IN THE SUPREME COURT OF THE STATE OF NEW HAMPSHIRE

No. 2019-0339

RICHARD POLONSKY,
Petitioner and Respondent,

v.

TOWN OF BEDFORD,
Defendant and Appellant.

On Appeal from Hillsborough Superior Court of New Hampshire,
Northern District
No. 216-2015-CV-00388

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF RESPONDENT RICHARD POLONSKY

OVIDE M. LAMONTAGNE, ESQUIRE
Bernstein, Shur, Sawyer & Nelson, P.A.
670 North Commercial Street, Suite 108
P.O. Box 1120
Manchester, NH 03105-1120
Telephone: (603) 623-8700
olamontagne@bernsteinshur.com

CHRISTINA MARTIN
Pro hac vice pending
Pacific Legal Foundation
4440 PGA Boulevard, Suite 307
Palm Beach Gardens, FL 33410
Telephone: (916) 503-8998
Email: cmartin@pacificlegal.org

Attorneys for Amicus Curiae Pacific Legal Foundation

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INTEREST OF AMICUS CURIAE

Established in 1973, Pacific Legal Foundation is the nation's oldest liberty-based public interest legal foundation. PLF seeks to establish legal precedents that protect basic constitutional freedoms, like the right to private property. To that end, the Foundation regularly represents individuals around the country in defense of the right to make reasonable use of one's property, and the corollary right to obtain just compensation when that right is infringed. *See, e.g., Knick v. Township of Scott*, 139 S. Ct. 2162 (2019); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013). PLF and its attorneys are currently representing property owners and has filed *amicus curaie* briefs in litigation concerning the taking of home equity through tax deed processes in other states. *See, e.g., Rafaeli, LLC v. Oakland County*, 919 N.W.2d 401 (Mich. 2018) (granting application for leave to appeal case to Michigan Supreme Court); *Wayside Church v. Van Buren County*, 847 F.3d 812, 823 (6th Cir. 2017), *cert. denie*d, 138 S. Ct. 380 (2017); *Coleman v. District of Columbia*, No. 1:13-cv-01456-EGS (D.D.C.June 11, 2015).

STATEMENT OF THE FACTS

The Pacific Legal Foundation defers to the Statement of Facts in the Brief by the Respondent, Richard Polonsky, and relies thereon.

INTRODUCTION AND SUMMARY OF ARGUMENT

After Richard Polonsky was unable to pay the property taxes on his home, the Town of Bedford (Town) conveyed to itself a tax deed to his property pursuant to RSA 80:89. *See* Superior Court Order at 1. The property was worth far more than Polonsky owed the town. *See id.* at 2. After the tax deed issued, New Hampshire law recognized that Polonsky had a continuing property interest in the home: if the Town sold his property in the subsequent three years, then it could collect Polonsky's debt from the proceeds, but the remaining money would belong to Polonsky. RSA 80:88-90. Moreover, until the Town sold his property, Polonsky could recover his title by paying all the back taxes, plus penalties, interest, and costs. RSA 80:89.

After three years, Polonsky was unable to save his property by paying the roughly $90,000 debt to the Town. *See* Superior Court Order at 2. The Town then declared that it

would be entitled to the full profits from a sale of his home worth approximately $300,000. But by taking more than Polonsky owed, the Town violated the requirement in the New Hampshire Constitution (and its federal counterpart) that government pay just compensation when it takes private property.

Here, the property interest that the Town took is Polonsky's home equity. That property interest has deep roots in this country. While government can seize property to collect tax debts, it does so subject to the traditional requirement that it sell the property and refund extra profits to the former owner. Failure to abide by that protection, or otherwise pay the former owner for his equity, violates an important property right that pre-exists the statute at issue in this case.

