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SUPREME COURT OF THE UNITED STATES

No. 96–1578

THOMAS R. PHILLIPS, ET AL., PETITIONERS *v.* WASHINGTON LEGAL FOUNDATION ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

[June 15, 1998]

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

Texas, like 48 other States and the District of Columbia,[1] has adopted an Interest on Lawyers Trust Account

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[1] Ala. Rule Prof. Conduct 1.15(g) (1996); Alaska Rule Prof. Conduct 1.15(d) (1997); Ariz. Sup. Ct. Rule 44(c)(2) (1997); Ark. Rule Prof. Conduct 1.15(d)(2) (1997); Cal. Bus. & Prof. Code §6211(a) (1990 and Supp. 1998); Colo. Rule Prof. Conduct 1.15(e)(2) (1997); Conn. Rule Prof. Conduct 1.15(d) (1998); Del. Rule Prof. Conduct 1.15(h) (1998); D. C. Rule Prof. Conduct 1.15(e) (1997); Fla. Bar Rule 5–1.1 (1994 and Supp. 1998); Ga. Code Prof. Responsibility Rule 3–109, DR 9–102 (1998); Haw. Sup. Ct. Rule 11 (1997); Idaho Rule Prof. Conduct 1.15(d) (1997); Ill. Rule Prof. Conduct 1.15(d) (1997); Iowa Code Prof. Responsibility DR 9–102 (1997); Kan. Rule Prof. Conduct 1.15(d)(3) (1997); Ky. Sup. Ct. Rule 3.830 (1998); La. Rule Prof. Conduct 1.15(d) (1997); Me. Code Prof. Responsibility 3.6(e)(4) (1997); Md. Bus. Occ. & Prof. Code Ann. §10–303 (1995); Mass. Sup. Ct. Rule 3:07, DR 9–102 (1997); Mich. Rule Prof. Conduct 1.15(d) (1997); Minn. Rule Prof. Conduct 1.15(d) (1993); Miss. Rule Prof. Conduct 1.15(d) (1997); Mo. Rule Prof. Conduct 1.15(d) (1997); Mont. Rule Prof. Conduct 1.18(b) (1996); Neb. Sup. Ct. Trust Acct. Rules 1–8 (1997); Nev. Sup. Ct. Rule 217 (1998); *Petition of New Hampshire Bar Assn.*, 122 N. H. 971, 453 A. 2d 1258 (1982); N. J. Rules

(IOLTA) program. Under these programs, certain client funds held by an attorney in connection with his practice of law are deposited in bank accounts. The interest income generated by the funds is paid to foundations that finance legal services for low-income individuals. The question presented by this case is whether interest earned on client funds held in IOLTA accounts is "private property" of either the client or the attorney for purposes of the Takings Clause of the Fifth Amendment. We hold that it is the property of the client.

I

In the course of their legal practice, attorneys are frequently required to hold client funds for various lengths of time. Before 1980, an attorney generally held such funds in non-interest bearing, federally insured checking accounts in which all client trust funds of an individual attorney were pooled. These accounts provided administrative convenience and ready access to funds. They were non-interest bearing because federal law prohibited federally insured banks and savings and loans from paying

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Gen. Application 1:28A–2 (1998); N. M. Rule Prof. Conduct 16–115(D) (1998); N. Y. Jud. Law §497 (Supp. 1997 and 1998); N. C. Rule Prof. Conduct 1.15–3 (1997); N. D. Rule Prof. Conduct 1.15(d)(1) (1997); Ohio Rev. Code Ann. §4705.09(A)(1) (1997); Okla. Rule Prof. Conduct 1.15(d) (1997); Ore. Code Prof. Responsibility DR 9–101(D)(2) (1997); Pa. Rule Prof. Conduct 1.15(d) (1997) and Pa. Rule Disciplinary Enforcement 601(d) (1997); R. I. Rule Prof. Conduct 1.15(d) (1997); S. C. App. Ct. Rule 412 (1988); S. D. Rule Prof. Conduct 1.15(d)(4) (1995); Tenn. Code Prof. Responsibility DR 9–102(C)(2) (1997); *In re Interest on Lawyers' Trust Accounts*, 672 P. 2d 406 (Utah 1983); Va. Sup. Ct. Rules, Pt. 6, §4, ¶20 (1997); Vt. Code Prof. Responsibility DR 9–103 (1996); Wash. Rule Prof. Conduct 1.14(c)(1) (1997); W. Va. Rule Prof. Conduct 1.15(d) (1997); Wis. Sup. Ct. Rules 13.04, 20:1.15 (1997); Wyo. Rule Prof. Conduct 1.15(II) (1997). Indiana is the only State that has not implemented an IOLTA program. See *In re Indiana State Bar Assn. Petition*, 550 N. E. 2d 311 (Ind. 1990).

interest on checking accounts. See 12 U. S. C. §§371a, 1464(b)(1)(B), 1828(g). When a lawyer held a large sum in trust for his client, such funds were generally placed in an interest-bearing savings account because the interest generated outweighed the inconvenience caused by the lack of check-writing capabilities.

