No. 25-203

In the Supreme Court of the United States

JOHANNA MCGEE, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JACQUELINE MCGEE, ET AL.,
Petitioners,

v.

ALGER COUNTY TREASURER, ET AL.,
Respondents.

On Petition For A Writ Of Certiorari To The Michigan Court Of Appeals

BRIEF OF *AMICUS CURIAE* LEGAL SERVICES OF NEW JERSEY IN SUPPORT OF PETITIONERS

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Identity and Interest of *Amicus Curiae*

Pursuant to Supreme Court Rule 37, Legal Services of New Jersey respectfully submits this brief *amicus curiae* in support of petitioner Joanna McGee, as Personal Representative of the Estate of Jacqueline McGee.[1]

Legal Services of New Jersey ("LSNJ") is a non-profit corporation that supports and coordinates New Jersey's statewide Legal Services system, consisting of a network of five regional Legal Services programs in addition to LSNJ ("Legal Services" collectively). The Legal Services system is New Jersey's primary provider of free legal assistance to low-income people in civil matters.

LSNJ frequently participates as *amicus curiae* in New Jersey cases involving issues of major significance to the State's low-income population. In so doing, it presents perspectives of low-income people as a group rather than the views or interests of the individual litigants. *See, e.g.*, *257-261 20th Ave., Realty, LLC v. Roberto*, 259 N.J. 417 (2025); *Bank of Am., N.A. v. Maher*, 260 N.J. 225, 332 A.3d 710 (Mem) (2025); *257-261 20th Ave. Realty, LLC v. Roberto*, 477 N.J. Super. 339 (App. Div. 2023, aff'd as modified, 259

[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 October 6, 2025. Pursuant to Rule 37.6, *amicus curiae* affirms 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 *amicus curiae* made a monetary contribution to its preparation or submission.

N.J. 417 (2025)); and *Invs. Bank v. Torres*, 243 N.J. 25 (2020).

Since 2002, LSNJ has provided statewide representation in homeowner foreclosure defense cases through a specialized project concentrating on the full range of foreclosure-related issues. Through its Foreclosure Defense Project, LSNJ is New Jersey's largest provider of free legal defense for families facing foreclosure. The LSNJ hotline, website, and outreach have provided legal assistance in more than 10,500 foreclosure cases during the past 17 years. LSNJ has assisted even more residents facing foreclosure through educational materials accessed on our website.

Summary of Argument

In *Tyler v. Hennepin County*, 598 U.S. 631 (2023), this Court made clear that when the government takes private property to satisfy tax debt, the Fifth and Fourteenth Amendments require payment to the property owner for any surplus value exceeding the debt. Notwithstanding *Tyler*, states like Michigan and New Jersey enforce surplus equity claim procedures that do not guarantee payment of surplus value and thus continue denying property owners the just compensation promised by the Constitution.

Petitioner argues that Michigan's surplus equity claim procedure violates the Takings and Due Process Clauses, and asks this Court to find preclusive claims processes like Michigan's

unconstitutional and overrule *Nelson v. City of New York*, 352 U.S. 103 (1956) as the basis for such procedures. New Jersey's claim procedure[2] requires property owners to file a written demand for sheriff's sale before final judgment enters in a judicial action or forfeit their equity. LSNJ argues that, like Michigan, New Jersey's claim procedure is unconstitutional for similar reasons and asks this Court to grant the petition in this matter, find preclusive claims processes unconstitutional, and overrule *Nelson*. LSNJ represents and advocates for indigent, elderly, and vulnerable populations including property owners who are harmed by unconstitutional claim procedures that fail to guarantee fundamental rights in the Takings and Due Process Clauses.

The brief first identifies similarities in New Jersey's *Nelson*-styled claims procedure that, like Michigan, violate the Takings Clause both in not guaranteeing just compensation and causing actual damage to dispossessed property owners. Second, the brief discusses Due Process violations in New Jersey's procedure, both in adhering to and going further than *Nelson* in limiting property owner rights to a fair procedure for recovery of surplus equity.

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[2] New Jersey's claim procedure differs from Michigan's, but is analogous in that both require a written demand prior to the existence of surplus funds. N.J.S.A. 54:5-87.

Argument

I. Surplus equity claims procedures that deny just compensation and cause actual damage to dispossessed owners, like those in MI and NJ, violate the Takings Clause.