In fact, the Town of Bedford acknowledges that it effected a "taking without compensation." App. Br. at 19. But the Town incorrectly argues that alternative procedural remedies can substitute for the constitutional requirement that government pay money when it takes private property. *See id.* at 21-22. The Town also argues that this Court should construe the three-year time period during which an owner may recover his property or collect any extra profits from its sale as a statute of limitations for Polonsky's takings claim. According to the Town, the statute of limitations begins running when the tax deed issues title to the municipality. But that argument must fail because it would be irrational to suppose the legislature intended a statute of limitations to begin running before a takings claim could be raised in court. Here Polonsky could not have raised his takings claim until long after the tax deed issued title to the Town.

Ultimately, the scheme proposed by the Town threatens property owners across the state. If the Town can reap an extra $200,000 by simply delaying the sale of a tax-deeded property, municipalities across the state will realize a perverse incentive to similarly reap a windfall at its residents' expense. While wealthier debtors would be able to save their equity, New Hampshire's most vulnerable residents would lose everything. Such a scheme would fail the central purpose of government: the protection of individual rights.

ARGUMENT

I. UNDER THE NEW HAMPSHIRE CONSTITUTION, THE TOWN MUST PAY POLONSKY JUST COMPENSATION FOR THE TAKING OF HIS HOME EQUITY

A. New Hampshire's Takings Clause protects a delinquent taxpayer's traditional property rights to the surplus value of property taken to pay a government debt

The New Hampshire Constitution provides that "no part of a man's property shall be taken from him…without his consent." N.H. Const. pt. 1, art. 12. This provision requires just compensation in the event of a taking. *Burrows v. City of Keene*, 121 N.H. 590, 596 (1981); *Thomas Tool Servs., Inc. v. Town of Croydon*, 145 N.H. 218, 220 (2000), as amended (Feb. 1, 2001). New Hampshire's Takings Clause is similar to the federal Takings Clause, *Hill-Grant Living Tr. v. Kearsarge Lighting Precinct*, 159 N.H. 529, 532-537 (2009), except New Hampshire's Takings Clause provides even greater protection. *Thomas Tool*, 145 N.H. at 221; *see also State v. Dowdle*, 148 N.H. 345, 349 (2002).

The New Hampshire Supreme Court has already recognized that this state's Takings Clause protects a person's equity in their property when he loses title because he failed to pay a property tax debt. *See Thomas Tool*, 145 N.H. at 220; *see also First N.H. Bank v. Town of Windham*, 138 N.H. 319 (1994) (Horton, J. concurring). In *Thomas Tool* the government took title to business property worth more than $65,000 as payment for a $370 property tax debt. 145 N.H. at 219. The Court held unconstitutional the state's former statute that purported to give the town absolute title to a property worth more than the owner's tax debt. *Id*. at 220.

Thomas Tool correctly recognized that government has a constitutional obligation to protect an owner's equity when it collects on a tax debt. "Equity" is, by definition, the fair market cash value of the property after deduction of all encumbering debts (such as tax debts). *Crane v. Commissioner*, 331 U.S. 1, 7 (1947). Ultimately, "equity" is like money or any other investment. Just as the Takings Clause protects money, homes, land, liens, and mortgages, it also protects home equity. *See, e.g., United States v. Lawton*, 110 U.S. 146, 150 (1884) (federal takings clause protects equity realized in the sale of property sold for

delinquent taxes); *Koontz*, 570 U.S. at 616 (federal takings clause protects money and "a right to receive money that is secured by a particular piece of property"); *Horne*, 135 S. Ct. at 2426 (takings clause protects personal property); *Phillips v. Washington Legal Found.*, 524 U.S. 156, 168 (1998) (accrued interest); *Armstrong v. United States*, 364 U.S. 40, 48 (1960) (liens); *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 601-02 (1935) (mortgages); *Dowdle*, 148 N.H. at 349 (recognizing that the New Hampshire Constitution is more protective than the federal Constitution).

