

No. 24-29

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In The  
**Supreme Court of the United States**

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PENNYMAC LOAN SERVICES, LLC, ET AL.,  
*Petitioners,*

v.

ROOSEVELT ASSOCIATES, RIGP, ET AL.,  
*Respondents.*

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On Petition for Writ of Certiorari to the  
Supreme Court of Rhode Island

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**BRIEF AMICUS CURIAE OF  
PACIFIC LEGAL FOUNDATION  
IN SUPPORT OF PETITIONERS**

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## **QUESTIONS PRESENTED**

1. Does the government violate the Takings Clause when it confiscates property for payment of a tax debt without allowing the property owner any means of recovering the value of the property in excess of the debt?

2. Is an otherwise unconstitutional taking insulated from the Constitution's reach just because the confiscating municipality delivers the excess equity to private investors rather than to local governments?

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## IDENTITY AND INTEREST OF AMICUS CURIAE<sup>1</sup>

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt corporation organized for the purpose of litigating matters affecting the public interest in private property rights, individual liberty, economic freedom, and the separation of powers. Founded more than 50 years ago, PLF is the most experienced legal organization of its kind.

PLF has represented property owners in many important property rights cases in this Court, including *Tyler v. Hennepin County*, 598 U.S. 631 (2023), a case that is central to the questions presented here. *See also, e.g., Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024) *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147 (2021); *Knick v. Twp. of Scott*, 588 U.S. 180 (2019); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987).

PLF attorneys have extensive experience with the constitutional issues in this case, having represented more than two dozen former owners of tax-delinquent property lost to foreclosure. *See, e.g., Fair v. Cont'l Res.*, 143 S. Ct. 2580 (2023); *Nieveen v. TAX 106*, 143 S. Ct. 2580 (2023); *Rafaeli, LLC v. Oakland Cnty.*, 505 Mich. 429 (2020); *Schafer v. Kent Cnty.*, No. 164975,

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<sup>1</sup> Pursuant to Rule 37.2, PLF provided timely notice to all parties. Pursuant to Rule 37.6, PLF 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 PLF, its members, or its counsel made a monetary contribution to its preparation or submission.

\_\_ N.W.3d \_\_, 2024 WL 3573500 (Mich. July 29, 2024); *Hall v. Meisner*, 51 F.4th 185 (6th Cir. 2022); *Johnson v. City of East Orange*, No. ESX-C-000016-23, Order Granting Defendants’ Motion for Summary Judgment (N.J. Sup. Ct. Law Div. Mar. 19, 2024) (appeal pending). Moreover, PLF also frequently participates as amicus curiae in cases alleging that government takes private property without just compensation when it confiscates more than is owed in property taxes. *See, e.g., Dorce v. City of New York*, 2 F.4th 82 (2d Cir. 2021); *Freed v. Thomas*, 976 F.3d 729 (6th Cir. 2020); *Searle v. Allen*, No. CV-24-00025-PHX-JJT, 2024 WL 3427163 (D. Ariz. July 16, 2024).

PLF advocates in favor of the highest levels of constitutional protection for property tax debtors, particularly because such property owners frequently are among the most vulnerable demographics—elderly and suffering from physical and mental impairments. The Fifth Amendment, as incorporated against the states via the Fourteenth Amendment, protects against takings without just compensation and deprivation of property without due process of law. Both are implicated by this petition and warrant this Court’s review.

## **INTRODUCTION AND SUMMARY OF ARGUMENT**

The Petitioners here both owned property interests in homes in Coventry, Rhode Island, that were taken by the government and given to investors as payment for relatively small tax debts. In *PennyMac Loan Servs., LLC v. Roosevelt Assocs., RIGP*, the tax debt was \$1,213.54 and the property was worth \$300,000—giving a huge windfall to the Respondent investor at the expense of the debtor Domenico Companatico and

Petitioner PennyMac. App. 32a. In *Wilmington Savings Fund Society, FSB v. Power Realty, RIGP*, the tax debt was \$4,330.44 on a property worth approximately \$165,000. See App. 50a–51a. No one paid Petitioners or other parties with an interest in the home for the taking of the excess value of the homes.