In 1980, Congress authorized the creation of Negotiable Order of Withdrawal (NOW) accounts, which for the first time permitted federally insured banks to pay interest on demand deposits. §303, 94 Stat. 146, as amended, 12 U. S. C. §1832. NOW accounts are permitted only for deposits that "consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, political, or other similar purposes and which is not operated for profit." §1832(a)(2). For-profit corporations and partnerships are thus prohibited from earning interest on demand deposits. See *ibid.* However, interpreting §1832(a), the Federal Reserve Board has concluded that corporate funds may be held in NOW accounts if the funds are held in trust pursuant to a program under which charitable organizations have "the exclusive right to the interest." Letter from Federal Reserve Board General Counsel Michael Bradfield to Donald Middlebrooks (Oct. 15, 1981), reprinted in Middlebrooks, The Interest on Trust Accounts Program: Mechanics of its Operation, 56 Fla. B. J. 115, 117 (Feb. 1982) (hereinafter Federal Reserve's IOLTA Letter).[2]

Beginning with Florida in 1981, a number of States moved quickly to capitalize on this change in the banking regulations by establishing IOLTA programs. Texas followed suit in 1984. Its Supreme Court issued an order,

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[2] We express no opinion as to the reasonableness of this interpretation of §1832(a). See *Chevron U. S. A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U. S. 837, 844 (1984).

now codified as Article XI of the State Bar Rules, providing that an attorney who receives client funds that are "nominal in amount or are reasonably anticipated to be held for a short period of time" must place such funds in a separate, interest-bearing NOW account (an IOLTA account). Tex. State Bar Rule, Art. XI, §5(A); Rules 4, 7 of the Texas Rules Governing the Operation of the Texas Equal Access to Justice Program. Client funds are considered "nominal in amount" or "held for a short period of time" if the attorney holding the funds determines that

> "such funds, considered without regard to funds of other clients which may be held by the attorney, law firm or professional corporation, could not reasonably be expected to earn interest for the client or if the interest which might be earned on such funds is not likely to be sufficient to offset the cost of establishing and maintaining the account, service charges, accounting costs and tax reporting costs which would be incurred in attempting to obtain the interest on such funds for the client." Texas IOLTA Rule 6.

Interest earned by the funds deposited in an IOLTA account is to be paid to the Texas Equal Access to Justice Foundation (TEAJA), a nonprofit corporation established by the Supreme Court of Texas. Tex. State Bar Rule, Art. XI, §§3, 4; Texas IOLTA Rule 9(a). TEAJA distributes the funds to nonprofit organizations that "have as a primary purpose the delivery of legal services to low income persons." Texas IOLTA Rule 10. The Internal Revenue Service does not attribute the interest generated by an IOLTA account to the individual clients for federal income tax purposes so long as the client has no control over the decision whether to place the funds in the IOLTA account and does not designate who will receive the interest generated by the account. See Rev. Rul. 81–209, 1981–2 Cum. Bull. 16; Rev. Rul. 87–2, 1987–1 Cum. Bull. 18.

Respondents are the Washington Legal Foundation (WLF), Michael Mazzone, and William Summers. WLF is a public-interest law and policy center with members in the State of Texas who are opposed to the Texas IOLTA program. App. 26. Mazzone is an attorney admitted to practice in Texas who maintains an IOLTA account into which he regularly deposits client funds. *Id.*, at 82. Summers is a Texas citizen and businessman whose work requires him to make regular use of the services of an attorney. In January 1994, Summers learned that a retainer he had deposited with his attorney was being held in an IOLTA account. *Id.*, at 85. In February 1994, respondents filed this suit against petitioners– TEAJF, W. Frank Newton, in his official capacity as chairman of TEAJF, and the nine Justices of the Supreme Court of Texas. Respondents alleged, *inter alia*, that the Texas IOLTA program violated their rights under the Fifth Amendment, by taking their property without just compensation.

