No. 24-1095

IN THE

Supreme Court of the United States

CHELSEA KOETTER,

Petitioner,

v.

MANISTEE COUNTY TREASURER, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF MICHIGAN

BRIEF OF *AMICI CURIAE*, LEGAL SERVICES OF THE HUDSON VALLEY, LEGAL SERVICES OF LONG ISLAND, AND PETER M. SOARES IN SUPPORT OF PETITIONER

MICHAEL WIGUTOW
LEGAL SERVICES OF LONG ISLAND
Helen Keller Way, 5th Floor
Hempstead, NY 11550

PETER M. SOARES
New York, NY

TANYA P. DWYER
Counsel of Record
RICHARD MENAKER
DANIEL MCENROE
LEGAL SERVICES OF THE HUDSON VALLEY
One Park Place, Suite 202
Peekskill, NY 10566
(914) 368-2489
tdwyer@lshv.org

Counsel for Amici Curiae

120383

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, Legal Services of the Hudson Valley, Legal Services of Long Island, and Peter Michael Soares respectfully submit this brief *amicus curiae* in support of Petitioner Chelsea Koetter.[1]

Legal Services of the Hudson Valley ("LSHV") is a non-profit law firm providing free civil legal services to individuals in the seven counties of the Hudson Valley in the State of New York. LSHV is the only provider of foreclosure prevention services in six of the seven counties in the Hudson Valley. LSHV has a distinct interest in the outcome of this case, as it will impact Hudson Valley homeowners' property rights.

Legal Services of Long Island ("LSLI") is a non-profit law office providing free counsel, advice, and legal representation on Long Island, New York. LSLI was among the first Legal Services Corporation programs in the state and is one of the largest providers of free civil legal assistance in New York. The LSLI Foreclosure Prevention Unit has a distinct interest in the outcome of this case.

Peter M. Soares is a *pro bono* volunteer with the Foreclosure Prevention Unit at LSHV. He has provided

1. Pursuant to Rule 37.2, all parties listed on the docket were given a ten-day notice that this brief would be filed on May 21, 2025. Pursuant to Rule 37.6, *Amici Curiae* affirm that no counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *Amici Curiae* made a monetary contribution to its preparation or submission.

free legal services to indigent New Yorkers through his volunteer work with Legal Services NYC, The Legal Aid Society, and Catholic Charities Community Services.

SUMMARY OF THE ARGUMENT

The Constitution requires government to provide *just compensation* and *due process* in the taking of a homeowner's property. Under this Court's decision in *Tyler v. Hennepin County*, 598 U.S. 631, such a taking occurs when local government forecloses on a tax lien against a homeowner resulting in surplus equity. The Fifth and Fourteenth Amendments direct the taxing authorities to ensure that the former homeowners subject to a tax foreclosure are justly compensated when there is a surplus. Since *Tyler* was decided, state legislatures and local governments across the country have issued updated regulations responding to this clarification of the law of takings. In some states, however, those new regulations have obstructed the ability of the foreclosed homeowners to recover surplus equity. Here, the Petitioner appeals from procedures in Michigan that continue to deny recovery because they fail to provide *due process*. The undersigned *Amici* from New York support Petitioner Chelsea Koetter because a similar failure of due process is occurring in our state, resulting in the unconstitutional taking of surplus equity by local government without just compensation.

The brief emphasizes the following points. First, we show that the failures to provide due process are not unique to Michigan. The New York Legislature amended the Real Property Tax Law (RPTL) Article 11, adding several sections governing surplus funds. These amendments

provide no clear process for the former homeowner to be notified that she is entitled to just compensation from a resulting surplus equity, or for the process she must follow to receive her just compensation.

Second, we show that the constitutional duty of the taxing authority to return surplus equity includes a duty to comply with constitutional due process. Both requirements originate in the Fifth Amendment and are applied to the States through the Fourteenth Amendment. History and tradition conjoin just compensation and due process in our fundamental law. The decision of the Court in *Nelson v. City of New York*, 352 U.S. 103, does not hold otherwise. While some courts have, without analysis, effectively held that any established process should suffice, only due process that is designed to ensure just compensation satisfies the Constitutional requirement when there is a taking.

