Nos. 19-1279 & 19-1285

IN THE

Supreme Court of the United States

JAKE LATURNER, TREASURER
OF THE STATE OF KANSAS

AND

ANDREA LEA, IN HER OFFICIAL CAPACITY AS AUDITOR
OF THE STATE OF ARKANSAS

Petitioners,

v.

UNITED STATES OF AMERICA ET AL.,

Respondents.

On Petitions for Writ of Certiorari to the United States Court of Appeals for the Federal Circuit

BRIEF OF INDIANA, ALABAMA, ALASKA, FLORIDA, GEORGIA, IDAHO, ILLINOIS, IOWA, KENTUCKY, LOUISIANA, MAINE, MARYLAND, MISSISSIPPI, MISSOURI, NEVADA NORTH CAROLINA, OHIO, OKLAHOMA, PENNSYLVANIA, SOUTH CAROLINA, SOUTH DAKOTA, TENNESSEE, VIRGINIA, AND WISCONSIN AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

1. Whether States that have exercised their historic power to escheat title to abandoned United States savings bonds may redeem those bonds as successor owners, as the Third Circuit has concluded, or whether federal law preempts such redemption, as the Federal Circuit held below.

2. Whether Treasury regulations requiring presentation of a bond serial number may operate as a time bar to prevent a bond owner who has lost that serial number from ever redeeming that bond.

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INTEREST OF *AMICI* STATES[1]

The States of Indiana, Alabama, Alaska, Florida, Georgia, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Nevada, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Virginia, and Wisconsin respectfully submit this brief as *amici curiae* in support of petitioners. The decision below accepted a Treasury Department position that reverses its long-held stance and undermines States' ability to escheat savings bonds their residents have abandoned. States use escheat laws to acquire such bonds and use their unclaimed property programs to return the bonds' proceeds to their original owners. By letting Treasury refuse to recognize state escheat judgments, the decision below could make it impossible for States' citizens to recover the money they are owed.

As sovereigns responsible for abandoned property within their borders, *Amici* States have an interest in preserving federal law's longstanding respect for States' escheat power. For example, nine *Amici* States have brought similar suits that are stayed awaiting these cases' outcome. *See* Pet. iii.[2] The Court should grant the petitions and reverse the decision below.

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[1] Pursuant to Supreme Court Rule 37.2(a), counsel of record for all parties have received notice of *Amici* States' intention to file this brief at least 10 days prior to the due date of this brief.

[2] All citations to the Petition (Pet.) and Petitioner's Appendix (Pet. App.) in this brief refer to the Petition and Petitioner's Appendix filed in *LaTurner v. United States*, No. 19-1279.

REASONS FOR GRANTING THE PETITIONS

1. The U.S. Treasury Department is currently in possession of more than 62 million matured, unredeemed U.S. savings bonds, which have an aggregate value in the tens of billions of dollars. Because they take decades to mature, many of these bonds have been lost, forgotten, or abandoned by their original owners. And while Treasury has been content to sit on this unpaid debt it owes American citizens, States have stepped in to protect the rights of their resident bondholders. In reliance on Treasury's longstanding position—settled since at least 1952 and repeated many times thereafter—that States can obtain title to, and redeem, lost or abandoned bonds registered to state residents under the well-settled law of escheat, 24 States (including *Amici*) have adopted title-based escheat laws with respect to savings bonds. These laws allow citizens to recover their unclaimed savings bonds with the same degree of ease they are able to recover other unclaimed property: They authorize the States to escheat title to mature, unredeemed bonds pursuant to state judicial proceedings and due process, and the States then deliver the proceeds of abandoned bonds to the original bondholders using each State's established unclaimed property apparatus.

The decision below upsets this long-settled division of state and federal authority. It accepted a novel interpretation of a longstanding agency regulation, and it concluded that this regulation preempted the state escheat laws Treasury endorsed just a few years

ago. The decision below thereby threatens to invalidate dozens of state laws and frustrate States' attempts to return billions of dollars to their citizens. It merits the Court's review.