Like Michigan, and in direct response although substantively contrary to this Court's ruling in *Tyler*, New Jersey amended its Tax Sale Law ("TSL") to provide property owners with a surplus equity claim process. However, also like Michigan, New Jersey property owners continue losing just compensation because the TSL remains unconstitutional and defective; it seeks conformity with claim procedures modeled after dicta in *Nelson* instead of with mandates in the federal and state Takings Clauses. While dispossessed homeowners are still being evicted from their New Jersey homes without even a dollar paid to them for taken surplus equity, government and state actors reap the windfall benefits of those homeowners' inability to navigate the unconstitutional procedural barriers enacted by the legislature.

In just six recent tax foreclosures impacting Legal Services clients,[3] a combined total of more than $2.1M surplus equity - exceeding the combined property tax debt of less than $175,000 - was at risk of being taken without just compensation **after** NJ amended its law post-*Tyler* to mirror Michigan's procedure. At least one client was rendered homeless and financially destitute, and suffered actual

[3] *See* FN 11, 20, 26, 27, 29, 30.

damages, as a direct result of New Jersey's unconstitutional procedure.

A. NJ's claim procedure parallels Michigan's by permitting and authorizing uncompensated confiscation of surplus equity in violation of the Takings Clause

New Jersey's TSL resembles Michigan's procedure in several problematic ways by permitting – and, in some cases, directly authorizing – uncompensated confiscation of surplus equity. Pre-*Tyler*, New Jersey recognized no statutory right to just compensation for property owners; upon entry of final judgment, lienholders obtained full property title and surplus equity regardless of the tax arrears amount. On July 10, 2024, New Jersey amended its TSL for purported compliance with *Tyler* by creating a claim procedure.[4]

When a New Jersey property owner defaults on property tax payments, the local government sells the certificate at a tax sale to enforce the lien.[5] N.J.S.A. 54:5-19. If an investor purchases the lien, then the investor receives a certificate of sale that is "acknowledged [by the tax officer] as a conveyance of land" (N.J.S.A. 54:5-46) and is a state actor.[6] If no

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[4] "After we granted certification, the Legislature amended the state's tax foreclosure laws in response to *Tyler* []. Among other changes, property owners facing tax foreclosure can now take steps to preserve their equity in property being foreclosed." *Roberto*, 259 N.J. at 434.

[5] "The purchase of a tax sale certificate does not convey the property to the buyer." *Id.* at 433 (internal citation omitted).

[6] "[B]ecause private lienholders act jointly with local governments under the TSL to perform a traditional public

state actor purchases the lien, the government obtains the "same remedies and rights as other purchasers, including the right to bar or foreclose the right of redemption." N.J.S.A. 54:5-34.

If the property owner fails to redeem, then the government bars the owner's right of redemption by obtaining a final judgment of foreclosure. Upon entry of final judgment barring the right of redemption, the government or state actor acquires the full value of the property free and clear of all liens and without just compensation paid to the owner for equity exceeding the tax debt. N.J.S.A. 54:5-87.

Even under *Nelson*-styled amendments, New Jersey's TSL still fails to guarantee just compensation. First, like required under Michigan's procedure, the New Jersey property owner must act before the taking to preserve their inchoate, future right to collect any just compensation. If the owner does not file a claim in court prior to entry of final judgment, i.e. prior to the taking, then their equity is forfeit without payment of just compensation.[7] N.J.S.A. 54:5-87. The demand requirement is arguably voidable as "its repugnancy to the constitution is clear beyond reasonable doubt" (*Gangemi v. Berry*, 25 N.J. 1, 10 (1957)) and thus violates the Takings and Due Process Clauses.

Second, failure to timely demand the sheriff's sale in court results in the owner having no claim

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function -- the collection of taxes -- they may be considered state actors." *Id.* at 427–28.

[7] LSNJ does not concede that sheriff sale processes provide adequate or actual just compensation as required by the Takings Clause, but that issue is not before the Court.

against the government or state actor for taken surplus equity. N.J.S.A. 54:5-87b. Like Michigan's procedure, if a New Jersey property owner either misses the filing deadline or files the demand incorrectly,[8] the TSL cuts off the owner's right to any future claim or constitutional challenge. Meanwhile the government or state actor retains the windfall equity in violation of the Takings Clause.

