

The Supreme Court Update - February 28, 2023

by Brock Huebner

Today, the Supreme Court of the United States issued two decisions:

Bittner v. United States, No. 21-1195: This case concerns the Bank Secrecy Act's requirement that certain individuals file an annual report about their foreign bank accounts on a form known as an "FBAR"— the Report of Foreign Bank and Financial Accounts. The Act imposes a maximum \$10,000 penalty for nonwillful violations of the law. The Court answered the following question: if you fail to file a FBAR, is that a single \$10,000 violation, or is there a separate \$10,000 violation for each account not properly reported? Today, in a 5-4 decision authored by Justice Gorsuch, the Court held that the Act "treats the failure to file a legally compliant report as one violation carrying a maximum penalty of \$10,000, not a cascade of such penalties calculated on a per-account basis." Justice Barrett filed a dissent, joined by Justices Thomas, Sotomayor, and Kagan, contending that the "most natural reading of the [Act] establishes that each failure to report a qualifying foreign account constitutes a separate reporting violation."

View the Court's [decision](#).

Delaware v. Pennsylvania, No. 220145: This case, decided under the Court's original jurisdiction, addressed the question of which state has the right to claim abandoned intangible property under the process of "escheatment." MoneyGram issued two financial products that operated similar to money orders, allowing funds to be transferred to a named payee. However, if the products are not presented for payment within a set time limit, they are deemed abandoned and can be reclaimed by a state government under escheatment. The MoneyGram products followed a common law rule which transmitted the abandoned proceeds back to MoneyGram's state of incorporation, Delaware. Multiple states sued to argue that the products at issue were governed by the federal Disposition of Abandoned Money Orders and Traveler's Checks Act ("FDA"), requiring the proceeds go to the state where the financial product was purchased. In a 9-0 decision authored by Justice Jackson, the Court held that the FDA rules applied because the financial products at issue were sufficiently similar to money orders given their similar

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function and operation. (Note: Justices Thomas, Alito, Gorsuch, and Barrett did not join one part of the opinion addressing legislative history.)

View the Court's [decision](#).