No. 26-99

In the Supreme Court of the United States

DAVID PAUL BIESEMEYER,

Petitioner,

v.

MUNICIPALITY OF ANCHORAGE, ALASKA,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

David Paul Biesemeyer
Petitioner Pro Se
7650 E. Jim Cottrell
Palmer, AK 99645
(907) 982-2328
davebiesemeyer@hotmail.com

June 24, 2026

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QUESTIONS PRESENTED

1. Whether a municipality's continued retention of surplus proceeds from a tax foreclosure constitutes an ongoing violation of the Takings Clause under *Tyler v. Hennepin County*, 598 U.S. 631 (2023), when the government still holds the identifiable equity that common-law principles recognize as the former owner's property.

2. Whether, under *Board of Regents v. Tomanio*, 446 U.S. 478 (1980), a borrowed state statute of limitations may bar a § 1983 claim where the government's own notice procedures allegedly prevented meaningful opportunity to claim surplus equity before the statutory deadline expired.

3. Whether the Excessive Fines Clause limits a municipality's retention of surplus equity grossly disproportionate to the underlying tax debt.

PARTIES TO THE PROCEEDINGS

Petitioner and Plaintiff-Appellant below

- David Paul Biesemeyer

Respondent and Defendant-Appellee below

- Municipality of Anchorage, Alaska

CORPORATE DISCLOSURE STATEMENT

The Petitioner is an individual and the Respondent is a government entity.

LIST OF PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit

No. 24-5670

David P. Biesemeyer, *Plaintiff-Appellant* v.
Municipality of Anchorage, *Defendant-Appellee*

Memorandum Opinion: December 22, 2025

Rehearing Denial: March 31, 2026

U.S. District Court for the District of Alaska

No. 3:23-cv-00185

David P. Biesemeyer, *Plaintiff* v.
Municipality of Anchorage, *Defendant*

Judgment: September 12, 2024

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PETITION FOR A WRIT OF CERTIORARI

Petitioner David Paul Biesemeyer respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The Ninth Circuit's unpublished memorandum, dated December 22, 2025, is reproduced at App.1a. The district court's final order dismissing the case is reproduced at App.6a. The magistrate judge's report and recommendation is reproduced at App.37a.

JURISDICTION

The Ninth Circuit entered judgment on December 22, 2025. App.1a; and denied rehearing en banc on March 31, 2026. App.53a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const., amend. V

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S. Const., amend. VIII

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

U.S. Const., amend. XIV § 1

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

This case also involves 42 U.S.C. § 1983, Alaska Stat. §§ 29.45.480 and 29.45.500, and Anchorage Municipal Code §§ 6.30.090 and 12.05.062. These statutes are reproduced at App.55a-58a.

STATEMENT OF THE CASE

This case concerns whether local governments may retain surplus equity from tax foreclosures through procedural time bars, despite *Tyler v. Hennepin County*'s holding that surplus proceeds remain protected private property under the Takings Clause.

For more than two decades, Petitioner lived in, substantially improved, and paid taxes on his debt-free Anchorage home. The Municipality assessed the property at approximately $530,000. In November 2014, the Municipality sold it at tax foreclosure for $243,235.29 — roughly half its assessed value — to satisfy a $7,607.76 tax debt plus costs, and retained the entire surplus of $443,000 according to the Municipality's accounting.

Alaska Stat. § 29.45.480(b) requires municipalities to notify former owners of excess proceeds and remit them upon proper claim, but bars claims filed after six months from the sale date. Petitioner alleged that notice was not provided until after this deadline had passed. He later filed suit under 42 U.S.C. § 1983 asserting Takings, Due Process, and Excessive Fines claims. The district court dismissed the action as untimely under Alaska's two-year tort statute of limitations. The Ninth Circuit affirmed.

REASONS FOR GRANTING THE PETITION

I. This Case Presents an Important and Recurring Post-*Tyler* Question on Whether Governments May Retain Surplus Equity Through Procedural Time Bars.

Tyler held that governments may not use a tax debt "as a legal foothold to confiscate a far larger store of private equity." 598 U.S. at 638. The Court rooted this rule in historical common-law principles that surplus after tax sale belongs to the owner.

The decision below permits precisely the indirect confiscation *Tyler* forbids. By treating the retention of surplus as a completed historical event subject to a borrowed limitations period — rather than an ongoing deprivation where the government still holds identifiable funds — lower courts create a nationwide loophole. Municipalities can retain hundreds of thousands (or millions) in surplus equity simply by waiting out procedural deadlines, even when the tax debt was a small fraction of the value taken.

This issue recurs across jurisdictions. Post-*Tyler* litigation has proliferated, with varying state surplus claim deadlines and notice practices leading to inconsistent outcomes. Some courts treat retention as a present taking; others apply strict time bars that effectively nullify *Tyler*. Review is needed to clarify that governments cannot evade the Takings Clause through procedure when they continue to hold the owner's equity. (Related valuation issues are pending in *Pung v. Isabella County*, No. 25-95, argued Feb. 25, 2026.)

The short statutory deadline exacerbates the problem. While *Tyler* expressly drew on centuries of common-law tradition — including the maxim that equity abhors a forfeiture — to recognize surplus equity as protected property, Alaska's six-month bar (AS 29.45.480(b)) extinguishes that interest with far less process than historical redemption periods or the long-term holding periods states routinely apply to unclaimed property funds. When the government knows the owner's identity yet allegedly provides notice only after the bar has expired, the statute operates as the very forfeiture *Tyler* and common-law principles condemn.

II. The Decision Conflicts With *Tomanio* by Allowing State Limitations Rules to Frustrate § 1983's Remedial Purpose.

Tomanio permits borrowing state limitations periods for § 1983 claims but forbids their application when they are inconsistent with federal policy. Here, the borrowed limitations period allegedly expired before meaningful notice of the surplus claim process. Petitioner was recovering from clinical death and coma during the critical period, was homeless thereafter, and paid a California attorney $50,000 to handle the matter after the attorney advised him not to pay the taxes and promised to "take care of it." The lower courts rejected equitable tolling and attorney abandonment arguments without an evidentiary hearing. This approach insulates the government's retention from any federal review and defeats § 1983's remedial purpose.

III. The Excessive Fines Clause Provides an Independent Limit on Disproportionate Retention of Surplus.

The Eighth Amendment prohibits excessive fines. Retaining $443,000 in surplus to satisfy a $7,607.76 debt raises a substantial question whether this constitutes an excessive economic sanction, especially where the forced sale occurred at roughly half the assessed value.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

/s/ David Paul Biesemeyer
David Paul Biesemeyer
Petitioner Pro Se
7650 E. Jim Cottrell
Palmer, AK 99645
(907) 982-2328
davebiesemeyer@hotmail.com

June 24, 2026