Third, owners of properties that the lienholder alleges are vacant, abandoned or deteriorated – allegations often supported with questionable and self-serving affidavits from the lienholder – are categorically excluded from the claim right, regardless of the existence of surplus equity. N.J.S.A. 54:5-87a. (excluding properties alleged as statutorily "abandoned" by the lienholder, under N.J.S.A. 54:5-86b., from the right to demand a sheriff's sale). Like Michigan's procedure again, New Jersey's claim procedure statutorily cuts off this class of owners' right to any future claim or constitutional challenge while the government retains the windfall taken equity. Further, this procedural exclusion directly authorizes uncompensated confiscation of surplus equity in violation of the Takings Clause.

Fourth, thousands of dollars in additional fees exceeding the bona fide arrears and lawful statutory interest are added to the redemption sum, without consent of the property owner nor with any evaluation of the underlying redemption sum. N.J.S.A. 54:5-98. These added fees exceeding the valid redemption sum are not only non-consensual and non-contractual, but they also violate federal and state public policy for fee-

[8] *See* FN 27 and 28, infra.

shifting statutes.[9] The fees are more than nominal as they add thousands of dollars to the redemption amount, starting with an automatic $2,500 attorney's fee when the lienholder files the foreclosure action; more attorney's fees if the property owner files bankruptcy or litigates the action even in good faith; and all court filing fees, service fees, title search fees, and several others. Such fees can make redemption impossible for a property owner. If the property owner is unable to redeem but capable of demanding a sheriff's sale, they still lose rightful surplus equity to the lienholder in the amount of the additional fees. Like Michigan's procedure, New Jersey's TSL awards claimants less than they are constitutionally due and thus fails to render just compensation as required by the Takings Clause.

Fifth, if the property owner requests a sheriff's sale, the TSL states that amount derived from the

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[9] *City of Riverside v. Rivera*, 477 U.S. 561, 578, 581 (1986) ("[t]he function of an award of attorney's fees is to encourage the bringing of meritorious civil rights claims which might otherwise be abandoned because of the financial imperatives surrounding the hiring of competent counsel," (internal citation omitted) . . . "Congress intended that statutory fee awards be "adequate to attract competent counsel, but ... not produce windfalls to attorneys."). *See also Jacobs v. Mark Lindsay & Son Plumbing & Heating, Inc.*, 458 N.J. Super. 194, 211 (App. Div. 2019) ("As a matter of public policy, the [New Jersey] Legislature enacted fee-shifting provisions in **remedial statutes** like the [New Jersey Consumer Fraud Act] to induce competent counsel and advance public interest through private enforcement of statutory rights that the government alone cannot enforce." (*citing Pinto v. Spectrum Chems. & Lab. Prods.*, 200 N.J. 580, 593 (2010) (emphasis added)).

sale or a lack of bids shall be "conclusively presumed" as property fair market value, and does not allow the owner to challenge this presumption even in the face of fraud or other infirmity. N.J.S.A. 54:5-87b. Like Michigan's procedure, New Jersey fails to guarantee that surplus equity after sale produces just compensation in violation of the Takings Clause.

Sixth, New Jersey's requirements for mandated notice of the claim requirement are inconsistent and subject to lienholder discretion. As a result, New Jersey property owners are harmed by a process that is not "reasonable, certain, and adequate to secure the just compensation to wh[i]ch the owner is entitled." *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 659 (1890). Like Michigan's procedure, New Jersey's TSL is neither designed nor executed in a manner intended to fairly apprise property owners of their right to claim surplus equity and thus violates the Takings and Due Process Clauses.

B. NJ incorrectly conforms to *Tyler* dicta instead of Constitutional mandate; overruling *Nelson* is necessary to resolve the Constitutional defect.

Like Michigan's procedure, New Jersey's TSL seeks conformity with claim procedures modeled after *Tyler* dicta instead of with mandates in the federal and state Takings Clauses. The TSL violates the Takings Clause by requiring property owners to forfeit equity if they miss a claim window and categorically excluding some owners from asserting any equity claim.