In Rhode Island, tax collectors auction tax liens to private investors. The tax lien—called a “collector’s deed”—entitles the debt collector to collect the tax debt plus costs and 12% annual interest. R.I. Gen. Laws Ann. § 44-9-21. The lienholder has no right of possession and no right to exclude. R.I. Gen. Laws Ann. § 44-9-12(a) (interest in real estate is “held as security for the repayment of the purchase price with all intervening costs, terms”). If the full debt is not paid within one year, the lienholder may foreclose and take title to the percentage of ownership in the property offered by the lienholder at an auction. R.I. Gen. Laws Ann. § 44-9-12(a), -19. The winning bidder for the lien—the collector’s deed—is the investor who offers to take the smallest share of ownership if the property is foreclosed. R.I. Gen. Laws Ann. § 44-9-8.

Usually, the auctions lack competition because only a handful of investors in Rhode Island understand the unusual state statutes governing these sales. See Patrick Anderson, *Should RI tax sales be for 'locals only?' Bill seeks to reduce out-of-state competition*, The Providence Journal (May 7, 2022).<sup>2</sup> Consequently, the winning bidder often prevails after offering to take the entire property—100% ownership.

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<sup>2</sup> [www.providencejournal.com/story/news/politics/2022/05/07/bill-would-give-rhode-island-bidders-edge-municipal-tax-sales/9686609002/](http://www.providencejournal.com/story/news/politics/2022/05/07/bill-would-give-rhode-island-bidders-edge-municipal-tax-sales/9686609002/).

*Picerne v. Sylvestre*, 113 R.I. 598, 603 n.7 (1974) (“[a]s a practical matter, the only offer made in most sales is for the whole interest.”). Regardless, the property interest sold at these auctions is not fee simple ownership to the property. Rather it is a lien with a future contingent interest in title to the property. See R.I. Gen. Laws Ann. § 44-9-12(a). The investors here used the purchased tax liens, for which they paid only the tax debt, to take the valuable homes without any payment to the former owners for the substantial home equity taken.

In *Tyler*, 598 U.S. at 639, this Court held that the government has “the power to sell . . . [a debtor’s] home to recover the unpaid property taxes.” But the government cannot “use the toehold of the tax debt to confiscate more property than was due.” *Id.* Such confiscation unconstitutionally takes private property without just compensation. *Id.* That decision requires payment of just compensation for the alleged confiscation at issue here.

Yet the Rhode Island Supreme Court held that *Tyler* did not apply because the government here “sold the subject property exclusively for unpaid taxes and fees . . . and did not retain any excess value in the property.” App. 13a, 26a. The Rhode Island Supreme Court’s decisions conflict with decisions by this Court and other jurisdictions. The Rhode Island Supreme Court’s decision especially harms vulnerable owners, including the elderly, sick, and poor, who are most prone to losing their homes to tax foreclosures.

This Court should grant the petition and reverse to ensure consistent application of *Tyler* by the lower courts.

**ARGUMENT****I. THE RHODE ISLAND SUPREME COURT'S DECISION CONFLICTS WITH DECISIONS BY THIS COURT**

In *Tyler*, a Minnesota county took Geraldine Tyler's condo to collect \$15,000 in taxes, penalties, interest, and fees. 598 U.S. at 634. Pursuant to Minnesota statutes, the county sold it for \$40,000 and kept it all to fund various public programs. *Id.* The county never paid Tyler for the excess property that it took. *Id.* This Court unanimously held, "The County had the power to sell Tyler's home to recover the unpaid property taxes. But it could not use the toehold of the tax debt to confiscate more property than was due." *Id.* at 639. By doing so, it effected a classic unconstitutional taking. *Id.*

*Tyler* compels the conclusion that Petitioners' private property, which was worth more than what they owed, was taken without just compensation. Like in *Tyler*, the government here confiscated valuable homes as payment for much smaller tax debts. Here, the government gave that confiscated property away to private parties—Respondents. But when deciding whether there was a taking, it is irrelevant whether the government keeps a windfall or gives it away to private lienholders. "[T]he question is what has the owner lost, not what has the taker gained." *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 710 (1999).

