No. 24-858

IN THE

Supreme Court of the United States

KARI BEEMAN, LINDA HUGHES, STEPHANIE HULKABERTOIA, SHEDRICK MI, LLC, AND JOHNNY DORE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHNNY CHAPMAN,

Petitioners,

v.

MUSKEGON COUNTY TREASURER,

Respondent.

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

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

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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 *amici curiae* in support of Petitioners Kari Beeman, Linda Hughes, Stephanie Hulkabertoia, Shedrick MI, LLC, and Johnny Dore, as Personal Representative of The Estate of Johnny Chapman.[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. Through its Foreclosure Prevention Unit, LSHV protects over 618,000 New York homeowners by litigating property rights issues, negotiating settlements, and providing community education and outreach. 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 provides

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 April 14, 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 in thousands of civil cases each year and legal support to community advocates ensuring people with low incomes and disabilities have equal access to the civil justice system on Long Island. 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. LSLI is highly experienced in poverty law and, from their beginnings, have focused on cases concerning the survival needs of people with low incomes, involving shelter, food, healthcare, and family issues. The LSLI Foreclosure Prevention Unit provides representation to homeowners and thus has a distinct interest in the outcome of this case.

Peter M. Soares is a member of the New York State Bar and a *pro bono* volunteer with the Foreclosure Prevention Unit at LSHV. He has provided 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* when it engages in the taking of a taxpayer's home. Under this Court's decision in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), such a taking occurs when a local government's foreclosure of a tax lien results in surplus funds from the subsequent sale of the taxpayer's home. The foreclosing taxing authority has a duty to return that surplus to the taxpayer—failure to do so constitutes a failure to provide just compensation as required by the Fifth and Fourteenth Amendments. Since *Tyler* was decided, states and local governments that

had long been seizing the foreclosure surplus as a matter of course have issued updated procedures. Such procedures repeatedly channeled money to the government or other lienors rather than foreclosed homeowners, who are entitled to it under the Fifth Amendment.

This case's Petitioners appeal from Michigan procedures that continually deny just compensation. The undersigned *amici* from New York support that appeal because New York has witnessed similar tactics, yielding demonstrable harm to hundreds of foreclosed homeowners. The points we present are (1) the Fifth Amendment requires the exercise of *due process* to assure just compensation is given, and (2) that procedures compliant with local government's duty of due process already exist in other areas involving foreclosure and surplus funds. Michigan's current unconstitutional approach should be rejected. This Court should set clear due process standards allowing State legislatures and local governments to design simple procedures making the required disbursement of surplus funds to the foreclosed homeowner essentially self-executing.

This brief's authors are not-for-profit legal services organizations representing indigent, elderly, and infirm clients whose homes were once their only substantial property, now lost to them for inability to pay some of the highest real estate taxes in America. We first discuss whether the regulatory approaches New York's Legislature and local governments use to resolve a tax foreclosure surplus mirror Tyler's direction that surplus belongs to the foreclosed homeowner. We show current procedures, like the one at issue in Michigan, obstruct disbursing surplus as just compensation, and harm

indigent and elderly people, who are vulnerable to loss of their homes through tax foreclosure, in deeply disturbing ways.

Second, we show why the Fifth Amendment, as applied to the States through the Fourteenth Amendment, requires local governments to pay special attention to due process in executing the mandate of *Tyler*. History and tradition demonstrate due process goes hand-in-hand with just compensation when a governmental taking occurs, as Constitutional case law from early days of the Republic shows. Under the requirements of due process, we show designing a compliant procedure is simple and consistent with existing practice in other areas where local government handles surplus funds. With basic guidance from this Court, States and local governments in Michigan and New York, indeed throughout America, can achieve the result mandated by the just compensation clause of the Fifth Amendment.

ARGUMENT

I. Surplus claims procedures, like those in Michigan and New York, deny just compensation and are causing profound harm to unhoused homeowners.