The TSL requires a property owner to submit a written claim demand "to the Superior Court before the date that the final judgment is entered" or forfeit the claim. N.J.S.A. 54:5-87b. New Jersey's TSL also fully prohibits owners of property alleged as vacant from asserting a surplus equity claim, and perversely mandates that those owners forfeit equity based upon plaintiff allegations alone.[10] The self-serving nature of this scheme is evident as it is the plaintiff who reaps an equity windfall from the taking.[11]

In *Nelson*, this Court rejected a former property owner's claim for compensation after a governmental taking because the owner missed a claim window to request compensation from a future sale. In *Tyler*, this Court reviewed the challenged unconstitutional Minnesota procedure and addressed the respondent's argument that *Nelson* superseded prior decisions upholding a taxpayer's right to surplus equity (*United States v. Lawton*, 110 U.S. 146 (1884) and *United States v. Taylor*, 104 U.S. 216 (1881)). The Court rejected the supersession argument and distinguished *Nelson*, noting that unlike New York City, "Minnesota's scheme provide[d] no opportunity for the taxpayer to recover excess value." *Tyler*, 598 U.S. at 644.

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[10] *See* Argument II.B. explaining low bar by which a lienholder may allege a vacant property foreclosure and thereby, after initial notice of the action, exclude the owner from right to notice of a claim procedure.

[11] A Burlington County, NJ, homeowner was barred from surplus claim notice and procedure because Plaintiff prevailed in challenged litigation as foreclosing against alleged vacant property. The homeowner purchased his home in cash and risked losing more than $40,000 surplus equity.

Although *Tyler* distinguished and did not affirm *Nelson*'s statutory window procedure as a one-size-fits-all solution for states seeking to make their claim procedures minimally compliant with the Takings Clause, New Jersey attempted to solve its Takings problem by adhering to the dicta.[12] Consequently, New Jersey's TSL falls short of the categorical Constitutional mandate to pay just compensation. *See Horne v. Dep't of Agric.*, 576 U.S. 350, 358 (2015) ("The Government has a categorical duty to pay just compensation when it takes your car, just as when it takes your home"). Granting the petition and overruling *Nelson* is necessary to resolve the Constitutional defect.

C. NJ's claim procedure is incongruent with other surplus funds procedures in the state and violates the Takings Clause.

New Jersey has clear and effective processes for distribution of surplus equity in the majority of foreclosure cases (i.e., mortgage foreclosures) and other unclaimed fund scenarios that function to preserve – not deter – the owner's claim to funds. Most of the existing procedures are neither time-

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[12] Celene Chen, *Homeowners' Rights: How Courts Can Prevent States from Stealing Home Equity During Property Tax Foreclosure*, 41 Rev. Banking & Fin. L. 385, 404 (2021). "The *Reinmiller* court oversimplifies and mischaracterizes *Nelson*'s holding. *Nelson*, as discussed, primarily examines procedural due process and adequate notice procedures. *Nelson*'s discussion of takings is a single sentence and discussed in tandem with the substantive due process claim. Because takings law has developed further since *Nelson*, *Nelson* is not the reigning authority for how courts should decide a takings claim attacking a surplus retention law."

barred nor force owners into a preclusive claims process.

i. Mortgage foreclosure surplus funds procedures

Exempting TSL properties from existing statutory protections is inequitable. Property tax foreclosures appear to be less than 13% of New Jersey's annual foreclosure filings.[13] The other 87% are mortgage foreclosures for which an established process exists that – without necessarily implicating a Takings Issue – provides a presumptive avenue for compensation of some surplus equity to dispossessed homeowners, without inequitable hurdles and with few exceptions.

New Jersey statutes and court rules governing mortgage foreclosure provide due process and statutory rights, during and after foreclosure, that coalesce in efforts to protect some portion of homeowner surplus equity.[14] These rights create a

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[13] Madden, A., *What To Do When Facing Mortgage or Tax Foreclosure*, Rutgers Center on Law, Inequality and Metropolitan Equity (2024) at 1, https://static1.squarespace.com/static/5b996f553917ee5e584ba742/t/6718ee47d001cd6bee9fc3db/1729687111470/WTD+Mortgage+and+Tax+Foreclosure.pdf.

