property.213 This is one

209. Id.
210. Id. at 821 (quoting 2 J. SACKMAN, NICHOLS’ LAW OF EMINENT DOMAIN § 6.05 (rev. 3d ed. 1983)).
212. Hall, 908 N.W.2d at 356 (“When a valid claim is filed, the state is to ‘refund’ to the owner the ‘proceeds’ that the state received from its sale of the unclaimed property. Thus, all of the property must be returned to the owner. This property includes the interest that would have accrued on an interest-bearing bank account had the bank not transferred the balance to the State.”).
213. See United States v. $277,000 U.S. Currency, 69 F.3d 1491, 1492 (9th Cir. 1995) (holding “that to the extent that the government has profited from use of the property, especially where it has (actually or constructively) earned interest on money, it must disgorge those earnings along with the property itself.”). When funds are deposited into a general fund, the government benefits from this deposit in that it is not then required to borrow money at its interest rate because it already has the money “on loan” from the person from whom it was taken. See id. To determine that this use is not (1) a violation of the protected right to use property, and (2) a taking of property without just compensation seems wrong. See id; see also Brooks v. United States, 980 F.Supp. 321, 321–22 (E.D. Mo. 1997) (discussing constructive interest earned by the government). Even though the property in Hall was not earning interest, nor was it sold for profit by the government, the government still did not
of Appellant’s chief arguments, stating in their brief: “First, the State’s use of Plaintiffs’ money requires just compensation under the Minnesota Constitution, even though the State returns the principal.”

Because the State here placed the assets of Hall, Undlin, and Herron in a general use fund as required by the MUPA, it would seem that the State did in fact use Hall’s, Undlin’s, and Herron’s property. Considering that the general function of the government is to provide for the welfare of Minnesota citizens, it is a logical conclusion that the funds were used by the State for the benefit of the public. Despite the fact that the property was readily available for Appellants to reclaim from the State, Hall, Undlin, and Herron are entitled to just compensation in the form of interest for the time the property was held and used by the State.

F. Designated Holding Account for Unclaimed Funds

The State should place unclaimed monies into a special account that is not to be used by the State to avoid unconstitutional takings claims. If the State places unclaimed funds into a specific account with the sole purpose of keeping and maintaining funds for owners of unclaimed property, the State would be more likely to avoid constitutional concerns. In this scenario, the State would not be using the funds for its benefit or for the benefit of the public. It would merely be acting as a custodian, which is the stated intention of the MUPA.

Many other states have followed this suggested model. For example, under Alabama’s Uniform Disposition of Unclaimed Property Act, unclaimed property—or the proceeds from the sale of unclaimed property—is placed into the Unclaimed Property Reserve.

... have to borrow the amount of money taken from the unclaimed accounts. See Hall, 908 N.W.2d at 354. Hence, the unclaimed accounts gave the government an almost instantaneous windfall in the form of interest that it was not required to pay. See id.; see also Brooks, 980 F.Supp. at 321–22.

214. See Reply Brief of Appellants, supra note 71, at *1.

215. See Hall, 908 N.W.2d at 355 (assuming, of course, that the "general fund" discussed in the statute was in fact a fund from which the government could withdraw money to serve any purpose it saw fit).

216. See id.

217. See MINN. STAT. § 345.48, subdiv. 1 (2016) ("All funds received . . . including the proceeds from the sale of abandoned property . . . shall forthwith be deposited by the commissioner in the general fund of the state after deduction of the fees and expenses . . . .").
This fund is used solely to pay the costs of administering Alabama’s unclaimed property program. However, it is still not a perfect system. Any surplus funds are transferred into the state general fund quarterly.

California has a similar system to Alabama. Like Alabama, unclaimed property is deposited into the Unclaimed Property Fund—specifically, into an account called “Abandoned Property.” Again, this would seem to be an effective means of ensuring that this money is not used for public benefit, and instead is simply held in safekeeping by the State. But each month, all funds in the “Abandoned Property Account in excess of fifty thousand dollars” are transferred to the state’s general fund. However, this is a preferred system when compared to Minnesota and Alabama because there is a custodial account that serves the sole purpose of paying out unclaimed property claims.

Michigan’s system mirrors California’s, where all funds are initially deposited into the state’s general fund, but a separate trust fund of at least $100,000 is maintained at all times for the purpose of paying claims. Finally, Washington has the same system as

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218. [Code Reference]
219. [Code Reference]
220. [Code Reference]
221. [Code Reference]
222. [Code Reference]
223. [Code Reference]
224. [Code Reference]
225. [Code Reference]
Michigan, except Washington’s trust fund account maintains a multi-million dollar account balance, an amount likely large enough to pay most claims for return of unclaimed property the state receives.\footnote{226}{See Mich. Comp. Laws § 567.244(1); Wash. Rev. Code § 63.29.230(1) (2018) (“Except as otherwise provided by this section, the department shall promptly deposit in the general fund of this state all funds received under this chapter, including the proceeds from the sale of abandoned property . . . . The department shall retain in a separate trust fund an amount not less than two hundred fifty thousand dollars from which prompt payment of claims duly allowed must be made by the department.”); see also Wash. Office of the State Treasurer, Washington State Treasurer’s Monthly Report: June 2018 56 (2018), https://tre.wa.gov/wp-content/uploads/June-Monthly-2018.pdf [https://perma.cc/RX7C-SARC] (documenting a balance of $5,636,275.00 as of June 30, 2018 in the state’s Unclaimed Personal Property fund).}