Third, we share client stories and some surplus claims statistics that New York's post-*Tyler* legislation does not meet the requirements of due process. Taxpayers are confronted with just compensation procedures that materially differ from county to county; New York mandates state-wide due process for other types of seizure. New York's legislation covers several types of just compensation procedures as well as procedures to claim surplus after a non-tax foreclosure. Some are calculated to provide the former owners with a fair and reasonable opportunity to receive the constitutionally required compensation, e.g., the State Comptroller's abandoned funds application process and the State's Eminent Domain Procedures Law. The NY Real Property Tax Law surplus claims procedures is a web of traps for the unwary.

Fourth, we highlight claims procedures from eminent domain law, conventional mortgage foreclosures and private tax lien foreclosures, all of which assure that the property owner loses no more than what the creditor has the right to receive. Indeed, in a few New York localities, the procedures for private lien foreclosures are well-structured to facilitate the foreclosed homeowner's recovery of surplus equity. This demonstrates that just compensation as required by *Tyler* can be achieved in New York by adopting due process legislation like that required for Eminent Domain, mortgage and private tax lien law. Anything less is contrary to due process law in New York.

ARGUMENT

I. Post-*Tyler* procedures governing claims for surplus equity, such as those in Michigan and New York, deny just compensation by failing to provide due process to homeowners who lose their homes.

In her petition for certiorari, Petitioner has shown that the surplus claims procedure enacted in Michigan in response to *Tyler* creates barriers that disproportionately affect vulnerable populations, including the elderly and low-income individuals. Any misstep by a financially distressed property owner leads to loss of the surplus equity. Under the guise of providing adequate claim procedures, Michigan local government ends up taking the surplus proceeds itself. The same unconstitutional regime now exists in New York, with a few important exceptions. After *Tyler* came down, the New York Legislature amended the State's tax foreclosure statute to provide the foreclosed homeowner with a purported pathway to obtain the surplus. But the amended provisions do not provide

for adequate notice, contrary to the requirements of due process, and leave room for local governments to add further and different obstacles that channel the surplus equity to the taxing authority itself while preventing the foreclosed homeowners from receiving just compensation.

Local Cities, Towns, Villages ("Tax Districts"), enforce tax liens in New York through a tax foreclosure process. Though many of these Tax Districts use the provisions set forth in Article 11 of the New York State Real Property Tax Law ("RPTL"), several Tax Districts opted out of Article 11 and continued to use pre-existing tax foreclosure schemes. Two years ago, this Court held that Tax Districts could not "confiscate more property than was due. By doing so, they effected a 'classic taking in which the government directly appropriates private property for its own use.' [citation omitted]." *Tyler v. Hennepin County*, 598 U.S. at, 639. In 2024, New York amended the RPTL ostensibly to align the Article 11 provisions with *Tyler*.

RPTL §1135, Application for Surplus, was added to allow, in lieu of filing an answer to the foreclosure proceeding, "any person claiming surplus arising from a tax district's enforcement of delinquent property taxes…" to file a written notice of claim "with the clerk in whose office the report of sale is filed at any time before the confirmation of the report of sale…stating the nature and extent of their claim and the address of the claimant or the claimant's attorney." RPTL §1136(2)(d) was amended to "direct the enforcing officer of the tax district to prepare and execute a deed conveying title [leaving the former homeowner] barred and forever foreclosed of all such right, title…"

Title 6, Distribution of Surplus, was added to Article 11 (RPTL §§1195-1197). The former homeowner is "a person or persons who lost title to and/or ownership of the residential property due to a tax foreclosure." RPTL §1195(1). Surplus is defined as "the net gain… realized by the tax district upon the sale of tax-foreclosed property" over and above the amount of the lien and related expenses. RPTL §1195(3). The amount of the surplus, whether obtained from a public sale, private sale, or because "the tax district intends to retain tax-foreclosed property for a public use…" is then established under the terms of RPTL §1196(1)(a), (b). RPTL §1197 establishes that "[a]ny person who had any right, title, interest, claim, lien or equity of redemption…immediately prior to the issuance of a judgment of foreclosure may file a claim with the court having jurisdiction for a share of any surplus resulting from the sale of such property", which claim "shall be administered and adjudicated" by the court, RPTL§1197(1). If the former homeowner has not filed a claim for the surplus within three years, unless the court directs otherwise, the tax foreclosure proceeding is concluded, with the surplus funds "deemed abandoned but shall be paid to the tax district, not to the state comptroller, and shall be used by the tax district to reduce its tax levy." RPTL §1197(4) & (5).