[14] *See* FN 5, supra. A recent study of mortgage foreclosures, which typically have larger liens and thus higher minimum bid amounts than would be expected in tax foreclosures, found that on average, "[l]ender sales at foreclosure auction are for a discount of 27.2%." Chinloy, Hardin III, Wu, *Foreclosure, REO, and Market Sales in Residential Real Estate*, J. Real Estate Finan. Econ. 54, 188-215 at 102 (2017). *See also* Campbell, J.Y., Giulio, S., & Pathak, P. (2011), *Forced Sales and House Prices*. The American Economic Review, 101(5), 2108–2131 at 2129.

procedure that encourages competitive bidding on foreclosed properties, without creating hurdles or burdens by which the homeowner may lose equity in a windfall to the foreclosing lienholder.[15] New Jersey's Fair Foreclosure Act at N.J.S.A. 2A:50-53 et seq., enacted in 1995, includes mandates governing the framework for sheriff's sales of mortgaged premises (N.J.S.A. 2A:50-64). A foreclosing mortgage lienholder may obtain a final judgment and Writ of Execution (N.J.S.A. 2A:50-36, -58, -64), then demand a sheriff's sale of the property from which they may only recover the judgment amount if there is a bid high enough to satisfy the judgment (N.J.S.A. 2A:50-37), and then the foreclosed homeowner may apply for release of surplus funds (*Id.*).[16]

After a sheriff's sale following a New Jersey mortgage foreclosure, a clear court process exists for

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[15] Exceptions were introduced in New Jersey's Community Wealth Preservation Program (CWPP), N.J.S.A. 2A:50-64, codified in January 2024. The exceptions were challenged for violations of the federal and state Takings Clause protections in New Jersey, Mercer County, Chancery consolidated docket: MER C 94-24. On August 28, 2025, the presiding Judge issued an Order stating: "N.J.S.A. § 2A:50-64(g) is unconstitutional as applied to the property owners and junior lienholders in this case and violates the Takings Clause of the Fifth Amendment of the United States Constitution and the New Jersey Constitution." Thus, the CWPP may be amended and its exceptions may be removed.

[16] The FFA provides limited exceptions for foreclosing lienholders to request strict foreclosure without sheriff's sale, and one exception requires a lienholder to prove that the judgment amount exceeds the property value. The FFA still allows the property owner to demand a sheriff's sale. Notably such scenarios are exceptions and not the rule. N.J.S.A. 2A:50-63, -73.

recovering surplus equity at any time. The surplus funds are deposited with the court and allowed to earn interest, and then funds are distributed to persons entitled to them upon application as determined by the court. N.J.S.A. 2A:50-37. Where an application is challenged the court determines the movant's interest and priority of claims, and issues a report listing the priority of claims and the amounts due to any lienholder who filed a claim supported by required proofs. N.J. Ct. R. 4:64-3. The surplus claim framework does not impose a limitation period for applications.

ii. Unclaimed property surplus funds procedures

New Jersey provides clear processes for recovering unclaimed funds in non-foreclosure scenarios at any time. The New Jersey Uniform Unclaimed Property Act ("NJUUPA") at N.J.S.A. 46:30B-1 et seq., amended for conformity with the Uniform Unclaimed Property Act (1981) in 1989, requires notification to rightful owners of unclaimed funds (N.J.S.A. 46:30B-51), maintains a fund to pay claims made by owners (N.J.S.A. 46:30B-61 and -74), and provides a claims procedure that exists for claims to the funds at any time (N.J.S.A 46:30B-77). *Haven Savings Bank v. Zanolini*, 416 N.J.Super. 151 (2010) ("The Act also provides that title to the unclaimed property remains with the owner and does not vest in the State. . . . **A person may make a claim to the property at any time**." (citations and quotation omitted; emphasis added)). Like the claim process for mortgage surplus funds, the NJUUPA also does not

create inequitable deadlines for claimants to recover rightful funds.

iii. Eminent domain surplus funds procedures

New Jersey's Eminent Domain Act of 1971, N.J.S.A. 20:3-1 et seq., places the action onus on the government. The condemnor must make a written offer to the property owner that details the property interest to be acquired, compensation offered, and a reasonable disclosure of how the compensation amount was calculated. N.J.S.A. 20:3-6. The compensation offer cannot be less than the fair market value appraisal. *Id.* Specifically "the fair market value of the property [is calculated] as of the date of the taking, determined by what a willing buyer and a willing seller would agree to, neither being under any compulsion to act." *Borough of Harvey Cedars v. Karan*, 214 N.J. 384, 403 (2013) (citing *State v. Silver*, 92 N.J. 507, 513 (1983) (internal citations omitted); and *State v. Caoili*, 135 N.J. 252 (1994)); *see also City of Trenton v. Lenzner*, 16 N.J. 465, 476 (1954), *cert.* den., 348 U.S. 972 (1955).