In their petition for certiorari, Petitioners show the Michigan surplus claims procedure enacted in response to *Tyler* disproportionately affects vulnerable populations, including elderly and indigent individuals. Michigan's local governments consume all surplus proceeds when indigent property owners fail to navigate the state's claim procedures. The same unconstitutional regime exists in much of New York. After *Tyler*, the Legislature

amended the State's tax foreclosure statute to provide the foreclosed homeowner with a purported pathway to obtain the surplus. But the process is opaque and treacherous, allowing local governments to impose obstacles barring most homeowners from receiving just compensation.

A. New York's amended tax surplus statute

New York property tax foreclosures are handled by counties and cities, like those in Michigan. Article 11 of the New York State Real Property Tax Law (RPTL) provides the framework for enforcement of property tax foreclosures in New York. While many local jurisdictions use the RPTL provisions for enforcement of tax liens, some counties and cities opted out of such provisions and instead follow local laws to administer tax foreclosures. While Article 11 offers a framework for enforcing tax liens in RPTL jurisdictions, the mechanics of disposing of foreclosed property have been left to the discretion of local government.

While a public auction, similar to a mortgage foreclosure, is most common and presumed as the default by Article 11, local jurisdictions may instead opt to sell via a private sale, transfer to a local land bank (N-PCL 1608), or retain the property for its own use. In rem Jurisdictions throughout New York utilize all four methods for disposing of foreclosed properties and use a combination of two or more methods depending on local ordinances and the perceived condition of the foreclosed property. In rem Jurisdictions throughout New York utilize all four methods for disposing of foreclosed properties and use a combination of two or more methods depending on local ordinances and the perceived condition of the foreclosed property.

After *Tyler*, New York amended the RPTL ostensibly to align with the Court's mandate. The RPTL added three sections: §1135 permitting notice of claims for surplus, §1196 to determine the amount of a surplus, and §1197 to determine how such surplus is distributed. RPTL §1135 requires the notice of claim be filed before the report of sale, while RPTL §1197(4) allows residential homeowners up to three years to claim their surplus. However, if the homeowner fails to move to claim the surplus in this time, the surplus "shall be 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(5). This supposed "abandonment" of the surplus, which is a construct of the law, contradicts and circumvents existing procedures under New York law that, like Michigan and every other state, create unclaimed funds accounts in which the state holds money *indefinitely* from multiple sources, including deposits from court cases. N.Y. Aband. Prop. Law §600 et seq. New York has procedures to record and hold unclaimed funds, including those involving multiple potential claimants, without resulting in early forfeitures. Depositing tax foreclosure surpluses with the state comptroller imposes no material burdens on the state. In contrast, the amended tax foreclosure law imposes constraints on the foreclosed homeowner's ability to recover the surplus and repeatedly leads to forfeitures.

B. The time limitation imposed on in rem surplus claims is anomalous among surplus processes in New York

A property owner can lose all rights to equity redemption after an *in rem* tax foreclosure due to a

mere delay. This is contrary to the claims processes available after a mortgage foreclosure, condemnation or for abandoned property; these may be claimed at any time by a known owner.

Inverse condemnation takings claims are subject to a statute of limitations such as 3-years for New York or 6-years for Michigan but that is intended to restrict excessive delays in seeking relief in cases brought by the property owner, particularly where the exact amount of compensation may potentially be subject to dispute. Though an *in rem* foreclosure is also an inverse condemnation, the surplus funds are already available to be claimed and there is generally no dispute over the amount of the surplus. Thus, the local governments need only notice and make the funds available to former homeowners.

I*n rem* tax foreclosure is unlike any other foreclosure proceeding in New York. In a mortgage foreclosure, the court appoints a referee to conduct the sale of the property and issue a report of the sale, which identifies any surplus. Interested parties have until confirmation of the report of sale to submit a notice of claim. Notably, the former property owner does not submit a notice of claim as they are provided with notice of the report of sale and claim hearing. Once the sale is completed, any remaining surplus from the sale becomes the personal property of the former owner substituting their previous interest in the property. *Hawthorne v. Hawthorne*, 13 N.Y.2d 82 (favorably citing *Franklin Square Nat. Bank v. Schiller*, 202 Misc. 576. Further "[a] foreclosure suit cannot be said to have terminated until the surplus moneys are disposed of, in that suit. The court has not only the power, but it