Although Article 11 provides for a public auction, similar to a conventional mortgage foreclosure, as the default for disposing of the property of a defaulting homeowner, local jurisdictions may instead hold a private sale, transfer the property to a local landbank under the State's not-for-profit corporation law (N-PCL § 1608), or retain the property for its own use. The availability of these options further exposes the foreclosed homeowner

to the likelihood that the surplus equity will be retained by the tax district. All four methods are available to local authorities, and some use a combination of two or more methods depending on local ordinances and the perceived condition of the foreclosed property.

Where the new RPTL provisions have been adopted, recovery of the surplus equity is in no way assured. Under amended Article 11, the enforcing officer who "determines that a surplus is attributable to the sale shall submit a report to the court…demonstrating how the amount of the surplus was determined." RPTL §1196(3)(b). "Within ten days…, the enforcing officer shall notify the former property owner that a surplus was attributable to the sale…, that such surplus has been paid into court and that the court will notify the interested parties of the procedure to be followed in order to make a claim for a share of the surplus." *Id.* "Upon approval by the court of the enforcing officer's report, the tax district shall have no further responsibilities in relation to the parcel or any surplus attributable thereto, except to the extent the court directs otherwise…" RPTL §1196(4). Thus, under New York's amended laws governing tax foreclosure surpluses, the Tax District is automatically relieved of any obligation to ensure that the former homeowner is justly compensated. The amended laws provide no explanation of what notice the court is to provide the former homeowner, or where, or how that taxpayer is to make a claim.

Thus, New York's amended laws governing the process for claiming the surplus lacks clear guidance on how the former homeowner is notified of her right to just compensation, or any details for the claims process if she happens to learn of the surplus. The law absolves the

Tax District of any responsibilities to justly compensate, ending its involvement after the issuance of a report that provides the amount of the surplus. In short, New York's amendment of its *in rem* foreclosure statute is not calculated to satisfy the just compensation mandate of *Tyler*.

Moreover, the multiple ways Tax Districts may elect to enforce their tax liens add another layer of uncertainty, even confusion, that interferes with enabling the post tax foreclosure claim process to accomplish just compensation of the foreclosed homeowner. (See Section II below for examples.) Each of these procedures, individually or in combination, "imposes an unjustifiable burden on takings plaintiffs…." *Knick v. Township of Scott, Pennsylvania*, 588 U.S. 180.

II. New York's amended *in rem* foreclosure procedures do not assure just compensation.

The Fifth Amendment's Due Process and Takings Clauses have remained closely intertwined in this Court's just compensation jurisprudence for more than a century. As noted in *Tyler*, the Court issued two important decisions, *United States v. Taylor*, 104 U.S. 216 and *United States v. Lawton*, 110 U.S. 146, establishing that the seizure of surplus equity constituted a taking that required just compensation. Shortly thereafter, in *Cherokee Nation v. Southern Kansas Ry. Co.*, 135 U.S. 641, the Court sustained a federal statute granting eminent domain rights to a private railroad company, noting nevertheless that the dispossessed property owner was "entitled to reasonable, certain and adequate provision for obtaining compensation" under the Constitution, achieved in that

instance by a defined statutory process for an assessment of the value. Similarly, in *Crozier v. Krupp, A.G*, 224 U.S. 290, in circumstances where the taking occurred prior to payment, the Court required that "adequate means be provided for a reasonably just and prompt ascertainment and payment of the compensation." In other words, what was required was not a theoretical path to compensation but a demonstrated "means" to enable "just and prompt ascertainment and payment." More recent cases such as *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 and *Knick v. Twp. of Scott*, 588 U.S. 180, have similarly noted the close relationship between due process and takings, holding that taxing authorities cannot create procedural barriers to just compensation. Indeed, in emphasizing the "self-executing character of the constitutional provision with respect to compensation." *First English Evangelical Lutheran Church v. Los Angeles County*, 482 U.S. 304, quoting *United States v. Clarke*, 445 U. S. 253, and 6 P. Nichols, Eminent Domain § 25.41 (3d rev. ed.1972), the Court has underscored the need for taxing authorities to take the initiative through procedures that assure just compensation of dispossessed owners.