D. NJ's unconstitutional procedure is difficult and harmful, causing actual damages and litigation from non-adherence with the Takings Clause.

Due to its *Nelson* framework, New Jersey's claim procedure causes more harm and actual damages to dispossessed owners than it does to guarantee just compensation under the Takings Clause. The notice required under New Jersey's TSL

is inconsistent and confusing. As explained further in Section II of this brief, although the TSL requires owners to claim equity prior to the taking or forfeit the claim, the TSL does not clearly dictate form or location for notice of this requirement. Consequently, lienholder whim creates significant variation in how owners are noticed of their rights. Owners may never see or understand the notice, resulting in a missed deadline and statutorily terminated recovery of just compensation.

The impact on homeowners is devastating.[17] First, the owner's equity gets taken without their knowledge due to a missed deadline; then the owner learns they lost title to their home when they receive a sheriff's writ of possession and are rendered homeless shortly thereafter; finally, in shock, the dispossessed owner seeks legal assistance to determine why there was no sheriff's sale and how they can recover their just compensation, only to learn that under New Jersey law "it's simply too late" to recover anything. As stated, six vulnerable Legal Services clients faced a staggering $2.1M in taken equity for less than $175,000 in tax arrears.

The devastating effects of *Nelson*-styled procedures are harshest for vulnerable homeowners including disabled, elderly, and BIPOC (Black, Indigenous, and People of color). Historically

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[17] "For elderly homeowners . . . a lack of proper notice regarding tax sales and their rights to redeem property can be devastating both financially and emotionally." Jennifer C.H. Francis, *Redeeming What Is Lost: The Need to Improve Notice for Elderly Homeowners Before and After Tax Sales*, 25 Geo. Mason U. Civ. Rts. L.J. 85, 86 (2014).

marginalized BIPOC communities scaled vast institutional hurdles in pursuing homeownership in the last century, but still lag behind White homeowners by almost 30%[18] and shoulder disproportionately higher property tax burdens compared to non-BIPOC neighbors.[19]

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[18] Julie Gilgoff, *Inequities Beyond Surplus Equity: Fixing the Limited Remedies of Tyler*, 61 San Diego L. Rev. 287, 327–28 (2024). "As Dorothy Brown articulated in The Whiteness of Wealth, real estate acquisition is one of the primary sources of wealth in the United States, but the opportunity to build wealth through homeownership has been disproportionately denied to Black people. Today, Black Americans enjoy the lowest rate of homeownership of any racial group in America. In 2022, levels of Black homeownership decreased to 43.4%, lower than it was over a decade ago in 2010, and nearly thirty percentage points behind the White homeownership rate of 72.1%. These rates can be explained by a long history of discriminatory policies like redlining, the denial of Federal Housing Administration and VA mortgage assistance, subprime mortgages, exclusionary zoning, racially restrictive housing covenants, as well as discriminatory tax policies."

[19] *Id.* at 319–20 "The disproportionate taxation of African-Americans is not a new phenomenon. Historian Andrew Kahrl chronicles the history of county assessors intentionally overvaluing Black-owned properties, sometimes in direct retaliation for their political action. According to Kahrl's research, blighted neighborhoods were routinely assessed at a higher rate of market value than were neighborhoods considered stable or improving because the blighted neighborhoods were occupied by communities of color. This resulted in low-income communities devoting a much higher percentage of their annual incomes to property taxes than did higher earners and the imposition of taxes that were "regressive" in nature." *See also* Andrew W. Kahrl, *Unconscionable: Tax Delinquency Sales As A Form of Dignity Taking*, 92 Chi.-Kent L. Rev. 905, 913 (2017). "'Time after time,' a reporter who interviewed blacks living in Mississippi in 1966, remarked, 'Negroes told how their land had

Nelson gives uncompensated homeowners only one insulting remedy: pay an attorney for representation in a subsequent lawsuit to recover just compensation as actual damages, despite no guarantee of a successful claim due to *Nelson*.[20] If the litigant succeeds, they likely must pay a share of the actual damages for attorney fees that could exceed the amount of just compensation to which they were entitled.

