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NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

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**BROWN ET AL. v. LEGAL FOUNDATION OF
WASHINGTON ET AL.****CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT**

No. 01–1325. Argued December 9, 2002—Decided March 26, 2003

Every State uses interest on lawyers' trust accounts (IOLTA) to pay for legal services for the needy. In promulgating Rules establishing Washington's program, the State Supreme Court required that: (a) *all* client funds be deposited in interest-bearing trust accounts, (b) funds that cannot earn net interest for the client be deposited in an IOLTA account, (c) lawyers direct banks to pay the net interest on the IOLTA accounts to the Legal Foundation of Washington (Foundation), and (d) the Foundation use all such funds for tax-exempt law-related charitable and educational purposes. It seems apparent from the court's explanation of its IOLTA Rules that a lawyer who mistakenly uses an IOLTA account for money that could earn interest for the client would violate the Rule. That court subsequently made its IOLTA Rules applicable to Limited Practice Officers (LPOs), nonlawyers who are licensed to act as escrowees in real estate closings. Petitioners, who have funds that are deposited by LPOs in IOLTA accounts, and others sought to enjoin respondent state official from continuing this requirement, alleging, among other things, that the taking of the interest earned on their funds in IOLTA accounts violates the Just Compensation Clause of the Fifth Amendment, and that the requirement that client funds be placed in such accounts is an illegal taking of the beneficial use of those funds. The record suggests that petitioners' funds generated some interest that was paid to the Foundation, but that without IOLTA they would have produced no net interest for either petitioner. The District Court granted respondents summary judgment, concluding, as a factual matter, that petitioners could not make any net returns on the interest accrued in the accounts and, if they could, the funds would not be subject to the

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IOLTA program; and that, as a legal matter, the constitutional issue focused on what an owner has lost, not what the taker has gained, and that petitioners had lost nothing. While the case was on appeal, this Court decided in *Phillips v. Washington Legal Foundation*, 524 U. S. 156, 172, that interest generated by funds held in IOLTA accounts is the private property of the owner of the principal. Relying on that case, a Ninth Circuit panel held that Washington’s program caused an unconstitutional taking of petitioners’ property and remanded the case for a determination whether they are entitled to just compensation. On reconsideration, the en banc Ninth Circuit affirmed the District Court’s judgment, reasoning that, under the ad hoc approach applied in *Penn Central Transp. Co. v. New York City*, 438 U. S. 104, there was no taking because petitioners had suffered neither an actual loss nor an interference with any investment-backed expectations, and that if there were such a taking, the just compensation due was zero.

Held:

1. A state law requiring that client funds that could not otherwise generate net earnings for the client be deposited in an IOLTA account is not a “regulatory taking,” but a law requiring that the interest on those funds be transferred to a different owner for a legitimate public use could be a *per se* taking requiring the payment of “just compensation” to the client. Pp. 13–17.

(a) The Fifth Amendment imposes two conditions on the state’s authority to confiscate private property: the taking must be for a “public use” and “just compensation” must be paid to the owner. In this case, the overall, dramatic success of IOLTA programs in serving the compelling interest in providing legal services to literally millions of needy Americans qualifies the Foundation’s distribution of the funds as a “public use.” Pp. 13–14.

(b) The Court first addresses the type of taking that this case involves. The Court’s jurisprudence concerning condemnations and physical takings involves the straightforward application of *per se* rules, while its regulatory takings jurisprudence is characterized by essentially ad hoc, factual inquiries designed to allow careful examination and weighing of all relevant circumstances. *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U. S. 302, 322. Petitioners separately challenged (1) the requirement that their funds must be placed in an IOLTA account and (2) the later transfers of interest to the Foundation. The former is merely a transfer of principal and therefore does not effect a confiscation of any interest. Even if viewed as the first step in a regulatory taking which should be analyzed under the *Penn Central* factors, it is clear that there would be no taking because the transaction had no adverse economic impact on petitioners and did not interfere with any investment-backed expectation. 438

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U. S., at 124. A *per se* approach is more consistent with the Court’s reasoning in *Phillips* than *Penn Central*’s ad hoc analysis. Because interest earned in IOLTA accounts “is the ‘private property’ of the owner of the principal,” *Phillips*, 524 U. S., at 172, the transfer of the interest to the Foundation here seems more akin to the occupation of a small amount of rooftop space in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U. S. 419, which was a physical taking subject to *per se* rules. The Court therefore assumes that petitioners retained the beneficial ownership of at least a portion of their escrow deposits until the funds were disbursed at closings, that those funds generated interest in the IOLTA accounts, and that their interest was taken for a public use when it was turned over to the Foundation. This does not end the inquiry, however, for the Court must now determine whether any “just compensation” is due. Pp. 14–17.

2. Because “just compensation” is measured by the owner’s pecuniary loss—which is zero whenever the Washington law is obeyed—there has been no violation of the Just Compensation Clause. Pp. 17–22.

(a) This Court’s consistent and unambiguous holdings support the conclusion that the “just compensation” required by the Fifth Amendment is measured by the property owner’s loss rather than the government’s gain. *E.g.*, *Boston Chamber of Commerce v. Boston*, 217 U. S. 189, 195. Applying the teachings of such cases to the question here, it is clear that neither petitioner is entitled to any compensation for the nonpecuniary consequences of the taking of the interest on his deposited funds, and that any pecuniary compensation must be measured by his net losses rather than the value of the public’s gain. Thus, if petitioners’ net loss was zero, the compensation that is due is also zero. Pp. 17–19.

(b) Although lawyers and LPOs may occasionally deposit client funds in an IOLTA account when those funds could have produced net interest for their clients, it does not follow that there is a need for further hearings to determine whether petitioners are entitled to compensation from respondents. The Washington Supreme Court’s Rules unambiguously require lawyers and LPOs to deposit client funds in non-IOLTA accounts whenever those funds could generate net earnings for the client. If petitioners’ money could have generated net income, the LPOs violated the court’s Rules, and any net loss was the consequence of the LPOs’ incorrect private decisions rather than state action. Such mistakes may give petitioners a valid claim against the LPOs, but would provide no support for a compensation claim against the State or respondents. Because Washington’s IOLTA program mandates a non-IOLTA account when net interest can be generated for the client, the compensation due petitioners for

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any taking of their property would be nil, and there was therefore no constitutional violation when they were not compensated. Pp. 19–22. 271 F. 3d 835, affirmed.

STEVENS, J., delivered the opinion of the Court, in which O’CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C. J., and KENNEDY and THOMAS, JJ., joined. KENNEDY, J., filed a dissenting opinion.