

IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS

MORRIS ARTHUR

Appellant,

v.

D.C. GOVERNMENT, ET AL.

Appellees.

No. 00-CV-1389 &
No. 00-CV-1413

*On Appeal from the Superior Court of the District of Columbia,
Civil Division*

**BRIEF OF AMICI CURIAE,
THE WASHINGTON COUNCIL OF LAWYERS,
AYUDA,
CONSORTIUM OF LEGAL SERVICES PROVIDERS,
COUNCIL OF LATINO AGENCIES,
PARTNERSHIP FOR CIVIL JUSTICE,
PUBLIC CITIZEN LITIGATION GROUP**

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**IN THE DISTRICT OF COLUMBIA
COURT OF APPEALS**

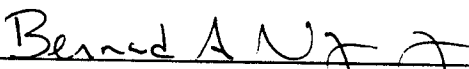
MORRIS ARTHUR)	
)	
Appellant,)	
)	
v.)	No. 00-CV-1389 &
)	No. 00-CV-1413
D.C. GOVERNMENT, ET AL.)	
)	
Appellees.)	
)	

**CERTIFICATE REQUIRED BY RULE 28(A)(1) OF THE RULES OF THE
DISTRICT OF COLUMBIA COURT OF APPEALS**

The undersigned, counsel of record for *Amicus Curiae*, the Washington Council of Lawyers, certifies that the following listed parties appeared or were represented below:

1. Morris Arthur
2. District of Columbia Courts
3. District of Columbia Government
4. Sheldon Kamins
5. Abraham Zaiderman
6. Christine Gibson Arthur
7. Chief Financial Officer of the District of Columbia
8. Irving and Bessie Kamins
9. Rostelle J. Reese, Jr.
10. Fiscal Officer of the District of Columbia Courts

These representations are made in order that the judges of this court, *inter alia*, may evaluate possible disqualification or recusal.



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ISSUE PRESENTED FOR REVIEW

Whether the D.C. Superior Court's practice of taking all interest earned on litigants' private funds deposited with the court's registry results in an unconstitutional taking in violation of the Fifth Amendment of the United States Constitution.

STATEMENT OF THE CASE

I. INTRODUCTION

Although this litigation has continued for many years, entailing a number of issues before multiple judges, the constitutional question in this case is quite simple -- when litigants before the District of Columbia's (the "District's") courts deposit their private funds with the court registry pending the outcome of litigation, may the District invest those funds, and keep for itself all of the interest earned? Under binding United States Supreme Court precedent, this question must be answered in the negative.

The District's practice of taking all interest earned on court registry funds is an unconstitutional taking of private property without just compensation. The expropriated interest belongs to the party awarded the principal funds at the outcome of litigation, not to the District. Federal courts and states that comply with binding United States Supreme Court precedent award interest earned on court registry funds, less a reasonable administrative fee, to the party entitled to the principal funds. Therefore, in order to conform to the Constitution, the District must amend its practice to do likewise.

In the case at bar, Morris Arthur has been unconstitutionally denied the interest earned on his principal funds that were deposited with the D.C. Superior Court pending litigation. The District's policy governing interest earned by funds deposited with the District's courts, both on its face and as applied to Mr. Arthur, is unconstitutional.

II. INTEREST OF AMICI

The Washington Council of Lawyers (the "Council") is a non-profit organization of lawyers committed to the spirit and practice of law in the public interest. The Council is united in its conviction that the legal system must serve the needs of the poor and the powerless as well as the wealthy and powerful. The Council has always taken a strong interest in administration of justice issues, and has advocated on behalf of the disenfranchised. The Council seeks to ensure that all litigants have equal access to the courts, and that they are treated with fairness throughout

the court process. The Council has filed *amicus curiae* briefs, such as this one, on issues affecting the public interest.

Since its establishment in 1971, Ayuda has provided comprehensive legal services in the fields of immigration and domestic relations to the low-income Latino and foreign-born non-English-speaking community of the Washington metropolitan area. These services include providing representation before local and federal courts or in non-judicial administrative matters, and translating for case-related matters. Ayuda is the only agency in the District offering emergency and one-stop legal and social services to immigrant and refugee women fleeing domestic violence. Ayuda also provides information to a variety of individuals and organizations on the latest changes affecting the legal rights of battered immigrant women and children, as well as model programs for serving them.

The D.C. Consortium of Legal Services Providers represents the civil legal services programs that serve persons living in poverty in the District.¹ Each member organization uses legal strategies to aid families, individuals and communities to meet their needs. Although our programs focus on a variety of substantive areas of law or segments of the population, we share the common goals of increasing access to justice and lifting people out of poverty.

The mission of the Council of Latino Agencies is to support and promote its members for the betterment of the community and to act as a voice of the Latino community in the District. Its role as a policy advocate and information clearinghouse on the Latino community makes the Council an effective bridge between grassroots organizations and policymakers.

Experienced civil rights attorneys practicing in Washington D.C. founded the Partnership for Civil Justice ~ Legal Defense and Education Fund. The Fund provides and supports exclusively charitable and educational activities that secure and advance civil rights under the law, and that work towards the elimination of discrimination and prejudice.

¹ The Consortium is an informal collaboration comprised of several member organizations, including the Legal Aid Society of D.C., sharing common principles.

Public Citizen's Litigation Group is a public interest law firm that specializes in public interest litigation concerning federal health and safety regulation, consumer rights, free speech, open government, and access to civil justice. The Litigation Group litigates cases at all levels of the federal and state judiciaries, and has a substantial practice before federal regulatory agencies. The Litigation Group is a division of Public Citizen, a national consumer organization with approximately 120,000 members.

The District's unconstitutional practice of taking all interest earned on court registry funds has a sweeping impact that potentially harms all litigants who deposit funds with the District's courts. *Amici curiae* urge the Court to restore equality and integrity to the judicial process by ending the District's unconstitutional practice, and ruling in Mr. Arthur's favor.