Traditionally, the common law protected a debtor's property right in the value of his or her property by requiring the property to be sold to the highest bidder and the surplus profits returned to the former owner. Sir William Blackstone explained that whenever officials took and sold property to pay delinquent taxes, they did so subject to "an implied contract in law . . . to render back" profits that exceeded the debt. 2 William Blackstone, Commentaries on The Laws of England *452. Consistent with that principle, the British land tax required "surplus" proceeds from the sale of delinquent properties to be refunded to the former owner. *Martin v. Snowden*, 59 Va. 100, 137 (1868), *affirmed sub nom. on other grounds Bennett v. Hunter*, 76 U.S. 326 (1869). Likewise, Magna Carta required less valuable movable goods to be seized (instead of land) when sufficient to satisfy a tax debt, *Martin*, 59 Va. at 136. Additionally, when collecting from a deceased person's estate, the "value of the goods seized had to approximate the value of the debt." Vincent R. Johnson, *The Ancient Magna Carta and the Modern Rule of Law: 1215 to 2015*, 47 St. Mary's L.J. 1, 47, 50 (2015).

Early American law built on English law to protect tax-debtors' equity. *Martin*, 59 Va. at 137; *Timbs v. Indiana*, 139 S. Ct. 682, 695 (2019) (recognizing that colonists had rights of Englishmen). Long after the founding, the states and their courts overwhelmingly protected that equity. *See, e.g.,* Thomas M. Cooley, *A Treatise on the Law of Taxation* 343 (1876) (noting all states protected former owner's equity); *McDuffee v. Collins*, 23 So. 45, 46 (Ala. 1898) (tax collector must follow "well-known general rule of law" by paying proceeds in order of priority); *People ex rel. Seaman v. Hammond*, 1 Doug. 276, 280–81 (Mich. 1844); *Cone v. Forest*, 126 Mass. 97, 101 (1879) (when a tax collector failed to

refund the extra profits, dispossessed owner could bring an action in trespass or trover to recover it).

Consistent with that principle, most states' statutes recognize that right today by requiring tax foreclosures to be sold to the highest bidder, and that extra profits be returned to the former owner.[1] When state laws fail to protect that right, many courts, like New Hampshire's Supreme Court, have recognized that government effects a taking when it confiscates property worth more than the debt. *See e.g., Thomas Tool*, 145 N.H. at 220; *Bogie v. Town of Barnet*, 270 A.2d 898, 903 (Vt. 1970) (retention of excess funds from sale of foreclosed land "amounts to an unlawful taking for public use without compensation, contrary to . . . Vermont Constitution"); *Griffin v. Mixon*, 38 Miss. 424, 436-37 (Miss. Err. & App. 1860) (violation of due process and just compensation guarantee); *King v. Hatfield*, 130 F. 564, 579 (C.C.D.W. Va. 1900) (taking). Likewise, courts have noted the right to the surplus proceeds from the sale of tax-foreclosed property is an important right that exists regardless of what state law says. *Farnham v. Jones*, 32 Minn. 7, 11-12; 19 N.W. 83 (1884); *McDuffee v. Collins*, 23 So. at 46 (right of former owner to surplus proceeds preexisted the statute); *Lake Cty. Auditor v. Burks*, 802 N.E.2d 896, 899-900 (Ind. 2004) (noting it would "produce severe unfairness" and likely violate the Takings Clause); *Martin*, 59 Va. at 142-43 (would violate due process); *Shattuck v. Smith*, 6 N.D. 56, 69 N.W. 5 (1896) (indicating such a law would likely be unconstitutional); *see also Coleman through Bunn v. D.C.*, 70 F. Supp. 3d 58, 80 (D.D.C. 2014).

