

No. 09-

09-195 AUG 12 2009

OFFICE OF THE CLERK
In The Honorable K. Suter, Clerk

Supreme Court of the United States

—◆—
DAN REUST,

Petitioner,

v.

THE STATE OF ALASKA,

Respondent.

—◆—
**On Petition For A Writ Of Certiorari
To The Supreme Court Of The State Of Alaska**

—◆—
PETITION FOR WRIT OF CERTIORARI

—◆—
For Petitioner

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QUESTIONS PRESENTED

The Supreme Court of the State of Alaska upheld the validity of a state statute that took a percentage of Reust's recovery in a civil action for public use, aligning the Alaska Supreme Court with the Ninth Circuit and six State Supreme Courts that have held such statutes constitutional and furthering the split with two State Supreme Courts that have held such statutes violate the Takings Clause of the Fifth Amendment to the United States Constitution. The first question presented is:

1. Whether a state statute that allows a percentage of a civil judgment to be taken for public use violates the Takings Clause of the Fifth Amendment to the United States Constitution?

The Supreme Court of the State of Alaska upheld the taking of a percentage of Reust's recovery even though the recovery was through a settlement and not a judgment as required by the State statute. The second question presented is:

2. Did the taking of a percentage of Reust's civil recovery violate the Due Process Clause of the Fourteenth Amendment?

PARTIES

1. Dan Reust is a citizen of the State of Alaska and the United States and former employee of Alaska Petroleum Contractors, Inc. (“APC”).

2. The State of Alaska intervened in Reust’s civil matter to protect its alleged statutory entitlement to take a portion of any punitive damages awarded to Reust.

3. Dan Reust and APC, entered into a settlement agreement resolving all issues. (App. 75-82). APC is not named in this petition because the question presented arises solely from a dispute between Dan Reust and the State of Alaska and Reust agreed to indemnify and hold APC harmless from any claim the State may have regarding its right to share in an award of punitive damages. (App. 78).

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OPINIONS AND ORDERS BELOW

The first opinion from the Alaska Supreme Court is reported at *Reust v. Alaska Petroleum Contractors, Inc. (Reust I)*, 127 P.3d 807 (Alaska 2005). The opinion is provided in the Appendix. (App. 12-63). The second opinion from the Alaska Supreme Court is reported at *Reust v. Alaska Petroleum Contractors, Inc. (Reust II)*, 206 P.3d 437 (Alaska 2009). The opinion is provided in the Appendix. (App. 1-11). The Alaska Supreme Court's order denying rehearing is not reported and is provided in the Appendix. (App. 66).



JURISDICTION

The Alaska Supreme Court filed its final opinion on April 10, 2009. (App. 1-11). The petition for rehearing was denied on May 15, 2009. (App. 66). This Court has jurisdiction to review a final decision of the highest State Court, deciding a federal question, under 28 U.S.C. § 1257(a).



CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Takings Clause of the Fifth Amendment of the United States Constitution provides that private property shall not be taken for a public purpose without just compensation. The Takings Clause of the

Fifth Amendment was made applicable to the States under the Fourteenth Amendment.

The Fourteenth Amendment to the United States Constitution provides that no State may deprive any person of life, liberty, or property, without due process of law.

Alaska Stat. § 09.17.020(j) provides that if a person receives an award of punitive damages the court shall require that fifty-percent of the award be deposited in the State's general fund, however, the statute does not grant the State the right to file or join a civil action to recover punitive damages. (App. 67-71).

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STATEMENT OF THE CASE

Dan Reust sued APC for wrongful termination, claiming his discharge violated Alaska public policy regarding protection of Court witnesses. (App. 14-16). A trial jury found that Reust was hired by APC and then unlawfully terminated. *Id.* The jury awarded Reust damages of \$132,200 for past wage loss, \$156,800 for future wage loss, and \$100,000 for non-economic losses for "emotional distress, mental anguish and anxiety." It also found that Reust was entitled to recover punitive damages. (App. 15-16).