III. FACTUAL BACKGROUND

A. **The District's Current Practice is to Retain All Interest Earned on Court Registry Funds.**

When a party deposits private funds with the court registry, the District routinely invests the deposited money and retains all interest income for its own benefit. The District's practice is not required by any specific rule. D.C. Superior Court Civil Procedure Rule 67 (similar to Federal Rule of Civil Procedure 67), and the Comments to the Rule, state that when funds are deposited with the court, the decision whether to invest and "disperse those funds with accrued interest" is left in the court's discretion D.C. Super. Ct. R. Civ. P. 67 (Ex. 1). Two D.C. Code Sections, D.C. Code Ann. § 1-204.50 (Ex. 2)² and D.C. Code Ann. § 1-204.48 (Ex. 3)³ are

² D.C. Code Ann. § 1-204.50 (2002), formerly D.C. Code Ann. § 47-130 (1973), provides that "The General Fund of the District shall be composed of those District revenues which on January 2, 1975 are paid into the Treasury of the United States and credited either to the General Fund of the District or its miscellaneous receipts, but shall not include any revenues that are applied by law to any special fund existing on January 2, 1975. The [City] Council may from time to time establish such additional special funds as may be necessary for the efficient operation of the government of the District. All money received by any agency, officer, or employee of the District in its or his official capacity shall belong to the District government and shall be paid promptly to the Mayor for deposit in the appropriate fund, except that all money received by the District of Columbia Courts shall be deposited in the Treasury of the United States or the Crime Victims Fund." The District of Columbia does not rely on this statute as justification for its retention of the funds at issue. *Amici* submit that if this section is intended to apply not only to fines and court costs

Footnote continued

perhaps peripherally relevant, but neither directly addresses the issue of court registry funds. Indeed, the District acknowledges that "there is no controlling state statute in the District of Columbia." *See* Brief of District of Columbia, Third-Party Defendant, Pursuant to Order of Court of May 29, 1998, July 20, 1998, at 3; Supplemental Memorandum of District of Columbia, Third-Party Defendant, on the Issue of Interest on Unclaimed Property, Dec. 19, 1997, at 2 ("there is no statute in the District of Columbia concerning the placement of funds held in the registry of the court in interest-bearing accounts"). (R. at 131)

Nonetheless, according to the District's Fiscal Officer, "[i]t is the practice of the District of Columbia Courts [that] all interest earned on funds held in its general civil escrow account, be used to first pay bank service charges, with the balance deposited as revenue to the District's General Fund."⁴ *See* Defendant's Exhibit 2, Affidavit of John Schultheis, Response of District of Columbia, Third-Party Defendant, To Motion of Plaintiff Morris Arthur for Summary Judgment, Sept. 9, 1997. (Supp. R.#15 at 291)

No published rule or established procedure sets forth an alternative to the District's practice of keeping all interest that accrues on funds in its court's registry. A party placing funds with the court has no certain means for asking the court to deviate from its routine of transferring all interest earned on deposited funds to the District's General Fund.

Footnote continued from previous page

received by the courts, but also to registry funds deposited with the court, then it unconstitutionally violates the Takings Clause. *See infra* Part III.

³ D.C. Code Ann. § 1-204.48 (2002), formerly D.C. Code Ann. § 47-310 (1973), (a) provides that "Subject to the limitations in § 1-206.03, the Mayor shall have charge of the administration of the financial affairs of the District and to that end he shall: . . . (7) Have custody of all public funds belonging to or under the control of the District, or any agency of the District government, and deposit all funds coming into his hands, in such depositories as may be designated and under such terms and conditions as may be prescribed by act of the [City] Council." Moreover, just because the District has a scheme directing where the funds go and who takes care of them, does not mean that the scheme is not susceptible to a constitutional attack.

⁴ By depositing this earned interest into its General Fund, the District is further precluded from relying on D.C. Code Ann. § 1-204.50 (2002), *supra* note 2, which directs that money received by the Courts is to be deposited in the Treasury of the United States or the Crime Victims Fund.

In 1994, well after Mr. Arthur deposited his funds, the District established one unpublished, undefined, and apparently narrow exception to its general practice of taking all interest earned on funds in the court registry. In the words of the District's Fiscal Officer, "[t]he only exception to this practice occurs when the funds are specifically ordered to be placed in a separate, interest bearing escrow account for the benefit of a party or parties to a specific action. Currently, such accounts can only be established with the approval of the Chief Judge (Administrative Order No. 94-26)." *See* Defendant's Exhibit 2, Affidavit of John Schultheis, Response of District of Columbia, Third-Party Defendant, To Motion of Plaintiff Morris Arthur for Summary Judgment, Sept. 9, 1997. (Supp. R.#15 at 291) The text of the 1994 Administrative Order states that an interest bearing escrow account for the benefit of a party will only be established "[i]n extraordinary circumstances where a large sum is to be held by the Court for a reasonably long period of time" *See* Ex. 4. However, the unpublished Administrative Order 94-26 provides no additional guidance. Specific requirements for satisfying these extraordinary circumstances, such as dollar amounts or periods of time, are not addressed. Furthermore, the Order does not specify how to seek the Chief Judge's approval to establish a separate escrow account.

Although the District's scheme improperly takes interest on court registry funds deposited by *all* litigants, lower income litigants -- presumably less likely to be represented by counsel -- are particularly susceptible to this unconstitutional practice. While all litigants may struggle to find, let alone implement, this Administrative Order, the likelihood of resulting harm may be even greater for lower income litigants appearing before the court without legal representation. Such litigants may face great difficulty discovering and utilizing an unpublished and imprecise administrative order that offers the only opportunity to protect their property from governmental expropriation.

B. Procedural History

Morris Arthur, the victim of a loan scam, originally began this suit to enjoin the foreclosure of his home over the default on a promissory note. Eventually, Mr. Arthur deposited

two sums with the D.C. Superior Court Clerk. First, on August 12, 1980, the court required him to deposit \$350 as security for a party during an extension of time before a hearing. (R. at 1) Additionally, on June 9, 1981, Mr. Arthur deposited \$14,500, a portion of the proceeds from the sale of his home, until the court could determine the rightful owner of those funds. (Supp. R. #15 at 33) The \$14,500 represented the amount allegedly owed on the subject promissory note.

At no time was the D.C. Government or the D.C. Superior Court a possible awardee of the \$14,850.⁵ These amounts were placed in interest-bearing investments immediately upon their deposit with the court. (R. at 358; Supp. R. #15 at 291) On February 17, 1988, the \$14,850 was transferred from the court registry into the D.C. Treasury. (Supp. R. #15 at 46) Although it is unclear in what type of account these funds were held, interest continued to accrue. (R. at 372-74)

Though many motions and orders by different judges occurred in the interim, Judge Mize determined on July 26, 2000 that Morris Arthur and his ex-wife should receive the \$14,500 proceeds as tenants by the entirety. (R. at 2998-99) Though Mr. Arthur disputes this characterization, and his ex-wife's claim to any part of these funds, he repeatedly requested the interest that had accrued on these amounts deposited with the court.⁶ On October 4, 2000, Judge Mize ordered that Mr. Arthur was not entitled to the interest. (R. at 3107)

⁵ When first entering the case in 1995, the District of Columbia Government filed a cross-motion for award of the \$14,850 as "unclaimed property". (Supp. R. #15 at 86) The District initially claimed the funds had been placed in a special account for unclaimed funds. (Supp. R. #15 at 88). In opposing Mr. Arthur's Aug. 6, 1997 motion for the interest, the District revealed that the funds were still in the custody of the District's courts and had begun earning interest in 1980 and 1981. (Supp. R. #15 at 291).