2. The decision below is also incorrect. The decision was premised on a novel interpretation of a Treasury regulation that is mistaken on its face and certainly cannot overcome the presumption against preemption. The regulation at issue required Treasury to recognize "a claim against an owner of a savings bond . . . if established by valid, judicial proceedings, but only as specifically provided in this subpart." 31 C.F.R. § 315.20(b) (2014). The Federal Circuit accepted Treasury's new position that this provision's "as specifically provided in this subpart" language means that the *only* judicial determinations the agency must recognize are those specifically addressed by subsequent provisions—namely, "bankruptcy (§ 315.21), divorce (§ 315.22), and proceedings finding a person to be entitled to the bond 'by reason of a gift causa mortis' . . . (§ 315.22)," Pet. App. 13a. This interpretation cannot be correct, however, for it renders superfluous § 315.20(a), which provided that Treasury will "*not* recognize a judicial determination that gives effect to an attempted voluntary transfer inter vivos of a bond." 31 C.F.R. § 315.20(a) (2014) (emphasis added). Voluntary inter vivos transfers are plainly not transfers in bankruptcy, divorce, or gift causa mortis; if Treasury's regulations permitted only these categories of transfers, it would therefore be entirely unnecessary to separately *prohibit* voluntary inter vivos

transfers. Accordingly, the regulatory text alone forecloses Treasury's newfound interpretation.

Moreover, as the Court has stated time and again, "the assumption that the historic police powers of the State [are] not to be superseded . . . unless that was the clear and manifest purpose of Congress . . . applies with particular force when Congress has legislated in a field traditionally occupied by the States." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008) (citation omitted). That assumption clearly applies to the States' escheat power. Indeed, in light of the ancient origins of state unclaimed property laws, their extraordinary successes, and the important policies they further — in particular vis-à-vis the U.S. savings bond program—it should come as no surprise that there is nothing in federal law that even remotely suggests an intention to supplant the States' escheat power with respect to savings bonds. In contrast to Congress's clear authorization to override state unclaimed property laws in other contexts, the regulatory text here does not evince the clear and manifest purpose necessary to preempt state law.

Because nothing in federal law supplants States' escheat power with respect to U.S. savings bonds, federal law does not preempt state laws—like those at issue in this case—that authorize States to escheat title to matured, unredeemed savings bonds. The Federal Circuit erred in concluding otherwise. The Court should correct this serious and far-reaching error by granting the petitions and reversing the decision below.

I. The Decision Below Accepts a Treasury Department Position That Subverts Long-Established State Laws, Contradicts Decades of the Agency's Own Statements, and Allows the Agency To Keep Billions of Dollars It Owes to Ordinary Americans

State unclaimed property regimes grounded in the law of escheat have "ancient origins," *Texas v. New Jersey*, 379 U.S. 674, 675 (1965), and to this day States successfully use those programs to return to rightful owners within their borders billions of dollars in unclaimed property each year. The Court has long recognized the importance and effectiveness of these well-established state programs, and has long held that the right to regulate the disposition of abandoned property within state borders is among the traditional powers reserved to the states. *Delaware v. New York*, 507 U.S. 490, 502 (1993) (holding that the "'disposition of abandoned property is a function of the state'" because it is a sovereign "'exercise of a regulatory power'" over property) (quoting *Standard Oil Co. v. New Jersey*, 341 U.S. 428, 436 (1951)).

State escheat laws are particularly critical in the context of the U.S. savings bond program, which has since its origins targeted small savers whose economic interests most need protecting. States have adopted savings-bond-specific unclaimed property laws to provide a remedy to their working-class and middle-class citizens who may have invested in savings bonds decades ago but lost or forgotten about those bonds now that they finally have matured. And these state efforts

are all the more important in light of Treasury's failure to take efforts of its own to alert owners when their bonds mature.

The decision below threatens to nullify these state efforts. It would effectively invalidate dozens of state escheat laws—laws adopted pursuant to States' age-old escheat power and in reliance on Treasury's many statements, including representations made to this Court—and could prevent States' citizens from recovering billions of dollars they are rightfully owed. Accordingly, the decision below squarely presents a nationally important question of federal law that merits this Court's consideration. *See* Sup. Ct. R. 10(c).