The District Court granted summary judgment to petitioners, reasoning that respondents had no property interest in the interest proceeds generated by the funds held in IOLTA accounts. *Washington Legal Foundation* v. *Texas Equal Access to Justice Foundation*, 873 F. Supp. 1 (WD Tex. 1995). The Court of Appeals for the Fifth Circuit reversed, concluding that "any interest that accrues belongs to the owner of the principal." *Washington Legal Foundation* v. *Texas Equal Access to Justice Foundation*, 94 F. 3d 996, 1004 (1996). Because of a split over whether the interest income generated by funds held in IOLTA accounts is private property for purposes of the Fifth Amendment's Takings Clause,[3] we granted certiorari. 521 U. S.

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[3] *Cone* v. *State Bar of Fla.*, 819 F. 2d 1002 (CA11), cert. denied, 484 U. S. 917 (1987); *In re Interest on Lawyers' Trust Accounts*, 672 P. 2d 406 (Utah 1983); *Petition of New Hampshire Bar Assn.*, 122 N. H., at

___ (1997).

II

The Fifth Amendment, made applicable to the States through the Fourteenth Amendment, *Chicago, B. & Q. R. Co.* v. *Chicago,* 166 U. S. 226, 239 (1897), provides that "private property" shall not "be taken for public use, without just compensation," U. S. Const., Amdt. V. Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to "existing rules or understandings that stem from an independent source such as state law." *Board of Regents of State Colleges* v. *Roth,* 408 U. S. 564, 577 (1972).

All agree that under Texas law the principal held in IOLTA trust accounts is the "private property" of the client. Texas IOLTA Rule 4 (discussing circumstances under which "client funds" must be deposited in an IOLTA account); Texas Bar Rule 1.14(a) (lawyers "shall hold funds . . . belonging in whole or in part to clients . . . separate from the lawyer's own property"); see also Brief for United States as *Amicus Curiae* 10 ("There can be no doubt that the client funds underlying the IOLTA program are the property of respondents"). When deposited in an IOLTA account, these funds remain in the control of a private attorney and are freely available to the client upon demand. As to the principal, then, the IOLTA rules at most "regulate the use of [the] property." *Yee* v. *Escondido,* 503 U. S. 519, 522 (1992). Respondents do not contend that the State's regulation of the manner in which attorneys hold and manage client funds amounts to a taking of private property. The question in this case is whether the

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975–976, 453 A. 2d, at 1260–1261; *In re Minnesota State Bar Assn.*, 332 N. W. 2d 151, 158 (Minn. 1982); *In re Interest on Trust Accounts*, 402 So. 2d 389, 395–396 (Fla. 1981).

interest on an IOLTA account is "private property" of the client for whom the principal is being held.[4]

The rule that "interest follows principal" has been established under English common law since at least the mid-1700's. *Beckford* v. *Tobin*, 1 Ves. Sen. 308, 310, 27 Eng. Rep. 1049, 1051 (Ch. 1749) ("[I]nterest shall follow the principal, as the shadow the body"). Not surprisingly, this rule has become firmly embedded in the common law of the various States.[5] The Court of Appeals in this case,

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[4] We granted certiorari in this case to answer the question whether "interest earned on client trust funds held by lawyers in IOLTA accounts [is] a property interest of the client or lawyer, cognizable under the . . . Fifth Amendmen[t] to the U. S. Constitution . . . ." Pet. for Cert. i. JUSTICE SOUTER contends that we should vacate the judgment of the Court of Appeals because it was improper for that court to have answered this question apart from the takings and just compensation questions. Petitioners, however, did not argue in their petition for certiorari that it was error for the Fifth Circuit to address the property question alone. Because, under this Court's Rule 14(1)(a), our practice is to consider "[o]nly the questions set forth in the petition, or fairly included therein," it would be improper for us *sua sponte* to raise and address the question answered by JUSTICE SOUTER.