Significantly, the Court in *Tyler* rejected Hennepin County's argument that the holdings in cases like *Taylor* and *Lawton* were superseded in *Nelson*, which had sustained the City's retention of surplus equity following a *in rem* foreclosure. *Tyler* found *Nelson* distinguishable from the case before it in which there was "no opportunity for the taxpayer to recover excess value," contrasting it with the compensation procedure of the City that the owner had repeatedly (by implication, knowingly) avoided. 598 U.S. at 642. It should be emphasized, however, that *Nelson* does not purport to define what in all instances

constitutes the due process necessary to render a local compensation procedure compliant with the requirements of the Fifth and Fourteenth Amendments, and *Tyler* itself does not address that important issue. As decisions such as Cherokee Nation and Crozier make clear, the mere existence of some minimal compensation procedure is not enough— it must be due process, i.e., "adequate means . . . for a reasonably just and prompt ascertainment and payment of the compensation."

While the court in *Mennonite Board of Missions v. Adams*, 459 U.S. 903 reaffirmed that *Nelson*'s mail notice of the initial foreclosure was valid process, it does not mean that any process should be considered due process under the *Matthews* test. The court should not extend the main holding of *Nelson*, which was that a notice sent by mail to the primary address of the property owner was sufficient. Even the court in *Nelson* emphasized that it was the provision of notice that made the deprivation constitutional. This court has held that it "cannot be disputed that due process requires that an owner whose property is taken for public use must be given a hearing in determining just compensation." *Walker v. City of Hutchinson, Kan.*, 352 U.S. 112. This Court has consistently found that the state must provide notice that is reasonably calculated to inform parties of proceeding that may directly impact their rights. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306; *Mennonite, id.*

New York's approach to notice, in which each local municipality determines their own procedures, frequently results in a lack of actual notice about the available surplus. As a result of these local procedures, foreclosed homeowners will either be deterred from applying for a surplus or even being aware that one exists. The localities

then benefit from the "abandoned" property, seizing it again to pad municipal budgets.

New York's failure to provide adequate due process in reclaiming a surplus, much like Michigan's, is especially telling when made in comparison to how takings have typically occurred in New York. The state of New York has long recognized the necessity of providing compensation for government taking property. *Gardner v. Vill. of Newburgh*, 2 Johns.Ch. 162. New York courts have historically found that compensation is a necessary condition for a taking and that a failure to provide adequate process to acquire compensation would be invalid *Rent Stabilization Ass'n of New York City, Inc. v. Higgins*, 83 N.Y.2d 156; *Manocherian v. Lenox Hill Hosp.*, 84 N.Y.2d 385.

State courts have recently held due process is related to a takings. *James Square Assocs. LP v. Mullen*, 21 N.Y.3d 233. Article 11's onerous requirement that the owners of foreclosed properties must track down and serve all other interested parties (despite the fact that they had notice from the initial *in rem* proceeding) in order to initiate a surplus claim is invalid. In the realm of eminent domain, the government must service notice of the condemnation on all interested parties. The state must also offer an award to the former owner which they may choose to accept. If the former owner declines the state's offer, they may then bring their own claim for compensation. Notably a condemnee needs only serve the state entity with their notice of claim.

There is a three-year statute of limitation for making a claim which also applies for inverse condemnation in which a property owner claims that a government act

constitutes a taking mandating compensation. Even if there are lien holders on the property in a condemnation case, a lien on condemned property becomes a lien on the award from condemned property and is not extinguished by the condemnation. *Utter v. Richmond*, 112 N.Y. 610; *In re Houghton & Olmstead Avenues in City of New York*, 266 N.Y. 26. Further, this court recently held in *Tyler v. Hennepin County* that the surplus equity from a tax foreclosure sale is a distinct property right conferred onto the holder of the equity of redemption. A comparison with the tax foreclosure process reveals the clear due process violations by the state of New York.

While with both proceedings all interested parties are noticed of the imminent taking and given the option to claim compensation, significant difference remain. First, a condemnation proceeding requires an affirmative offer of just compensation at the start of the proceeding N.Y. Em. Dom. Proc. Law § 303 (McKinney). By comparison, in a tax foreclosure the tax jurisdiction is under no affirmative duty to timely inform interested parties of the availability of the surplus or even notify them of the sale itself. Further, in a condemnation case the claimant is under no obligation to notify other interested parties even as lienholders have a right to compensation as a lien on the surplus rather than something to be affirmatively claimed. N.Y. Em. Dom. Proc. Law § 503 (McKinney). In a tax foreclosure however, the state requires former homeowners, many of whom are elderly or disabled and unlikely to be able to afford an attorney, to notice all possible interested parties of the potential surplus. That said parties would already be noticed of the underlying tax foreclosure and thus have had the opportunity to appear and claim the surplus already makes any state interest

in protecting the rights of lienholders or absent property owners basically moot. Finally, the surplus can be lost entirely if the former homeowner, due to ignorance or inaction, fails to timely move to recover it. While there is a deadline for claimants to file a claim or appear, it "is merely a procedural direction to be issued by the court in the exercise of its broad discretion to administer the litigation in an orderly and expeditious manner. As such, the court may extend the time fixed by its own prior order 'upon such terms as may be just and upon good cause shown'." *Grandinetti v. Metro. Transp. Auth.*, 74 N.Y.2d 785.