Following a required second phase of the trial, the jury awarded Reust punitive damages in the amount of \$4.3 million. (App. 15-16). This amount

was later reduced by the trial court when it applied a statutory cap to the punitive award. (App. 16). Reust sought to have parts of the Alaska tort reform legislation declared unconstitutional. The State of Alaska was allowed to intervene to defend the constitutionality of Alaska Statute 09.17.020(j). (App. 16, 1-11). The trial court denied Reust's motion, reduced the punitive damages award to \$500,000 under AS 09.17.020(h), and directed that fifty-percent of the award be allocated to the State under AS 09.17.020(j). (App. 12, 15-16). Reust appealed to the Alaska Supreme Court seeking a declaration that AS 09.17.020(j) was an unconstitutional taking of his property without just compensation in violation of the 5th Amendment of the United States Constitution and a deprivation of his property interest in violation of the Due Process Clause of the 14th Amendment to the United States Constitution. (App. 45-49, 51-55).

Reust claimed that the allocation requirement in AS 09.17.020(j) is an unconstitutional taking because it deprives him of a property right in his punitive damages claim without just compensation. (App. 51-55). The Alaska Supreme Court rejected Reust's claim, relying on its prior decision in *Anderson v. State ex rel. Central Bering Sea Fishermen's Ass'n (Anderson II)*, 78 P.3d 710 (Alaska 2003). (App. 51-52). The Alaska Supreme Court concluded that AS 09.17.020(j) does not violate the Takings Clause of the Alaska Constitution or the Federal Constitution. (App. 51-55). The Court also concluded that it was not a violation of the Due Process Clause. (App. 49).

However, the Alaska Supreme Court remanded the trial court's punitive damages judgment for recalculation of the punitive damages award because the trial court applied the wrong statutory cap in reducing the amount of punitive damages determined by the jury. (App. 55-57). The Alaska Supreme Court instructed the trial court, on remand, to recalculate the punitive damages by applying the statutory cap found in AS 09.17.020(f). (App. 60). Although, during the original trial, the jury was instructed by trial court instructions to consider the factors listed in AS 09.17.020(c), and, although AS 09.17.020(c) allows the fact finder to consider the seven factors listed in determining the amount of punitive damages, the Alaska Supreme Court instructed the trial judge, on remand, to make these factual findings by applying the seven factors listed in Section (c) of the Statute to ensure the amount entered in the judgment on remand would not be excessive. (App. 60). This was, in effect, reversal of the trial court's punitive damages judgment. The trial court was also instructed to determine whether the recalculated amount of punitive damages would be excessive in light of *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559, 574-575, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996). (App. 57).

On remand from the Alaska Supreme Court, Reust settled his claims with APC before entry of a final judgment for punitive damages. (App. 75-52). In the settlement agreement Reust and APC agreed that no award or judgment for punitive damages would be entered against APC. (App. 76-77). Reust agreed to

indemnify, defend and hold APC harmless against any claim by the State of Alaska for punitive damages arising under AS 09.17.020(j). (App. 78). Reust and APC then filed a stipulation for dismissal in the trial court. (App. 3-4). The State objected to dismissal. *Id.* The trial court ordered that the settlement agreement was valid and would be enforced, but it refused to dismiss the case. (App. 62). Although the settlement agreement stated that no judgment would be entered, the trial court then entered a final judgment for the State against APC and Reust's settlement proceeds in the amount of \$207,792.40 as its share of the trial court's calculated punitive damages judgment. (App. 64). Reust again appealed the trial court's judgment to the Alaska Supreme Court. (App. 1-11).

In the second appeal, Reust argued that Alaska's split-recovery statute, AS 09.17.020(j) was unconstitutional. (App. 1-11). The Alaska Supreme Court again rejected Reust's constitutional challenge, affirming the trial court's decision. (App. 10-11). Reust filed a petition for rehearing with the Alaska Supreme Court and the petition for rehearing was denied on May 15, 2009. (App. 66).



REASONS FOR GRANTING THE PETITION

A. Does a state statute that allows a percentage of a civil judgment to be taken for public use violate the Takings Clause of the Fifth Amendment to the United States Constitution?

This Court should accept review of this issue of national importance: whether a State may take a share of punitive damages awarded in a civil case and place a portion of the award in the State's general fund. Applying Alaska's "split-recovery" statute, the Alaska Courts ordered judgment in favor of the State of Alaska for a portion of Reust's settlement proceeds. In taking a portion of the settlement proceeds related to a state tort claim, the State took that "property" away from Reust and did not compensate Reust for that taking as required by the Takings Clause of the U.S. Constitution.

