No. 25–1098

In the Supreme Court of the United States

RYAN O'DONNELL, ET AL.,
Petitioners,

v.

CITY OF CHICAGO, ILLINOIS, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

Lenoard A. Zolna
Counsel of Record
60 Hunt Trail
Barrington, IL 60010
(612) 419-3741
len@zolna.com

Jacie C. Zolna
jzolna@zolnaswetland.com
Benjamin R. Swetland
bswetland@zolnaswetland.com
ZOLNA SWETLAND, LLC
30 N. LaSalle St., Ste 2300
Chicago, IL 60602
(312) 724-8474

Attorneys for Petitioners

JULY MMXXVI

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I. *Hadley* v. *City of South Bend* Does Not Support Chicago's Position That It Can Take Property Indefinitely Under Its Police Power

Respondents' citation to *Hadley* v. *City of South Bend*, 154 F. 4th 549 (CA7 2025) is unavailing. *Hadley* does not stand for the proposition that the government has unlimited authority to take property under the police power. In fact, it demonstrates just the opposite. *Hadley* simply held that no taking occurs when property is damaged while executing a lawful search warrant. *Id.*, at 552–53 (executing warrant to search house for murder suspect). *Hadley* did not say that once the purpose of that warrant is fulfilled—*i. e.*, once it was determined that the suspect was not in the house—officers could continue to damage the house indefinitely under the guise of the police power.

In other words, the valid search warrant in *Hadley* limited the extent of the officers' police power interest. So long as they acted within it, no taking occurred. But here, Chicago and the Seventh Circuit went much further. Chicago's punitive police power interest was defined by the civil judgments that each Petitioners' parking fines were reduced to. Had Chicago only confiscated property to satisfy those fines, no taking would have occurred. But Chicago did not stop there. It confiscated vehicles worth far more than the civil judgments, failed to refund the surplus and, worse, did not even apply the sales proceeds to the underlying judgments.

The Founders surely did not intend for such a result under the Fifth Amendment. There must be limits on exceptions to the Constitution. The police power exception to the takings clause is no different. In *Hadley*, the reasonable limit was the lawful search warrant. Here, it was the civil judgment entered against each Petitioner. Seizing and selling a vehicle to satisfy those judgments was self-evidently sufficient for Petitioners to "internalize" the error of their ways. Chicago has no police power interest in going so far *beyond* those judgments, certainly not one so strong as to push aside the constitutional guarantee of the Takings Clause.

II. Chicago's Uncompensated Vehicle Confiscations are Unconstitutional In Every Circumstance

Since the founding, American law has recognized that, when a forced sale is conducted to satisfy an unpaid fine, the owner has a right to (1) the application of the sales proceeds to extinguish the fine, and (2) a refund of the surplus remaining. See Pet. 13–15 (citing historical cases and statutes).

Here, *every time* Chicago conducts a forced sale of a vehicle under its ordinance, it keeps all of the proceeds. It *never* applies the proceeds to extinguish the underlying debt. And it *never* refunds the surplus. There is simply "no set of circumstances" in which Chicago's ordinance respects these traditional property rights. See *United States* v. *Salerno*, 481 U. S. 739, 745 (1987). So, Petitioners are plainly correct to bring a facial challenge against Section 9–100–120(f) of the Municipal Code and this case presents a fine vehicle for review.

Chicago scrambles to generate theoretical scenarios that might comply with the Takings clause, but none measure up. It argues that because Section 9–100–120(f) states that a vehicle "*may*" be sold, it is conceivable Chicago might instead "indefinitely impound affected vehicles." Br. in Opp. 12 (emphasis in original). That is not true. The Municipal Code requires Chicago to either sell the vehicle at scrap or at public auction or add it to Chicago's fleet for its own use. See Municipal Code of Chicago (MCC) § 9–92–100. In each case, Chicago permanently dispossesses the owner of the vehicle without compensation. Even if the City "indefinitely impounded" a vehicle (it does not) that too would amount to a permanent dispossession that is never used to reduce the underlying judgment or otherwise provide any compensation.

Chicago also argues that some vehicles are in such poor condition that there is no surplus value after the vehicle sale. See Br. in Opp. 14. Even still, Chicago *always* fails to apply even negligible sales proceeds to extinguish the underlying judgment. Chicago then asserts that in some situations, the value of the vehicle is below its cost to "immobilize and store the vehicles." But, again, Chicago *never* applies even meager sales proceeds to extinguish Petitioners' immobilization or storage fees. See MCC § 9–100–120(g) ($100 immobilization fee); § 9–92–080(b) ($50 daily storage fee). These fees are included in the civil judgment against Petitioners. See MCC § 2–14–132(b) and (c). So, the right to extinguishment recognized since the founding is denied in every case. A facial challenge remains entirely appropriate here.

By the end, Chicago is reduced to the picayune argument that subsection (b) of Chicago's ordinance only authorizes "booting" of vehicles that, for one reason or another, may not result in the vehicle being confiscated. See Br. in Opp. 12. For this reason, Chicago argues, the whole of §9–100–120 must be saved, including subsection (f), which is the section pertaining to disposal and sale that Petitioners challenge here. Suffice it to say, there is no authority for preserving a facially unconstitutional subsection of a law based on the mere existence of other, unrelated subsections of the law. See *City of Los Angeles, Calif.* v. *Patel*, 576 U. S. 409 (2015) (finding single provision of Los Angeles Municipal Code facially invalid without disturbing the rest of the ordinance); *Am. Fed'n of State, Cnty. & Mun. Emps. Council 79* v. *Scott*, 717 F. 3d 851, 865 (CA11 2013) ("If a statute has two distinct provisions, and a court strikes down one as unconstitutional…., we would not say that the relief was as-applied simply because a part of the statute remains. Rather, we would say that, as to the provision the court struck down, the plaintiff obtained facial relief.").