In mortgage foreclosure proceedings, the proceeding most analogous to a tax foreclosure, the court appoints a referee to execute the sale and said referee must issue a report of sale, noticing the property owner and other interested parties of the availability of the surplus. A property owner will be given notice of the amount of the surplus available as well as simple instructions for how they may claim it. Even in the rare instance in which a surplus goes unclaimed, such as where there are unknown heirs to an estate, the funds are deposited with the State Comptroller for safekeeping until it may be claimed.

A simple application of the *Matthews v. Eldridge*, 424 U.S. 319 test would hold due process is not met by existing tax foreclosure surplus procedures. First, both Michigan and New York, have devised a scheme to reclaim the private property interest at issue – the surplus in foreclosed property. The surplus is usually vital to relocation efforts of the former homeowner, impacting future housing stability and health. Second, the present procedures create a substantial risk of deprivation because

in many cases property owners do not receive notice that is reasonably calculated to inform homeowners of surplus proceedings that may directly deprive them of their right to Just Compensation. *Mullane*, *id.* Third, the deprivation may be easily mitigated by creating simple procedures to notice homeowners of the surplus and inform them what they must do to claim it. Finally, there is minimal burden to the government from additional safeguards as it will just require an additional notice sent out to the former owners. Lienholders would not need additional notice regarding the surplus since they already receive notice of the foreclosure petition, akin to other types of foreclosure proceedings.

III. Client stories show how recovery of surplus equity is impeded by lack of procedural due process.

Since the RPTL was amended to comply with *Tyler*, many local governments have implemented statutory amendments creating barriers to the foreclosed homeowner's ability to recover surplus. These procedures occasionally require efforts no laymen could be expected to achieve from indigent or distressed foreclosed homeowners. This clearly violates the principle that there is a "self-executing obligation to actually pay just compensation under the 5th Amendment." *First English Evangelical,* 482 U.S. 304. In some instances, those procedures allow lienholders subordinate to the taxing local government's lien to seize the surplus with none of the constraints imposed on the homeowners, effectively ignoring the primacy of the homeowner's right to the surplus under *Tyler*. The following cases and statistics exemplify the current takings regime in New York's local governments.

A. Examples of local surplus procedures

In Cattaragus County, the former homeowner has the burden of serving notice of surplus proceedings on all former lienholders, regardless the liens validity or enforceability. The delays and expense are unnecessary when all interested parties have already been served with the notice of the foreclosure and either defaulted or appeared.

In Sullivan county, former homeowners are required to submit eight different forms to claim their surplus. These forms are rife with legalese and contain waivers of rights (such as a concession the auction was valid and the amount of surplus is correct) that an unsophisticated former homeowner is unlikely to understand. By comparison New York's Eminent Domain Procedures Law requires the government to affirmatively make efforts to find the condemnee and offer just compensation immediately – this is a statewide requirement that cannot be diminished by local law.

B. New York's surplus claims proceedings cause grave harms when lack of due process and self-dealing deprive homeowners of their right to just compensation

The illusion of due process in New York's surplus proceedings often causes grave, irreparable harm. *In rem* foreclosures push elderly and disabled homeowners into extreme poverty, requiring reliance on government benefits for relocation, despite the wealth accumulated in their homes.

The New York Legislature established insufficient procedures for *in rem* tax foreclosure surplus claims and left the details to local enforcing officers across the state. If a claims procedure that meets due process standards was included in the RPTL, then homeowners would be able to claim funds easily and relocate without becoming housing insecure.