A. Regulating the disposition of abandoned property is a traditional power of the States

The law of escheat, which provides the legal foundation of modern unclaimed property laws in all 50 States and the District of Columbia, is "a procedure with ancient origins." *Texas v. New Jersey*, 379 U.S. at 675. It is rooted in the English common law doctrines of escheat and *bona vacantia*. *See* Susan T. Kelly, *Unclaimed Billions: Federal Encroachment on States' Rights in Abandoned Property*, 33 B.C. L. Rev. 1037, 1041 (1992). Under the common law doctrine of escheat, unowned real property passed to the tenant's feudal lord, but—if the feudal lord could not be identified, or if the Crown was the original owner in fee—the property escheated to the sovereign. *See* Note, *Origins and Development of Modern Escheat*, 61 Colum.

L. Rev. 1319, 1319–20 (1961). At English common law, this doctrine applied only to real property; the analogous concept of *bona vacantia* applied to personal property. *See id.* at 1326. Pursuant to the doctrine of *bona vacantia*, the Crown's claim to personal property "was predicated on the absence of any other owner rather than on its status as ultimate owner. It was thought that the Crown's claim was more equitable than that of a stranger, and that possession by the Crown would eliminate conflicting claims of private parties." *Id.* at 1326–27 (footnote omitted).

Following the American Revolutionary War, "[t]he states, not the federal government, assumed the sovereign rights of the Crown," and thus "adopted the broad principles of English common law escheat and *bona vacantia* under a unified doctrine of escheat." Kelly, 33 B.C. L. Rev. at 1041–42. The American conception of escheat ultimately expanded to include real property and personal property, both tangible and intangible. *See State v. Standard Oil Co.*, 74 A.2d 565, 572 (N.J. 1950) ("The doctrine of escheat, at the early common law operative only upon that which was the subject of tenure, . . . was eventually extended to include personal property, tangible and intangible."), *aff'd sub nom. Standard Oil Co. v. New Jersey*, 341 U.S. 428 (1951).

Currently, all 50 States and the District of Columbia maintain unclaimed property systems founded on escheat, most of which include laws based on a version of the Uniform Unclaimed Property Act. *See New Jersey Retail Merchs. Ass'n v. Sidamon-Eristoff*, 669 F.3d

374, 383 (3d Cir. 2012). As courts and commentators have recognized, these laws are "remedial legislation . . . rooted in consumer protection." *American Express Travel Related Servs. Co. v. Sidamon-Eristoff*, 755 F. Supp. 2d 556, 581 (D.N.J. 2010), *aff'd*, 669 F.3d 359 (3d Cir. 2012); *see also* John Coalson *et al.*, *A Tale of Two Questions: May States Escheat or Sell Foreign-Address Unclaimed Property?*, 25 J. Multistate Tax'n & Incentives 16, 16 n.1 (2015) ("Unclaimed property laws are primarily consumer protection statutes designed to protect the interests of owners of property, not to raise revenues for states.").

Because these unclaimed property laws apply to both tangible and intangible property, the unclaimed property programs founded upon them are an efficient means for helping state citizens recover many types of unclaimed property. Under these programs, state officials actively search out and find citizens with unclaimed property. In addition, citizens can learn if they are due compensation for unclaimed property by consulting the authorities charged with administering the unclaimed property program in each State, or simply by visiting a State's unclaimed property website; they may then avail themselves of a "simple process" for redeeming any lost property to which they are entitled. *State ex rel. Mallicoat v. Coe*, 460 P.2d 357, 358 (Or. 1969) (en banc).

State unclaimed property programs are extraordinarily successful in returning properties to their rightful owners. States employ extensive efforts—including hosting websites, cross-checking public data

such as tax and motor vehicle records, staging awareness events at state fairs and shopping malls, and developing a national database—to reunite residents with their abandoned property. *See* Nat'l Ass'n of Unclaimed Property Adm'rs, *What is Unclaimed Property* ("*Unclaimed Property*"), https://www.unclaimed.org/who-we-are/. One Senate bill estimated that these efforts result in the return of "over $1,500,000,000 of property annually"—property that otherwise "would almost certainly remain lost." Unclaimed Savings Bond Act of 2009, S. 827, 111th Cong. § 2(3) (2009). Indeed, according to the National Association of Unclaimed Property Administrators (an affiliate of the National Association of State Treasurers), state unclaimed property programs return more than *three billion dollars* to rightful owners each year. *See Unclaimed Property*.