Split-recovery statutes attempt to reduce some of the plaintiff's windfall by allocating part of the punitive award to the state. *See, e.g., Charles F. G. Parkinson, Note, A Shift in the Windfall: An Analysis of Indiana's Punitive Damages Allocation Statute and the Recovery of Attorney's Fees Under the Particular Services Clause*, 32 Val. U. L. Rev. 923, 943-944 (1998) (describing split-recovery statutes). Although the plaintiff shares in the award to compensate for bringing the punitive claim in the first place, *see Smith v. Wade*, 461 U.S. 30, 58 (1983) (Rehnquist, J., dissenting) ("Punitive damages are justified as a 'bounty' that encourages private lawsuits seeking to

assert legal rights.”); the state takes the balance of this property interest to use for the public benefit. See *E. Jeffrey Grube, Note, Punitive Damages: A Misplaced Remedy*, 66 S. Cal. L. Rev. 842, 854 (1993) (“Society could put punitive damages awards to better use than allowing individual civil plaintiffs windfall recoveries.”). Several states have enacted split-recovery statutes. See 35 St. Mary’s L. J. 207, 208 (St. Mary’s University of San Antonio 2003). Some of those statutes have been scrutinized by the courts.¹

Alaska Statute 09.17.020(j) was enacted in 1997 as part of Alaska’s tort reform legislation. *Evans v. State*, 56 P.3d 1046, 1048 (Alaska 2002). The statute requires that half of all punitive damages awards received by a plaintiff be paid into the state treasury. *Id.* In adopting this provision, the Alaska Legislature took the five-billion dollar punitive damages award against Exxon into account and that award along with the State’s inability to share in that award, was likely part of the impetus for adoption of this “split-recovery” provision. See <http://www.legis.state.ak.us/cgi-bin/folioisa.dll/cm20/query=!22punitive+damages!22/doc/%7B@1175%7D?>

¹ See *Kirk v. Denver Publ’g Co.*, 818 P.2d 262 (Colo. 1991); *Gordon v. State*, 608 So.2d 800 (Fla. 1992) (per curiam); *Mack Trucks, Inc. v. Conkle*, 436 S.E.2d 635 (Ga. 1993); *Spaur v. Owens-Corning Fiberglas Corp.*, 510 N.W.2d 854 (Iowa 1994); *Fust v. Attorney Gen.*, 947 S.W.2d 424 (Mo. 1997) (en banc); *Tenold v. Weyerhaeuser Co.*, 873 P.2d 413 (Or. Ct. App. 1994).

State Courts are sharply divided over whether split-recovery statutes pass constitutional muster. The Supreme Court in six states upheld the statutes against federal takings challenges. *Cheatham v. Pohle*, 789 N.E.2d 467, 474-475 (Ind. 2003); *Evans v. State*, 56 P.3d 1046, 1058 (Alaska 2002); *Mack Trucks, Inc. v. Conkle*, 263 Ga. 539, 436 S.E.2d 635, 639 (1993); *Gordon v. State*, 608 So.2d 800, 801-802 (Fla. 1992) (per curiam); *Shepard Components, Inc. v. Brice Petrides-Donohue & Associates*, 473 N.W.2d 612, 619 (Iowa 1991). Two State Supreme Courts have held the statutes violate the federal Takings Clause. *Kirk v. Denver Publishing Co.*, 818 P.2d 262, 273 (Colo. 1991); *Smith v. Price Development Co.*, 125 P.3d 945 (Utah 2005). One U.S. District Court has held that a split-recovery statute violates the Excessive Fines Clause. *McBride v. Gen. Motors, Corp.*, 737 F.Supp. 1563, 1578 (M.D. Ga. 1990).

The two State Supreme Courts that have sustained a constitutional challenge and the United States District Court decision from the Middle District of Georgia are also in conflict with other federal courts, including *Engquist v. Oregon Dept. of Agriculture*, 478 F.3d 985, 1004-1005 (9th Cir. 2007) (certiorari granted, in part); *Engquist v. Or. Dep't of Agric.*, 128 S.Ct. 977, 169 L.Ed.2d 800, 2008 U.S. LEXIS 749, 76 U.S.L.W. 3371 (2008) (certiorari was denied on the question presented in this petition).

