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Does Interest Always Follow Principal?: A Prisoner's Property Right to the Interest Earned on His Inmate Account Under *Young v. Wall*, 642 F.3d 49 (1st Cir. 2011)

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Note*

Does Interest Always Follow Principal?: A Prisoner’s Property Right to the Interest Earned on His Inmate Account Under *Young v. Wall*, 642 F.3d 49 (1st Cir. 2011)

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I. INTRODUCTION

There is little doubt the Fifth Amendment of the United States Constitution protects ordinary citizens from unconstitutional takings.¹ However, the prison environment presents unique circumstances that call into question the applicability of this protection to prison inmates. In fact, many courts have denied prison inmates the property rights they maintained prior to incarceration.² One right that courts have denied prisoners is the property right to the interest earned on their inmate accounts.³ Yet, not all courts have denied prisoners a property right to such interest, creating a definitive split among the federal courts of appeals.

On one side, courts applying the common law rule of “interest follows principal” contend that a prisoner maintains a property right to the interest that accrues on his inmate account. For example, in *Schneider v. California Department of Corrections*,⁴ the Ninth Circuit held that a prisoner had a property right to the interest earned on his inmate account because “interest follows principal” is a “‘core’ notion” that cannot be denied even to a prisoner.⁵ On the other side, courts focusing on the unique circumstances of the prison environment contend that a prisoner has forfeited any property right to the interest earned on his account. For instance, a prisoner’s lack of property rights at common law led both the Fourth Circuit in *Washlefske v. Winston*⁶ and the Eleventh Circuit in *Givens v. Alabama Department of Corrections*⁷ to conclude that a prisoner has no property right to the interest earned on his inmate account and, thus, cannot claim that such property was unconstitutionally taken.⁸

In 2011, the First Circuit Court of Appeals was confronted with the same substantial issue in *Young v. Wall*⁹ that had previously split the federal circuit courts. After the First Circuit analyzed the decisions of the Fourth, Eleventh, and Ninth Circuits, it concluded that a prison inmate lacks a constitutionally protected property right to the interest not yet paid on his inmate account.¹⁰

Part II of this Note describes the traditional sources of property rights underlying the courts’ opinions and then describes the split re-

1. U.S. CONST. amend. V (“[N]or shall private property be taken for public use, without just compensation.”).

2. See, e.g., *Givens v. Ala. Dep’t of Corrs.*, 381 F.3d 1064 (11th Cir. 2004); *Washlefske v. Winston*, 234 F.3d 179 (4th Cir. 2000).

3. *Givens*, 381 F.3d at 1064.

4. *Schneider v. Cal. Dep’t of Corrs.*, 151 F.3d 1194 (9th Cir. 1998).

5. *Id.* at 1200.

6. *Washlefske*, 234 F.3d at 179.

7. *Givens*, 381 F.3d at 1064.

8. *Id.* at 1068–69; *Washlefske*, 234 F.3d at 185–86.

9. *Young v. Wall*, 642 F.3d 49 (1st Cir. 2011).

10. *Id.* at 51, 55.

garding inmates' property rights on interest-bearing accounts among the federal courts of appeals. Part II also takes a closer look at *Young v. Wall*, examining the facts surrounding the case and the First Circuit's opinion.

Part III begins by analyzing the tension surrounding constitutional rights in the prison environment. The constitutional protections afforded to prisoners are of such importance that the Fourth and Eleventh Circuits used the Ninth Circuit's failure in *Schneider* to address the issue as justification for their refusal to follow the Ninth Circuit's reasoning. As *Young* borrows from the analysis in *Washlefske* and *Givens*, Part III next describes two problems with these opinions. First, an inmate does have a property right in the wages held in his inmate fund. Second, the common law rule that "interest follows principal" should apply in the prison context. Finally, Part III addresses whether interest should follow principal in the prison environment—a public policy issue left unaddressed by any of the courts' opinions. Part IV concludes that when a court completely addresses each aspect of the issue, a prisoner should have a constitutionally protected right to the interest that accrues on his inmate account.

II. BACKGROUND

A. Traditional Sources of Property Rights

In each case addressing whether a prisoner has a property right to the interest earned on an inmate account, the prisoner alleged that the prison's refusal to pay interest on the funds in the inmate account amounted to an unconstitutional taking of property.¹¹ The Takings Clause of the Fifth Amendment provides that "private property" shall not "be taken for public use, without just compensation."¹² In order to state a claim under the Takings Clause, a plaintiff must first demonstrate that he possesses a constitutionally protected "property interest."¹³ Only if the plaintiff possesses such an interest is it necessary for a court to determine whether the deprivation of that interest constitutes a "taking" within the meaning of the Fifth Amendment.¹⁴ It

11. *Id.* at 55. In some cases, the plaintiff also alleges a violation of his procedural due process rights under the Fourteenth Amendment. *See id.* (noting that the plaintiff suggested that he was entitled to notice and an opportunity to be heard before the Rhode Island Department of Corrections could effectuate its policy change of no longer paying interest on inmate accounts).

12. U.S. CONST. amend. V.

13. *Givens v. Ala. Dep't of Corrs.*, 381 F.3d 1064, 1066 (11th Cir. 2004) (citing *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1000–01 (1984); *Penn Cent. Transp. Co. v. City of N.Y.*, 438 U.S. 104, 124–25 (1978); *Jackson v. Birmingham Foundry & Mach. Co.*, 45 So. 660, 662–63 (Ala. 2008)).

14. *Id.* (citing *Schneider v. Cal. Dep't of Corrs.*, 151 F.3d 1194, 1198 (9th Cir. 1998)); *Wash. Legal Found. v. Mass. Bar Found.*, 993 F.2d 962, 973 (1st Cir. 1993).

is this preliminary determination of whether a prisoner has a protected property right to the interest earned on his inmate account that has split the federal circuits.

It is an accepted tenant of property law that the Constitution protects rather than creates property interests.¹⁵ Therefore, to determine whether one has a constitutionally protected property interest, and the nature and extent of that interest, the court must look to “existing rules or understandings that stem from an independent source such as [common law or] state law.”¹⁶ A unilateral expectation, by itself, is not sufficient to create a constitutionally protected property interest.¹⁷ As such, the fact that a prison inmate expects that interest should or will be deposited in his account is not sufficient to create a protected property interest. Instead, the source must give rise to a “legitimate claim of entitlement” to the property.¹⁸ The independent sources that can create a constitutionally protected property interest include statutory law, policy and practice, and common law.¹⁹

1. *Statutory Law and Policy and Practice*

A state can create a property interest by enacting a statute.²⁰ For instance, the Ninth Circuit held in *Tellis v. Godinez* that inmates have a property right to any interest that accrues on their accounts based on a Nevada statute providing that inmates are entitled to the interest.²¹ It is important to note, however, that a state does not have unlimited power to redefine property rights by statute.²² If a state was allowed to do so, it would be able to sidestep the arbitrary government action the Takings Clause was designed to prevent. As the Ninth Circuit stated, “[T]he States’ power vis-à-vis property thus operates as a one-way ratchet of sorts: States may, under certain circumstances,

15. *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998).

16. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972).

17. *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161 (1980) (citing *Fox River Paper Co. v. R.R. Comm’n*, 274 U.S. 651 (1927)); *United States v. Willow River Power Co.* 324 U.S. 499 (1945)); *URI Student Senate v. Town of Narragansett*, 631 F.3d 1, 11 (1st Cir. 2011) (citing *Paul v. Davis*, 424 U.S. 693, 710–11 (1976); *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972)).

18. *Centro Medico del Turabo, Inc. v. Feliciano de Melecio*, 406 F.3d 1, 8 (1st Cir. 2005) (quoting *Roth*, 408 U.S. at 577).

19. *See Young v. Wall*, 642 F.3d 49, 53 (1st Cir. 2011).

20. *See Washlefske v. Winston*, 234 F.3d 179, 185 (4th Cir. 2000) (stating that if no right existed at English common law, a state may subsequently create one); *Schneider v. Cal. Dep’t of Corrs.*, 151 F.3d 1194, 1200–01 (9th Cir. 1998) (explaining that state law may affirmatively create constitutionally protected “new property” interests).

21. *Tellis v. Godinez*, 5 F.3d 1314, 1316–17 (9th Cir. 1993).

22. *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 439 (1982) (citing *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) (“[A] State, by *ipse dedit*, may not transform private property into public property without compensation”)).

confer “new property” status on interests located outside the core of constitutionally protected property, but they *may not* encroach upon traditional “old property” interests found within the core.”²³ As a result, a state can create a new property interest by enacting a statute, but it cannot deny an “old property interest,” such as those recognized at common law.