Amici States' unclaimed property programs exemplify these successes. The State of Indiana, for example, has already paid out more than $25 million to rightful owners in unclaimed property claims thus far in 2020. Ind. Off. Att'y Gen., *Unclaimed Property Fact Sheet*, https://indianaunclaimed.gov/app/unclaimed-property-fact-sheet. And in 2017 the Commonwealth of Pennsylvania's efforts resulted in the return of $254 million in unclaimed property. Associated Press, *Pennsylvania Treasury Returned $254M In Unclaimed Property Last Year*, https://www.wtae.com/article/pennsylvania-treasury-returned-dollar254m-in-unclaimed-property-last-year/15339118.

And the States of Florida, South Carolina, Mississippi, and Louisiana also have reunited rightful owners with unclaimed property with extraordinary success: Florida returned more than $313 million in the most recently completed fiscal year alone; during the tenure of South Carolina's state treasurer, South Carolina returned more than $158 million in unclaimed property to its citizens; Mississippi has already paid out $1.5 million in 2020; and Louisiana returns $25 to $27 million each year. Fla. Dep't Fin. Serv., *Unclaimed Property*, https://www.myfloridacfo.com/Division/UnclaimedProperty/; S.C. St. Treasurer Off., *Unclaimed Property,* https://southcarolina.findyourunclaimedproperty.com/; 16 WAPT News Jackson, *Mississippi Treasury Department Gives Back $1.5 Million in Unclaimed Property to Residents*, https://www.wapt.com/article/mississippi-treasury-department-gives-back-dollar15-million-in-unclaimed-property-to-residents/30997767; Chris Nakamoto, *Millions of Dollars Worth of Unclaimed Money on the Way to People in Louisiana*, https://www.wbrz.com/news/millions-of-dollars-worth-of-unclaimed-money-on-the-way-to-people-in-louisiana/.

Similarly, the Commonwealth of Kentucky and the States of Ohio, South Dakota, and Iowa have returned millions of dollars' worth of unclaimed property to original owners in recent years: Ohio has paid more than $253 million in claims since 2015, including more than $96 million in fiscal year 2017 alone; Kentucky has reunited original owners with $93 million worth of unclaimed property since 2016; South Dakota returned $15.7 million in fiscal year 2015; and

Iowa has returned more than $283 million to more than 538,000 owners. N. Ky. Trib., *State Treasurer Allison Ball Says $1.29m in Unclaimed Property Was Returned to Kyians the Week of Feb. 24*, https://www.nkytribune.com/2020/03/state-treasurer-allison-ball-says-1-29m-in-unclaimed-property-was-returned-to-kyians-the-week-of-feb-24/; S.D. Off. St. Treasurer, *Unclaimed Property Facts*, http://www.sdtreasurer.gov/newsroom/unclaimedfacts.aspx#:~:text=The%20Unclaimed%20Property%20Division%20received,dollars%20in%20unclaimed%20property%20nationally; Iowa St. Treasurer, *State Treasurer Michael L. Fitzgerald's Great Iowa Treasure Hunt*, https://www.iowatreasurer.gov/media/cms/GITH_2020_Infographic_6_A549D54CF7C70.pdf.

Given the ancient origins of state unclaimed property laws, the important policies these laws further, and the remarkable degree of success States have achieved, it is unsurprising that this Court has long affirmed States' authority to regulate the disposition of unclaimed property. *See*, *e.g.*, *Hamilton v. Brown*, 161 U.S. 256, 263 (1896) ("In this country, when the title to land fails for want of heirs and devisees, it escheats to the state."); *Provident Inst. for Sav. in Boston v. Malone*, 221 U.S. 660, 664 (1911) (holding that "[t]he right and power" of the States to enact unclaimed property laws is "undoubted"). And just as courts have deemed the exercise of this power to be an essential function of the States' sovereign authority, it is also clear that the escheat power is one reserved to the States under the Tenth Amendment. *See Anderson Nat'l Bank v. Luckett*, 321 U.S. 233, 240 (1944)

(holding that the right to appropriate abandoned property "exist[s] in the several states of the United States"); *Germantown Trust Co. v. Powell*, 108 A. 441, 442 (Pa. 1919) ("There seems to be no room for doubt that the commonwealth, by virtue of its sovereign power, may take charge of property abandoned or unclaimed for a period of time."); *United States v. Alabama*, 434 F. Supp. 64, 67 (M.D. Ala. 1977) ("Control over the ownership and transfer of property, both real and personal, is an area traditionally left to the states under the rubric 'police power.'"); *In re Montana Pac. Oil & Gas Co.*, 614 P.2d 1045, 1047 (Mont. 1980) ("The enactment of a statute for the protection of private property is a valid exercise of the sovereign police power of the state[.]").