1. Client Stories 1 and 2 – Orange County

Newburgh, in Orange County, evicted our septuagenarian client after taking her deed. Like the Michigan high court, the Sothern District of New York determined that Newburgh's policy to evict a homeowner without compensation was not a taking because Newburgh had not yet benefited from the taking. Newburgh's tax collection procedures require former homeowners to be evicted, have the home boarded up and winterized, then assess all carrying costs to the delinquent tax account. *Newburgh City Charter, Art. VIII, § C13. Found at https://ecode360.com/10870386#10870386.* Our client had all her faculties last fall when she was evicted. Small illnesses snowballed after she became homeless. She died several weeks ago after being homeless for seven months. Her family struggled to get her into hospice care in her final weeks because Medicaid analysts determined that she still owned the home, and all the equity in it, because Newburgh did not recorded its deed. Our client's family offered to make Newburgh whole for the delinquent taxes, fines and fees but the City Counsel repeatedly refused to accept payment in full. The City of Newburgh had not sold her house as of April 2025. Our client was entitled to compensation or injunctive relief at the time the deed was transferred to Newburgh. Delayed compensation has caused immediate, predictable and irreparable harm.

In contrast, the neighboring city of Middletown does a non-judicial foreclosure wherein they sell tax liens for $10. Those tax liens are converted into redeemable tax deeds by operation of law. If the City fails to notify a homeowner about the non-judicial tax foreclosure, then the homeowner has an additional year to redeem the property.

Each tax district has its own labyrinth of hurdles to deprive homeowners of due process and just compensation, allowing said districts to private interests after the claims period ends.

2. Client Story 3 – Cattaraugus County

Homeowners in Cattaraugus County, New York must meet confusing requirements to claim their funds. One former homeowner held fee simple interest in his property. He filed a claim for ~$12,000 after his home was sold at public auction pursuant to an *in rem* tax foreclosure judgment, which extinguished all property liens. The municipality required the prior owner to serve all former interested parties with a notice of claim. The court insisted the surplus be set aside for a judgement creditor who failed to appear in court and defaulted on the foreclosure and the notice of claim. The extinguished lien's validity was not examined but surplus funds were set aside for it. This county is forcing former homeowners to find their creditors and set aside funds for defaulting creditors without examining the validity and enforceability of the claims. *In the Matter of the Foreclosure of Tax Liens by Proceedings in Rem pursuant to Article 11 of the RPTL by Cattaraugus County, List of Delinquent Taxes for 2022*, 92728, Cnty. Court of the State of NY, Cnty. of Cattaraugus, (June 7, 2024).

3. Client Story 4 – Sullivan County from police station proceeding to threats to call Sheriff.

Livingston Manor in Sullivan County does public auctions to the highest bidder. Before *Tyler* they had an incentive to find the highest bidder because they retained the surplus. Immediately after the *Tyler* decision, the Sullivan tax assessor insisted our client wait a year and a half to request a surplus so Sullivan County could use the surplus proceeds in the next budget cycle. Sullivan County presently allows homeowners to request Surplus funds through court forms that implicitly waive the right to challenge the validity of the auction, the auction amount or invalid liens. *Instructions to Claim Surplus Monies Action (In Rem Foreclosures)*, Sullivan County Treasurer (n.d.), accessed Apr. 12, 2025, available at https://www.sullivanny.gov/sites/default/files/departments/treasurer/Claim%20Form%20Packet_3.pdf. If Sullivan acts affirmatively to give former homeowners actual notice then they might be able to claim the funds within three years. However, our clients wish to challenge the validity of the auction and the assumed market value. This may take longer than three years so there is a risk that the surplus proceeds will be returned to the Sullivan County fisk before the dispute is resolved.

C. Tax Districts collect millions of dollars annually from tax foreclosures, but less than 17% of former homeowners claim their compensation.

Tax-foreclosure surplus funds are largely uncollected by New York's former homeowners. Seven New York

counties provided tax-foreclosure surplus information for this brief: Nassau, Erie, Sullivan, Ulster, Franklin, Cayuga, and Chemung. 562 surpluses were reported, totaling $27,420,225.82. Nassau County distributed 3 of 34 surpluses, or 8.8%. Erie County distributed 26 of 159 surpluses, or 16.70%. Sullivan County distributed 8 of 82 surpluses, or 9.70%. These rates show that New York's prior homeowners, like those in Michigan, are mostly failing to secure their surplus funds.

In the few cases where prior homeowners obtain their funds, such funds often face financial erosion due to legal and administrative fees. Many prior homeowners retain lawyers who charge a percentage of the surplus in exchange for surplus-recovery services. An elderly LSLI client was billed a third of her $125,000 surplus in exchange for such services. In Erie County, a Referee received $1,300 from a surplus distribution regarding a surplus valued at $86,875.67. These instances show that most prior homeowners are not collecting their surplus funds, and those who are successful may incur substantial fees and costs.