A state’s policies and practices can also underpin a constitutionally protected property interest²⁴ by creating a “shared understanding” that a person possesses a certain property interest.²⁵ Therefore, when a prison has a unilateral policy stating that interest will be credited to the inmate’s account, the policy has the potential to create a property right in that interest.²⁶ However, it is accepted that “[a] policy, once implemented, need not be continued in perpetuity but, rather, in the absence of special circumstances (say, detrimental reliance), may be modified or abandoned prospectively.”²⁷ This ability to abandon a policy also applies in the prison context.²⁸ As a result, if the payment of interest is solely based on the prison’s policies or practices, the prison can unilaterally withdraw its policy of paying interest on inmate funds. Yet, a prison cannot deny a prisoner property interests secured by either statutory or common law, regardless of whether such rights were reinforced by the prison’s policies or practices.

2. Common Law: “Interest Follows Principal”

A fundamental source of property interests is the English common law rule that “interest shall follow the principal.”²⁹ Many inmates argue they have a property right to the interest that accrues on their inmate funds under this common law rule. The rule was the subject of two U.S. Supreme Court decisions: *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*³⁰ and *Phillips v. Washington Legal Foundation*.³¹ While

23. *Schneider*, 151 F.3d 1194, 1200–01 (citing Richard H. Fallon, Jr., *Some Confusions About Due Process, Judicial Review, and Constitutional Remedies*, 93 COLUM. L. REV. 309, 329 (1993)).

24. *See, e.g.*, *Wilkinson v. Austin*, 545 U.S. 209, 221–22 (2005); *Wolff v. McDonnell*, 418 U.S. 539, 556–58 (1974); *Givens v. Ala. Dep’t of Corrs.*, 381 F.3d 1064, 1069 (11th Cir. 2004); *cf. Perry v. Sindermann*, 408 U.S. 593, 603 (1972) (“[A plaintiff] must be given an opportunity to prove the legitimacy of his claim of such entitlement in light of ‘the policies and practices of the institution.’”).

25. *See Young v. Wall*, 642 F.3d 49, 54 (1st Cir. 2011).

26. *Id.*

27. *Id.* at 55 (citing *Bova v. City of Medford*, 564 F.3d 1093, 1097 (9th Cir. 2009) (explaining that the city may alter or abandon retirement policy)); *Biggers v. Wittek Indus., Inc.*, 4 F.3d 291, 295 (4th Cir. 1993) (holding that employer was under no obligation to continue severance benefits policy).

28. *See Murphy v. Shaw*, 49 F.App’x 711, 714 (9th Cir. 2002); *Clark v. Perego*, No. 92-3567, 1994 WL 612520, at *1 (5th Cir. 1994).

29. *Beckford v. Tobin*, (1749) 27 Eng. Rep. 1049 (Ch.) 1051; 1 Ven. Sen. 308, 310.

30. *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980).

neither of these cases concerned the prison environment, they firmly established that the interest earned on wages placed in a bank account is the property of the citizen who performed the labor.

In *Webb's Fabulous Pharmacies*, the Supreme Court held that the plaintiff's property was subject to an unconstitutional taking when a Florida statute expressly directed a county to retain interest that had accrued on an interpleader fund deposited by a private party into the registry of the court.³² Despite the explicit language of the statute, the Court held that the county was not entitled to the interest earned.³³ Instead, the Court invoked the "usual and general rule . . . that any interest on an interpleaded and deposited fund follows the principal and is to be allocated to those who are ultimately to be the owners of that principal."³⁴ The Court then concluded that "[t]he earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property."³⁵

The Supreme Court reaffirmed its adherence to the common law rule of "interest follows principal" in *Phillips v. Washington Legal Foundation*.³⁶ In *Phillips*, the Court analyzed whether the interest earned on client funds held in a Texas Interest on Lawyers Trust Account (IOLTA) program was the client's property.³⁷ Texas's IOLTA regulations provided that interest earned on certain client funds held by lawyers was to be paid not to the clients themselves, but to foundations that financed legal services for the indigent.³⁸ However, the Court held that the clients possess a protected property interest in the earnings.³⁹ In so holding, the Court observed that the "interest follows principal" rule "has been established under English common law since at least the mid-1700's [sic]"⁴⁰ and "has become firmly embedded in the common law of the various States."⁴¹ As it had done in *Webb's Fabulous Pharmacies* with regard to the Florida interpleader fund statute, the *Phillips* Court refused to accord the Texas IOLTA rules any significance. Instead, the Court reiterated that "a State may not

31. *Phillips v. Wash. Legal Found.*, 524 U.S. 156 (1998).

32. *Webb's Fabulous Pharmacies*, 449 U.S. at 162.

33. *Id.*

34. *Id.*

35. *Id.* at 164.

36. *Phillips*, 524 U.S. at 156.

37. *Id.* at 163.

38. *See id.* at 162 (citing Tex. State Bar Rule, Art. XI, §§ 3-4).

39. *Phillips*, 524 U.S. at 171.

40. *Id.* at 165 (citing *Beckford v. Tobin*, (1749) 27 Eng. Rep. 1049, 1051 (Ch.) 1051; 1 Ven. Sen. 308, 310 ("[I]nterest shall follow the principal, as the shadow the body.")).

41. *Id.* at 165 & n.5.

sidestep the Takings Clause by disavowing traditional property interests long recognized under state law.”⁴²

B. The Split: Property Rights to the Interest Earned on Inmate Accounts

Young v. Wall was the fourth court of appeals decision to consider whether inmates have a constitutionally protected property right to the interest that accrues on their inmate accounts.⁴³ Prior to *Young*, the Fourth and Eleventh Circuits determined that a prisoner has no such property right.⁴⁴ The Ninth Circuit focused on the “interest follows principal” rule to conclude that an inmate does have a property right in the earnings.⁴⁵ While each circuit used slightly different reasoning to reach their conclusions, each decision proved important to the First Circuit’s conclusion in *Young*.⁴⁶ As such, each decision will be addressed in turn.

1. Schneider v. California Department of Corrections

In 1998, the Ninth Circuit Court of Appeals in *Schneider v. California Department of Corrections* was the first federal appellate court to examine whether a prisoner has a property right to the interest earned on his inmate account.⁴⁷ The court examined the California Department of Correction’s policy of withholding the interest earned on inmate trust accounts.⁴⁸ While the California statute did not create a property right, the Ninth Circuit held that an explicit statute is not necessary to create a property right:

Notwithstanding the State’s protestations to the contrary, property rights can—and often do—exist wholly independently of statutes recognizing them as such. Indeed, as the Supreme Court’s decisions in *Webb’s Fabulous Pharmacies, Inc. v. Beckwith* and *Phillips v. Washington Legal Foundation* demon-

42. *Phillips*, 524 U.S. at 167 (citing *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 163–64 (1980)).

43. *Young v. Wall*, 642 F.3d 49 (1st. Cir. 2011).

44. See *Givens v. Ala. Dep’t of Corrs.*, 381 F.3d 1064 (11th Cir. 2004); *Washlefske v. Winston*, 234 F.3d 179 (4th Cir. 2000); *Schneider v. Cal. Dep’t of Corrs.*, 151 F.3d 1194 (9th Cir. 1998).

45. *Schneider*, 151 F.3d at 1194.

46. See *Young*, 642 F.3d 49.

47. *Schneider*, 151 F.3d at 1194.