Consistent with that view, shortly after deciding *Tyler*, this Court vacated two judgments by the Nebraska Supreme Court for reconsideration "in light of *Tyler*." *Fair*, 143 S. Ct. 2580; *Nieveen*, 143 S. Ct.

2580. In both cases, the government sold tax liens to private parties, which gave the investors a right to collect the tax debt with interest. *Fair v. Continental Resources*, 311 Neb. 184, 186–87 (2022); *Nieveen v. TAX 106*, 311 Neb. 574, 589 (2022). When the owners failed to pay, the investors were able to obtain a deed to the properties. The investors only paid the tax debt, so the government did not receive a windfall.<sup>3</sup> Nevertheless, this Court sent both cases back to the Nebraska Supreme Court for reconsideration, where they are currently pending.

The lower court’s holding that *Tyler* cannot apply because the *government* did not retain a windfall conflicts with *Tyler*. The Court should grant the Petition.

## II. THE LOWER COURT’S DECISION CREATES A CONFLICT WITH OTHER JURISDICTIONS

The Rhode Island Supreme Court rejected the takings claim raised here because the government sold the property for only the amount of the debt and “did not retain any excess value in the property.” App. 13a, 26a. That holding conflicts with the Sixth Circuit, Michigan Court of Appeals, and the New

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<sup>3</sup> The investor that received the windfall may also be liable as a state actor for an unconstitutional taking when acting under the color of state law and with aid from the government. *See Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 936–37 (1982); *Fuentes v. Shevin*, 407 U.S. 67, 69 (1972); *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 486 (1988). This Court has long recognized that the power of eminent domain can be exercised “by private parties to whom the power has been delegated.” *PennEast Pipeline Co., LLC v. New Jersey*, 594 U.S. 482, 487 (2021).

Jersey Appellate Division. See *Hall*, 51 F.4th at 189, *reh'g denied*, No. 21-1700, 2023 WL 370649 (6th Cir. Jan. 4, 2023), and *cert. denied*, No. 22-874, 2023 WL 4065633 (U.S. June 20, 2023); *Jackson v. Southfield Neighborhood Revitalization Initiative*, No. 361397, \_\_\_ N.W.3d \_\_\_, 2023 WL 6164992, at \*14 (Mich. Ct. App. Sept. 21, 2023); *257-261 20th Ave. Realty, LLC v. Roberto*, 307 A.3d 19, 32 (N.J. App. Div. 2023).

In *Hall*, which was cited favorably by this Court in *Tyler*, 598 U.S. at 638, the Sixth Circuit held that just compensation must be paid even if the government gives the windfall from the tax foreclosure to a private investor. 51 F.4th at 189. In that case, consistent with Michigan's statutes, Oakland County confiscated Tawanda Hall's home, which was worth substantially more than her \$22,642 debt. *Id.* The county did not auction it in a fair sale. Instead, the county sold it to the city for the amount of the tax debt, and the city then transferred the property to a private company run by city officials for \$1. *Id.* at 189. Even though the government did not profit from the sale, this was still a taking. *Id.* at 196. The Sixth Circuit rejected the argument that a homeowner's property interest in foreclosed "property is limited to any 'surplus' proceeds after a foreclosure sale" by the government. *Id.* at 195. "[T]he County took the plaintiffs' property without just compensation, in violation of the Takings Clause." *Id.* at 196.