is its duty, in that action, to provide for the equitable distribution or disposition of the surplus moneys" *Mut. Life Ins. Co. v. Bowen*, 1866 WL 5443 (N.Y. Gen. Term. 1866) Generally, the notice of claim requirement in a foreclosure is unnecessary for the owner of the equity of redemption (provided they had been a party to the foreclosure action) as they do not need to prove their entitlement to any surplus proceeds. *NYCTL 1997-1 Tr. v. Stell*, 184 A.D.3d 9, *Federal Home Loan Mtge. Corp. v. Grant*, 224 A.D.2d 656.

Article 11 proceedings do not require the tax district to publish any report of the sale proceeds or to confirm the sale RPTL 1197 (3). Thus, a property owner may never know when their properties were sold or even for how much until they make a motion to claim said surplus. By comparison "[t]he owner of the equity of redemption, or any party who has appeared in the action or any person who files a notice of claim or who has a recorded lien against the property shall be given notice by mail or in such other manner as the court shall direct, to attend any hearing on disposition of surplus money" N.Y. Real Prop. Acts. Law §1361 (McKinney). The nearest equivalent to the RPTL's surplus provision in the RPAPL is the state's provision for disbursement to unknown heirs. Under RPAPL sections 991, 992 and 1391, the court may set aside a portion of the surplus from a foreclosure or partition sale for any unknown heirs of a deceased record owner. The unknown heirs will then be provided 25 years to claim their share of the surplus in a special proceeding. If an unknown heir fails to appear during the 25-year period, then the remainder of the surplus is vested with all known heirs. Unlike Article 11, this process still ensures the remaining known heirs are fully compensated.

C. Examples of local surplus procedures

Many local governments implemented statutory amendments, creating barriers to the foreclosed homeowner's ability to recover surplus by retaining local procedures. 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, 315 (1987). In other 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 exemplify the current takings regime in New York's local governments.

In Cattaragus County, the county places the burden on former homeowners to serve notice of surplus proceedings on all former lienholders, regardless of if the lien is valid, prohibiting them from claiming their surplus until it is done. 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 Westchester only requires that homeowners submit a simple proposed order and affidavit to request their surplus. The court then makes a decision on how much of the surplus they are entitled on notice to all appearing parties. The former homeowner may receive

their check within a few days of submission if the surplus proceedings are uncontested.

D. 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

Homeownership, a core component of the American dream, confers economic benefits on homeowners, allowing them to accumulate wealth by accessing credit, building equity and reducing housing costs. New York's fast-paced *in-rem* foreclosure scheme deprives homeowners of these benefits without due process.

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

Our state requires municipalities to commence judicial foreclosures for unpaid fees. However, New York has 1300 counties, cities and villages that have their own tax enforcement procedures. That's 1300 foreclosure methods, 1300 record keepers, 1300 valuation methods, and 1300 actors continually depriving homeowners of their constitutional rights to due process, equal protection. Most tax districts north of New York City have complex claims procedures hindering the just compensation former owners are due.

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 and is now in hospice after becoming homeless. The hospice facility conducted a title search for Medicaid benefits and determined that she still owned the home, and all the equity in it. because Newburgh has 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 has not sold her house as of April 2025. Her compensation will be delayed until Newburgh sells the home. Our client was entitled to compensation or injunctive relief at the time the deed was transferred to Newburgh. But the state and federal courts determined that she could have neither immediate compensation, nor a stay of eviction. She is in hospice. Delayed compensation has caused immediate, predictable and irreparable here.

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 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 reclaim the proceeds 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 serve all former interested parties with a notice of claim. The court insisted the surplus be set aside for a judgement creditor failed to appear in court and defaulted on the foreclosure and the notice of claim. The extinguished lien's validity was not examined. He was instructed to find his creditors and make them take the equity in his home, *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.

4. Client Story 5—Tax-Lien Surplus Claims in Long Island

Our clients who face tax foreclosures are overwhelmingly seniors. Many of these clients are thrust into housing instability, even homelessness.