48. *Id.* at 1195–96; see also CAL. PENAL CODE § 5008 (West 2006) (specifying that any interest earned on inmate funds placed in inmate trust accounts shall be allocated not to the prisoners themselves, but rather to the “Inmate Welfare Fund,” which “shall be used for the benefit, education, and welfare of inmates of prisons and institutions under the jurisdiction of the Department of Corrections . . .”); *Schneider*, 151 F.3d at 396 (quoting CAL. CODE REGS. tit. 15, § 3075.1(d)(3) (noting that when a prisoner signs CDC Form 345, “a prisoner expressly authorize[s] any interest earned on monies held for [him] in such trust [to] be deposited into the Inmate Welfare Fund”).

strate, constitutionally protected property rights can—and often do—exist despite statutes, such as § 5008, that appear to deny their existence.⁴⁹

Further analyzing *Phillips* and *Webb's Fabulous Pharmacies*, the Ninth Circuit applied the common law rule of “interest follows principal” to find a protected property right in the earnings.⁵⁰ In fact, the Ninth Circuit stated that this common law rule is so fundamental to the notion of constitutionally protected property that it cannot be ignored.⁵¹ As a result, the Ninth Circuit found “little doubt that interest income of the sort at issue here is sufficiently fundamental that States may not appropriate it without implicating the Takings Clause.”⁵²

2. Washlefske v. Winston

Only two years after *Schneider*, the Fourth Circuit came to the opposite holding in *Washlefske v. Winston*.⁵³ Analyzing the Virginia Department of Corrections's policy requiring interest earned on prisoner funds to be used for the benefit of the general prison population, the court held that a prisoner does not have a protected property right to the interest earned on an inmate account.⁵⁴ The Fourth Circuit reasoned that because a prisoner at common law had no right to earn wages for work performed while in prison, any right an inmate currently possesses extends only so far as provided by statute.⁵⁵ The court stated, “[I]f a statute creates a property right not previously recognized or one broader than that traditionally understood to exist, the property interest so created is defined by the statute and may be withdrawn so long as the State affords due process in doing so.”⁵⁶

While a Virginia statute creates and defines a limited property right in the wages for penological purposes, it does not grant “full rights of ‘possession, control, and disposition.’”⁵⁷ For instance, an inmate cannot receive wages as cash and may only spend the wages on items in the prison commissary, direct that they be sent outside of the prison to other persons, or use them to purchase other approved items.⁵⁸ As the statute only gives inmates limited rights to wages, the Fourth Circuit concluded that a prisoner does not have a full property right in the principal itself.⁵⁹ The Fourth Circuit explained that while

49. *Schneider*, 151 F.3d at 1199 (citations omitted).

50. *Id.* at 1199–1200.

51. *Id.* at 1201.

52. *Id.*

53. *Washlefske v. Winston*, 234 F.3d 179 (4th Cir. 2000).

54. *Id.* at 181, 185–86.

55. *Id.* at 184–86.

56. *Id.* at 184.

57. *Id.* at 185 (citing *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 170 (1998)).

58. *Id.*

59. *Id.*

interest follows principal at common law, it does so only incident to the ownership of the underlying principal.⁶⁰ As a result, an inmate has no property right in the interest accruing on the wages held in an inmate account.

3. *Givens v. Alabama Department of Corrections*

In 2004, the Eleventh Circuit analyzed both the *Schneider* and *Washlefske* opinions to decide whether an Alabama inmate had a similar property right in *Givens v. Alabama Department of Corrections*.⁶¹ Evaluating the Alabama state scheme prohibiting inmates from receiving the interest that accrued on their accounts, the Eleventh Circuit agreed with the Fourth Circuit and held that an inmate lacks a constitutionally protected property right in such interest.⁶² In reaching this conclusion, the court held that the common law rule of “interest follows principal” does not apply.⁶³

First, the Eleventh Circuit stated that the plaintiff’s status as an inmate could not be ignored because such status was significant at common law.⁶⁴ At common law, an inmate not only lacked a property right in wages from work performed in prison, but could also be forced to forfeit all rights to personal property.⁶⁵ Therefore, the Eleventh Circuit concluded that the common law rule does not apply to a prison inmate.⁶⁶ The court then reasoned “the Supreme Court’s holdings in *Phillips* and *Webb’s Fabulous Pharmacies . . . assumed that a complete private property right existed in the principal.*”⁶⁷ Yet, the inmate in this instance had “at most, a *limited* property right in the principal. Like the inmate in *Washlefske*, [the inmate was] not free to receive the amounts deposited in cash, make withdrawals whenever he [chose], or spend money without the Department’s approval.”⁶⁸ As the Alabama statutes granting such a limited property right were silent as to what was to become of any interest earned,⁶⁹ the court concluded that Alabama inmates do not have a property right to the interest that accrues on their accounts.⁷⁰

60. *Id.* at 184 (noting that while interest follows principal, “a prisoner does not enjoy the same common law property rights in his prison accounts as did the *Phillips*’ plaintiffs in their attorney trust accounts”).

61. *Givens v. Ala. Dep’t of Corrs.*, 381 F.3d 1064 (11th Cir. 2004).

62. *Id.* at 1070.

63. *Id.* at 1068.

64. *Id.*

65. *Id.* at 1068–69 (citing *Calero-Toledo v. Pearson Yacht Leasing Co.*, 416 U.S. 663, 682 (1974)).

66. *Givens*, 381 F.3d at 1068.

67. *Id.* at 1069.

68. *Id.* (citing ALA. CODE § 14-8-6 (1975) (limiting the extent of an Alabama inmate’s property interest in his earnings)).

69. *See id.* § 14-8-6.

70. *Givens*, 381 F.3d at 1070.

C. *Young v. Wall* Facts and Holding

In 2011, over thirteen years since the issue was first decided in *Schneider*, the First Circuit was confronted with the same substantive issue in *Young v. Wall*.⁷¹ In *Young*, the plaintiff was Edward Eugene Young, Sr., an inmate at a prison maintained by the Rhode Island Department of Corrections (RIDOC).⁷² While in prison, Young and his fellow inmates were authorized to pursue gainful, in-prison employment.⁷³ As a result, Young performed various jobs, and his wages were deposited into inmate accounts maintained by RIDOC.⁷⁴ RIDOC placed twenty-five percent of an inmate's earnings into an "encumbered account," which was then tendered to the inmate upon release.⁷⁵ RIDOC deposited the balance of the inmate's earnings into an "available account" with certain limits on what the inmate could do with those funds.⁷⁶ In accordance with Policy No. 2.17, an inmate could purchase items at the prison commissary but could not purchase proscribed merchandise or make cash withdrawals.⁷⁷

In the past, the state pooled and invested funds in the individual inmate accounts and then allocated any return on the investment to the individual inmate accounts in an equitable fashion based on average daily balances.⁷⁸ In 2001, RIDOC decided to outsource its system, and comments from prospective vendors ultimately led RIDOC to no longer pay interest on inmate accounts.⁷⁹ Instead, any earnings of the collective funds accrued to the State of Rhode Island.⁸⁰ Because Young was an inmate at the prison both before and after the policy change, he sued RIDOC's director individually and in his official capacity.⁸¹ Ultimately, the main issue confronting the court was whether RIDOC's unilateral suspension of its internal policy of paying interest on inmate accounts constituted an unconstitutional taking of the inmate's property under the Fifth Amendment.⁸²

After evaluating the circuit split regarding the issue, the First Circuit concluded that Young lacked a constitutionally protected property right to the interest earned on his inmate account.⁸³ The court reasoned that the common law rule of "interest follows principal" does not

71. 642 F.3d 49 (1st Cir. 2011).

72. *Id.* at 52.

73. *Id.* at 51 (citing R.I. GEN. LAWS ANN. § 42-56-22 (West 1956)).

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.* at 52.

80. *Id.* at 51.

81. *Id.* at 52.

82. *Id.*

83. *Id.* at 51, 54.

apply in the “highly idiosyncratic context that prison presents”⁸⁴ because a prisoner traditionally enjoys fewer constitutional rights than other persons.⁸⁵ Further, the court noted that a prison inmate possesses no right to profit from his labors and could be compelled to work without pay at common law.⁸⁶ Despite the Rhode Island statute creating a property right in inmate wages, the First Circuit rejected the argument that this statute created a property right because it was silent on the subject of interest.⁸⁷ Finally, the court determined that the State’s policy and practice of paying interest on the accounts did not provide Young with a property right because the policy was an act of administrative generosity that could be abandoned prospectively.⁸⁸ The First Circuit concluded that since Young lacked a property right to the interest earned on his account, there could be no taking under the Fifth Amendment.⁸⁹

III. ANALYSIS

A. Balancing Act: Constitutional Rights in the Prison Environment

One rationale underlying the opinion in *Young v. Wall*, as well as *Washlefske* and *Givens*, is that while “interest follows principal” in the case of an ordinary citizen, the common law rule does not apply to a prison inmate.⁹⁰ In fact, these courts used the Ninth Circuit’s failure in *Schneider* to directly address the unique circumstances of the prison environment as justification for their contrary holdings. For instance, the Fourth Circuit stated:

84. *Id.* at 53.

85. *Id.* (citing *Turner v. Safley*, 482 U.S. 78, 91, 93 (1987); *Wolff v. McDonnell*, 418 U.S. 539, 555–56 (1974)).

86. *Id.*

87. *Id.* at 54; *see also* R.I. GEN. LAWS ANN. § 42-56-22(a) (West 1956) (providing that inmates “may be permitted to labor in the discretion of the director . . . and in that case may be paid not more than \$3.00 [per] day”).