Making small changes to state unclaimed property statutes could have positive effects for both the states and owners of unclaimed property. For example, adding a statute of limitations provision to states’ unclaimed property laws would perhaps alleviate any future takings claims such as those in \textit{Hall}\.\footnote{227}{See Hall v. State, 908 N.W.2d 345, 360–61 (Minn. 2018); see, e.g., Travelers Exp. Co. v. State, 732 P.2d 121 (Utah 1987).} As it stands right now, states that deposit unclaimed funds or funds from the sale of unclaimed property into a general fund will invariably face takings claims because the particular state is using the unclaimed property without just compensation to the rightful owner.\footnote{228}{See Minn. Stat. § 345.48, subdiv. 1 (2018); see also Ala. Code § 35-12-81; Cal. Civ. Proc. Code § 1564; Mich. Comp. Laws § 567.244(1); Wash. Rev. Code § 63.29.230(1).}

If the State of Minnesota were to place a relatively long statute of limitations on reclamation of property in its custody, the argument for a constitutional taking would be weakened by providing reasonably diligent property owners an opportunity to discover their property is in the custody of the State.\footnote{229}{See Tyler T. Ochoa & Andrew J. Wistrich, \textit{The Puzzling Purposes of Statutes of Limitation}, 28 Pac. L.J. 453, 456 (1997) (“The statute of limitations is . . . enacted as a matter of public policy to fix a limit within which an action must be brought, or the obligation is presumed to have been paid . . . .”); see also \textit{Statute of Limitations}, Black’s Law Dictionary (10th ed. 2014) (“A law that bars claims after a specified period; specific, a statute establishing a time limit for suing in a civil case, based on the date when the claim accrued (as when the injury occurred or was discovered). The purpose of such a statute is to require diligent prosecution of known claims, thereby providing finality and predictability in legal affairs and ensuring that claims will be resolved while evidence is reasonably available and fresh.”).} This would at least give property

owners ample time to recover their property before it was used by the State, avoiding State liability for takings claims. In fact, the court of appeals acknowledged the possibility of this kind of system. Specifically, the court of appeals discussed Appellants' admission that if the State were to place unclaimed funds into an account that was solely used for safekeeping, the argument for a constitutional taking would be weaker.

V. Conclusion

The Minnesota Supreme Court here faced property law, constitutional law, and civil procedure issues. It determined that the State’s withholding of interest in Wingfield's case violated the Constitution, but in Hall, Undlin, and Herron’s, it did not. In so holding, the court failed to recognize that regardless of the non-interest-bearing nature of the property at the time the State took custody, the State nonetheless violated Appellants’ protected property interests because it still actually used the property in its custody. Therefore, Minnesota should be required to compensate Appellants Hall, Undlin, and Herron for the unauthorized use of their property in violation of their constitutionally protected property interests.

The MUPA should be amended in two ways. First, any money that the State takes into its custody—or funds received by the State from the sale of unclaimed property—should be deposited directly into a fund designated for the sole purpose of custodial safekeeping. Were the State to make this amendment to the MUPA, the likelihood of future takings claims would be significantly reduced as the State

230. See Hall, 908 N.W.2d at 360–61 (holding that the Minnesota Unclaimed Property Act gives owners of presumably abandoned property sufficient notice that their property has been taken into the custody of the State).
232. See id. at 735 ("Respondents concede: 'If the [s]tate truly acted solely as custodian of the funds, salting the property away in a vault until returned, the obligation to pay just compensation may not arise.'").
233. See Hall, 908 N.W.2d at 348. The court here was tasked with determining a property law issue in the context of a constitutional claim. Id. The notice issue—which was not discussed at length in this note—provided the court with the civil procedure issue. Id.
234. Id. at 349.
would avoid violating the protected property rights of true property owners.

The issue with establishing a purely custodial account is the wasteful nature of this practice. Property law generally favors use of property and disfavors non-use or waste. With this in mind, Minnesota also should amend the MUPA by placing a statute of limitations on the property owner’s right to recover the property from the State. The limitations period should be fairly long in order to give adequate time for owners to discover that their property is in the custody of the State. However, if this change were made, the notice required to owners under the MUPA would need to meet a higher standard because once the statute of limitations runs, the property would be fully divested from the owner, a “proceeding which is to be accorded finality . . . .”

Ideally, the statute of limitations would be around fifteen years, after which point ownership of the property would be fully vested in the State. A statute of limitations of this length makes sense because of the nature of the property at issue under the MUPA, which is generally money or funds from the sale of property. Money, unlike real property, must actually be held in the custody of and be maintained by the State. Because of the requirement that the State spend resources to maintain and hold the property, the statute of limitations should be slightly shorter than a statute of limitations for abandonment of real property where the State is not required to physically hold or maintain the property.

237.  See Texaco, Inc. v. Short, 454 U.S. 516, 530 (1982) (providing that the statute at issue, which allowed the State to take possession of the property in question, had a twenty-year statute of limitations. After that period of time, the property was considered actually abandoned. This makes sense in the context of unused real property and mineral rights on that property, which is at issue in this case, because the State was not required to hold and maintain that property during the statute of limitations. The State simply took possession of it later.).
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