One LSLI client's home was sold pursuant to a tax foreclosure judgment in Nassau County. The sale produced a $370,381.19 surplus, deposited with the County Treasurer. The client, struggling emotionally, self-evicted soon thereafter, and wound up in an emergency housing placement through the local Department of Social Services. While at this emergency housing, a private

attorney convinced our client to have him make a motion to request the surplus funds be released to him. The attorney had the senior sign a retainer agreement giving him one-third of the surplus funds, approximately $125,000. The motion was granted within one week, directing the County Treasurer to release the funds to the attorney, whose office is in Westchester County, a significant distance from client's former home and her emergency housing. This senior was referred to us by a non-profit that provides case management services for vulnerable seniors after the above transpired. Elder abuse is not uncommon, especially where the senior's property has a substantial value. There should have been no reason for this senior to ask the court to direct the County Treasurer to release funds already established to belong to our client.

It is important that the state legislature set standards making it easy for former homeowners to claim their proceeds. Unlike in rem tax jurisdictions, these tax lien jurisdictions do not give themselves an opportunity to take back the surplus. If the client had failed to claim the surplus, then the county treasurer would have held the surplus for three years before sending to the New York Comptroller to hold until she claimed it. The Long Island courts would not have given surplus proceeds to former lien holders without validating their claims, nor to the tax district for its coffers.

5. Client Stories 7 and 8—Mortgage and Tax Lien Surplus Proceedings in Westchester County Meet Due Process Standards

Westchester County uses its Home Rule authority to make mortgage surplus claims proceedings fast and

simple. LSHV recently assisted two homeowners with such claims. Both were fast and simple compared to the *in rem* tax surplus procedures that take place in the same court.

The first homeowner claimed she did not receive notice of the tax lien foreclosure proceedings in Westchester Supreme Court. She received statutory notice of her surplus funds before she could be evicted by the purchaser. She challenged personal jurisdiction instead of immediately claiming the funds, but was evicted before her personal jurisdiction defense could be heard on appeal. She became homeless and LSHV assisted her with relocation fees, but she needed the $70,000 surplus funds to secure housing. The purchaser filed an illicit action for $70,000 in holdover costs after evicting her. The purchaser attempted to claim the surplus as a judgment creditor, but was ultimately unsuccessful. The client received a certification of surplus amounts deposited with the court and obtained the surplus within a week of filing an order to show cause. After mortgage foreclosure, the claim process was fast and easy for the former property owner—the owner of the equity redemption—while the creditor with the frivolous claims had many hoops to jump through to prove its claim to the surplus. Tax surplus proceedings should do the same.

The second client did not expect the mortgage foreclosure auction of her home to result in surplus proceeds. She received statutory notice of the surplus before an eviction proceeding was possible, and collected the funds immediately by filing a simple order to show cause in the foreclosure proceeding. Her order to show cause was accompanied by two forms of identification

proving she was the owner of equity redemption, and a certificate of funds held by the court. She received her funds the following day and relocated before she was evicted.

New York's *in rem* foreclosure surplus claims proceedings require simple due process for just compensation and must protect prior homeowners from grave and irreparable harm under the equal protection clause.

II. Just compensation and due process are indispensable elements of a compliant takings regime under the Fifth Amendment.

A. *Tyler*

Two years ago, this Court, in *Tyler v. Hennepin County, Minnesota, et al.*, held that a municipality cannot retain surplus funds from a tax foreclosure commenced to satisfy unpaid property taxes. To do so would effect a "'classic taking in which the government directly appropriates private property for its own use.' *Tahoe-Sierra Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302,304 . . . " *Tyler*, 598 U.S. 631 (III, A). "[A] taxpayer is entitled to the surplus in excess of the debt owed." *Id.* (III.C). "A taxpayer who loses her $40,000 house to the State to fulfill a $15,000 tax debt has made a far greater contribution to the public fisc than she owed." *Id.* (IV, end of decision). "[A] property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it." *Knick v. Township of Scott, Pennsylvania*, 588 U.S. 180, 189 (2019). The government may not "avoid

the categorical duty to pay just compensation for a physical taking of property by reserving to the property owner a contingent interest in a portion of the value of the property, set at the government's discretion." *Horne v. Department of Agriculture*, 576 U.S. 350, 362-63 (2015). A takings violates the Fifth Amendment where there is no just compensation. *Id.* at 367.