88. *Id.* at 55 (noting that “a policy, once implemented, need not be continued in perpetuity but . . . may be modified or abandoned prospectively”) (citing *Bova v. City of Medford*, 564 F.3d 1093, 1097 (9th Cir. 2009) (explaining that the city may alter or abandon retirement policy)).

89. *Id.* at 51, 54.

90. *See id.* at 53 (“The most jagged rent in the fabric of the plaintiff’s argument is his failure to recognize the highly idiosyncratic context that prison presents.”); *Givens v. Ala. Dep’t of Corrs.*, 381 F.3d 1064, 1068 (11th Cir. 2004) (“Givens’s argument ignores both his status as an inmate and the fact that, at common law, such status was significant.”); *Washlefske v. Winston*, 234 F.3d 179, 184 (4th Cir. 2000) (“Washlefske, as a prisoner, does not enjoy the same common law property rights in his prison accounts as did the *Phillips*’ plaintiffs in their attorney trust accounts” and “the *Phillips* Court never intended its conclusion . . . to translate to the prison environment.”).

In reaching this conclusion, we recognize that we reach a result different from that reached by the Ninth Circuit in *Schneider v. California Department of Corrections* . . . [b]ut the court never determined who “owned” the principal and to what extent. We believe that an investigation into that question by the Ninth Circuit would have produced the same conclusion that we reach today.⁹¹

In *Young v. Wall*, the First Circuit similarly dismissed the reasoning in *Schneider*: “The *Schneider* court mechanically applied the mantra that interest follows principal without giving due weight to the truncation of prisoners’ property rights that is characteristic of the common law. We think that this limitation easily tips the balance.”⁹² Thus, it is necessary to first analyze whether and to what extent a prisoner’s property rights are truncated in the prison environment.

Ordinary citizens have a property right to the wages they earn and any interest derived therefrom.⁹³ Yet, tension has emerged regarding whether a prisoner should be afforded the same constitutional rights. Imprisonment necessarily makes unavailable many rights and privileges of the ordinary citizen, “a retraction justified by the considerations underlying our penal system.”⁹⁴ A prisoner is denied these constitutional rights to accommodate the institutional needs and objectives of prison facilities, particularly internal security and safety.⁹⁵ For instance, a prisoner has no reasonable expectation of privacy entitling him to the protection of the Fourth Amendment against unreasonable searches and seizures.⁹⁶ If a prison official had to obtain a warrant to search an inmate’s cell, it would be impossible to accomplish the prison objectives of preventing the introduction of weapons, drugs, and other contraband into the prison environment.⁹⁷

Though his rights may be diminished by the needs and exigencies of the institutional environment, a prisoner is not wholly stripped of constitutional protections when he is imprisoned for a crime. “There is no iron curtain drawn between the Constitution and the prisons of this country.”⁹⁸ For example, prisoners have been held to enjoy substantial religious freedom under the First and Fourteenth Amendments,⁹⁹ retain the right of access to the courts,¹⁰⁰ and are protected

91. *Washlefske*, 234 F.3d at 186 (citation omitted).

92. *Young*, 642 F.3d at 54.

93. *See Young v. Wall*, 359 F. Supp. 2d 84, 92 (D.R.I. 2005).

94. *Price v. Johnston*, 334 U.S. 266, 285 (1948).

95. *See Hudson v. Palmer*, 468 U.S. 517, 524 (1984); *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974).

96. *Hudson*, 468 U.S. at 526.

97. *Id.*

98. *Wolff*, 418 U.S. at 555–56.

99. *See Cruz v. Beto*, 405 U.S. 319 (1972); *Cooper v. Pate*, 378 U.S. 546 (1964).

100. *See Gilmore v. Lynch*, 319 F. Supp. 105 (N.D. Cal. 1970), *aff’d sub nom. Younger v. Gilmore*, 404 U.S. 15 (1971); *Johnson v. Avery*, 393 U.S. 483 (1969); *Ex parte Hull*, 312 U.S. 546 (1941).

under the Equal Protection Clause of the Fourteenth Amendment from invidious discrimination based upon race.¹⁰¹ Prisoners can also claim the protections of the Due Process Clause.¹⁰²

Ultimately, there must be a "mutual accommodation between institutional needs and objectives and the provisions of the Constitution that are of general application."¹⁰³ Due to the fundamental importance of constitutional rights, many courts and legal commentators have concluded that the only constitutional rights that should be denied to prisoners are those necessary to maintain the prison's institutional needs and objectives.¹⁰⁴ For example, "the right to present evidence is basic to a fair hearing," but prison inmates are not afforded the unrestricted right to call witnesses from the prison population because doing so carries "obvious potential for disruption and interference" with the correctional program of the institution.¹⁰⁵ Therefore, prison officials have the "discretion to keep a hearing within reasonable limits and to refuse to call witnesses that may create a risk of reprisal or undermine authority."¹⁰⁶ As one court stated, a prisoner should have "all the rights of an ordinary citizen which are not necessarily taken from him by reason of his condition as a convict."¹⁰⁷ As a result, it is first necessary to determine whether the institutional needs of the prison environment necessitate that a prisoner be denied a property right to the principal balance of his inmate account. If not, an additional analysis must be undertaken in regard to the interest earned on such accounts.

1. *Prisoner's Property Right to the Balance in His Inmate Account*

In order to determine whether a prisoner has a property right to the interest that accrues on his inmate account, it is first necessary to consider whether he has a property right to the principal amount. This principal amount is composed of the wages the prisoner earns while imprisoned, which are deposited into his inmate account. To some extent, the courts in *Washlefske*, *Givens*, and *Young* all concluded that under English common law, a prisoner did not possess a

101. See *Lee v. Washington*, 390 U.S. 333 (1968).

102. See *Haines v. Kerner*, 404 U.S. 519 (1972); *Wilwording v. Swenson*, 404 U.S. 249 (1971); *Screws v. United States*, 325 U.S. 91 (1945).

103. *Wolff*, 418 U.S. at 556.

104. *Pell v. Procunier*, 417 U.S. 817, 822 (1974); see also *Hudson v. Palmer*, 468 U.S. 517, 523 (1984) ("We have insisted that prisoners be accorded those rights not fundamentally inconsistent with imprisonment itself or incompatible with the objectives of incarceration.").

105. *Wolff*, 418 U.S. at 566.

106. *Id.*

107. *Anderson v. Salant*, 96 A. 425, 431 (R.I. 1916).

property right to the wages deposited in his inmate account.¹⁰⁸ In doing so, two of the courts further reasoned that an inmate did not have full rights of “possession, control, and disposition” over the wages deposited in his account and thus lacked a full property right.¹⁰⁹ Without a property right in the underlying principal, the prisoner could not use the common law rule of “interest follows principal” to establish a property right in the accruing interest. Yet, each of these explanations fails to account for more recent common law, statutory law, and Supreme Court precedent. After a consideration of these sources, it is clear that a prison inmate has a property right to the wages he rightfully earns and deposits in his account.

The argument that a prisoner does not have a property right in the balance of his inmate account begins with an analysis of prisoners' property rights under English common law. Generally, the courts first explained that, at common law, prisoners did not maintain the same protected property rights in their wages as private citizens.¹¹⁰ These courts further reasoned as follows: “[A]t common law, prison inmates possessed no right to profit from their labors; they could be compelled to work without any recompense.”¹¹¹ Not only did a prisoner not have a property right in the product of his labor in prison, but “he also forfeited all rights to personal property.”¹¹² As a result, the payment to a prisoner for his labor is purely discretionary on the part of the state.¹¹³ One such court described a prisoner's earnings by stating:

[They] are not wages in the realistic economic employer-employee relationship. They are, rather, a gratuitous payment authorized by the [state] and made by virtue of an administrative policy promoted and advanced in the best interests of penology and sociology. The plaintiff has no inherent legal right to the payment of this gratuity, nor to determine its form and amount.¹¹⁴

Under this early precedent, these courts concluded that common law could not provide a prisoner with a constitutionally protected property right to the balance of his account.¹¹⁵ However, the problem

108. See *Young v. Wall*, 642 F.3d 49, 53–54 (1st Cir. 2011); *Givens v. Ala. Dep't of Corrs.*, 381 F.3d 1064, 1068 (11th Cir. 2004); *Washlefske v. Winston*, 234 F.3d 179, 184–85 (4th Cir. 2000).

109. See *Givens*, 381 F.3d at 1069; *Washlefske*, 234 F.3d at 185.

110. *Givens*, 381 F.3d at 1068 (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES *299) (“If . . . a member of any national community violates the fundamental contract of his association, by transgressing the municipal law, he forfeits his right to such privileges as he claims by that contract.”).