Similarly, the U.S. Supreme Court has repeatedly refused to interpret federal law as depriving property owners the surplus value of their property when taken by government to satisfy a tax debt.[2] *United States v. Taylor*, 104 U.S. 216, 221; 17 Ct. Cl. 427 (1881);

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[1] *See, e.g.*, Ark. Code § 26-37-209; Conn. Gen. Stat. § 12-157(h); Del. Code tit. 9 § 879; Fla. Stat §§ 197.522, 197.582; Ga. Code Ann. § 48-4-5; Idaho Code § 31-608(2)(b); Kan. Stat. § 79-2803; Ky. Rev. Stat. § 426.500; Mo. Rev. Stat. § 140.340; Nev. Rev. Stat. § 361.610.5; Ohio Rev. Code § 5723.11; 72 Pa. Cons. Stat. Ann. §§ 1301.19, 1301.2; S.C. Code Ann. § 12-51-130; S.D. Code § 10-22-27; Tenn. Code Ann. § 67-5-2702; Va. Code Ann. § 58.1-3967; Rev. Code Wash. § 84.64.080; W. Va. Code § 11A-3-65; Wyo. Stat. § 39-13-108(d)(4).

[2] *Nelson v. City of New York*, 352 U.S. 103, 110 (1956) did *not* reject a comparable takings claim. *Nelson* rejected the plaintiffs' takings argument because the tax foreclosure statute provided

Bennett, 76 U.S. at 335-36 ("[I]t is certainly proper to assume that an act of sovereignty so highly penal is not to be inferred from language capable of any milder construction."); *United States v. Lawton*, 110 U.S. 146, 147 (1884) (relying on *Bennett* and *Taylor*). Likewise, the supreme courts of Texas and Alaska rejected confiscatory interpretations of state law, partly because it would be unjust. *City of Anchorage v. Thomas*, 624 P.2d 271 (Alaska 1981); *Syntax, Inc. v. Hall*, 899 S.W.2d 189, 191-92 (Tex. 1995), as amended (June 22, 1995) ("Taxing authorities are not (nor should they be) in the business of buying and selling real estate for profit.").

Moreover, the U.S. Supreme Court has made clear that the government cannot avoid the just compensation mandate by redefining a preexisting private interest as public property. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980). Government may regulate property rights, but it cannot "by ipse dixit . . . transform private property into public property without compensation." *Id.* This Takings Clause protection doesn't simply disappear because the property owner owes the government money. *See id.*; *Armstrong*, 364 U.S. at 41.

B. The Town effected a taking when it extinguished Polonsky's right to his equity without paying him for it

New Hampshire's tax deed law recognizes that a former titleholder has a continuing property right to their equity, even after the tax deed is issued. Most importantly, the statute requires a municipality to refund extra profits from the property if it is sold within three years of the tax deed. RSA 80:88. Until the property is sold, or three years pass, the law also gives a former titleholder up to three years to regain title by paying the full tax debt for the property, including all interest, costs, and the applicable penalty. RSA 80:89. Thus while title may pass to the municipality, a former owner's rights to their home equity continue.

owners an opportunity to claim the surplus profits, but the owner failed to request the money. *Id.* (noting the "absence of timely action . . . to recover any surplus."). In fact, *Nelson* itself was a due process case. The takings argument was only raised in the petitioner's reply on the merits, *id. at* 109, which is likely why it received minimal analysis in the opinion.

In this case, the Town concedes that it effected a taking of the surplus value of Polonsky's property. But the Town argues that the three-year period after the tax deed issues should be construed as a statute of limitations on Polonsky's takings claim. Perhaps recognizing that its statute of limitations argument would fail if the taking occurs at a later date, the Town asserts that a former owner's interest in his equity extinguishes when the tax deed issues and thus the taking invariably occurs at that time. App. Br. at 20 (citing N.H. Rev. Stat. § 80:61).[3]