II. Like Michigan, NJ's claim procedure violates the Due Process Clause.

Due process demands notice reasonably calculated to apprise the property owner of the action to be taken and to allow them to present objections (*Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950)) and requires appropriate procedures "adapted to the end to be attained" (*Hagar v. Reclamation Dist. No. 108*, 111 U.S. 701, 708 (1884)). New Jersey's TSL does not provide adequate due process to property owners; it is insufficient to explain the proposed action and how to respond, and lacks delivery method structured to reasonably assure notice is delivered. Instead, like Michigan's procedure, New Jersey creates unreasonable traps for

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been taken over by white farmers by manipulation of tax sales or foreclosures.'"

[20] A 72-year-old Hudson County, NJ, homeowner lost more than $450,000 surplus equity over approximately $30,000 in tax arrears after defective service of process resulted in no actual notice of her claim rights. She asserted the surplus equity claim at an emergency hearing, but it was not recognized as timely within the limited statutory timeframe.

the unwary and delivers inequitable windfalls to the government.

"When notice is a person's due, process which is a mere gesture is not due process." *Mullane*, 339 U.S. at 315. As explained throughout section I of this brief,[21] New Jersey's claim procedure denies just compensation in several ways that fail to guarantee due process: (i) requiring an owner to claim surplus equity before the taking or forfeit the claim (N.J.S.A. 54:5-87), and allowing lienholders to provide notice of the claim right in myriad ways, and (ii) excluding all owners of properties alleged as vacant from the claim right, without exception or evaluation of potential surplus equity (N.J.S.A. 54:5-87a.).

A. New Jersey's inconsistent notice procedure violates the Due Process Clause.

Despite requiring owners to file claims or forfeit equity, the TSL does not specify form or location for notice. Further, the TSL inexplicably changes the notice language and recipients depending on which entity forecloses: state actors must only notice owners,[22] while municipalities must notice

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[21] "Because the Just Compensation Clause of the Fifth Amendment imposes very specific obligations upon the government when it seeks to take private property, . . . [i]t is appropriate . . . to subsume the more generalized Fourteenth Amendment due process protections within the more particularized protections of the Just Compensation Clause. The Supreme Court's decision in *Graham v. Connor*, 490 U.S. 386 (1989), supports our analysis." *First Bet Joint Venture v. City of Cent. City By & Through City Council*, 818 F. Supp. 1409, 1412 (D. Colo. 1993).

[22] *See* N.J.S.A. 54:5-98.1a. requiring a state actor lienholder to provide "with the summons and complaint" information stating

owners and their heirs with additional explanation about surplus equity.[23] While both classes should receive notice in bold face type, the TSL does not dictate font size or spacing or specific location. Additionally, state actor foreclosures provide an unclear timeframe to file the demand (generally at least 120 days[24]), but municipal foreclosures provide only 45 days.[25] Because of these deficiencies and

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that "the owner of the property being foreclosed has the right to demand, in writing to the Superior Court before the date that the final judgment is entered, that the foreclosure proceed to a judicial sale as in the manner of the foreclosure of a mortgage or an Internet auction of the property, through the office of the county sheriff."

[23] *See* N.J.S.A. 54:5-98.2 requiring a municipal lienholder to serve a notice of foreclosure stating that "the owner and the owner's heirs shall have the right to demand a judicial sale as in the manner of the foreclosure of a mortgage, or an Internet auction through the office of the county sheriff, of the property subject to the tax lien foreclosure to preserve any equity that they may have in the property." and "that the owner, or the owner's heirs, has until the date of entry of a final judgment to file the written request with the Superior Court for a judicial sale as in the manner of the foreclosure of a mortgage or an Internet auction through the office of the county sheriff with the Superior Court."

[24] N.J.S.A. 54:5-87b. gives property owners foreclosed upon by state actor investors, in *in personam* proceedings, the right to file a demand for sale at any time "before the date that the final judgment is entered." In practice, this process generally provides at least four to six months due to required filings and response deadlines that occur prior to the entry of final judgment.

[25] N.J. Ct. R. 4:64-7(b) requires property owners foreclosed upon by municipalities, in *in rem* proceedings, to file an answer within 45 days after date of publication of notice or otherwise be "forever barred and foreclosed of all right, title and interest and equity of redemption . . . ."

disparate rights, the notice content and location vary by identity and whim of the lienholder.