B. Due Process

"Procedural due process imposes constraints on governmental decisions which deprive individuals of 'liberty' or 'property' interests within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment." *Matthews v. Eldridge*, 424 U.S. 319, 332 (1976). "The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.' [citations omitted]." *Id* at 333. It is not enough that the government establishes a process; that process must be adequate to ensure that the individual's property interests are protected. *See Goldberg v. Kelly*, 397 U.S. 254, 261 (1970). "The extent to which procedural due process must be afforded the recipient is influenced by the extent to which he may be 'condemned to suffer grievous loss.' [citation omitted]. *Id.*, 397 U.S. at 262-63. (In *Goldberg*, the court ruled that public assistance beneficiaries are entitled to a pre-termination hearing). The property rights at issue in *Goldberg* were public assistance benefits necessary to meet the basic needs including food, housing, health and transportation, for low-income individuals and families. Our clients are low-income and moderate-income individuals, many seniors, with incomes well below the area median income, often near the federal poverty level. These former homeowners,

who have had their homes taken from them and who have often been thrust into an unstable housing situation, including homelessness, "'have a legitimate claim of entitlement to [the surplus].' [citation omitted]." *Town of Castle Rock, Colorado v. Gonzalez*, 545 U.S. 748, 756 (2005). This right to the surplus is not subject to the discretion of government officials. *See*, *id.* The surplus is a core private right. *See Axon Enterprise, Inc. v. Federal Trade Commission*, 598 U.S. 175, 217, fn. 3 (concurring opinion from Justice Thomas).

Due process is flexible, adapted to the demands of the particular situation. *See Matthews v. Eldridge*, *supra*, 424 U.S. at 334. Due process requires consideration of three factors: "First, the private interest that will be affected by the official action; second, the risk of erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the function and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. [citation omitted]." *Id* at 335. If the municipalities' procedure for justly compensating the homeowner whose property was seized in a tax foreclosure, makes it less than likely the homeowner will be justly compensated, she is deprived of due process to her property.

C. History and Tradition

The history and tradition of the Takings Clause reinforce the link between the constitutional requirement of just compensation for governmental seizure of private property and the right to due process in administration of such compensation. This Court has stressed the

significance of "a long unbroken line" of historical precedent in illuminating the Founders' intent. *New York State Rifle & Pistol Association, Inc. v. Bruen*, 597 U.S. 1. Here, that line extends unbroken from medieval English legislation to the adoption of the Fifth Amendment. Regarding compensation, the *Tyler* decision notes the continuity from Chapter 39 of Magna Carta (1215)[2] through the "Overplus" provision of 4 W&M, c. 1, §12 (1692) and Blackstone's observation on common law precedent in his *Commentaries* (1771), all supporting the point that the surplus from sale of a debtor's property to satisfy a debt to the government must be returned to the debtor.[3] Regarding due process, the path is similarly continuous and direct, and starts with the same provision of Magna Carta, Chapter 39, that prohibits an unlawful taking—"no free man shall be seized or imprisoned, or stripped of his rights or possessions . . . *except by the lawful judgment of his equals or by the law of the land*" (emphasis added). Statutory reiterations in parliamentary legislation introduced the expression "due process of law' as the shorthand for the original formulation, *e.g.*, 28 Edw.3, c. 3, (1354) (entitled "Liberty of the Subject"), and it continued unbroken as a fundamental principle until codified in the Fifth Amendment along with the Takings Clause.

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2. The organization of the statute into numbered chapters, a modern editorial addition, did not appear in the version of 1215.

3. 598 U.S. at 639. Moreover, the English Bill of Rights (1689), 1 W&M, sess. 2, c. 2, the model for our American Bill of Rights, complains of government impressment of private property for the quartering of soldiers and, as a separate but analytically related matter, prohibits "excessive fines," provisions that modern commentators point to as additional precedent for the Takings Clause. *See*, *e.g.*, A. Amar, *The Bill of Rights* 80 (1998); J. Rubenfeld, *Usings*, 102 Yale L.J. 1077, 1122-23 (1993).