B. Relying on the Treasury Department's longstanding position, States have used their escheat power to protect citizens who have lost or forgotten their U.S. savings bonds

Here, States have exercised their sovereign power to escheat intangible property to adopt laws that provide for the escheatment of abandoned savings bonds. In particular, 24 States—including many *Amici* States—have enacted savings-bond-specific unclaimed property laws which authorize the State to take sole and valid title to matured, abandoned savings bonds that were last registered to one of the

State's residents.[3] In doing so these States have relied on Treasury's longstanding position and decades-old promise that it would pay a savings bond where States "complete an escheat proceeding that satisfies due process and that *awards title to the bond to the State*." Br. for Resp'ts in Opp'n, *Director, Dep't of Revenue of Mont. v. Department of Treasury*, No. 12-926, 2013 WL 1803570, at *4 (U.S. Apr. 26, 2013) (emphasis added). In 1952, for example, Treasury refused to pay savings bonds that the State of New York "took custody of, but not title to," explaining that it *would* "'recognize[ ] the title of the state when it makes a claim based upon a judgment of escheat.'" Pet. App. 42a–44a (citing and quoting Bureau of the Public Debt, Public Debt Bulletin No. 111 (Feb. 27, 1952)). And Treasury maintained this position from then until very recently. *See generally* Pet. App. 46a–52a.

Indiana's Unclaimed Property Act illustrates the process States have adopted to escheat to the State title to unredeemed savings bonds: (1) under Indiana law, savings bonds become abandoned property if unclaimed by the owner for three years after their maturity date, Ind. Code § 32-34-1-20(c)(14); (2) the State

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[3] *See* Ark. Code § 18-28-231; Fla. Stat. § 717.1382; Ga. Code § 44-12-237; 765 Ill. Comp. Stat. 1026/15-213; Ind. Code § § 32-34-1-20.5; Iowa Code § 556.9B; Kan. Stat. § 58-3979; Ky. Rev. Stat. § 393.022; La. Stat. § 9:182; Me. Rev. Stat. tit. 33, § 2072; Miss. Code. § 89-12-59; Mo. Stat. § 447.534; Nev. Rev. Stat. § 120A.525; N.H. Rev. Stat. § 471-C:44; N.C. Gen. Stat. § 116B-54.1; Ohio Rev. Code § 169.051; Or. Rev. Stat. § 98.319; 72 Pa. Stat. § 1301.10b; 33 R.I. Gen. Laws § 33-21.1-2.1; S.C. Code § 27-18-75; S.D. Codified Laws § 43-41B-44; Tenn. Code § 66-29-134; W. Va. Code § 36-8-2a; Wis. Stat. § 177.225.

may escheat title to the bonds after they become abandoned property, *id*. § 32-34-1-20.5(a); (3) to obtain title, the Indiana Attorney General must commence an action in state court and obtain a judicial determination that the bonds have escheated to the State, *id*. § 32-34-1-20.5(b); (4) the Indiana Attorney General must publish notice of the unclaimed property in accordance with state law, *id*. § 32-34-1-28; (5) the Indiana Attorney General must redeem the bonds escheated to the State and deposit the proceeds in the State's abandoned property fund, *id*. § 32-34-1-20.5(c); and (6) if a person subsequently makes a claim to ownership of a bond accompanied by sufficient proof of ownership, the State will remit the bond proceeds to the claimant, *id*. § 32-34-1-20.5(d). Like Indiana, every other State that has passed similar legislation has provided for a statutory mechanism to reunite original bond owners with the proceeds of escheated bonds once claimed.