[5] *E.g.*, *Freeman* v. *Young*, 507 So. 2d 109, 110 (Ala. Civ. App. 1987) ("The earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property" (internal quotation marks omitted)); *Pomona City School Dist.* v. *Payne*, 9 Cal. App. 2d 510, 512, 50 P. 2d 822, 823 (1935) ("[O]bviously the interest accretions belong to such owner"); *Vidal Realtors of Westport, Inc.* v. *Harry Bennett & Assocs., Inc.*, 1 Conn. App. 291, 297–298, 471 A. 2d 658, 662 (1984) ("As long as the attached fund is used for profit, the profit . . . is impounded for the benefit of the attaching creditor and is subject to the same ultimate disposition as the principal of which it is the incident" (internal quotation marks omitted)); *Burnett* v. *Brito*, 478 So. 2d 845, 849 (Fla. App. 1985) ("[A]ny interest earned on interpleaded and deposited funds follows the principal and shall be allocated to whomever is found entitled to the principal"); *Morton Grove Park Dist.* v. *American Nat. Bank & Trust Co.*, 78 Ill. 2d 353, 362–363, 399 N. E. 2d 1295, 1299 (1980) ("The earnings on the funds deposited are a mere incident of ownership of the fund itself"); *B & M Coal Corp.* v. *United Mine Workers*, 501 N. E. 2d 401, 405 (Ind. 1986) ("[I]nterest earnings must follow the principal and be distributed to

two of the three judges of which are Texans, held that Texas also follows this rule, citing *Sellers* v. *Harris County*, 483 S. W. 2d 242, 243 (Tex. 1972) ("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"). Indeed, in *Webb's Fabulous Pharmacies, Inc.*

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the ultimate owners of the fund"); *Unified School Dist. No. 490, Butler County* v. *Board of County Commissioners of Butler County*, 237 Kan. 6, 9, 697 P. 2d 64, 69 (1985) ("[I]nterest follows principal"); *Pontiac School Dist.* v. *City of Pontiac*, 294 Mich. 708, 715–716, 294 N. W. 141, 144 (1940) ("[T]he generally understood and applied principles that interest is merely an incident of the principal and must be accounted for"); *State Highway Comm'n* v. *Spainhower*, 504 S. W. 2d 121, 126 (Mo. 1973) ("Interest earned by a deposit of special funds is an increment accruing thereto" (internal quotation marks omitted)); *Siroky* v. *Richland County*, 271 Mont. 67, 74, 894 P. 2d 309, 313 (1995) ("[I]nterest earned belongs to the owner of the funds that generated the interest"); *Bordy* v. *Smith*, 150 Neb. 272, 276, 34 N. W. 2d 331, 334 (1948) ("Once settled clearly and definitely whose money the principal sum was, the interest necessarily belongs to that person as an increment to the principal fund"); *State ex rel. Board of County Commissioners* v. *Montoya*, 91 N. M. 421, 423, 575 P. 2d 605, 607 (1978) ("[T]he general rule is that interest is an accretion or increment to the principal fund earning it"); *Stuarco, Inc.* v. *Slafbro Realty Corp.*, 30 App. Div. 2d 80, 82, 289 N. Y. S. 2d 883, 885 (1968) (plaintiff "is entitled to the interest actually accrued . . . despite the absence of any agreement to pay interest on the deposit, and this precisely and only because interest was in fact earned thereon"); *McMillan* v. *Robeson County*, 262 N. C. 413, 417, 137 S. E. 2d 105, 108 (1964) ("The earnings on the fund are a mere incident of ownership of the fund itself"); *Des Moines Mut. Hail & Cyclone Ins. Assn.* v. *Steen*, 43 N. D. 298, 301, 175 N. W. 195 (1919) ("[A]ccruing interest follows the principal"); *Board of Educ., Woodward Pub. Schools* v. *Hensely*, 665 P. 2d 327, 331 (Okla. App. 1983) ("The interest earned . . . becomes a part of the principal of the fund which generates it"); *University of S. C.* v. *Elliott*, 248 S. C. 218, 220, 149 S. E. 2d 433, 434 (1966) ("[I]nterest earned . . . is simply an increment of the principal fund, making the interest the property of the party who owned the principal fund"); *Board of County Commissioners of the County of Laramie* v. *Laramie County School Dist. No. One*, 884 P. 2d 946, 953 (Wyo. 1994) ("In general, interest is merely an incident of the principal fund, making it the property of the party owning the principal fund").

v. *Beckwith,* 449 U. S. 155, 162 (1980), we cited the *Sellers* opinion as demonstrative of the general rule that "any interest . . . follows the principal."