Under a similar set of facts as in *Hall*, the Michigan Court of Appeals recognized that the government violated the Takings Clause when it "took title to the plaintiffs' properties" via tax foreclosure "without paying plaintiffs just compensation for their

equity in the subject properties.” *Jackson*, 2023 WL 6164992, at \*14. That court held *Tyler* means “an unjust taking occurs under the federal constitution when the government keeps the entire property itself instead of holding a tax-foreclosure sale.” *Id.* at \*13. And it was irrelevant whether the government then gave that windfall to a private party. *See id.* at \*14. “The right to the retention of surplus proceeds necessarily relies on an arms-length public auction, which allows for a real-time evaluation of the value of the subject property.” *Id.* at \*16. Without such an auction, “the lack of surplus proceeds can hardly be described as not a taking—plaintiffs still lost their equitable title in their properties.” *Id.* at \*16.

Likewise, New Jersey’s appellate court held that *Tyler* applies to the state’s tax lien law, which like Rhode Island, sells tax liens that give the purchaser a right to collect the debt, and if not paid, later foreclose and take title without paying the debtor for the excess value of the property. *See Roberto*, 307 A.3d at 32. The New Jersey Appellate Division held that the state’s tax sale law “permitted foreclosure of a property owner’s equity and is thus a prohibited taking after *Tyler*.” *Id.* It did not matter that the government did not take a windfall. *See id.*

Like the confiscations in *Hall*, *Jackson*, and *Roberto*, there was no arms-length public auction for the fee simple title to the homes here. Rather, the Rhode Island auctions were for liens,<sup>4</sup> similar to those sold in New Jersey, which did not give the lienholders a right to possess or other interests associated with

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<sup>4</sup> R.I. Gen. Laws Ann. § 44-9-12(a) (interest initially must “be held as security for the repayment of the purchase price with all intervening costs” plus interest).



ownership.<sup>5</sup> The lienholders were entitled to only collect the tax debt with costs and 12% interest, plus a 10% penalty.<sup>6</sup> After one year of holding the lien, the investors then could seek foreclosure and take fee simple title if the debt remained unpaid. R.I. Gen. Laws Ann. § 44-9-19. The unusual auction procedure cannot transform an unconstitutional taking into a lawful confiscation.

Respondents may argue that Rhode Island's system nevertheless protects debtors by auctioning tax liens to the buyer who offers to take the smallest percentage ownership of the property if the lien is not paid in time. As noted, these "bid down" sales for something other than fee simple title are generally not commercially reasonable and attract little or no competition in some jurisdictions. *Picerne*, 113 R.I. at 603 n.7.

But even if in some municipalities, Rhode Island's "bid down" statute might sometimes result in competitive sales that protect equity, the alleged facts suggest the sales here failed to do so. That such valuable properties were transferred in their entirety for only the cost of the tax debts suggests that these auctions were insufficient to satisfy the Takings Clause. *See Slater v. Maxwell*, 73 U.S. 268, 276 (1867) (Because tax sales present "a great temptation" to corruption, they must be "closely scrutinized" to ensure they are conducted "not merely . . . in conformity with requirements of the law, but that they

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<sup>5</sup> The purchaser of the lien does not have "any right to either the possession, or the rents or profits of the land until the expiration of one year after the date of the sale." R.I. Gen. Laws Ann. § 44-9-12(a).

<sup>6</sup> R.I. Gen. Laws Ann. § 44-9-21.

should be conducted with entire fairness.”); *French v. Edwards*, 80 U.S. 506, 508 (1871) (tax debt statutes are “intended for the protection of the taxpayer”). At a minimum, this is a factual matter that the lower court should at least address, rather than cursorily refusing to apply *Tyler*.

The decision below conflicts with decisions in other jurisdictions and allows uncompensated takings to continue in Rhode Island. The Court should grant the petition.

### **III. LAWS LIKE RHODE ISLAND’S OVERWHELMINGLY HARM SOCIETY’S WEAKEST MEMBERS**

The decision below will most often harm owners who are elderly, sick, or poor. *See, e.g.*, John Rao, *The Other Foreclosure Crisis*, Nat’l Consumer Law Ctr. 5, 9, 33, 38 (July 2012); Jennifer C.H. Francis, Comment, *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 (2014).

