

HOLDERS COALITION

January 30, 2020

Senator Eli Bebout
Joint Appropriations Committee Co-chair

eli.bebout@wyoleg.gov

Representative Bob Nicholas
Joint Appropriations Committee Co-chair

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Dear Senator Bebout and Representative Nicholas:

The Holders Coalition ("Coalition") represents institutions whose members hold or represent owners of property. The Coalition was initially formed to assist the Uniform Law Commission ("ULC") in developing the Revised Uniform Unclaimed Property Act of 2016 ("RUUPA 2016"). Throughout the multi-year process, the members of the Coalition worked earnestly with the ULC's Drafting Committee and other participating stakeholders to develop the RUUPA 2016 by providing testimony and sharing valuable insights and expertise on legal, regulatory, technical, and operational matters. Following the adoption of the RUUPA 2016 by the ULC, the Coalition has continued to work together to address common issues impacting holders and owners of property.

EROSION OF CONSUMER PROTECTION

The purpose of this letter is to express our concerns regarding Wyoming Draft Bill 398 ("WY DB 398"). Our primary concern is a provision in the bill that limits the number of years owners can file a claim to reclaim property to "within twenty-five (25) years after the date on which the unclaimed property was delivered or paid to the administrator under this [Wyoming Uniform Unclaimed Property Act (UUPA)]" for property valued at less than one hundred dollars (\$100.00).¹ In our view, this provision erodes the "consumer protection" purpose of the UUPA by enabling the state to permanently deny owners or their successors a right to their property after 25 years.

Terminating the rights of property owners contradicts the provision in the Wyoming UUPA that expressly provides that "[a]ll unclaimed property shall be placed in the custody of the administrator, subject to the perpetual right of the party originally owning or being entitled to the property to reclaim it upon proper proof of ownership and identity."² Limiting an owner's right to reclaim property to a 25-year period is not a "perpetual right" to reclaim the property. In addition to being contrary to Wyoming's current law, it is also contrary to an official position taken by the National Association of Unclaimed Property Administrators (NAUPA).

¹ WY DB 398

² §34-24-101(d)

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NAUPA RESOLUTION

NAUPA's *Resolution for Preserving the Right of Owners to Recover Unclaimed Property from States in Perpetuity*³ (Resolution) expresses NAUPA's strong opposition to limiting or terminating an owner's ability to claim unclaimed property. This is evident in the Resolution's declaration that "statutorily denying a rightful owner the ability to recover unclaimed property transferred to the custody of a state could give rise to legal challenges, including potential constitutional challenges."

The Resolution affirms that "the fundamental purpose of state unclaimed property laws is to protect the public" and ensure "owners do not lose their rights to personal property." It further provides that "the purpose and integrity of all state unclaimed property programs would be severely compromised if rightful owners were unnecessarily limited as to the period of time in which they could recover unclaimed property transferred to the custody of a state." It also specifically notes that "the Uniform Unclaimed Property Act adopted by the Uniform Law Commission have repeatedly recognized that states do not take title to unclaimed property but, instead, take custody of the property and hold it in perpetuity for the owner."

CONSTITUTIONAL DUE PROCESS ISSUES

Expanding on the reference to possible legal challenges in NAUPA's Resolution, WY DB 398 may well be unconstitutional inasmuch as the Supreme Court of the United States (SCOTUS) has held that "...The Due Process Clause requires States to give adequate notice before seizing private property."⁴ In addition, SCOTUS has held that the Fifth Amendment to the United States Constitution requires the government to pay just compensation when it takes personal property.⁵

We appreciate the fact that, in accepting unclaimed property, states – including Wyoming – become responsible for maintaining such property on behalf of the property's rightful owners until such time as the owner is reunited with the property. We also understand that this may be a burdensome responsibility for states. However, it is our experience that states are willing to accept this responsibility because they see unclaimed property as providing an additional source of state revenue during the custodial period. We vehemently oppose any state, including Wyoming, attempting to further enrich itself at the expense of owners by denying an owner a right to claim owner's property at some point in time. For this reason, we oppose DB 398, which would change the UUPA from a custodial law to one which terminates owners' rights. Because this would not be in the best interest of the owners, we

³ <https://unclaimed.org/wp-content/uploads/Resolution-on-claimant-time-limits-NAST-and-NAUPA-Approved.pdf>, approved on June 9, 2019

⁴ See *Mullane v. Central Hanover Bank & Trust Co* 339 U.S. 306, 313, 70 S.Ct. 652, 94 L.Ed. 865 (1950) as cited in *Taylor v. Yee*, 136 S.Ct.929, 194 L.Ed. 2d 237, 2016 U.S. Lexis 1009 (2016)

⁵ See *Horne v. Department of Agriculture* 135 S. Ct. 2419 (2015)

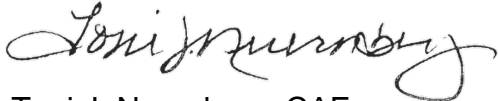
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recommend that this bill be revised to restore owner's lawful rights to their property.

Please do not hesitate to contact me if you have any questions concerning our recommendation or if we can be of any assistance during the legislative process.

Sincerely,



Toni J. Nuernberg, CAE
Holders Coalition Administrator

cc: via email

Honorable Curtis E Meier, Jr., Treasurer, treasurer@wyo.gov

Jeff Robertson Unclaimed Property Director, jeff.robertson@wyo.gov

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Holdings Coalition Members

Because of the breadth of issues being considered by the Holders' Coalition and the collaborative nature of our discussions, not all signatories to this letter are equally impacted by the issues for which we make a collective recommendation. The recommendations of the Holders' Coalition do not necessarily reflect the views of all present or future clients, attorneys, or members of each participant in the Coalition. Signatories to this letter with differing views will advance them separately from the collective recommendations.

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