The Town is mistaken. The statutes governing the tax-deeded property for those three years implicitly recognize that the former owner maintains a taxable interest throughout the three-year period after the tax deeding. Similar to the traditional right of redemption, the former owner has the right to repurchase a tax-deeded property if the owner pays "back taxes, interest, costs and penalty" within the first three years after the tax deeding. RSA 80:89; *cf.* 2 William Blackstone, *Commentaries on The Laws of England* *452 (noting when officials seize property for payment of taxes "they are bound by an implied contract in law to restore them on payment of the debt, duty, and expenses, before the time of sale"). If the municipality decides to sell the property within three years after taking a tax deed to the property, the former owner is entitled to surplus proceeds exceeding "back taxes, interest, costs and penalty." RSA 80:88. "[B]ack taxes, interest, costs and penalty" include not only the debt leading up the issuance of the tax deed, but the taxes assessed on the property *afterwards* until the time of sale. *Id.* § 80:90. In other words, for purposes of repurchase or distribution of proceeds, the taxes on the property continue to accrue throughout the three-year period, and those taxes will be taken out of the former titleholder's equity in the property. The only explanation for the continued accrual of taxes is that the municipality owns the tax-deeded property subject to a remaining, taxable interest held by the former owner. Thus, in cases like this one, no taking of that equity

[3] Appellant also relies on *First N.H. Bank v. Town of Windham* for its contention that "the issuance of the deed annihilates the previous owner's interest in the property." App. Br. at 19; 138 N.H. 319, 323 (1994). But this reliance is misplaced. *First N.H. Bank* considered a version of the tax lien statute that was eventually held unconstitutional by this Court in *Thomas Tool* for its lack of protection of the former owner's equity interest. 145 N.H. at 220.

interest will typically occur until the municipality actually extinguishes the former titleholder's interest by selling the property and keeping all the money, the full three years pass, or the town takes some other clear action to extinguish that interest. *Cf. Hart v. City of Detroit*, 331 N.W.2d 438, 443 (Mich. 1982) (taking occurs when right to get title back by paying off full debt expires).

In this case, the Town's actions provide additional evidence that it did not extinguish Polonsky's equity interest until long after the tax deed issued. Polonsky and his wife continued to live on the property, and they did not pay rent for it. App. Br. at 15. During that time, Polonsky attempted negotiations with the town to recover his title without paying his full debt. *Id.* Had the Town sold his property during those three years, Polonsky would have enjoyed the statutory right to collect the surplus proceeds from the sale of his property. *Id.* Moreover, New Hampshire law grants the municipality discretion to give even "more favorable terms to former owner" than these. RSA 80:91. In other words, Polonsky still had valuable rights in the property. It was not clear whether he would suffer a taking until three years after the tax deed issued to the town.

The Town's theory would also be unworkable in practice, promoting needless and premature litigation. Former owners would have to file takings claims before it was clear whether a taking occurred. As *amicus curiae* NHMA explains, municipalities ordinarily sell tax-deeded property within the three-year statutory time period and pay over the surplus to the former titleholder. Br. for NHMA at 10. During those three years, the town may voluntarily choose to sell the property, or the owner may acquire sufficient means to recover title. Alternatively, the town may decide that it wants to convert the property into a public building or a public park and use its eminent domain power to pay the former owner for his remaining equity in the property.

Until it is clear that the Town will confiscate the former titleholder's remaining equity in the property, no taking occurs. And regardless of when the taking occurs, "it is well-settled that the statute of limitations does not begin to run until the consequences of the condemnor's actions have stabilized." *Hart*, 331 N.W.2d at 445. Accordingly, this Court should reject the Town's invitation to construe the three-year period as a statute of

limitations that begins running when a municipality takes a tax deed. *See Hogan v. Pat's Peak Skiing*, *LLC*, 168 N.H. 71, 73 (2015) ("We construe all parts of a statute together to effectuate its overall purpose and avoid an absurd or unjust result."). This Court should instead hold that the date of the taking depends on the actions the municipality takes to extinguish the property owner's remaining interest. In many cases, this would occur at the conclusion of the three-year statutory period.

C. The Town must pay just compensation for the taking of Polonsky's equity

The Town also claims that it need not pay just compensation because the statute provides sufficient alternative remedies for former titleholders. App. Br. at 20-21. Specifically, the Town claims that the opportunity to reclaim title by paying the full tax debt can remedy the takings claim and therefore the Town need not pay just compensation. *Id.* The Town also suggests that Polonsky theoretically could have sued the town to force a sale of the property, which would have then paid him for his equity. *Id.* at 23.