⁶ Mr. Arthur has filed several motions requesting summary judgment on the issue that interest should be awarded to the party ultimately awarded the principal funds: motion for summary judgment on the court funds issue, Aug. 6, 1997, (Supp. R. #15 at 272); motion for summary judgment on the court funds issue, Sept. 18, 1998, (R. at 562); order denying summary judgment, June 21, 1999, (Judge Mize denied these motions, finding material facts were in dispute, but offering no elaboration on what facts were disputed.) (R. at 1239, 1241); motion for reconsideration denied July 30, 1999, (R. 1251, 1426); motion to file amended complaint on court funds issue denied September 5, 2000. (R. at 3046).

Interest has accrued on both deposits since the initial date the court took possession of them. (R. at 322) More than \$35,000 in interest has accrued on these funds, as of June 30, 1998, though the actual amount is not determined.⁷ (R. at 600, 613)

When Morris Arthur deposited \$14,850 into the court registry in 1980 and 1981, the District of Columbia had no policy regarding interest earned while these funds were held by the court. According to the District of Columbia, "[s]ince the court neither has nor had a policy regarding interest payments or administrative charges for these types of deposits, there was nothing to be known by Mr. Arthur regarding these matters." *See* Answers of Third-Party Defendant District of Columbia to Morris Arthur's First Set of Interrogatories to the District of Columbia, Dec. 19, 1997, Answer Nos. 3 & 4, at 4. Additionally, "[t]he Court neither has nor has it ever had a policy to charge fees on funds held in escrow." *See* Answers of Third-Party Defendant District of Columbia to Morris Arthur's First Set of Interrogatories to the District of Columbia, Dec. 19, 1997, Answer No. 11, at 7. Therefore, at the time he deposited his funds with the court, Mr. Arthur lacked even the questionable benefit of a unpublished Administrative Order advising him that the District expropriates earned interest on registry funds. He certainly had no notice of any alternatives to the District's practice. Therefore, we submit that the District's practice is unconstitutional on its face, and as applied to Mr. Arthur.⁸

ARGUMENT

IV. THE DISTRICT'S RETENTION OF ALL INTEREST EARNED ON MR. ARTHUR'S FUNDS DEPOSITED INTO THE COURT REGISTRY IS AN UNCONSTITUTIONAL TAKING OF PRIVATE PROPERTY.

⁷ It is uncontested that Mr. Arthur's money was placed in an interest bearing account and that interest was actually earned on those funds. The calculation of interest earned is imprecise because the District failed to track the interest earned on these funds. The District has also failed to produce the actual, documented rate of interest paid during the time Mr. Arthur's funds have been accruing interest. Thus, interest actually earned is approximated based on the rate of interest paid during the relevant time period on judgments entered in the Superior Court.

⁸ Mr. Arthur also alleges additional claims in tort in addition to his Constitutional claim. This brief takes no position on those claims.

The Takings Clause of the Fifth Amendment to the U.S. Constitution provides: "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V.⁹ Funds deposited by a litigant into the court registry are private property, and any interest earned on those funds is private property as well. Thus, the District's current practice of taking for itself all interest earned on litigants' registry funds -- without providing any compensation -- clearly results in an unconstitutional taking.

A. Interest Earned on Litigants' Funds Deposited with the Court Registry is Private Property.

In a decision that clearly controls the case at bar, the United States Supreme Court invalidated a Florida statute which provided that "[a]ll interest accruing from moneys deposited [with the court registry] shall be deemed income of the office of the clerk of the circuit court investing such moneys" *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 156 n.1 (1980). The Court declared that interest earned on funds deposited with a court is private property protected by the Fifth Amendment and that private funds, once deposited, do not become public funds. *Id.* at 162. Because the principal would eventually be distributed among the litigants, the litigants had a property right to their respective portions of the fund and the interest realized on the fund in the interim. *Id.* at 161. In reaching its decision, the Court found that "the usual and general rule is that any interest on an interpleaded and deposited fund follows the principal and is to be allocated to those who are ultimately the owners of that principal." *Id.* at 162-163 (supporting this well-settled rule with a string citation to nine cases where interest was found to follow the principal).

Like the litigants in *Webb's Fabulous Pharmacies*, Mr. Arthur deposited private funds with the court pending the outcome of litigation. Without his knowledge or consent, Mr.

⁹ The Fifth Amendment's prohibition applies against the District of Columbia. See *Bolling v. Sharpe*, 347 U.S. 497 (1954).

Arthur's funds were invested in interest bearing accounts.¹⁰ The District now takes the very position deemed unconstitutional in *Webb's Fabulous Pharmacies* -- the District asserts that all interest generated on funds in the court registry should go to the District as government revenue as a fee for its services. To the contrary, under *Webb's Fabulous Pharmacies* and the general rules of law it embodies, the interest earned on this fund follows the principal and, thus, must be distributed to Mr. Arthur. Mr. Arthur, not the District, is entitled to any interest earned on the funds he deposited with the court registry in 1981.

B. Interest Taken is Not Related to Services Rendered

Because interest earned on funds deposited with the court is private property, government retention of all interest earned on funds in a court registry consistently has been found to violate the Takings Clause. *See, e.g., Webb's Fabulous Pharmacies*, 449 U.S. at 163 (ruling that the Florida statute was an impermissible "forced contribution" to governmental revenues rather than a permissible fee reasonably related to the costs of using the courts); *Rivkin v. County of Montgomery*, 838 F. Supp. 1009 (E.D. Pa. 1993) (holding that in light of *Webb's Fabulous Pharmacies* a county could not withhold all interest earned on interpleaded funds and exact a fee for maintaining such accounts); *Sellers v. Harris County*, 483 S.W.2d 242 (Tex. 1972) (section of the statute that awarded the interest on funds deposited with court to the county as a service fee was unconstitutional because private property is constitutionally protected and the fee must be reasonably related to the value of services).