Finally, Chicago wrongly asserts that a facial challenge may only succeed where the "mere enactment" of §9–100–120(f) causes a taking, even before a vehicle is confiscated. See Br. in Opp. 12. The "mere enactment" language comes from regulatory takings cases that challenge newly enacted regulations, before injury occurs. See, *e. g*, *Keystone Bituminous Coal Ass'n* v. *DeBenedictis*, 480 U. S. 470 (1987) (no allegation of injury in act to enjoin new regulations). It is absurd to think that citizens cannot mount a facial challenge against a law that, as here, uniformly deprives every last one of them of a property right recognized as far back as the founding.

Chicago cannot identify any circumstances in which its ordinance can be constitutionally applied. It always robs vehicle owners, at a minimum, of their right to extinguishment, even partial, of their underlying judgments. So, this case is not just an adequate vehicle: it is a real, live injustice that can only be remedied by this Court.

III. The Decision Below Conflicts With This Court's Decisions in *Tyler* and *Bennis*

Chicago's efforts to reconcile the Seventh Circuit's decision below with *Tyler* and *Bennis* are unpersuasive. Chicago asserts that *Tyler* is inapposite because it involved property taxes, not the police power. But, as previously noted, the historical precedent relied on in *Tyler* did not involve property taxes, but rather debts to the Crown and the principle that the government may seize only enough chattels to satisfy the debt. See Pet. 15–16. This is consistent with the American historical precedent that provides, when seizing chattels to satisfy a fine under its police power, a government may never "forfeit[] or confiscate[] the proceeds of the sale of the property beyond the payment of the legal charges thereon." *Wilcox* v. *Hemming*, 15 N. W. 435, 440 (Wis. 1883); see also Pet. 13–15 (collecting cases).

Chicago discounts these cases because they "merely discuss state statutes that happen to provide for the return of the surplus from the sale of property[.]" Br. in Opp. 20, n. 8. But this historical practice is very much relevant to the takings analysis here. See *Tyler* v. *Hennepin Cnty., Minnesota*, 598 U. S. 631, 638 (2023) ("The Takings Clause does not itself define property. *** So we … look to 'traditional property law principles,' plus historical practice and this Court's precedents."); *Pung* v. *Isabella Cnty., Michigan*, 609

U. S. ___ (2026) (slip op., at 4) ("A long legal tradition dating back to the Founding embodies this principle.") (citing historical federal and state laws in Takings analysis). Simply put, a "long legal tradition dating back to the Founding" recognizes a limitation on the confiscation of property for nonpayment of fines and penalties assessed pursuant to the police power.

Lastly, relying on *Bennis*, Chicago asserts that its ordinance "is the kind of law enforcement forfeiture scheme that fits comfortably within the country's punitive jurisprudence." Br. in Opp. 22. But the confiscation of vehicles here bears no resemblance to forfeiture employed in *Bennis* and other traditional forfeiture cases. In *Bennis*, only the vehicle used in the commission of the crime was subject to forfeiture, not every single vehicle the person ever owns in perpetuity. Here, Chicago can and does seize vehicles that were never used in any of the infractions. The result puts people with unpaid parking tickets in a worse position than convicted drug traffickers, whose vehicles may only be confiscated when they are "used" or "intended for use" in drug trafficking. 21 U. S. C. §811(a)(4).

Unlike *Bennis*, Chicago does not permanently confiscate vehicles because they were used in the commission of a crime. To the contrary, Chicago confiscates vehicles only for non-payment, on a temporary and conditional basis, and will actually return the vehicle to its owner upon payment of the fines and penalties. Chicago fails to cite any decision from this Court that supports the conditional, reversible "forfeiture" of property, for punitive reasons, in the face of a takings claim. There is none. From *Bennis*, through *Calero-Toledo*, to the federal forfeiture statutes, constitutional punitive forfeitures in this country are exclusively permanent.

In short, Chicago's expansive view of its police power finds no support in American jurisprudence. To the contrary, historical practice and the common law going back centuries recognized that when chattel property was seized and sold to satisfy a fine or penalty, the owner had a right to the application of the sales proceeds to extinguish the fine itself, and the surplus remaining after sale. See Pet. 13–17. And Illinois law has long recognized that when enforcing a judgment or lien, the creditor can only seize assets to satisfy the amount owed and any surplus must be returned to the debtor. See 735 ILCS 5/12–169 (judgments); 810 ILCS 5/9–615(d)(1) (liens).

* * *

"The government exists to protect property; property does not exist to support the government." *Pung*, 609 U. S. ___ (2026) (slip op., at 14) (THOMAS, J., concurring). That is not the case in the City of Chicago. Chicago is literally bankrupting its own citizens by taking property worth vastly more than the debt that is owed and keeping everything to support its own operations. Petitioners respectfully urge the Court to grant the petition to reach this important issue that affects tens of thousands of motorists in Chicago and other cities.

CONCLUSION

This Court should grant certiorari.

Respectfully submitted.

Lenoard A. Zolna	Jacie C. Zolna
Counsel of Record	jzolna@zolnaswetland.com
60 Hunt Trail	Benjamin R. Swetland
Barrington, IL 60010	bswetland@zolnaswetland.com
(612) 419-3741	ZOLNA SWETLAND, LLC
len@zolna.com	30 N. LaSalle St., Ste 2300
	Chicago, IL 60602
	(312) 724-8474
JULY 2026	*Attorneys for Petitioners*