In *Webb's*, we addressed a Florida statute providing that interest accruing on an interpleader fund deposited in the registry of the court " 'shall be deemed income of the office of the clerk of the circuit court.' " (Emphasis deleted.) *Id.*, at 156, n. 1 (quoting Fla. Stat. §28.33 (1977)). The appellant in that case filed an interpleader action in Florida state court and tendered the sum at issue, nearly $2 million, into court. In addition to deducting $9,228.74 from the interpleader fund as a fee "for services rendered," the clerk of court also retained the more than $100,000 in interest income generated by the deposited funds. We held that the statute authorizing the clerk to confiscate the earned interest violated the Takings Clause. As we explained, "a State by *ipse dixit*, may not transform private property into public property without compensation" simply by legislatively abrogating the traditional rule that "earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property." See 449 U. S., at 164. In other words, at least as to confiscatory regulations (as opposed to those regulating the use of property), a State may not sidestep the Takings Clause by disavowing traditional property interests long recognized under state law. See *id.*, at 163–164; see also *Lucas* v. *South Carolina Coastal Council,* 505 U. S. 1003, 1029 (1992).

Petitioners nevertheless contend that *Webb's* does not control because Texas does not, in fact, adhere to the "interest follows principal" rule, "at least if elevated to the level of an absolute legal rule." Brief for Petitioners 22. They point to several examples, such as income-only trusts and marital community property rules, where under Texas law interest does not follow principal. According to petitioners, the IOLTA program is simply another exception to

the general rule.

We find these examples insufficient to dispel the presumption of deference given the views of a federal court as to the law of a State within its jurisdiction. *Bernhardt* v. *Polygraphic Co. of America,* 350 U. S. 198, 204 (1956). Petitioners' examples miss the point of our decision in *Webb's*. Texas' exception of income-only trusts and certain marital property from the general rule that "interest follows principal" has a firm basis in traditional property law principles. Permitting the owner of a sum of money to distribute to a designated beneficiary the interest income generated by his principal is entirely consistent with the fundamental maxim of property law that the owner of a property interest may dispose of all or part of that interest as he sees fit. *United States* v. *General Motors Corp.,* 323 U. S. 373, 377–378 (1945) (property "denote[s] the group of rights inhering in the citizen's relation to the physical thing, as the right to . . . dispose of it"). Similarly, the Texas rules governing the distribution of marital assets have a historical pedigree tracing back to the marital property laws adopted by the Texas Congress only four years after Texas became an independent republic. W. McClanahan, Community Property Law in the United States §3:23, pp. 123–124 (1982). But petitioners point to no "background principles" of property law, *Lucas*, *supra*, at 1030, that would lead one to the conclusion that the owner of a fund temporarily deposited in an attorney trust account may be deprived of the interest the fund generates.

Petitioners further contend that "interest follows principal" is an incomplete explication of the Texas rule. Petitioners' Reply Brief 11. Petitioners explain that interest follows principal in Texas only if the interest is "allowed by law or fixed by the parties." *Cavnar* v. *Quality Control Parking, Inc.*, 696 S. W. 2d 549, 552 (Tex. 1985). We fail to see how this assists petitioners' cause. We agree that

the government has great latitude in regulating the circumstances under which interest may be earned. As we explained in *Andrus* v. *Allard,* 444 U. S. 51, 66 (1979), "anticipated gains ha[ve] traditionally been viewed as less compelling than other property-related interests." But petitioners do not argue that the payment of interest on client funds deposited in an attorney trust account is not "allowed by law" in Texas. Rather, they argue that interest actually "earned" by funds held in IOLTA accounts, Texas IOLTA Rule 9, is not the private property of the owner of the principal. However, regardless of whether the owner of the principal has a constitutionally cognizable interest in the *anticipated* generation of interest by his funds, any interest that *does* accrue attaches as a property right incident to the ownership of the underlying principal.

Finally, petitioners argue that the interest income transferred to the TEAJA is not "private property" because the client funds held in IOLTA accounts "cannot reasonably be expected to generate interest income on their own." Brief for Petitioners 18. As an initial matter, petitioners' assertion that client funds held in IOLTA accounts cannot be expected to generate interest income is plainly incorrect under the express terms of the Texas IOLTA rules. Texas IOLTA Rule 6 requires that client funds held by an attorney be deposited in an IOLTA account "if the interest which might be earned" is insufficient to offset the "cost of establishing and maintaining the account, service charges, accounting costs and tax reporting costs which would be incurred in attempting to obtain the interest on such funds for the client." In other words, it is not that the client funds to be placed in IOLTA accounts cannot generate *interest*, but that they cannot generate *net interest*.