As with all unclaimed property laws, the purpose of such savings-bond-specific unclaimed property laws "is to provide for the safekeeping of abandoned property and then to reunite the abandoned property with its owner." *Sidamon-Eristoff*, 669 F.3d at 383. Such legislation helps States protect their citizens and manifests "the power of the states to care for the safety of the property of their peoples," *Reid v. Colorado*, 187 U.S. 137, 148 (1902), by "protect[ing] the interests of [missing or lost owners] from the risks which attend long neglected accounts," *Luckett*, 321 U.S. at 241. Unclaimed property laws thereby effectu-

ate state public policy in favor of locating and delivering unclaimed properties to their rightful owners—properties that may have "remained unclaimed through no fault or lack of diligence on the part of the rightful owners." *Arkansas v. Federated Dep't Stores, Inc.*, 175 B.R. 924, 930 (S.D. Ohio 1992).

These consumer-protective state escheat laws are especially critical in the context of the U.S. savings bond program, because the success of that program has always been predicated on savings bonds' affordability and accessibility to large numbers of everyday Americans. *See* U.S. Dep't of the Treasury, *United States Savings Bonds Program: A Study prepared for the Committee on Ways and Means, U.S. House of Representatives* 13 (1981) (stating that the savings bond program was created in 1935 to "appeal primarily to individuals with small amounts to invest"), *available at* https://catalog.hathitrust.org/Record/000102054. During World War II, for example, Treasury expanded its campaign to appeal to "small savers" by issuing Series E "defense" savings bonds alongside defense stamps. U.S. Dep't of the Treasury, *A History of the United States Savings Bonds Program* 11–12, 15 (1991), https://www.treasurydirect.gov/indiv/research/history/history_sb.pdf. Series E bonds were issued in denominations as small as $25, and defense stamps—filled albums of which could be redeemed for Series E bonds—were sold in denominations as small as 10 cents. *Id.* at 12, 15.

Not only were the terms of these bonds designed to appeal to small investors, but Treasury also engaged in targeted advertising campaigns featuring popular

actors and musicians who Treasury hoped would make the campaign "pluralistic and democratic in taste and spirit." John M. Blum, *V was for Victory: Politics and American Culture During World War II* at 17 (1976). Few can forget, for example, how leading Golden-Era Hollywood actress and Hoosier native Carole Lombard died in a plane crash while traveling the country promoting savings bonds. *See* Robert Matzen, *Fireball: Carole Lombard and the Mystery of Flight 3* (2013). And to this day, Treasury continues to pitch the benefits of bond ownership to small savers, stressing that its Series EE bonds are "reliable" and "low-risk," and can help Americans save for retirement or education. *See* TreasuryDirect, *Series EE Savings Bonds*, https://www.treasurydirect.gov/indiv/research/indepth/ebonds/res_e_bonds.htm.

Despite targeting ordinary consumers, Treasury never undertook efforts to notify citizens who purchased bonds between 1935 and 1974 (the significant portion of the bonds at issue in these cases) that their bonds had matured. Similarly, with respect to bonds purchased after 1974, Treasury currently undertakes *no* efforts to alert bond owners when their bonds mature: Its only outreach efforts in connection with these bonds occurred in the mid-2000s, and that short-lived outreach program contacted an extremely small portion of bond owners; citing other priorities, Treasury soon abandoned even these meager efforts. *See La-Turner v. United States*, No. 18-1509 (Fed. Cir.), Appellant App. Vol. III at 777–788. As a result of Treasury's failure to notify owners that their bonds have matured, it is unlikely that these small savers, or

their heirs, will ever see the proceeds of their investment. State savings-bond-specific unclaimed property laws provide a remedy for this problem for America's many workaday savers who, now that their bonds have matured decades after they were purchased, have lost or forgotten about them.

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After repeatedly telling States and courts—including this Court—that it would cooperate with these sorts of state unclaimed property programs, Treasury has changed its position and now refuses to recognize *any* state escheatment judgments, claiming that its regulations have long preempted such state laws. The decision below endorses this position and thereby threatens to undermine these longstanding and essential state programs. This case raises a federal preemption question that sets the federal government against many States—and their citizens—and implicates billions of dollars. This is precisely the sort of nationally important issue the Court exists to resolve.

II. The Preemption Decision Below Depends upon an Interpretation of a Treasury Department Regulation That Is Both Wrong on Its Own Terms and Barred By the Presumption Against Preemption

A. There is no preemption here because the Treasury Department's own regulation requires it to recognize state escheat judgments

The Federal Circuit concluded that States cannot apply their centuries-old escheatment laws to U.S. savings bonds because those laws conflicted with, and were therefore preempted by, Treasury regulations. This conclusion, however, rests on a mistaken interpretation of those regulations: Because those regulations, properly interpreted, *required* Treasury to recognize valid state judgments—including state escheat judgments—that transfer title of savings bonds, there is no conflict between the regulations and state escheat laws and thus no preemption.