¹⁰ This lack of notice appears to be a substantial violation of Mr. Arthur's procedural Due Process rights under the Fifth Amendment to the U.S. Constitution. Without providing him with notice that his property could be or would be invested, the District invested his property in an interest bearing account and seized the interest as the District's revenue. Prior to an action that affects life, liberty, or property, the government must give "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Furthermore, laws that require affirmative action to retain vested property interests are disfavored. *See, e.g., Peter Bowal, Reluctance to Regulate: The Case of Negative Option Marketing*, 36 AM. BUS. L. J. 377 (1999) (concluding that marketing efforts that bind consumers to standard terms unless those consumers take steps to opt out violate the contractual common law principle that silence does not equal acceptance); *cf. Fed. R. Civ. P. 23(c)(3)* (requiring that a class action lawsuit "include all members who do not request exclusion").

In deciding whether a government that takes for itself interest earned on private court registry funds constitutes an unconstitutional taking, the Supreme Court in *Webb's Fabulous Pharmacies* focused on the relation of the interest generated to the costs incurred by the courts in maintaining registry accounts. 449 U.S. at 163 (analogizing the Florida statute to regulations that expropriate property for the government's use and characterizing Florida's statutory scheme as "forced contribution to general governmental revenues . . . not reasonably related to the costs of using the courts"); *Colorado Springs Production Credit Assoc. v. Farm Credit Admin.*, 967 F.2d 648, 657 (D.C. Cir. 1992) (describing the holding of *Webb's Fabulous Pharmacies* as primarily requiring a rational relation between administrative fees and incurred costs).

Thus, a court may not arbitrarily retain all interest earned on funds deposited with the court as an administrative fee because the amount of interest earned is not reasonably related to the costs of the court's services. *See, e.g., Winters v. Mowery*, 836 F. Supp. 1419, 1427 (S.D. Ind. 1993) ("by withholding interest, the defendants have failed to set forth a rational relationship between the amount withheld and the service rendered"); *Breda Costruzioni Ferroviarie S.P.A v. Los Angeles Metropolitan Trans. Auth.*, 66 Cal. Rptr. 2d 416, 419 (1997) (determining that a public entity's retention of interest earned on funds subject to a stop order is unconstitutional under *Webb's Fabulous Pharmacies*, except to the extent that interest retained was a reasonable withholding for the cost of services).

Here, the District has taken for itself all interest earned on Mr. Arthur's funds in the court registry. The District has stated that it would charge no administrative fees for handling the registry deposit at issue. *See* Answers of Third-Party Defendant District of Columbia to Morris Arthur's Second Set of Interrogatories to the District of Columbia, Dec. 16, 1997, Answer No. 4, at 6; Answers of Third-Party Defendant District of Columbia to Morris Arthur's First Set of Interrogatories to the District of Columbia, Dec. 19, 1997, Answer No. 11, at 7 ("the Court neither has nor has it ever had a policy to charge fees on funds held in escrow"). Even if administrative costs were deducted from the interest generated by the registry funds, the approximately \$35,000 in interest generated by the original \$14,850 deposited with the court

well exceeds any administrative costs the court may have incurred in managing this fund. Because the interest is not rationally related to the costs of the court's services in handling Mr. Arthur's funds, the court may not take all interest income for itself as a service fee. When the District expropriated for its general fund the interest earned on Mr. Arthur's principal, the District violated the United States Constitution's prohibition against governmental takings of private property without just compensation.¹¹

C. Courts That Take All Accrued Interest On Court Registry Funds Owe the Owner of the Funds the Interest Earned as Just Compensation.

Where private property has been taken by the government, just compensation is the full monetary equivalent of the property taken. *United States v. Reynolds*, 397 U.S. 14 (1970). The adequacy of the compensation is measured by the loss of property to the owner, not the value gained by the government. *United States v. Causby*, 328 U.S. 256 (1946) (citing *United States v. Miller*, 317 U.S. 369 (1943)). In cases where the taken property is the interest earned from invested principal, interest income is the exact measure of the property lost by the owner. See *Camden I. Condominium Assoc. Inc. v. Dunkle*, 805 F.2d 1532, 1535 (11th Cir. 1986) ("The best way to further the [*Webb's Fabulous Pharmacies*] ruling is to restore already confiscated money to those people to whom the Supreme Court has said it belongs"); *Winters*, 836 F. Supp. at 1426.

¹¹ Nor does the 1994 Administrative Order cure this constitutional violation. In the Order, the District determined that the Chief Judge could specifically order that funds be placed in a separate, interest-bearing account for the benefit of a party but only "in extraordinary circumstances where a large sum is to be held by the court for a reasonably long period of time." The District did not issue this Order until after Mr. Arthur's funds had already been deposited in a pooled account, however. The District also did not publish the Order or provide any other notice to Mr. Arthur that there was a way for him to attempt to obtain interest on his funds. Moreover, even for litigants making deposits after 1994, the order requires "extraordinary circumstances," and provides no guidance on how to meet this standard. Relying on this order as a basis to reject Mr. Arthur's Takings claim would therefore violate his Due Process rights. See, e.g., *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). More fundamentally, such an exception does not enable the District's basic practice to avoid the holding of *Webb's Fabulous Pharmacies*. The government cannot take property without paying just compensation simply because it establishes a difficult procedure by which in exceptional circumstances a property owner may be able to avoid the taking.

In this case, the value of the property lost by Mr. Arthur is the amount of interest expropriated by the District. Mr. Arthur should receive the \$14,850 he deposited with the Court in 1980 and 1981 accompanied by all interest earned on his funds as just compensation for being deprived of enjoyment of the principal.

D. Recent United States Supreme Court Decisions in the IOLTA Context Highlight the Flaws in the District's Court Registry Scheme, and Favor Mr. Arthur's Position.

While not dispositive as to the constitutionality of court registry statutes, the Supreme Court's recent IOLTA¹² jurisprudence is persuasive in the case at bar. Principles common to court registry and IOLTA case law illustrate the unconstitutionality of the District's court registry scheme and the merit of Mr. Arthur's argument.

Just as the interest earned on litigants' court registry funds is the private property of the party entitled to the principal, *see Webb's Fabulous Pharmacies*, 449 U.S. at 452, so too is "the interest income generated by funds held in IOLTA accounts [] the 'private property' of the owner of the principal." *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 172 (1998).

Similarly, with respect to both court registry funds and IOLTA accounts, the Supreme Court has recognized and adhered to the long-standing rule that interest follows principal. *See Webb's Fabulous Pharmacies*, 449 U.S. at 162 (court registry context); *Phillips*, 524 U.S. at 165 (IOLTA context).