Homeowners facing foreclosure receive innumerable legal mailings and struggle in determining what constitutes valid legal notice versus legal solicitation. Because TSL claim notice may appear in any number of varied ways, homeowners can miss the notice completely and suffer uncompensated takings. A homeowner who manages to find the notice may misunderstand the importance due to legalese or because the notice location is buried somewhere within or outside of the pleading.[26] Elderly homeowners may struggle locating or reading notices in small type font that are buried within legal pleadings.[27] Disabled homeowners may face other barriers that hinder them from asserting claims.[28]

Homeowners who are lucky enough to locate the notice and file a claim are in no better position

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[26] Due to language barriers and inability to locate notice, a Camden County, NJ, homeowner was unaware of claim requirement and lost $280,000 surplus for $48,000 tax arrears. Private counsel assistance resulted in recovery of some equity, but short of full just compensation after subtracting costs and fees.

[27] A 79-year-old Monmouth County, NJ, homeowner did not locate or comprehend the claim notice. He thought surplus equity would be available in the same process as mortgage foreclosure. He suffered an uncompensated taking likely in excess of $700,000.

[28] A Burlington County, NJ, homeowner with mental and physical disabilities lacked a computer and a car. He called lienholder's counsel to verbally assert his claim to equity, but was informed that the verbal claim was not cognizable under the TSL.

than those who cannot. Lienholders oppose the claim filings and ask Judges to strike the claims for myriad reasons with no basis in statute or Court Rule, even questioning the authenticity of claims because *pro se* filers reference and quote the statutory claim language.[29, 30]

This Court stated that "[d]ue process is flexible and calls for such procedural protections as the particular situation demands." *Mathews v. Eldridge*, 424 U.S. 319, 334 (1976) (citing *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972)). Further, "procedural due process rules are shaped by the risk of error . . . as applied to the generality of cases, not the rare exceptions." *Id.* at 344. Like Michigan's procedure, deficiencies in New Jersey's TSL fail to guarantee payment of just compensation and do not adhere to the risk of error in the generality of tax foreclosure takings.

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[29] After a Camden County, NJ, homeowner filed her claim and cited TSL statutory language, the lienholder filed a motion to strike the claim and asked the Court to impose extra-statutory burdens for the demand without citing any statutory or case law support. She risked losing $160,000 surplus for less than $12,000 tax arrears.

[30] A Middlesex County, NJ, homeowner filed claim to preserve $359,000 surplus exceeding $46,000 tax arrears. Lienholder asked the Court not to recognize the claim without first imposing extra-statutory burdens including: (i) requiring claimant to appear in Court with government-issued photo identification; (2) requiring non-statutory attestations under oath stating that a third party was not guiding them; (3) having the Court interrogate claimant as to how they learned of the foreclosure action (lienholder seemingly admitting to doubting adequacy of its notice attempts); and others.

B. NJ's TSL affords *no* due process for certain property owners and removes their right to just compensation, by decision of the foreclosing lienholder.

New Jersey's TSL categorically excludes owners of properties alleged as vacant, abandoned or deteriorated ("VAD") from the right to receive **any** due process notice before their property is taken and excludes them from the right to recover payment of just compensation for surplus equity. N.J.S.A. 54:5-87a. (excluding properties alleged as statutorily "abandoned" by the lienholder, under N.J.S.A. 54:5-86b., from the right to demand a sheriff's sale; statutory abandonment definitions at "Abandoned Properties Rehabilitation Act" at N.J.S.A. 55:19-78, et seq.). After the lienholder forecloses against the VAD property, the owner is not entitled by law to notice of the claim right and thus is neither notified of the right to just compensation nor provided a with a claim procedure.

The absurdity of this exclusion is worsened by problematic and collusive state law enabling the lienholder to unilaterally decide whether it will pursue foreclosure against a property alleged as VAD. There is a disturbingly low bar for the criteria that a lienholder can use in choosing to exclude the owner from claim notice and just compensation: the lienholder only must allege that the property was not legally occupied for six months and one property tax installment remains unpaid. N.J.S.A. 55:19-81. An owner could be seemingly away from their property for six months and miss one installment of taxes due to hospitalization, traveling for family care or work

requirements, or numerous other reasons that do not prove intent to vacate or abandon the property.

In *Tyler*, this Court found Minnesota's procedure unconstitutional because it provided no process for the taxpayer to recover excess value. Like Minnesota and Michigan, New Jersey's categorical exclusion of certain owners fails to meet even the most fundamental principles of due process in both refusing notice and fully depriving the owner of any claim procedure.

CONCLUSION

For the foregoing reasons, LSNJ respectfully asks this Court to grant the petition in this matter.

Respectfully submitted,

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