111. *Young*, 642 F.3d at 53; see also *Washlefske*, 234 F.3d at 184–85 (holding that a policy of non-payment “would not violate any traditional principle of property law”).

112. *Washlefske*, 234 F.3d at 185.

113. See *Anderson v. Salant*, 96 A. 425, 432 (R.I. 1916).

114. *Gray v. Lee*, 486 F. Supp. 41, 46 (D. Md. 1980).

115. See *Young*, 642 F.3d at 54; *Givens*, 381 F.3d at 1069; *Washlefske*, 234 F.3d at 186.

with the courts' reliance on these early precedents is that they ignore the constantly evolving nature of the common law based on changing conditions and circumstances in society.¹¹⁶ Total abrogation, revision, or modification of an outdated common law rule is within the competency of the judiciary to bring the law into accord with current standards of justice and wisdom.¹¹⁷ When an old rule is deemed to be unsound or unsuited to present conditions, it should be set aside in favor of a rule that is in harmony with current conditions and meets the demands of justice.¹¹⁸ The common law regarding prisoners' rights has indeed changed dramatically over time. In Rhode Island, it is accepted that "[a] convict is neither civilly dead, nor deprived of his rights of property; and if this be so, he should be entitled to enforce such right when it is necessary to do so."¹¹⁹ Another court concluded that "a convict can have an interest in property."¹²⁰

Modern jurisprudence throughout the United States reinforces the conclusion that the common law no longer supports denying a prisoner a property right in the wages he earns while in prison. In fact, the early common law regarding a prisoner as a slave lacking property rights has been routinely repudiated.¹²¹ For instance, in 1970, a federal district court observed that "[o]ur enlightened concern for individual human rights as it has penetrated prison compounds has taken us a long way from the judicial attitudes of the past . . ."¹²² It is now well-established that "prison walls do not form a barrier separating prison inmates from the protections of the Constitution,"¹²³ and courts have consistently rejected the harsh common law doctrines that were relied on to conclude that a prisoner did not have a property

116. See *Young v. Beck*, 251 P.3d 380 (Ariz. 2011).

117. *Funk v. United States*, 290 U.S. 371 (1933); see also *Handeland v. Brown*, 216 N.W.2d 574 (Iowa 1974) (stating that when common law principles are no longer supportable in reason, they are no longer supportable in fact); *Woods v. Lancet*, 102 N.E.2d 691 (N.Y. 1951) ("We act in the finest common-law tradition when we adapt and alter decisional law to produce common-sense justice.").

118. See *Mo. Pac. Transp. Co. v. Miller*, 299 S.W.2d 41 (Ark. 1957); *Katz v. Walkinshaw*, 70 P. 663 (Cal. 1902), *rev'd on other grounds*, 74 P. 766 (Cal. 1903); *United States v. Dempsey*, 635 So. 2d 961 (Fla. 1994) (stating that the common law may be altered when the reason for a rule of law ceases to exist); *Mitchell v. State*, 176 So. 743 (Miss. 1937); *Flandermeyer v. Cooper*, 98 N.E. 102 (Ohio 1912); *State v. Esser*, 115 N.W.2d 505 (Wis. 1962).

119. *Kenyon v. Saunders*, 18 R.I. 590 (1894).

120. *Anderson v. Salant*, 96 A. 425, 429 (R.I. 1916).

121. See, e.g., *Washlefske v. Winston*, 60 F. Supp. 2d 534, 539 (E.D. Va. 1999) (citing *McCann v. Coughlin*, 698 F.2d 112, 115 (2d Cir. 1983) (noting that courts have long rejected such harsh doctrines), *aff'd*, 234 F.3d 179 (4th Cir. 2000).

122. *Palmigiano v. Travisono*, 317 F. Supp. 776, 785 (D.R.I. 1970).

123. *Turney v. Safley*, 482 U.S. 78, 84 (1987); see also *Wolff v. McDonnell*, 418 U.S. 539, 556 (1974) (explaining prisoners do enjoy Due Process protections); *Johnson v. Avery*, 393 U.S. 483, 487 (1969) (noting that prisoners have a right to petition the government for a redress of grievances).

right to the balance of his inmate account. Therefore, the Fourth¹²⁴ and Eleventh¹²⁵ Circuits relied on an outdated common law rule instead of the more recent common law ensuring a prisoner can maintain property rights.

It is clear that a prisoner has a property right in the balance of his inmate account. For instance, the Supreme Court of Iowa stated, "The [Iowa Department of Corrections] seems not to quarrel with the notion that an inmate's money in prison accounts is property protected under the Constitution. Indeed the law in that regard appears well-settled."¹²⁶ Numerous other courts have firmly held that a prisoner has a property right in the balance of his inmate fund.¹²⁷ For instance, the Fifth Circuit Court of Appeals declared unequivocally that "[t]here is no doubt that Longmire was deprived of property—funds in his prison account."¹²⁸ As a result, recent common law firmly establishes that once a prison pays an inmate for his labor, those wages become the property of the inmate.¹²⁹

After examining prisoners' property rights under English common law and incorrectly concluding that no such rights exist, the *Washlefske*, *Givens*, and *Young* courts supported their conclusions by next examining state statutory law. Here, they reasoned that since a prisoner had no rights at common law, the only rights he possessed were those given to him by state statute.¹³⁰ As discussed above, state statutes can serve as an alternative source of a prisoner's property right in the balance of his inmate funds.¹³¹

124. See *Washlefske v. Winston*, 234 F.3d 179 (4th Cir. 2000).

125. See *Givens v. Ala. Dep't of Corrs.*, 381 F.3d 1064 (11th Cir. 2004).

126. *Walters v. Grossheim*, 525 N.W.2d 830, 831 (Iowa 1994).

127. See *Quick v. Jones*, 754 F.2d 1521, 1523 (9th Cir. 1985) ("There is no question that Quick's interest in the funds in his prison account is a protected property interest."); *State v. Ashburn*, 534 N.W.2d 106, 109 (Iowa 1995) ("An inmate's money in prison accounts is a protected property interest."); *Artway v. Scheidmantel*, 671 F. Supp. 330, 337 (D.N.J. 1987) ("[T]he Court finds that Artway has a property interest in the funds in his prison account . . ."); *Ruley v. Nev. Bd. of Prison Comm'rs*, 628 F. Supp. 108, 112 (D. Nev. 1986) ("To start, it seems clear that he has a protected property interest in the funds in his Inmate Trust Fund account.").

128. *Longmire v. Guste*, 921 F.2d 620, 623–24 (5th Cir. 1991).

129. See, e.g., *Jones v. Clark*, 607 F. Supp. 251, 254 (E.D. Pa. 1984) ("Clearly the plaintiff has a protected property interest in the \$6.40 taken out of his prison account. . . . The state does not contest that a valid property interest exists.").

130. See *Young v. Wall*, 642 F.3d 49, 54 (1st Cir. 2011); *Givens*, 381 F.3d at 1069; *Washlefske v. Winston*, 234 F.3d 179, 185 (4th Cir. 2000).

131. See *Washlefske*, 234 F.3d at 185 (stating that if no right existed at English common law, a state may subsequently create one); *Schneider v. Cal. Dep't of Corrs.*, 151 F.3d 1194, 1200–01 (9th Cir. 1998) (explaining that "state law may affirmatively create constitutional protected 'new property' interests . . ."); *Tellis v. Godinez*, 5 F.3d 1314, 1316–17 (9th Cir. 1993).

In *Young v. Wall*, the relevant provision of § 42-56-22 provided that the balance of the inmate fund was “to be turned over to the prisoner at the time of his or her release from the institution, *the funds being his or her property*”¹³² Not only did Young have a common law right to this amount, but this unequivocal labeling of the inmate’s funds leaves little doubt that the principal balance in the funds constituted his property.

Nevertheless, the Fourth and Eleventh Circuits challenged this unequivocal statutory language. The Fourth Circuit argued that while § 42-56-22 appeared to create a property right to the funds, the right created was at best “a limited property right, defined by the terms of the statute, which do[es] not give [the prisoner] full rights of ‘possession, control, and disposition’ over the amounts ‘earned’ and credited to his accounts.”¹³³ The rationale underlying this theory is that not only was a prisoner paid in the “discretion of the director,”¹³⁴ but the director controlled how the prisoner was to be paid, how a prisoner could spend his earnings, how earnings were to be invested, and how any interest was to be distributed.¹³⁵ As stated in *Washlefske*, “Washlefske is credited with pay at a rate of \$.90 per hour, but he is not entitled to have this money paid to him in cash. . . . Washlefske does not enjoy the right to exclude others from the funds credited to his accounts.”¹³⁶ The courts reasoned that without full rights of “possession, control, and disposition,” a prison inmate was incapable of establishing that a state statute granted him a constitutionally protected property right.¹³⁷

As discussed above, it is firmly established that all citizens have a property right in their money.¹³⁸ Therefore, a prisoner has a full property right in the money he earns unless his incarceration dramatically diminishes his fundamental property rights. In fact, the Supreme Court of Rhode Island pointed specifically to the fact that “a convict can have an interest *in property*, while a slave cannot.”¹³⁹ Furthermore, the fact that the prison director could have chosen not to

132. *Young v. Wall*, 359 F. Supp. 2d 84, 90 (D.R.I. 2005).