Alaska's split-recovery punitive damages statute provides in pertinent part:

If a person receives an award of punitive damages, the court shall require that 50 percent of the award be deposited into the general fund of the state. This subsection does not grant the state the right to file or join a civil action to recover punitive damages.

Alaska's split-recovery statute is substantially similar to Colorado's, which was held to be an unconstitutional taking in *Kirk*, 818 P.2d at 273 and then repealed by the Colorado Legislature. (App. 72-74). The Colorado statute read in relevant part:

One-third of all reasonable damages collected pursuant to this section shall be paid into the state general fund. The remaining two-thirds of such damages collected shall be paid to the injured party. Nothing in this subsection (4) shall be construed to give the general fund any interest in the claim for exemplary damages or in the litigation itself at any time prior to payment becoming due.

There is clearly a conflict between the Alaska Supreme Court and the Colorado Supreme Court on this federal question. *Reust I (supra)*; *Reust II (supra)* and *Kirk*, 818 P.2d at 273. The Alaska Supreme Court's decision also appears to be in conflict with the Ninth Circuit's decision in *Engquist*, at least in part.

The Alaska Supreme Court determined that *Reust* had a property interest but the interest was limited by AS 09.17.020(j). *Reust I*, 127 P.3d at 823; *Reust II*, 206 P.3d at 440. In *Engquist*, the Court of Appeals for the Ninth Circuit recognized that if the award was property, taking a percentage on behalf of the State would be a taking under the Takings Clause. The Ninth Circuit, however, held it was not property. *Engquist*, 478 F.3d at 1001 n. 18. The Ninth Circuit concluded that since punitive damages are not awarded as a matter of right but are a discretionary decision made by a jury, any interest to be protected was too speculative to constitute property under the Takings Clause. *Id.*, at 1004. The Alaska Supreme Court appears to be in conflict with the Ninth Circuit and to the extent they are aligned, both are in conflict with prior decisions from this Court as to what constitutes property.

There is no clear test for what constitutes property under the Takings Clause. However, in *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 118 S.Ct. 1925, 141 L.Ed.2d 174 (1998), the Court concluded that the interest gained from the State of Texas' Interest on Lawyers' Trust Accounts involved property for purposes of the Takings Clause. The reasoning applied in *Phillips* supports Reust's view that the Ninth Circuit Court of Appeals had it wrong, when it concluded that the interest in punitive damages was too speculative to constitute property, and the Alaska Supreme Court had it wrong when it concluded that the interest was modified by AS

09.17.020(j). In *Phillips*, this Court held that the interest that might accumulate was property because it attached as a relevant incident to ownership of the principal amount in the trust fund. *Phillips, supra*, 524 U.S. at 168.

Applying the *Phillips*' reasoning here, the property right to punitive damages attaches as a relevant incident to the property interest in a cause of action. *Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 102 S.Ct. 1148, 72 L.Ed.2d 265 (1982) (it is settled law that a cause of action is a species of property protected by the due process clause). In *Phillips*, this Court relied on the fact that accumulated interest follows principal and a property interest in the principal extended to a property right in the interest that might accumulate. *Phillips*, 524 U.S. at 165. Reust's property right in punitive damages extends from the property right in his cause of action and therefore attached when his cause of action accrued. *See Mullane v. Central Hanover Trust Co.*, 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1949) (legal right to have trustee answer for negligent impairment of interest was a property right for purposes of the due process clause).

The Court of Appeals for the Ninth Circuit and the Alaska Supreme Court had it wrong; Colorado had it right in *Kirk*. Colorado held that there was a property interest that could not be taken without just compensation. *Kirk*, 818 P.2d at 273. Colorado held there was a property interest in the cause of action, *Kirk*, at 267; and the interest in punitive damages

attached before the actual award. *Kirk*, at 270-273. Reason dictates that because the property interest attaches when the cause of action accrues; a taking of that interest after a determination of the property's value via an award constitutes a taking under the Takings Clause and just compensation must be paid by the State.