Amicus Curiae Pacific Legal Foundation has represented more than two dozen property owners who lost homes and other real estate to confiscatory tax foreclosures. Most of these owners, like Geraldine Tyler herself, are elderly or otherwise struggling with severe medical issues that interfere with their ability to keep up with debts and notices. *See, e.g.*, *Foss v. City of New Bedford*, 621 F.Supp.3d 203, 206 (D. Mass. 2022) (confiscatory foreclosure law took an indigent senior’s \$240,000 home over a \$9,626 tax debt); *Rafaeli, LLC v. Oakland Cnty.*, 505 Mich. 429, 437 (2020) (octogenarian owner lost home over \$8.41 tax

deficiency); *Fair*, 311 Neb. at 318 (owner was caring for wife who was dying of multiple sclerosis).

Indeed, cases filed by other firms demonstrate the same trend. *See, e.g., Coleman through Bunn v. D.C.*, 70 F.Supp.3d 58, 62 (D.D.C. 2014) (elderly veteran suffering from dementia); *Wisner v. Vandelay Invs., L.L.C.*, No. A-16-451, 2017 WL 2399492, at \*1–2 (Neb. Ct. App. May 30, 2017), *rev'd*, 300 Neb. 825 (2018) (elderly widow in nursing home). Even trial judges who regularly hear tax foreclosure and related cases have noted that those who lose their homes this way are in especially vulnerable populations. *See, e.g., Cherokee Equities, L.L.C. v. Garaventa*, 382 N.J. Super. 201, 211 (Ch. Div. 2005) (tax foreclosure defendants are often “among society’s most unfortunate.”); *Tyler v. Hennepin Cnty.*, No. 22-166, Joint Appendix at 51–52 (district court noting “disproportionate impact on the poor, the elderly, the infirm”).

This Court should grant the petition to ensure those populations are protected from unconstitutional confiscatory tax foreclosures.

**CONCLUSION**

This Court should grant the petition.

DATED: August 2024.

Respectfully submitted,

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On Petition for Writ of Certiorari to the  
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**CERTIFICATE OF COMPLIANCE**

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As required by Supreme Court Rule 33.1(h), I certify that the BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION IN SUPPORT OF PETITIONERS contains 2,882 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on August 9, 2024.

s/ Christina M. Martin

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**AFFIDAVIT OF SERVICE**

SUPREME COURT OF THE UNITED STATES

No. 24-29

-----X

PENNYMAC LOAN SERVICES, LLC,  
*Petitioner,*

*v.*

ROOSEVELT ASSOCIATES, RIGP, ET AL.,  
*Respondents.*

-----X

STATE OF NEW YORK            )

COUNTY OF NEW YORK        )

I, Julie Connor, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

I am retained by Counsel of Record for *Amicus Curiae*.

That on the 12th day of August, 2024, I served the within Brief Amicus Curiae of Pacific Legal Foundation in Support of Petitioners in the above-captioned matter upon:

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by sending three copies of same, addressed to each individual respectively, through USPS Priority Mail. An electronic version was also served by email to each individual.

That on the same date as above, I sent to this Court forty copies of the within Brief Amicus Curiae of Pacific Legal Foundation in Support of Petitioners through the Overnight Federal Express, postage prepaid. In addition, the brief has been submitted through the Court's electronic filing system.

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 12th day of August, 2024.

*Julie Connor*

---

Julie Connor

Sworn to and subscribed before me  
this 12th day of August, 2024.

A handwritten signature in black ink that reads "Mariana Braylovskiy". The signature is written in a cursive style with a large, looping initial 'M' and a long, sweeping tail on the 'y'.

**MARIANA BRAYLOVSKIY**  
Notary Public State of New York  
No. 01BR6004935  
Qualified in Richmond County  
Commission Expires March 30, 2026