133. *Washlefske*, 234 F.3d at 185 (quoting *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 170 (1998)); see *R.I. Bhd. of Corr. Officers v. State*, 264 F. Supp. 2d 87, 102 (D.R.I. 2003) (“Although property rights are ordinarily created by state law, federal constitutional law determines whether the alleged interest created by the state rises to the level of ‘property’ thereby securing the protections of the Fifth and Fourteenth Amendments.”).

134. See R.I. GEN. LAWS § 42-56-22(a); *Young*, 359 F. Supp. 2d at 90.

135. *Young*, 359 F. Supp. 2d at 91.

136. *Washlefske*, 234 F.3d at 185.

137. *Givens v. Ala. Dep’t of Corrs.*, 381 F.3d 1064, 1069 (11th Cir. 2004); *Washlefske*, 234 F.3d at 184.

138. See *Young*, 359 F. Supp. 2d at 86.

139. *Anderson v. Salant*, 96 A. 425, 429 (R.I. 1916) (emphasis added).

pay the prisoner for his work is irrelevant. As the attorney for Young stated:

Employers often make “gratuitous” payments to employees in the form of bonuses or monetary gifts. One would never even suggest that the employee who receives such a gratuitous payment from his employer lacks a constitutionally protectable property interest in the payment once received. . . . While an employer has a legal obligation to pay for labor and RIDOC does not, it is insufficient to announce that constitutional property rights do not exist merely because the circumstances under which the property (i.e., the money) was obtained differ.¹⁴⁰

The state, having decided to pay the inmates for their labor, cannot trample the inmate's property rights in the wages he has rightfully earned. These property rights are clear under the Rhode Island Supreme Court's pronouncement that “[a] convict is neither civilly dead, nor deprived of his rights of property” and that “a convict can have an interest in property.”¹⁴¹

Furthermore, the unequivocal labeling of the prisoner's wages as his property in § 42-56-22 should control despite the limitations on the prisoner's use of his money. The courts have recognized constitutionally protected property interests in many forms of property owned under substantial restrictions.¹⁴² For example:

[U]nder the zoning and housing laws, the owner of a house in a residential zone cannot manufacture commercial goods in the house or lease all of the rooms in the house out to different families. Yet the government cannot take the home without paying just compensation. An owner of a certificate of deposit, an IRA, or certain investment bonds cannot receive payment for the amount invested prior to the expiration of the term of the investment vehicle or some time set by law without significant penalties. Yet the government cannot take the principal or return on deposit without just compensation.¹⁴³

Most importantly, the U.S. Supreme Court has established that the inability to immediately use and enjoy funds does not extinguish the property interest.¹⁴⁴ In *Webb's*, the claimants had no right to the deposited fund until their claims were recognized and distribution was ordered.¹⁴⁵ The Court found the “lack of immediate right, however, does not automatically bar a claimant ultimately determined to be entitled to all or a share of the fund from claiming a property share of the interest, the fruit of the fund's use, that is realized in the interim.”¹⁴⁶

Finally, public policy dictates that a prisoner should have a property right to the funds in his inmate account. With this money, a pris-

140. See Plaintiff's Objection to Defendant's Motion to Dismiss, *Young v. Wall*, 359 F. Supp. 2d 84 (D.R.I. 2005) (No. 07-34S), 2007 WL 4768003, at *11.

141. *Anderson*, 96 A. at 429 (quoting *Kenyon v. Saunders*, 18 R.I. 590, 590 (1894)).

142. See Plaintiff's Objection, 2007 WL 4768003, at *14.

143. *Id.*

144. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 161–62 (1980).

145. *Id.*

146. *Id.* at 162.

oner can “purchase goods from the prison commissary and therefore turn his earnings into consumable goods just like other citizens.”¹⁴⁷ Alternatively, a prisoner “can choose not to spend the money in his account and save it” until he is no longer imprisoned.¹⁴⁸ A prisoner earns money through his labor in the same manner as every other citizen. Just like all citizens, a prisoner should enjoy a constitutional right to the money he has earned in exchange for his labor.

Ultimately, the fact that a prisoner maintained no right to be paid for his labor at early common law does not dictate that he now has no property right in the money the state has decided to pay him for his labor. Modern common law provides that a prisoner can maintain property rights. Further, the statutory provision in *Young v. Wall* unequivocally stated that Young maintained a property right in his account balance. Finally, Supreme Court precedent has firmly established that limited use of a given piece of property does not deny its owner a property interest in that property. As a result, a prisoner should be recognized as having a property right in the balance of his inmate fund.

2. *Prisoner’s Property Right to the Interest Earned on His Account Balance*

The Fourth¹⁴⁹ and Eleventh¹⁵⁰ Circuits concluded that a prisoner does not have a protected property right to the interest that accrues on his inmate account by reasoning that the common law rule of “interest follows principal” does not apply in the prison environment.¹⁵¹ For instance, the Eleventh Circuit stated, “[W]e cannot accept Givens’s suggestion that the common law maxim that interest follows principal applies where an inmate is involved.”¹⁵² Instead, the courts found that the prison inmate had, at most, a limited property right in the wages as defined by statute; yet the statutes were silent on the subject of interest.¹⁵³ Due to this silence, the courts concluded that the prisoner did not have a property right in such interest.

The rationale for such a contention is that “if a statute creates a property right not previously recognized or one broader than that traditionally understood to exist, the property interest so created is defined by the statute and may be withdrawn”¹⁵⁴ because “the State

147. See Plaintiff’s Objection, 2007 WL 4768003.

148. See *id.*

149. See *Washlefske v. Winston*, 234 F.3d 179 (4th Cir. 2000).

150. See *Givens v. Ala. Dep’t of Corrs.*, 381 F.3d 1064 (11th Cir. 2004).

151. See *Young v. Wall*, 642 F.3d 49, 53 (1st Cir. 2011); *Givens*, 381 F.3d at 1069; *Washlefske*, 234 F.3d at 184–85.

152. *Givens*, 381 F.3d at 1068.

153. See *Young*, 642 F.3d at 54; *Givens*, 381 F.3d at 1070; *Washlefske*, 234 F.3d at 185.

154. *Washlefske*, 234 F.3d at 184 (citing *Goldberg v. Kelly*, 397 U.S. 254, 262 (1970)).

never took from him what was created by statute.”¹⁵⁵ Yet, *Washlefske* cites *Goldberg v. Kelly*, which discusses constitutional restraints to the withdrawal of welfare rights.¹⁵⁶ Thus, *Goldberg* does not concern property rights but rather rights of procedural due process.¹⁵⁷ The only reference to property in *Goldberg* comes in a footnote, which acknowledges that welfare benefits are more like “property” than a “gratuity.”¹⁵⁸ Speaking of welfare benefits, the Court stated that “[s]uch benefits are a matter of statutory entitlement for persons qualified to receive them”¹⁵⁹ and, thus, can be withdrawn. When the qualifications to receive welfare benefits are defined by statute, it is clear they can be withdrawn when the recipient no longer meets the qualifications.¹⁶⁰ Yet, this proposition applies only to state entitlements such as welfare benefits; it does not translate into wages. Nowhere in the *Goldberg* opinion does the Supreme Court state the proposition as broadly as it is reproduced in *Washlefske*, and a thorough reading of *Goldberg* discloses that this is not a general principle of property law.¹⁶¹ The Fourth Circuit took broad liberties to construe the Supreme Court precedent to fit its conclusion, yet a closer examination reveals there is no merit in the contention that a statute granting a broader property right than that previously existing is defined only by statute and may be withdrawn.

Furthermore, the underlying premise that any property right in unearned interest must flow from state statute granting such an interest is in direct opposition to Supreme Court precedent holding otherwise. As discussed above, state statute is only one of three sources that can independently establish a property right.¹⁶² Simply because a state statute is silent regarding the interest earned on the balance of the fund does not mean that common law cannot independently create a property right. This logical fallacy was identified by the Ninth Circuit in *Schneider v. California Department of Corrections*.¹⁶³ The Ninth Circuit noted that a lower court had misinterpreted the Supreme Court precedent in *Board of Regents of State Colleges v. Roth*,¹⁶⁴ which pronounced that “[p]roperty interests . . . are not cre-

155. *Id.* at 185.