New York faces a wild-west scenario where its counties create surplus-recovery frameworks that effectively deprive most prior homeowners of their property. Tax-foreclosure surplus recovery rates need not be as low as 8.8% in New York, nor 5% in Michigan. With appropriate guidance from this Court, every party will be able to receive its surplus funds with due process.

IV. Certain New York localities provide a model for achieving recovery of surplus equity: the mandate of *Tyler* can be readily achieved.

New York's Abandoned Property Laws, Eminent Domain Procedures Law, and Westchester's mortgage surplus procedures have a brightline for due process. This is not true in the tax surplus context, and it deprives former homeowners of the right to just compensation when they are facing eviction.

The former owner experienced the taking and so is entitled to due process for the right of equity redemption and the right to just compensation. Thus, the former homeowner should not have to file a motion in any court for the payment of these funds, the government should affirmatively offer payment to the former homeowner. In New York State, there are straight-forward, user-friendly procedures for individuals to claim property held by the government. *See* NY Abandoned Property Law ("NY APL.") (requiring surplus funds, bank accounts, etc. to be transferred to the New York Comptroller's Office of Unclaimed Funds after three years of inactivity); NY Eminent Domain Procedure Law ("NY EDPL") (requiring the government to seek out property owners and make an affirmative offer of just compensation before condemning property).

The New York Comptroller makes the abandoned property claims process simple. Anyone may visit the Comptroller's website and enter personal information to find out if funds are being held in their name. Claimants have an unlimited amount of time to make a claim by proving their identity, without costs or fees. Lienholders who may have had a claim to the abandoned funds may not claim the funds once they are placed with the Office

of Unclaimed Funds. The process is simple enough not to require an attorney or broker. In 2024, 85% of claims for previously unclaimed and abandoned property were paid through an online process; $1.5 million was paid to claimants each business day. *SFY 2023-24 Annual Report of the Office of Unclaimed Funds*, OFFICE OF THE NEW YORK STATE COMPTROLLER (n.d.), accessed Apr. 12, 2025, *available at* https://www.osc.ny.gov/files/unclaimed-funds/resources/pdf/annual-report-sfy-2023-24.pdf. Tax districts could employ similar procedures since they know before commencing the tax foreclosure whose property is being seized to satisfy the tax lien, and who is entitled to the surplus post foreclosure judgment, as just compensation. Instead of returning the surpluss to the tax jurisdiction after three years, the RPTL should require that the funds be deemed "abandoned" so that former homeowners may claim it.

Just compensation would become a reality for former homeowners if a similar brightline existed in the RPTL. Due process here would ideally follow three steps. First, a final judgment granting a tax foreclosure directs the conveyance of the deed from the homeowner to the local government to satisfy the tax lien. This transfer extinguishes ownership of the real estate and all liens on the property. See RPTL §§1136, 1197(10). Second, the surplus funds are directed to be deposited with the County Treasurer, for the sole benefit of the former homeowner. Third, the government has an affirmative duty to pay the former homeowner just compensation before eviction, i.e., the surplus. See *Horne v. Department of Agriculture*, 576 U.S. 350. Due process requires the municipality to simply and directly notify the former homeowner it is holding funds for her, to collect as just compensation. If the funds are not collected from the county treasurer within

three years, then they may be claimed through the NY Comptroller's Office at any time thereafter.

New York must establish a tax surplus procedure that: (1) is not time bound, (2); ensures just compensation can immediately be claimed by the former homeowner; and (3) is actually available before an eviction can be commenced against her and anytime thereafter.

CONCLUSION

This Court should grant Chelsea Koetter's petition for certiorari and reconcile *Nelson*'s dicta with *Tyler*'s findings so former homeowners in New York and Michigan may claim their just compensation with due process.

Respectfully submitted,

Michael Wigutow
Legal Services
of Long Island
Helen Keller Way,
5th Floor
Hempstead, NY 11550

Peter M. Soares
New York, NY

Tanya P. Dwyer
Counsel of Record
Richard Menaker
Daniel McEnroe
Legal Services of
the Hudson Valley
One Park Place, Suite 202
Peekskill, NY 10566
(914) 368-2489
tdwyer@lshv.org

Counsel for Amici Curiae

Dated: May 21, 2025