The Town is mistaken about what "just compensation" demands. Just compensation must restore the owner to "as good position pecuniarily as he would have occupied if his property had not been taken." *U.S. v. Miller*, 317 U.S. 369, 373 (1943). Just compensation requires the payment of money—not merely additional steps that would help a person avoid a taking. *See id.*; *United States v. 564.54 Acres of Land*, 441 U.S. 506, 511 (1979) ("Under this standard, the owner is entitled to receive 'what a willing buyer would pay in cash to a willing seller' at the time of the taking."); *see Opinion of the Justices*, 131 N.H. 504, 509 (1989) (fair market value).

Giving an owner a grace period in which he may recover his title by paying what he owes may be helpful for those who have sufficient resources to take advantage of it, but it is not just compensation. *See Miller*, 317 U.S. at 373. Similarly, the Town's argument that Polonsky should have sued to force a sale of the property fails. Even assuming, *arguendo*, that Polonsky could have sued to force a sale, the right to sue to get a sale and a payment is not just compensation. *Knick*, 139 S. Ct. at 2170. Alternative procedural remedies do not substitute for just compensation. *Id.* ("[N]o matter what sort of procedures the government

puts in place to remedy a taking, a property owner has a Fifth Amendment entitlement to compensation as soon as the government takes his property without paying for it."). Polonsky's takings claim—and his right to go to court to enforce his right to just compensation—arose at the time the town took his equity in his property without paying for it. *See, e.g., id.* at 2170. Because New Hampshire's Takings Clause provides even greater protections than the federal Takings Clause, this fact holds true for Polonsky's takings claim. *Thomas Tool*, 145 N.H. at 221. The New Hampshire Constitution demands that the Town pay Polonsky for his home equity.[4]

II. THE DISTRICT'S TAX-SALE LAW THREATENS THE CONSTITUTIONAL RIGHTS OF THE MOST VULNERABLE MEMBERS OF SOCIETY

The Supreme Court has repeatedly instructed that the Constitution's just compensation requirement be enforced with "fairness and justice" in mind. *Armstrong*, 364 U.S. at 48-49 (The Takings Clause "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole."). This instruction is particularly important here, where the New Hampshire tax foreclosure statute purports to authorize a transfer of an owner's entire home equity to the government regardless of how much is owed—a windfall that often vastly exceeds the owner's debt.

Such confiscations impose especially severe burdens on the property rights of vulnerable and politically powerless people. The poor, elderly, sick, and minority groups are most likely to fall victim to such schemes. The elderly are usually hit the hardest by laws that compel a confiscation of surplus equity because they are significantly more likely to "own their homes free and clear of any encumbrances." Jennifer C.H. Francis, *Redeeming What Is Lost: The Need to Improve Notice for Elderly Homeowners Before and*

[4] Amicus Curiae NHTCA alternatively contends that the taking of Polonsky's remaining equity is a constitutional penalty. Br. for NHTCA, at 20-23. However, this argument has no merit. N.H. Rev. Stat. § 80:90(f) explicitly defines the only authorized penalty as "10 percent of the assessed value of the property as of the date of the tax deed…" The statute does not authorize municipalities to extinguish remaining property equity under the guise of applying a penalty. Moreover, Appellant has conceded that it engaged in an uncompensated taking. App. Br. at 19.

After Tax Sales, 25 Geo. Mason U. Civ. Rts. L.J. 85, 88-89 (2014). PLF client Uri Rafaeli, who is 84 years old, lost an important source of retirement income when Oakland County, Michigan took his rental home that was worth more than $60,000 as payment for a tiny $8.41 debt. The county sold the property in an auction for $24,500, and kept all of the profits. The Michigan Supreme Court is currently considering whether Oakland County effected a taking.