156. *See Goldberg*, 397 U.S. at 261–64.

157. *See id.*

158. *Id.* at 262 n.8.

159. *Id.* at 262.

160. *See Jefferson v. Hackney*, 406 U.S. 535 (1972) (stating that it is clear that a class of persons eligible for assistance must be determined by reference to federal standards).

161. *See generally Goldberg*, 397 U.S. 254.

162. *See Young v. Wall*, 642 F.3d 49, 53 (1st Cir. 2011) (stating that the three avenues to a claim of entitlement include common law, statutory law, and policy and practice).

163. 151 F.3d 1194, 1199 (9th Cir. 1998).

164. *Id.* at 1200.

ated by the Constitution. Rather they are created and their dimensions are defined by existing rules or understandings that stem from an independent source *such as state law*.”¹⁶⁵ As the court in *Schneider* pointed out:

The *Roth* Court’s recognition of the unremarkable proposition that state law may affirmatively *create* constitutionally protected “new property” interests in no way implies that a State may by statute or regulation *roll back* or *eliminate* traditional “old property” rights.¹⁶⁶

The Supreme Court gave one example of an independent source of property rights when it said “such as state law.”¹⁶⁷ As such, state statutes cannot displace other sources of property rights. Even if the statute is silent on the subject of interest, a property right in interest can be found from examining “old property” rights, including the common law.¹⁶⁸

A state’s inability to displace other sources of property rights by enacting a state statute has also been reinforced in other cases. For instance, despite a contrary state statute, the Supreme Court in both *Webb’s* and *Phillips* relied upon the traditional common law rule of “interest follows principal” to recognize a protected property right to earned interest income.¹⁶⁹ Thus, while a state statute can create a new property right, it cannot encroach upon preexisting property interests such as those created by common law. As the Ninth Circuit stated in *Schneider*, “Were the rule otherwise, States could unilaterally dictate the content of—indeed, altogether opt out of—both the Takings Clause and the Due Process Clause simply by statutorily recharacterizing traditional property-law concepts.”¹⁷⁰

As an “old property” rule, the common law rule of “interest follows principal” cannot be displaced by a state statute holding otherwise. This common law rule that any interest that accrues attaches as a property right incident to the ownership of the underlying principal¹⁷¹ has been firmly ingrained in the common law throughout the United States.¹⁷² The Ninth Circuit, following this common law rule, held “that interest income of the sort at issue here is sufficiently fundamental that States may not appropriate it without implicating the Takings Clause. . . . [T]he California inmates—like the creditors in *Webb’s* and the clients in *Phillips*—possess a constitutionally cognizable property interest that triggers Takings Clause scrutiny.”¹⁷³

165. *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 577 (1972) (emphasis added).

166. *Schneider v. Cal. Dep’t of Corrs.*, 151 F.3d 1194, 1200 (9th Cir. 1998).

167. *Roth*, 408 U.S. at 577.

168. *See Schneider*, 151 F.3d at 1200.

169. *See id.*

170. *Id.* at 1201.

171. *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 168 (1998).

172. *Id.* at 165.

173. *Schneider*, 151 F.3d at 1200–01.

Therefore, the Fourth Circuit in *Washlefske*, the Eleventh Circuit in *Givens*, and the First Circuit in *Young* erred in disregarding the “interest follows principal” rule in favor of statutes silent on the subject of interest. While an explicit state statute providing that a prisoner has a property right to interest is sufficient to create a constitutionally cognizable property interest,¹⁷⁴ it is assuredly not necessary. Property rights can, and often do, exist wholly independently of state statutes. Even in the context of a prison, the common law rule of “interest follows principal” has such a long pedigree and has gained such universal endorsement in American courts that it provides an independent source of property rights. As a result, a prisoner has a property right in both the principal amount in his account and the interest income derived therefrom.

B. Left Unconsidered: Should “Interest Follow Principal” in Prison Context?

One consideration left unexamined by all of the federal courts of appeals that have considered whether a prisoner has a property right to the interest that accrues on his inmate account is whether it is justifiable to pay a prisoner this interest given the penological objectives underlying the correctional system. More specifically, the courts have failed to ask whether the payment of interest either hinders or furthers penological goals such as rehabilitation, reduction of recidivism, development of work ethic, modification of behavior and value systems, punishment, and correction. A closer look at this consideration reveals that the payment of interest may logically further the penological goal of rehabilitation by fostering work ethic and providing the prisoner money for his release from prison. More importantly, there does not appear to be any legitimate penological rationale for denying prison inmates this property right.

It is generally accepted that one of the key purposes of the correctional system is rehabilitation.¹⁷⁵ In Rhode Island, the regulations of RIDOC state that the purpose of the inmate work program is to “provide inmates with a wide range of work assignments that afford an opportunity to learn job skills and develop good work habits that can be applied to jobs after release.”¹⁷⁶ Furthermore, in *Young v. Wall*, the Prison Director Wall submitted that the penological purposes of the work program and the provision of a personal account to inmates were rehabilitation, reduction of recidivism, development of work

174. *See, e.g.*, *Tellis v. Godinez*, 5 F.3d 1314, 1317 (9th Cir. 1993).

175. *Cf.* *R.I. Council 94, AFSCME, AFL-CIO v. State*, 714 A.2d 584, 591 (R.I. 1998) (stating that the purpose of inmate labor was rehabilitation).

176. Brief of Ashbel T. Wall, *Young v. Wall*, 642 F.3d 49 (1st Cir. 2011) (No. 10-1862), 2010 WL 5623167, at *15.

ethic, development of a trade to assist in gainful employment, and the provision of money upon release from prison.¹⁷⁷

The payment to a prisoner of interest earned on his accounts does further penological objectives in a manner similar to that of inmate labor programs.¹⁷⁸ First, receiving interest on the already minimal amounts the prisoner receives as wages may give the prisoner a monetary motivation to work when he otherwise might not. This work would in turn help develop the prisoner's work ethic and further the rehabilitative objective. As the Supreme Court stated, "[R]ehabilitation may be best achieved by simulating procedures of a free society to the maximum possible extent."¹⁷⁹ Further, one of the stated goals of the inmate work program is to provide money to the prisoner upon release from prison.¹⁸⁰ Adding interest to the principal balance would give the prisoner a larger amount upon release, which the prisoner could then use to reestablish himself as a productive member of the community by obtaining housing, food, clothing, or a job.

While paying a prisoner the interest earned on his wages may further the rehabilitative objective, this is an additional benefit to the actual issue. That is, rather than asking whether the policy would further any penological objective, the court should consider whether payment of the interest would hinder any such objective. It is settled that a prison inmate "retains those First Amendment rights that are not inconsistent with his status as a prisoner or with the legitimate penological objectives of the corrections system . . ."¹⁸¹ Chief among these legitimate penological objectives is security and internal order.¹⁸² The curtailment of certain rights is necessary to ensure the safety of the prison staff, administrative personnel, and visitors.¹⁸³ For example, a prisoner does not have the constitutional right to counsel in disciplinary proceedings because providing counsel "would inevi-

177. See Motion to Dismiss, *Young v. Wall*, 359 F. Supp. 2d 84 (D.R.I. 2005), 2007 WL 4768002, at *10.

178. Cf. Noah D. Zatz, *Working at the Boundaries of Markets: Prison Labor and the Economic Dimension of Employment Relationships*, 61 VAND. L. REV. 857, 889 (2008) (characterizing inmate labor as fundamentally rehabilitative and educative as a means of job training).

179. *Wolff v. McDonnell*, 418 U.S. 539, 563 (1974).

180. See Motion to Dismiss, *Young v. Wall*, 359 F. Supp. 2d 84 (D.R.I. 2005), 2007 WL 4768002, at *10.

181. *Pell v. Procunier*, 417 U.S. 817, 822 (1974); see also *Hudson v. Palmer*, 468 U.S. 517, 523 (1984) ("We have insisted that prisoners be accorded those rights not fundamentally inconsistent with imprisonment itself or incompatible with the objectives of incarceration.").