Finally, in both the court registry and IOLTA contexts, a distinction is drawn between *de minimis* amounts of interest that may be constitutionally deducted from litigants' registry funds or clients' IOLTA funds, and significant amounts of interest that must be returned to litigants or clients. Regarding court registry funds, a fee may be deducted to compensate the court for

¹² Interest on lawyers trust account ("IOLTA") programs permit attorneys, when holding clients' funds that are either nominal in amount or that will be held for only a short period of time, to invest those funds with the interest to be used to pay for legal services for the needy (rather than returned to the client). *See generally Brown v. Legal Foundation of Washington*, No. 01-1325, slip op. at 1-4 (U.S. Mar. 26, 2003).

investing and maintaining the funds so long as the fee is “reasonably related to the costs of using the courts.” *Webb’s Fabulous Pharmacies*, 449 U.S. at 163. However, a court may not categorically take *all* interest earned on litigants’ funds because the amount of property taken may not be rationally related to the costs incurred by the courts. *See id.* at 163-65. Mr. Arthur provides the paradigmatic example of why this rule exists -- one cannot possibly claim that the sizeable interest earned on Mr. Arthur’s funds is reasonably related to the costs of investing and maintaining his money.

Likewise, in the IOLTA context, when a client’s funds are either too small or will not be invested for a long enough period of time to earn net interest after administrative costs, the funds may be invested with the minimal interest earned used to fund legal services for the poor. However, where significant interest may be earned (i.e., profit after administrative fees), such interest must be returned to the client. The very recent case of *Brown v. Legal Foundation of Washington*, No. 01-1325, slip op. (U.S. Mar. 26, 2003), is illustrative.

In *Brown*, the Supreme Court upheld the constitutionality of Washington’s IOLTA program. Under the program, when an attorney receives client funds, the funds must be invested in either of two interest-bearing accounts -- one that provides interest net of any transaction costs to the client, or another that pays interest to organizations that provide legal services to the poor. *Id.* at 5-6. The decision as to which account receives a client’s funds turns on a simple question:

Can the client’s money be invested so that it will produce a net benefit for the client? If so, the attorney must invest it to earn interest for the client. Only if the money cannot earn net interest for the client is the money to go into an IOLTA account.

Id. at 7-8 (quoting *IOLTA Adoption Order*, 102 Wash. 2d 1101, 1113-14 (Wash. 1984)). In other words, “IOLTA funds are only those funds that *cannot, under any circumstances, earn net interest (after deducting transaction and administrative costs and bank fees) for the client.*” *Id.* at 8 (emphasis in original). Thus, Washington’s IOLTA program allows investment in IOLTA accounts of funds that could not generate net earnings for clients, but “unambiguously require[s]

lawyers . . . to deposit client funds in non-IOLTA accounts [with the interest to go to the client] whenever those funds could generate net earnings for the client.” *Id.* at 21.

While assuming that the program technically takes a *de minimis* amount of interest from funds placed in IOLTA accounts, *see id.* at 17, the Supreme Court explained that because any amount taken is roughly equal to or less than administrative costs, clients do not suffer any net loss and hence are not due any compensation. *Id.* at 22 n.11 (“[J]ust compensation for a net loss of zero is zero.”). Thus, the Court held that the program was not an unconstitutional taking. *Id.* at 22.

Although comparison of court registry statutes to IOLTA laws is imperfect, the difference between the IOLTA program upheld in *Brown* and the District’s unconstitutional court registry scheme is obvious: While the Washington IOLTA program ensures that any net profit earned from clients’ funds is returned to the client, the District’s court registry scheme categorically takes *all* interest earned on litigants’ funds irrespective of whether that amount is relatively small or, as in Mr. Arthur’s case, quite substantial. Thus, the Supreme Court’s IOLTA decisions, by way of comparison, highlight the central flaw in the District’s court registry scheme -- its taking of all interest on litigants’ funds, whether that amount is *de minimis* (and possibly permissible) or significant (and clearly unconstitutional). Moreover, the IOLTA cases support the basic underpinnings of Mr. Arthur’s argument -- that interest earned on principal deposited with the court registry is private property, and that therefore, such interest must follow principal to the party entitled to the principal.

V. **THE DISTRICT’S UNCONSTITUTIONAL PRACTICE IS INCONSISTENT WITH FEDERAL PRACTICE AND STATE STATUTES THAT COMPLY WITH *WEBB’S FABULOUS PHARMACIES*.**

The District's general practice of keeping for itself all interest earned on court registry funds results in an uncompensated taking of private property. The District's practice should therefore be stricken down as unconstitutional. Federal practice and well-drafted state statutes follow *Webb's Fabulous Pharmacies'* teaching that "[t]he usual and general rule is that interest on an interpleaded and deposited fund follows the principal . . . [to] the owners of that principal," and demonstrate that the District's scheme does not pass muster. 449 U.S. at 162.

A. Federal Practice Provides that Interest on Court Registry Funds Follows the Principal to the Party Entitled to Such Funds.

Federal practice uniformly provides that interest earned on litigants' funds deposited with the court registry follows the principal to the party entitled to such funds. Federal Rule of Civil Procedure 67 provides that "[i]n an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money . . . a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum" Fed. R. Civ. P. 67 (Ex. 5). The Rule further instructs that "[t]he fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court." *Id.*

While Federal Rule of Civil Procedure 67 clearly directs that funds deposited with federal courts be invested at interest, the Rule does not specifically address the disposition of interest income that accrues to such funds once invested. The majority of federal district courts have adopted local rules to fill this void.

Consistent with the Supreme Court's holding in *Webb's Fabulous Pharmacies* that governmental expropriation of all interest income from court registry funds is unconstitutional, substantially all local federal district court rules provide expressly that interest on court registry funds follows principal to the party entitled to such funds. *See, e.g.,* D.D.C. Loc. R. 67.1 (interest income from registry fund investments, less administrative fee of 10% of interest income, "will

be distributed” to party entitled to principal) (Ex. 6); S.D.N.Y. Loc. Civ. R. 67.1 (same) (Ex. 7); D. Del. Loc. Civ. R. 67.2 (same) (Ex. 8). Indeed, not a single one of the 94 federal district courts employs a scheme like that currently used in the District, which routinely takes from litigants all the interest earned on their registry funds.¹³

While properly allocating interest income on court registry funds to the rightful owner of the principal, local federal rules do not leave the federal courts without compensation for their efforts in investing and maintaining litigants’ funds. Rather, recognizing that courts that maintain funds on behalf of litigants are entitled to compensation in an amount “reasonably related to the costs of using the courts,” *Webb’s Fabulous Pharmacies*, 449 U.S. at 163, local federal rules generally provide that for the district court’s services, the court may retain 10% of the income earned on registry funds.¹⁴ *See, e.g.*, D.D.C. Loc. R. 67.1; D. Conn. Loc. Civ. R. 35 (Ex. 11); S.D.N.Y. Loc. Civ. R. 67.1; W.D. Okla. Loc. Civ. R. 67.1 (Ex. 12). Thus, the federal rules strike a sensible and instructive balance between sensitivity to courts’ administrative costs