At bottom, the parties' dispute in this case turns on the meaning of 31 C.F.R. § 315.20(b) (2014), which required Treasury to "recognize a claim against an owner of a savings bond . . . if established by valid, judicial proceedings, but only as specifically provided in this subpart." If state escheat judgments qualify as such a claim, there is no conflict between state and federal law at all—and, accordingly, no preemption.

The petitions and the district court's decisions below skillfully explain why § 315.20(b) encompassed

state escheat judgments: An escheat judgment is a "claim against the owner of a savings bond," and, pursuant to state law, is "established by valid, judicial proceedings." *Id.* And such claims are established by judicial proceedings "as specifically provided in this subpart [which encompasses 31 C.F.R. §§ 315.20–315.23]," because—as even Treasury concedes—these escheat proceedings satisfy the requirements that 31 C.F.R. § 315.23 sets forth "[t]o establish the validity of judicial proceedings." Indeed, Treasury's repeated prior statements that it would recognize transfers effected pursuant to title-based escheat laws indicate that this is precisely how the agency has long interpreted this provision. *See, e.g.,* Pet. App. 128a–131a.

B. The Treasury Department's recent reinterpretation of its regulation is foreclosed by both the rule against superfluities and the presumption against preemption

In this litigation, however, Treasury has changed course and now claims that "as specifically provided in this subpart" means that the *only* judicial proceedings it will recognize are those addressed in 31 C.F.R. § 315.21 (identifying specific requirements for levies to satisfy money judgments against bond owners and for bankruptcy proceedings) and § 315.22 (identifying specific requirements for divorce proceedings and for transfers by gift causa mortis).

Treasury's newfound interpretation is untenable. The regulatory text alone excludes its reading, for the

interpretation would render superfluous § 315.20(a)'s *prohibition* on Treasury's recognition of "a judicial determination that gives effect to an attempted voluntary transfer inter vivos of a bond." And in any case, Treasury's interpretation cannot possibly overcome the presumption against preemption; the regulation is unambiguous, but even if it were not, any ambiguity should be resolved in favor of States' time-honored escheatment laws.

1. The Federal Circuit accepted Treasury's position that the "as specifically provided in this subpart" language limited the "judicial determination[s]," 31 C.F.R. § 315.20(b) (2014), Treasury must recognize to *only* determinations pertaining to one of the proceedings listed in 31 C.F.R. §§ 315.21 and 315.22. Pet. App. 13a; *see also id.* at 63a (describing Treasury's position). That position, however, cannot explain the existence of § 315.20(a), which provided that "Treasury will *not* recognize a judicial determination that gives effect to an attempted voluntary transfer inter vivos of a bond." 31 C.F.R. § 315.20(a) (2014) (emphasis added).

Notably, *none* of the four types of proceedings listed in 31 C.F.R. §§ 315.21 and 315.22 encompass voluntary inter vivos transfers. First, § 315.21(a) limits when Treasury will pay a savings bond "under a levy . . . to satisfy a money judgment" against the bond's owner. Second, § 315.21(b) specifically addresses how § 315.21(a)'s "money judgment" rule applies to bankruptcy proceedings. Third, § 315.22(a) provides detail rules governing Treasury's recognition

of "divorce decree[s]." Finally, § 315.22(b) requires Treasury to pay "[a] savings bond belonging solely to one individual . . . found by a court to be entitled by reason of a gift causa mortis from the sole owner." Because none of the four proceedings addressed by these provisions could possibly apply to voluntary inter vivos transfers, limiting § 315.20(b) to these proceedings would render § 315.20(a) superfluous: If these four proceedings were the only ones Treasury recognized, there would be no reason to specifically and separately *prohibit* recognition of voluntary inter vivos transfers.