Unsurprisingly, the homeowners most at risk of losing their home to a tax sale include those who are sick or incompetent, "suffering from Alzheimer's, dementia, or other cognitive disorders." John Rao, *The Other Foreclosure Crisis: Property Tax Lien Sales*, National Consumer Law Center (NCLC) at 5 (July 2012). For example, 76-year-old veteran Benjamin Coleman failed to pay the small $317 remaining tax debt on his property because he suffered from "severe dementia." *Coleman through Bunn v. D.C.*, 70 F. Supp. 3d 58, 64 (D.D.C. 2014). In other cases, medical conditions leave otherwise hardworking individuals unable to pay.

Further, "property tax foreclosures are highly concentrated among low-income communities with large African American and Latino populations." *Id.* When government exercises "unchecked discretion in the use of eminent domain," officials tend to use that power to displace "poor, politically powerless minorities." *See* Werner, supra, at 350. The statute's impact on the politically powerless suggests that it fails the "chief object of government": the protection of individual liberties and property. *See* Derek Werner, *The Public Use Clause, Common Sense and Takings*, 10 B.U. Pub. Int. L.J. 335, 337 (2001). The Framers of the Constitution believed that protecting property rights "can prevent the government from arbitrarily imposing its will on disfavored minorities." *Id.* (John Adams said, "Property must be secured, or liberty cannot exist," and James Madison asserted that a just government "impartially secures" each person's right to "whatever is his own" in a manner that protects individuals from control by factions). When government denies property rights "to the politically disfavored," it "effectively strips them of a political identity" because property "is an individual right" that allows citizens to "'rely on themselves and plan their own lives.'" *Id*. at 337-38 (quoting James Bovard, *Lost Rights:*

The Destruction of American Liberty 48 (1994)). *See also Lynch v. Household Finance Corp*., 405 U.S. 538, 552 (1972) ("[A] fundamental interdependence exists between the personal right to liberty and the personal right in property. Neither could have meaning without the other.").

CONCLUSION

For the foregoing reasons, PLF respectfully requests that this Court hold that Polonsky is entitled to full compensation for the taking of his home and land equity.

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Respectfully submitted,

By: /s/Christina Martin

CHRISTINA MARTIN
FL Bar No. 0100760
Pacific Legal Foundation
4440 PGA Boulevard Suite 307
Palm Beach Gardens, FL 33410
Telephone: (916) 503-8998
Email: cmartin@pacificlegal.org

By: /s/Ovide M. Lamontagne

OVIDE M. LAMONTAGNE, ESQUIRE
Bernstein, Shur, Sawyer & Nelson, P.A.
670 North Commercial Street, Ste. 108
Manchester, NH 03105-1120
Telephone: (603) 665-8838
Email: olamontagne@bernsteinshur.com

CERTIFICATE OF SERVICE

I hereby certify that that the foregoing filing was electronically filed with the Clerk of the Court on December 3rd, 2019, using the electronic filing system, which will send notification of said filing to the attorneys of record:

John F. Hayes, Esq. Alfano Law Offices PLLC 4 Park Street Concord, New Hampshire 03301 Appellate Counsel for Plaintiff	Barton L. Mayer, Esq. Upton and Hatfield, LLP 10 Centre Street P.O. Box 1090 Concord, New Hampshire 03301 Appellate Counsel for Defendant
Stephen C. Buckley, Esq. Legal Services Counsel NH Municipal Association 25 Triangle Park Drive Concord, New Hampshire 03301 Amicus Counsel	Bernard H. Campbell, Esquire BEAUMONT & CAMPBELL 1 Stiles Road Suite 107 Salem, New Hampshire 03079 Counsel for NHTCA

Respectfully submitted,

By: /s/ Ovide M. Lamontagne

OVIDE M. LAMONTAGNE, ESQUIRE
Bernstein, Shur, Sawyer & Nelson, P.A.
670 North Commercial Street, Suite 108
P.O. Box 1120
Manchester, NH 03105-1120
Telephone: (603) 623-8700
olamontagne@bernsteinshur.com