Whether client funds held in IOLTA accounts could generate net interest is a matter of some dispute. As written, the Texas IOLTA program requires the calculation as

to net interest to be made "without regard to funds of other clients which may be held by the attorney." Texas IOLTA Rule 6. This provision would deny to an attorney the traditional practice of pooling funds of several clients in one account, a practice which might produce net interest when opening an account for each client would not. But in the District Court, petitioners agreed that this portion of the rule was not to be enforced, and that an attorney could make the necessary calculation on the basis of pooled accounts. Petitioners made a similar concession during oral argument here. Tr. of Oral Arg. 13–16. We accept this concession but find that it does not avail petitioners.

We have never held that a physical item is not "property" simply because it lacks a positive economic or market value. For example, in *Loretto* v. *Teleprompter Manhattan CATV Corp.,* 458 U. S. 419 (1982), we held that a property right was taken even when infringement of that right arguably *increased* the market value of the property at issue. *Id.*, at 437, n. 15. Our conclusion in this regard was premised on our longstanding recognition that property is more than economic value, see *id.*, at 435; it also consists of "the group of rights which the so-called owner exercises in his dominion of the physical thing," such "as the right to possess, use and dispose of it," *General Motors, supra*, at 380. While the interest income at issue here may have no economically realizable value to its owner, possession, control, and disposition are nonetheless valuable rights that inhere in the property. See *Hodel* v. *Irving,* 481 U. S. 704, 715 (1987) (noting that "the right to pass on" property "is itself a valuable right"). The government may not seize rents received by the owner of a building simply because it can prove that the costs incurred in collecting the rents exceed the amount collected.

The United States, as *amicus curiae*, additionally argues that "private property" is not implicated by the

IOLTA program because the interest income generated by funds held in IOLTA accounts is "government-created value." Brief for United States as *Amicus Curiae* 20. We disagree. As an initial matter, this argument is factually erroneous. The interest income transferred to the TEAJA is not the product of increased efficiency, economies of scale, or pooling of funds by the government. Indeed, as noted above, the State has conceded at oral argument that if an attorney could in any way (such as pooling of client funds) earn interest for a client, he is ethically obligated to do so rather than place the funds in an IOLTA account. Interest income is economically realizable by IOLTA primarily because: (1) the Federal Government imposes tax reporting costs only on those who attempt to exercise control over the interest their funds generate, see Rev. Rul. 81–209, 1981–2 Cum. Bull. 16; Rev. Rul. 87–2, 1987–1 Cum. Bull. 18; and (2) the Federal Government prohibits for-profit corporations from holding funds in NOW accounts if the interest is paid to the corporation, but permits corporate funds to be held in NOW accounts if the interest is paid to the TEAJA, see Federal Reserve's IOLTA Letter. In other words, the State does nothing to create value; the value is created by respondents' funds. The Federal Government, through the structuring of its banking and taxation regulations, imposes costs on this value if private citizens attempt to exercise control over it. Waiver of these costs if the property is remitted to the State hardly constitutes "government-created value."

In any event, we rejected a similar "government-created value" argument in *Webb's*. There, the State of Florida argued that since the clerk's authority to invest deposited funds was a statutorily created right, any interest income generated by the funds was not private property. 449 U. S., at 163. We rejected this argument, explaining that "the State's having mandated the accrual of interest does not mean the State or its designate is entitled to assume

ownership of the interest." *Id.*, at 162.

This would be a different case if the interest income generated by IOLTA accounts was transferred to the State as payment "for services rendered" by the State. *Id.*, at 157. Our holding does not prohibit a State from imposing reasonable fees it incurs in generating and allocating interest income. See *id.*, at 162; cf. *United States* v. *Sperry Corp.,* 493 U. S. 52, 60 (1989) (upholding the imposition of a "reasonable 'user fee'" on those utilizing the Iran-United States Claims Tribunal). But here the State does not, indeed cannot, argue that its confiscation of respondents' interest income amounts to a fee for services performed. Unlike in *Webb's*, where the State safeguarded and invested the deposited funds, funds held in IOLTA accounts are managed entirely by banks and private attorneys.

III

In sum, we hold that the interest income generated by funds held in IOLTA accounts is the "private property" of the owner of the principal. We express no view as to whether these funds have been "taken" by the State; nor do we express an opinion as to the amount of "just compensation," if any, due respondents. We leave these issues to be addressed on remand. The judgment of the Court of Appeals is

Affirmed.