The fact that Treasury's, and the Federal Circuit's, interpretation of § 315.20(b) removes all significance from § 315.20(a) counts heavily against that interpretation. In interpreting regulations, just as in interpreting statutes, the Court consistently "hesitates 'to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law." *Me. Cmty. Health Options v. United States,* 140 S.Ct. 1308, 1323 (2020) (quoting *Republic of Sudan v. Harrison*, 139 S.Ct. 1048, 1058 (2019)). *See Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 668 (2007) (rejecting a proposed interpretation because it "would render the regulation entirely superfluous").

2. With no affirmative textual evidence to recommend Treasury's interpretation, the rule against superfluities is sufficient to reject it. If any doubt remained, however, the presumption against preemption resolves the question.

As explained above, *supra* at 5–8, state escheatment laws have centuries of tradition behind them. And state laws that fall in such traditional realms of state authority are preempted *only* when the preemptive intent of federal law is "clear and manifest." *Altria Grp., Inc. v. Good*, 555 U.S. 70, 77 (2008); *see also CTS Corp. v. Waldburger*, 573 U.S. 1, 12 (2014) ("[S]ubstantial support also exists for the proposition that 'the States' coordinate role in government counsels against reading' federal laws . . . 'to restrict the States' sovereign capacity to regulate' in areas of traditional state concern" (quoting *FTC v. Phoebe Putney Health System, Inc.*, 568 U.S. 216, 236 (2013)); *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) ("In all pre-emption cases, and particularly . . . in a field which the States have traditionally occupied, we start with the assumption that the historic police powers of the States were not to be superseded by the Federal Act unless that was the clear and manifest purpose of Congress." (internal quotation marks and citation omitted)). In light of the sovereignty States retain under the Constitution, "where the intent to override [state law] is doubtful, our federal system demands deference to long-established traditions of state regulation." *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 546 (1994).

Because § 31.520(b) does not meet the "clear and manifest" standard, the regulation should not be read to preempt state law. *See, e.g., Knox v. Brnovich*, 907 F.3d 1167, 1179 (9th Cir. 2018) (applying "the presumption against preemption" to "decline to interpret

a federal regulation . . . as conflicting with a state statute"). As explained above, because the rule against superfluities forecloses Treasury's competing interpretation, the States' interpretation of the regulation is unambiguously correct. But even putting this problem to the side, Treasury has failed to identify any reason *its* interpretation is correct, much less unambiguously so.

Indeed, § 31.520(b) is nowhere near as explicit as the language Congress has occasionally used to override state unclaimed property laws on other occasions. For example, 5 U.S.C. § 8345(i) sets forth a federal, 30-year abandonment period governing the payment of benefits out of the Civil Service Retirement and Disability Fund. *See* 5 U.S.C. § 8345(i)(2); Civil Service Retirement Act, ch. 195, 41 Stat. 614 (1920), *amended by* Act of Dec. 31, 1975, Pub. L. No. 94-183, 89 Stat. 1057, *and*, *in turn*, *amended by* Act of Sept. 15, 1978, Pub. L. No. 95-366, 92 Stat. 600. Similarly, Congress has enacted a federal abandonment period for federal Old-Age and Survivors Insurance benefit checks that have not been presented for payment. *See* 42 U.S.C. § 401(m); Social Security Act Amendments of 1939, ch. 666, § 201, 53 Stat. 1360, 1362; Social Security Act Amendments of 1983, Pub. L. No. 98-21, § 152(a), 97 Stat. 65, 105. And Congress has enacted statutes that provide for escheatment to the federal government of unclaimed-benefit payments to federal insurance funds. *See* 5 U.S.C. § 8705(d) (providing that, if no claim for payment of Federal Employee Life Insurance benefits has been made "within 4 years after the death of the employee, . . . the amount payable escheats to

the credit of the [federal] Employees' Life Insurance Fund"); 38 U.S.C. § 1950 ("No [Veterans Life Insurance] payments shall be made to any estate which under the laws of the residence of the insured or the beneficiary, as the case may be, would escheat [to the State], but same shall escheat to the United States and be credited to the United States Government Life Insurance Fund.").

The regulation at issue here, in contrast, does not come close to providing the necessary clarity. If anything, it clearly *requires* Treasury to honor state escheat judgments; it certainly does not clearly require Treasury to ignore them. The decision below unjustifiably preempts longstanding, essential state escheatment laws. The Court should grant the petitions and reverse this decision.

CONCLUSION

The petitions should be granted.

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