Reust had a property interest in his cause of action against APC and, by extension, he had a property interest in any future award whether compensatory or punitive. That property interest attached when the cause of action accrued and before the split-recovery provision was triggered by an award. The Alaska Supreme Court held that the State's interest did not attach until the jury verdict was rendered. (App. 5-6). Reust's interest attached even before the lawsuit was filed. AS 09.17.020(j) is triggered by the award, thus it constitutes a taking because the State's alleged right to take the property attached long after Reust's property interest was vested.

The constitutional violation in this case is more egregious in light of the fact that Reust settled with APC before the entry of a final judgment and before the actual amount of punitive damages had been set by the Court. (App. 5-6). This settlement prevented attachment of the State's right under AS 09.17.020(j), however, the State seeks to take part of the settlement proceeds under that provision. The State seeks to do so without compensating Reust for the taking. That constitutes the taking of a property

interest without just compensation in violation of the Takings Clause.

B. Did the taking of a percentage of Reust's civil recovery violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution?

Reust twice raised the question whether the split-recovery provision of AS 09.17.020 violated his due process rights before the State Court. (App. 51-55). In its second and most recent opinion, the Alaska Supreme Court merely referred to its prior decisions on this issue; essentially ignoring the fact that Reust's claim was based on a new set of facts. (App. 9 fn. 17). The facts that changed are: Reust settled his claim with APC before the entry of a judgment in favor of the State and thus, no award existed for purposes of the split-recovery provision. (App. 75-82, 1-11). Even in the absence of an "award", the trial court took Reust's property interest in his settlement proceeds without just compensation and misapplied the statute. (App. 62-64). This violated Reust's due process rights under the 14th Amendment of the United States Constitution.

The state's interest in punitive damages vests after entry of a judgment and the damages are actually received by a judgment creditor. AS 09.17.020(j) (App. 5-6). There is no "award" until the trial court enters a judgment for the amount. AS 09.17.020(d) *Id.* The Statute states that the fact

finder shall determine the amount and the trial court shall enter a judgment, thus the State's interest does not vest until there is a judgment and the noun "award" is synonymous with judgment. *Id.* This is consistent with the common definition of "award."

The plain meaning of the noun "award" includes a judgment. Webster's Third New International Dictionary, 152 (unabridged ed. 2002). Similarly, Black's Law Dictionary defines award as "a final judgment or decision." Black's Law Dictionary, 147 (8th ed. 1999); *see* Black's Law Dictionary, 125 (5th ed. 1979). It is a fundamental and widely accepted rule that where a statute uses a word or term and does not define same, the courts must give such word or term its ordinary, plain and commonly accepted meaning. *Addison v. Holly Hill Fruit Products*, 322 U.S. 607, 618, 64 S.Ct. 1215, 88 L.Ed. 1488 (1944).

Here, there was no "award" prior to Reust entering into a settlement agreement for two reasons. First, the Alaska Supreme Court, in effect, vacated the prior judgment by directing the trial court to reconsider factors that should have been considered by the fact finder. (App. 57-60). Second, the trial court invaded the province of the jury to perform that fact finding and it did not enter its judgment until after Reust settled his claims with APC. (App. 75-82, 1-11); *see* AS 09.17.020(a) (fact finder shall determine the amount of punitive damages). There being no award prior to the settlement agreement, the State's right under the statute had not yet vested and when the trial court entered judgment in favor of the State and

against APC and Reust, the trial court granted the State a share of Reust's settlement proceeds and not a share of the punitive damages awarded in a final judgment in favor of Reust as contemplated by the statute. (App. 9-11). The statute upon which the State and the trial court relied, does not authorize the taking of settlement proceeds and as applied to Reust, this misapplication of the statute deprived Reust of property in violation of the Due Process Clause of the 14th Amendment.

In *Sniadach v. Family Finance Corporation of Bayview*, 395 U.S. 337, 89 S.Ct. 1820, 23 L.Ed.2d 349 (1969), this Court was confronted with the Wisconsin garnishee law. There a creditor, prior to judgment, could cause the defendant debtor's wages to be frozen without the opportunity to be heard. This Court struck down the law holding it violated procedural due process. The Court noted that it was making no judgment about whether the law was wise – the sole question is whether there has been a taking of property without that procedural due process required by the 14th Amendment. The Court concluded its opinion by saying:

Where the taking of one's property is so obvious, it needs no extended argument to conclude that absent notice and a prior hearing . . . this prejudgment garnishment procedure violates the fundamental principles of due process.