¹³ The United States District Court for the Eastern District of Virginia appears to be the only federal jurisdiction with the *potential* to take the interest generated from invested registry funds. *See* E.D. Va. Loc. R. 67 (Ex. 9). Unlike D.C.’s scheme, however, the Eastern District’s local rule provides litigants with clear notice as to the simple steps required to preserve their interest, and also provides a clear statement of the consequences for failing to do so. The Eastern District’s rule states that a proposed order for the deposit of funds pursuant to Federal Rule of Civil Procedure 67 “should specify if the Clerk is directed to place the funds into an interest bearing account for the benefit of the party later determined by the Court to be entitled to the fund and *interest earned thereon will be provided to the person receiving the funds.*” *Id.* (emphasis added). The rule further provides that if a party fails to request that the funds deposited be placed at interest, only then will any “[i]nterest earned thereon . . . accrue to the United States.” *Id.* Thus, for a party to lose the interest on their funds, they must fail to heed the explicit directions and warning of the local rule.

¹⁴ This 10% figure is not arbitrary, but rather represents the fee for the handling of registry funds prescribed by the Judicial Conference of the United States, pursuant to its authority under 28 U.S.C. §§ 1913, 1914(b), and 1930(b). *See* 55 Fed. Reg. 42,867 (Oct. 24, 1990) (Ex. 10).

in managing registry funds on the one hand, and constitutionally mandated respect for the private property of litigants on the other.¹⁵

Local Rule 67.1 of the Rules of the U.S. District Court for the District of Columbia, which makes use of the federal Court Registry Investment System,¹⁶ provides a representative example. *See* D.D.C. Loc. R. 67.1. That rule provides:

(b) Investment of registry funds.

(1) All funds deposited into the registry of the Court will be placed in some form of interest bearing instrument

(2) . . . [M]onies deposited in each case . . . will be “pooled” together with [court registry funds from other cases] and used to purchase Treasury Securities

(3) An account for each case will be established . . . [and] [i]ncome received from fund investments will be distributed to each case based on the ratio each account’s principal and income has to the aggregate principal and income total in the fund each week. . . .

(c) Registry investment fee.

(1) The custodian is authorized and directed by this Rule to deduct, for maintaining accounts in the Fund, a fee equal to 10% of the income earned. . . .

¹⁵ Under the Constitution, courts may deduct a fee from income earned on registry deposits. However, that fee must be reasonably or rationally related to the costs of using the courts. *See supra* § IV.B; *Webb’s Fabulous Pharmacies*, 449 U.S. 162-64; *accord Winters v. Mowery*, 836 F. Supp. 1419, 1427 (S.D. Ind. 1993).

¹⁶ The federal Court Registry Investment System is simply a system under which monies deposited from each case are pooled together and used to purchase Treasury securities. The securities purchased are kept in a safekeeping account by a custodian. An account for each case is established titled in the name of the case giving rise to the investment in the system. Income received from fund investments are distributed to each case based on the ratio each account’s principal and income has to the aggregate principal and income total in the fund each week. Additionally, regular reports showing the income earned and the principal amounts contributed in each case are prepared and made available to litigants and their counsel. *See* D.D.C. Loc. R. 67.1.

Id. Thus, under the D.C. District Court’s rule, the party ultimately entitled to the funds invested receives the principal plus 90% of the interest income, while the court receives 10% of the interest income for its efforts in investing and maintaining the funds.

Rule 508 of the U.S. District Court for the District of Maryland provides another simple example. That rule states:

The Court shall by standing order set the amount of funds deposited in the Court Registry which shall be invested at interest. These funds shall be placed in an interest bearing account or such other investment as is ordered by the Court. . . . All funds invested at interest will be assessed a charge pursuant to the fee schedule set by the Judicial Conference of the United States [10%].

D. Md. Loc. R. 508 (Ex. 13). Like its counterpart in D.C., under Maryland’s federal rule, interest on court registry funds follows principal to the owner of the funds, and the court is compensated for its administrative expenses.

As the examples cited above and numerous similar local federal rules make clear, the federal courts have taken care to comport with the Constitution, *Webb’s Fabulous Pharmacies* and its progeny by ensuring that the private property of litigants is not “taken,” while simultaneously ensuring that courts are reasonably compensated for their administrative costs. The District’s scheme, conversely, comports with neither the Constitution, nor *Webb’s Fabulous Pharmacies* and its progeny, and therefore must be struck down.¹⁷

B. Several States Have Been Forced by the Courts to Amend Their Statutes to Prevent the Unconstitutional Taking of Interest on Court Registry Funds.

¹⁷ Federal practice with respect to court registry funds is clear, fairly simple, and constitutional. However, as explained in § V.C, *infra*, federal practice is not the only approach that complies with the Constitution.

Court registry deposits are private property, and states may not expropriate for themselves that property or the interest derived from that property. As the Eleventh Circuit has succinctly stated:

The gist of [*Webb's Fabulous Pharmacies*] was that *all interest earned on all deposited money belonged not to the county, but to those people ultimately held to be the owners of the deposited funds*. When Florida counties spent money received under the old statutes, they spent money that did not belong to them.

Camden I. Condominium Assoc. Inc. v. Dunkle, 805 F.2d 1532, 1535 (11th Cir. 1986) (emphasis added); *see also Webb's Fabulous Pharmacies*, 449 U.S. at 164 (“[A] state, by *ipse dixit*, may not transform private property into public property without compensation, even for the limited duration of deposit with the court. This is the very kind of thing that the Taking Clause of the Fifth Amendment was meant to prevent.”).

While many states adhere to these straightforward principles, at least two states, Florida and Texas, have been forced to amend their court registry statutes to ensure proper protection of litigants' property and to avoid the problem addressed in *Webb's Fabulous Pharmacies*. Like the District's default scheme that takes from litigants all interest earned on their registry funds, the Florida statute struck down by the Supreme Court in *Webb's Fabulous Pharmacies* provided that “[a]ll interest accruing from moneys deposited shall be deemed income of the office of the clerk of the circuit court . . . and shall be deposited in the same accounts as are other fees and commissions of the clerk's office.” *Dunkle*, 805 F.2d at 1533. Following *Webb's Fabulous Pharmacies*, the Florida legislature promptly amended the statute to read “[e]xcept for interest earned on moneys deposited in the registry of the court, all interest accruing from moneys deposited shall be deemed income of the office of the clerk” *Id.* (Emphasis added.) The amended Florida statute further provides, like federal practice, that the court “shall retain as

income of the office of the clerk and as a reasonable investment management fee 10 percent of the interest accruing on [registry] funds with the balance of such interest being allocated in accordance with the interest of the depositors.” Fla. Stat. Ann. § 28.33 (West 2002) (Ex.14).