The Fifth Amendment's Due Process and Takings clauses have closely intertwined since the ratification of the Bill of Rights. After ratification of the 14th Amendment, this court had consistently found that in determining compensation for a taking, the government must provide the injured property owner with sufficient due process. In incorporating the takings clause against the states the court in *Chicago, B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226 held that "the legislature may prescribe a form of procedure to be observed in the taking of private property for public use, but it is not due process of law if provision be not made for compensation," and that "the mere form of the proceeding instituted against the owner, even if he be admitted to defend, cannot convert the process used into due process of law, if the necessary result be to deprive him of his property without compensation." As the court held in *United States v. Jones*, 109 U.S. 513, 519 "the proceeding for the ascertainment of the value of the property and consequent compensation to be made, is merely an inquisition to establish a particular fact as a preliminary to the actual taking . . . " *see also Backus v. Fort Street Union Depot Co., supra*, 18 Sup. Ct. 445. *Bragg v. Weaver*, 251 U.S. 57; *Hagar v. Reclamation Dist. No. 108*, 111 U.S. 701. *Marchant v. Pennsylvania R. Co.*, 153 U.S. 380. While early Supreme Court cases were differential towards the state regarding the actual due process required for just compensation, a consistent theme showed the state must afford the disposed property owner the opportunity to request compensation and be heard on the amount owed. More modern cases such as *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 and *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180 have consistently noted the close relationship between due process and takings and found the state cannot place barriers to just

compensation. This court has held that there is a "self-executing obligation to actually pay just compensation under the 5th Amendment." *First English Evangelical*, 482 U.S. 304, 315.

D. NY's Statutory Procedure for Justly Compensating the Former Homeowner

New York's RPTL §§1136, 1196, and 1197 make no provision for how former homeowners receive notice of their right to compensation. While the RPTL provides homeowners be given notice of the actual foreclosure proceeding (via mail and publication), this only notices the loss of title to the property (effective at time of default judgment). Afterwards, the former homeowner is not given notice of either the sale of the property or the surplus. At least one New York court (Matter of Seelbach, 85 Misc. 3d 497) held that former property owners are not entitled to any notice beyond that of the original notice of foreclosure. Instead, the court asserts mere notice of pendency of the action suffices for the entirety of the tax foreclosure proceeding, including sale and surplus proceedings. Tax foreclosure properties may be disposed of in multiple ways, none of which are likely to provide the homeowner with sufficient information to request their surplus. At best a former homeowner may learn their property has been transferred to a third party, and a surplus may theoretically be available, when the new owner begins to evict them. Worse, a homeowner who wishes to claim a surplus must notice all interested parties, meaning the homeowner, who may acting pro se and be elderly or severely disabled, has a greater obligation to inform interested parties of a surplus than the local government.

III. There is a bright line for due process when a surplus exists.

New York's Abandoned Property Laws and Westchester's mortgage surplus procedures have a bright line for due process when funds are available for a known owner. This is not true in the tax surplus context, and it deprives former homeowners of the ability to get just compensation and relocate before they are evicted.

Just compensation would become a reality after an *in rem* tax foreclosure 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*, *supra*, at 362-63. Due process requires the municipality to simply and directly notify the former homeowner it is holding funds for her, to collect as just compensation.

The former owner experienced the taking and 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. In New York State, there are straight-forward, user-friendly procedures for individuals

to claim their property. *See* Abandoned Property Law; *see also* RPAPL §1361. A few local municipalities, such as Westchester County, have also established easier procedures to ensure former homeowners are given their surplus proceeds.

The New York Comptroller makes the abandoned property claims process simple. 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.[4] 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. 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.

4. https://www.osc.ny.gov/files/unclaimed-funds/resources/pdf/annual-report-sfy-2023-24.pdf.

CONCLUSION

This Court should grant the Beeman petition for certiorari so that former homeowners in New York and Michigan may claim their just compensation after the taking of their homes.

Respectfully submitted,

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