182. See *Pell*, 417 U.S. at 823.

183. *Hudson*, 468 U.S. at 526.

tably give the proceedings a more adversary cast and tend to reduce their utility as a means to further correctional goals.”¹⁸⁴

If a prison regulation or policy burdens fundamental rights, as does the policy of not paying interest on a prisoner's wages, the reviewing court should inquire whether it is “‘reasonably related’ to legitimate penological objectives, or whether it represents an ‘exaggerated response’ to those concerns.”¹⁸⁵ As such, there is no clear penological objective that the payment of interest would undermine. It is difficult to imagine a situation where paying interest on the pooled funds of the inmates in an equitable fashion would cause a security concern within a prison. Therefore, denying this property right is likely an “exaggerated response” to any security concern that a prison official could posit. Further, courts consider whether the activity is “presumptively dangerous,” which is a conclusion about the reasonableness of the prison restriction in light of the articulated security concerns.¹⁸⁶ Once again, nothing about the policy of paying interest on inmate funds suggests it is dangerous. There is no “valid, rational connection”¹⁸⁷ between the payment of interest on inmate funds and any legitimate government interest. Any connection would be so remote as to render the policy arbitrary or irrational.

As a result, there is no logical penological rationale for denying a prisoner his constitutional property right to the interest accruing on the wages deposited in his inmate account. While another purpose of the correction system is retributive in nature, and denying a prisoner the interest he earns could be a form of punishment, rehabilitation and correction of offenders are important penological objectives.¹⁸⁸ In fact, early courts established that the purpose of legally adjudicated punishment should not be vengeance, but rather deterrence of the offender and other prospective offenders from crime, assistance in their rehabilitation, and the protection of society.¹⁸⁹ Because the work program and inmate accounts are geared toward the rehabilitative objective, the denial of interest should be evaluated in comparison to that objective. This evaluation reveals that denying interest to inmates undermines the rehabilitative objective. As a result, giving a prisoner the interest he earns on his wages is in the best interest of the correctional system's legitimate objectives.

184. *Wolff v. McDonnell*, 418 U.S. 539, 570 (1974).

185. *Turney v. Safley*, 482 U.S. 78, 87 (1987).

186. *Id.* at 89.

187. *Block v. Rutherford*, 468 U.S. 576, 586 (1984).

188. *See O'Lone v. Estate of Shabazz*, 482 U.S. 342, 348 (1987) (stating that valid penological objectives include rehabilitation of prisoners).

189. *People v. Friend*, 306 P.2d 463 (Cal. 1957); *see also Williams v. People*, 337 U.S. 241, 248 (1949) (“Retribution is no longer the dominant objective of the criminal law. Reformation and rehabilitation of offenders have become important goals of criminal jurisprudence.”).

C. Implications of Denying Interest to Inmates

As discussed above, the majority of courts considering whether a prisoner has a property right to the interest earned on his inmate accounts have denied such a right. While each court has used slightly different reasoning to reach their conclusions, the courts almost universally have held that state statutes defined the nature and extent of the prisoner's property interest, rather than following the common law rule of "interest follows principal." This deference to statutory provisions poses grave concerns to constitutional rights in the United States.

Foremost, the relationship between liberty and property cannot be overlooked. These two fundamental principles are linked in the political philosophy of John Locke, regarded generally as the "philosophical father of American constitutionalism."¹⁹⁰ Locke posits that political society exists to preserve "property" in the broad sense, including the "Lives, Liberties and Estates" which inherently belonged to man before the formation of civil society.¹⁹¹ Today, this belief is demonstrated by Justice Stewart's affirmation of the relationship between liberty and property:

[T]he dichotomy between personal liberties and property rights is a false one. Property does not have rights. People have rights. The right to enjoy property without unlawful deprivation, no less than the right to speak or the right to travel, is in truth a "personal" right . . . a fundamental interdependence exists between the personal right in liberty and the personal right in property. Neither could have meaning without the other.¹⁹²

As a result, the denial of a protected property interest denies to individuals the liberty afforded to them in the Constitution. According to Locke, this liberty is of such importance that it predates civilized society.¹⁹³ As such, it predates the establishment of legal and penological systems that currently place offenders in confinement for their transgressions against society. Therefore, a prisoner is still afforded the fundamental liberty envisioned by Locke. In addition, a prisoner does not give up all of his liberties upon entering confinement.¹⁹⁴ In fact, a prisoner is enabled to maintain his property rights.¹⁹⁵ As a result, courts denying a prisoner his property rights implicate the fundamental liberties he maintains while incarcerated.

190. Karen H. Flax, *Liberty, Property, and the Burger Court: The Entitlement Doctrine in Transition*, 60 TUL. L. REV. 889, 916 (1986).

191. *Id.*

192. *Lynch v. Household Fin. Corp.*, 405 U.S. 538, 552 (1972).

193. Sheldon Gelman, "Life" and "Liberty": *Their Original Meaning, Historical Antecedents, and Current Significance in the Debate over Abortion Rights*, 78 MINN. L. REV. 585, 628 (1994).

194. *See Hudson v. Palmer*, 468 U.S. 517, 524 (1984); *Wolff v. McDonnell*, 418 U.S. 539, 555 (1974).

195. *Anderson v. Salant*, 96 A. 425, 431 (R.I. 1916).

Furthermore, the state's ability to unilaterally redefine property interests by statute could lead to the arbitrary use of government power. If the courts continue to sanction such behavior, a state could simply ignore the common law rule of "interest follows principal" by dictating statutorily that interest is to accrue to some entity other than the prisoner himself. By doing so, the state is effectively sidestepping the Takings Clause by denying the prisoner a property interest and thereby acquiring the ability to take the funds. Yet, this is the very kind of thing that the Takings Clause of the Fifth Amendment was designed to prevent as a shield against the arbitrary use of government power. The Ninth Circuit in *Schneider*, stating that states may not encroach upon old property interests, addressed the concern of arbitrary governmental power by saying, "were the rule otherwise, States could unilaterally dictate the content of—indeed opt out of—both the Takings Clause and the Due Process Clause"¹⁹⁶ Also, the prison director, Wall, testified, "As Director, I made this decision, in large part, because *I believe* it is far more consistent with the public interest to pay interest earned into the State General Fund, rather than to the inmates."¹⁹⁷ Thus, Wall was effectively able to take the interest earned on the wages from those who earned it and give it to those who did not.

It is important to remember that whether a prisoner has a property right in unearned interest is considered in the context of the Fifth Amendment's protection against unconstitutional takings. The Fifth Amendment's guarantee was "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."¹⁹⁸ Serving as a protection to all citizens, the Fifth Amendment should be carefully protected. In fact, the denial of a property right in unearned interest to prison inmates should concern all citizens. While a prisoner has been convicted of a criminal offense and therefore deemed deserving of punishment, he maintains many of the same constitutional rights of ordinary citizens.¹⁹⁹ A prisoner can maintain an interest in property.²⁰⁰ When a prisoner is denied these rights, the courts are inching closer to denying these rights to every citizen. Eventually, a court broadly interpreting these cases could use these principles once applicable only to a prisoner and gradually apply them to the ordinary citizen. This denial of constitutional rights should therefore be a grave concern for all citizens.

196. *Schneider v. Cal. Dep't of Corrs.*, 151 F.3d 1194, 1201 (9th Cir. 1998).

197. Motion for Summary Judgment, *Young v. Wall*, 359 F. Supp. 2d 84 (D.R.I. 2005), 2007 WL 4768002, at *3 (emphasis added).

198. *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

199. *See Wolff*, 418 U.S. at 555–56.

200. *Anderson v. Salant*, 96 A. 425, 431 (R.I. 1916).

IV. CONCLUSION

The preceding discussion tracks the circuit split regarding whether a prisoner has a constitutionally protected property right to the interest earned on his inmate account. This Note examined the traditional sources of property rights, described the holdings of each federal circuit that has examined the issue, and analyzed the truncation of property rights in the prison context. This Note then identified the most important issues that should be considered by any court considering this question. Each reviewing court should consider the extent to which a prisoner maintains a property right in the principle balance in his inmate account while in prison, the applicability of the common law rule of "interest follows principle" in the prison environment, and the degree to which denying such a property right hinders the penological objectives of the prison system.

As each court reviews these important legal considerations, judges must not be too quick to defer to the judgments of prison officials. Rather, prison practices, such as denying inmates the interest they earn on their inmate accounts, that are alleged to violate the Constitution deserve a thorough and comprehensive judicial review. Further, the extent of a prisoner's property rights under the Constitution should not depend on the jurisdiction in which the prison is located. Therefore, the Supreme Court of the United States should grant certiorari to a case presenting this issue and uniformly resolve the issue. While no court has adequately addressed the issue, a thorough review of each consideration presented in this Note should lead the Supreme Court to conclude that a prison inmate does have a constitutionally protected property right to interest earned on the funds in his inmate account.