Similarly, in *Sellers v. Harris County*, 483 S.W.2d 242 (Tex. 1972), the Supreme Court of Texas struck down a state statute that allowed a county to invest funds deposited with the court during litigation, and to keep all of the interest earned for itself. Striking down the Texas law, the *Sellers* Court stated that registry funds “are not owned by the county but are held in trust for the litigant who establishes his right thereto. . . . The interest earned by deposit of money owned by the parties to the lawsuit is an increment that accrues to that money and to its owners.” *Id.* at 243. In a statement especially relevant to Mr. Arthur’s case, the *Sellers* Court correctly observed that “[i]f the litigation over the principal lasts as long as some lawsuits do, the County will profit enormously. This result is untenable so long as private property is constitutionally protected.” *Id.*

As a result of the *Sellers* decision, the Texas law was amended to provide that of the interest generated on court registry funds, 90% would go to the individual entitled to the principal, with 10% paid to the county as compensation for the accounting and administrative expenses of maintaining the registry account. *See* Tex. Loc. Gov’t Code Ann. § 117.054 (Vernon 2002) (Ex. 15). The Revisor’s Note to the amended statute states that the old statute violated due process because it “deprived an owner of money deposited in court of interest on the money in an amount not reasonably related to the value of a county’s services in safeguarding and investing the principal.” *Id.* at Revisor’s Note. As amended, however, the current statute, like federal practice, reflected a constitutional and appropriate balance between respect for litigants’

property, and the need to reasonably compensate courts for the administrative costs of investing registry funds.

In light of the Constitution's clear command that private property shall not be taken without just compensation, these results are not surprising. *See Dunkle*, 805 F.2d at 1534 (“Nor can we say that the [Supreme Court’s] holding in [*Webb’s Fabulous Pharmacies*] was not clearly foreshadowed. The Florida high court’s decision validating the pertinent statute [overturned in *Webb’s Fabulous Pharmacies*] was apparently the first and only reported decision upholding such statutes appropriating interest on deposited funds.”).

C. The District’s Unconstitutional Court Registry Scheme is Inconsistent With Court Registry Statutes in States that Comply with *Webb’s Fabulous Pharmacies*.

Just as the District’s scheme is inconsistent with federal practice, the District’s scheme is equally at odds with the many state statutes that comply with *Webb’s Fabulous Pharmacies*. Indeed, *amici* have found fifteen states with statutes or practices that properly comply with *Webb’s Fabulous Pharmacies*. *See* statutes cited in this section, V.C. 18 For instance, Alabama’s statute straightforwardly provides that funds deposited in court shall be invested at interest and that “[t]he fund so deposited plus any interest shall be paid . . . in favor of the person to whom the [court’s] order directs payment to be made.” Ala. R. Civ. P. 67 (emphasis added) (Ex. 16).

¹⁸ *Amici* are aware of only one state statute permitting a state to retain interest earned on litigants’ funds that has been upheld as constitutional since the Supreme Court’s decision in *Webb’s Fabulous Pharmacies*. *See Bronfman v. Douglas County*, 476 N.W.2d 611 (Wis. Ct. App. 1991).

While *amici* contend that the statute upheld in *Bronfman* is unconstitutional because it allocates all interest earned on litigants’ registry funds to the county general fund, the Wisconsin statute is distinguishable from the District’s practice. Specifically, the *Bronfman* court distinguished *Webb’s Fabulous Pharmacies* by stating that under the Wisconsin scheme, “the owners here had the right to withdraw their funds [from the court registry] and invest them as they saw fit.” 476 N.W.2d at 616. Under the District’s scheme, Mr. Arthur had no such luxury -- his funds remained inaccessible to him while interest accumulated to the District’s benefit.

Similarly, North Carolina's statute states that where funds are interplead and deposited with the court, the funds will be invested at interest, and "[u]pon determination of the action, *the judgment shall provide for disbursement of the principal and interest earned on the funds while so deposited.*" N.C. R. Civ. P. 22 (emphasis added) (Ex. 17); *see also* Fla. Stat. Ann. § 28.33 (West 2002); Ky. Rev. Stat. Ann. §§ 67.01, 67.03 (Banks-Baldwin 2002) (Ex. 18); Ohio Rev. Code Ann. § 2303.20 (West 2002) (Ex. 19); Tex. Loc. Gov't Code Ann. §§ 117.052-117.054 (Vernon 2002) (Ex. 20); Utah Code Ann. § 78-27-4 (2003) (Ex. 21); Me. R. Ct., Admin. Order -- Court Fees (2003) (Ex.22); N.J. R. Ct. 4:57 (Ex. 23); S.C. R. Civ. P. 67 (Ex. 24).

In Illinois, on the other hand, court registry funds are invested at interest, and when the court renders judgment as to the principal, "the court shall also direct the disposition of the interest accrued to the parties as it deems appropriate." 735 Ill. Comp. Stat. Ann. 5/2-1011 (West 2002) (Ex. 25). Such discretion presumably enables the court to deduct a reasonable administrative fee, as appropriate.¹⁹

In order to keep administrative costs in check, several states have determined thresholds beneath which registry deposits will not be invested at interest. In New Hampshire, deposits greater than \$500, are "placed at interest, which deposit and interest shall be returned to the person entitled to it as the court may order." N.H. Super. Ct. R. 1-4 (Ex. 26); *see also* Okla. Stat. Ann. tit. 19, § 682 (West 2002) (deposited funds greater than \$1,000 shall be deposited at interest) (Ex. 27); Mass. Super. Ct. R. 22 (all deposited funds greater than \$500 shall be deposited at interest) (Ex. 28). These states apparently have determined that for relatively small deposits, any interest that might be earned would not likely outstrip the costs of investing and

¹⁹ While one might read this statute as allowing a court to award all interest on a litigant's funds to the state (which would be unconstitutional), *amici* presume that an Illinois court would exercise its discretion in accordance with the Constitution and *Webb's Fabulous Pharmacies*.

administering registry funds.²⁰ But where interest is earned, it is returned to the owner of the principal.