Sniadach, id., 395 U.S. at 342, 89 S.Ct. at 1823.

It is submitted that the taking of Reust's property interest in the settlement proceeds without any statutory authorization or procedure for the taking of such interest is an obvious violation of due process.

Following the *Sniadach*, decision, this Court in 1972 handed down *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983, 32 L.Ed.2d 556 (1972). There the Florida and Pennsylvania prejudgment replevin statutes were held violative of the Due Process Clause for failure to have notice and opportunity for hearing prior to seizure of property. The Court, speaking through Mr. Justice Stewart, said:

The constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decision making when it acts to deprive a person of his possessions. The purpose of this requirement is not only to insure abstract fair play to the individual. Its purpose more particularly, is to protect his use and possession of property from arbitrary encroachment . . . the prohibition . . . against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history, that we place on a person's right to enjoy what is his, free of government interference.

407 U.S. at 80, 92 S.Ct. at 1994. See *Lynch v. Household Finance Corp.*, 405 U.S. 538, 552, 92 S.Ct. 1113, 1122, 31 L.Ed.2d 424 (1972).

In *Lynch*, the Court said:

The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth, a “personal” right, whether the “property” in question be a welfare check, a home or a savings account. In fact, a fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other. That rights in property are basic civil rights has long been recognized.

Without the guarantee of due process as provided by our Constitution the right of private property cannot be said to exist. *Ochoa v. Hernandez y Morales*, 230 U.S. 139, 33 S.Ct. 1033, 57 L.Ed. 1427 (1913).

In 1978, this Court decided *Memphis Light, Gas & Water Division v. Craft*, 436 U.S. 1, 98 S.Ct. 1554, 56 L.Ed.2d 30 (1978). The Memphis Light, Gas & Water Division of the City of Memphis terminated utility services of respondents without an opportunity for hearing. This Court held that such action violated the Due Process Clause of the 14th Amendment. In doing so, it relied on *Mathews v. Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) to “provide a framework of analysis for determining the specific dictates of due process” in this case.

In *Mathews*, the Court identified three distinct factors to be considered:

- (1) The private interest that will be affected by the official action;
- (2) The risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and,
- (3) The Government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.

Under the three preceding factors:

(1) The private interest affected is Reust's interest in settlement proceeds vested through a settlement agreement entered prior to the "award" that would have triggered AS 09.17.020(j).

(2) The risk of erroneous deprivation by misapplying a statute and taking property without any defined procedures that gives the State the right to take that property.

(3) Finally the government took the property without any statutory authorization and no administrative burdens of consequence would be placed on the government if the due process requirements were satisfied. The State took part of the settlement proceeds from a settlement agreement deemed valid and enforceable by the trial court and

that was entered into after the Alaska Supreme Court, in effect, vacated the first judgment because it was entered in error under Alaska law. It did so without any statutory or regulatory provisions authorizing the attachment or setting out the procedures for the attachment of settlement proceeds.

It is submitted that the taking here is automatic, complete and absolute and that, as applied, the Alaska Court's application of the statute violated Reust's due process rights under the 14th Amendment of the U.S. Constitution.



CONCLUSION

There being a conflict between the different States on the question presented; and there being a conflict between certain State Courts and the Federal Courts on the question presented, the petition for writ of certiorari should be granted as to the first question presented. The taking of a property interest without just compensation presents a question of national importance and this case presents an opportunity to establish a clear test for determining what constitutes property for purpose of the Takings Clause. Should those property interests be determined based upon federal common law or does the Takings Clause only apply to property rights defined by State law?

There was a clear violation of due process when Reust's property was taken without statutory

authority and prior to any interest vesting in the State. The petition for writ of certiorari should be granted as to the second question presented.

Respectfully submitted,

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No. 09-_____



In The
Supreme Court of the United States



DAN REUST,

Petitioner,

v.

THE STATE OF ALASKA,

Respondent.



**On Petition For A Writ Of Certiorari
To The Supreme Court Of
State of Alaska**



PETITIONER'S APPENDIX



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