

6th Circuit: State's Plan to Claim Abandoned Checks Sooner Doesn't Violate Due Process

by Deborah S. Thoren-Peden and Amy L. Pierce

The U.S. Court of Appeals for the Sixth Circuit, in American Express Travel Related Serv. Co., Inc., v. Commonwealth of Kentucky, et al., held that an amendment to Kentucky's unclaimed property law that shortened the presumptive abandonment period for traveler's checks from 15 years to 7 does not violate the Due Process Clause.

In 2008, the Kentucky General Assembly passed legislation amending Section 393.060 of the Kentucky Revised Statutes to reflect a 7-year presumptive abandonment period for traveler's checks. In response, American Express filed suit in the U.S. District Court for the Eastern District of Kentucky. The District Court concluded that, because the amendment was intended as a revenue-raising measure, it did not satisfy rational basis review and, therefore, violated substantive due process principles. It declined to rule on American Express' challenges under the Contracts Clause and Takings Clause.

On May 5, 2011, the Sixth Circuit vacated the District Court's judgment and remanded the case for consideration of American Express' remaining constitutional challenges. The Sixth Circuit concluded that it was required to entertain the Treasurer's "rational speculation that the 2008 amendment was intended to facilitate Kentucky's interest in assuming possession of abandoned property." It found that this objective constitutes a "legitimate state purpose" and the 7-year presumptive abandonment period is rationally related to this purpose. It further found that the General Assembly rationally could have concluded that traveler's checks are no less likely to be abandoned after being unredeemed for 7 years as opposed to 15.

[Click here to read the Sixth Circuit's opinion.](#)

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