Georgia's analog to Federal Rule Civil Procedure 67 states that "[w]here the thing deposited is money, interest thereon shall abate." Ga. Code Ann. § 9-11-67 (2002) (Ex. 29). While the wording of this statute may seem ambiguous as to the disposition of interest income, Georgia case law indicates that litigants do receive the interest on registry funds invested by the court. *See Sacha v. Coffee Butler Serv., Inc.*, 450 S.E.2d 704 (1994) (affirming trial court's determination that prevailing party was entitled to interest income earned on funds deposited into interest-bearing account in court registry).

Despite their differences, these state statutes do not run afoul of the Constitution or *Webb's Fabulous Pharmacies* by ensuring that interest follows principal. Under the District's scheme for court registry deposits, however, the result is that the District generally keeps for itself all interest income. This result is simply impermissible under the Constitution and should not be countenanced by this Court.

D. The District Should Reform its Scheme to Follow Federal Practice and Ensure that Interest on Court Registry Funds Follows Principal to the Party Entitled to Such Funds.

As the District must amend its unconstitutional court registry scheme to ensure that its residents' property is not "taken" while on deposit with the court, *amici* respectfully submit that this Court should direct the Superior Court to reconsider D.C. Super. Ct. R. Civ. P. 67 in light of

²⁰ If a state were to keep any interest generated by investment of these modest sums, presumably such exactions would be reasonable and relatively small -- i.e., reasonably related to the cost of using the courts -- and hence might constitute a reasonable fee for maintaining funds in the court registry, rather than an unconstitutional taking of private property. *See Webb's Fabulous Pharmacies*, 449 U.S. at 163 (allowing exaction of fee from registry funds so long as the fee is "reasonably related to the costs of using the courts"). On the other hand, if a state does not invest such small sums at all (e.g., by keeping them in a non-interest bearing account), then no interest is generated, and hence none is taken by the state.

federal practice.²¹ In particular, *amici* commend to this Court the practice of the United States District Court for the District of Columbia. *See* discussion *supra* section III.A.²² In keeping with the *Webb's Fabulous Pharmacies'* teaching that states may not take for themselves the interest on litigants' registry funds without offending the Constitution, the D.C. District Court's practice strikes a reasonable and instructive balance between the court's administrative costs and the mandatory strictures of the Constitution. Like the other federal district courts, the D.C. District Court's rule returns 90% of any interest income generated from registry funds to the party entitled to the principal, and provides the remaining 10% to the court as a fee. This simple and straightforward approach safeguards litigants' private property while providing reasonable compensation to the court for its efforts in investing and maintaining registry funds.

In addition to the widespread application of the scheme used by the D.C. District Court at the federal level, many states have implemented similar schemes. *See, e.g.*, Fla. Stat. Ann. § 28.33 (West 2002); Tex. Loc. Gov't Code Ann. §§ 117.052-117.054 (Vernon 2002). It is especially notable that Florida and Texas reformed their court registry practices in response to judicial decisions declaring their prior schemes unconstitutional under the rationale of *Webb's Fabulous Pharmacies*. Thus, the current court registry practices of Florida and Texas (which closely resemble federal practice) reflect procedures carefully tailored to comply with the Constitution. The District should similarly amend its practice to make certain that the private

²¹ While there may be more than one satisfactory way to reform the District's practice, amending the Superior Court's Rule 67 to follow the federal model seems a simple and logical solution.

²² Because of the uniformity of federal practice, however, *amici* could just as easily -- and with the same conviction -- recommend that the District follow the local rules of the federal courts in Maryland, New York, or California, among many others.

property of litigants in the District's courts are ensured the protections guaranteed by the Constitution.

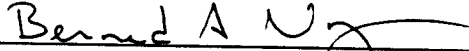
CONCLUSION

For the foregoing reasons:

- (1) the District's practice of keeping for itself all interest earned on litigants' funds deposited with the court registry should be declared unconstitutional;
- (2) the Superior Court should be directed to reconsider D.C. Super. Ct. R. Civ. P. 67 in light of federal practice;
- (3) the Superior Court's June 21, 1999 ruling denying Mr. Arthur summary judgment on his Fifth Amendment claim should be reversed; and
- (4) the Superior Court should be directed to enter judgment in favor of Mr. Arthur in the amount of his principal deposited with the court registry plus any interest earned on such principal.

April 18, 2003

Respectfully submitted,


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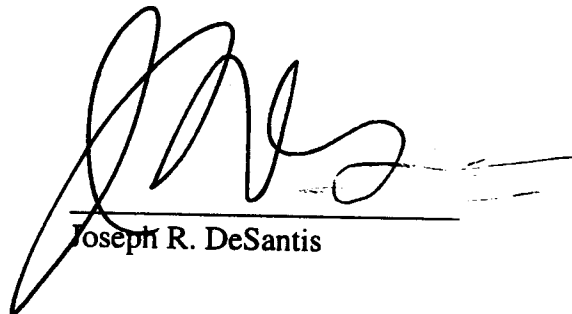
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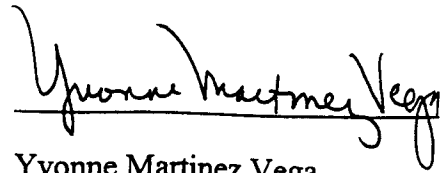
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A handwritten signature in black ink that reads "Yvonne Martinez Vega". The signature is written in a cursive style and is positioned above a solid horizontal line.

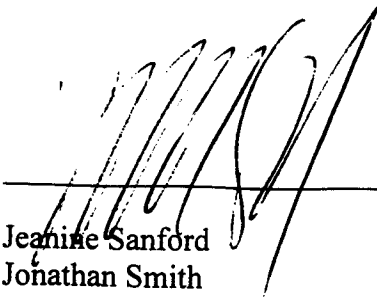
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Co-chairs, Consortium of Legal
Services Providers

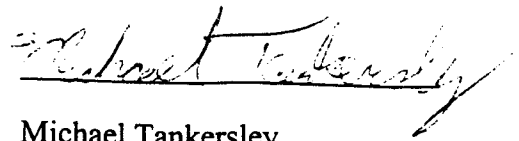
A handwritten signature in black ink, appearing to read 'Maria Gomez', is positioned above a solid horizontal line.

Maria Gomez
Council of Latino Agencies
2333 Ontario Road, N.W.
Washington, D.C. 20009

President, Board of Directors

A handwritten signature in black ink, appearing to read 'Carl Messineo', with a long horizontal flourish extending to the right.

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