IN THE SUPREME COURT OF IOWA

SUPREME COURT NO. 25-1482

EQUITY TRUST COMPANY FBO PETER R. SILVA,
Plaintiff-Appellee,

v.

ALAN WOODS and LISA HOLDEN,
Defendant-Appellants.

APPEAL FROM THE
IOWA DISTRICT COURT FOR FAYETTE COUNTY,
DISTRICT COURT NO. EQCV057094,
THE HONORABLE RICHARD D. STOCHL

BRIEF OF AMICUS CURIAE PACIFIC LEGAL FOUNDATION

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IDENTITY AND INTEREST OF AMICUS CURIAE

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt corporation organized for the purpose of litigating matters affecting the public interest in constitutional rights including property rights. PLF attorneys have participated as lead counsel in many United States Supreme Court cases that defend individuals' constitutional rights under the Takings Clause, including a case that is key to the dispute here, *Tyler v. Hennepin County*, 598 U.S. 631 (2023). PLF attorneys are also co-counsel, representing the former owner in *Pung v. Isabella County*, 146 S. Ct. 80 (Oct. 3, 2025) (granting certiorari), in which the Supreme Court will decide what constitutes "just compensation" in a confiscatory tax foreclosure case.

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); *Hall v. Meisner*, 51 F.4th 185 (6th Cir. 2022); *Rafaeli, LLC v. Oakland Cnty.*, 505 Mich. 429 (2020).

PLF also often participates as amicus curiae in important property rights cases, including cases involving takings that arise from confiscatory tax foreclosure laws. *See, e.g.*, *257-261 20th Ave. v. Roberto*, 327 A.3d 1177 (N.J. 2025); *Western States Land Reliance Trust v. Linn County*, 374 Ore. 437 (Nov. 20, 2025) (granting petition for review).

STATEMENT REQUIRED BY IOWA R. APP. P. 6.906(4)(d)

Neither party nor their counsel participated in the drafting of this brief, in whole or part. Neither party nor their counsel contributed any money to the undersigned for the preparation or submission of this brief.

ARGUMENT

Iowa, like all other states, has long recognized that home equity is private property. And Iowa, like all other states, may not take more from a taxpayer than she owes. Because equity is simply the value of an owner's interest in property minus any encumbering liens, Iowa in other contexts ensures that an owner's equity is not needlessly sold or unnecessarily sacrificed when collecting a debt. To do so, Iowa generally requires that the property be fairly sold in an arm's-length transaction. But the tax collection process used here needlessly confiscated home equity from Mr. Woods far beyond what he owed without paying just compensation. The County did not sell fee simple title to collect taxes from Mr. Wood. Instead, it sold a convoluted lien with a future contingent interest in possibly taking title to his home after two years for only the total amount due. In other words, the tax collection process here produced the taking of his home equity without just compensation. The principles behind *Tyler* are sound, and this Court should adopt them when construing the Iowa Constitution's Takings Clause.

I. Iowa Cannot Extinguish a Property Right That It Recognizes Everywhere Else to Escape the Takings Clause

The Takings Clause of the Fifth Amendment requires that when government takes private property for public use it must pay just compensation. U.S. Const. amend. V. Similarly, Article I, section 18 of the Iowa Constitution provides that "[p]rivate property shall not be taken for public use without just compensation first being made, or secured to be made to the owner thereof, as soon as the damages shall be assessed by a jury." Though this case involves only the Iowa Takings Clause, this Court has said that "federal cases interpreting the Federal Takings Clause" are "persuasive" when interpreting Iowa's Takings Clause, even if "not binding." *Puntenney v. Iowa Utils. Bd.*, 928 N.W.2d 829, 844 (Iowa 2019); *see also Livingood v. City of Des Moines*, 991 N.W.2d 733, 740–42 (Iowa 2023) (canvassing federal and state cases interpreting the Federal Takings Clause when interpreting the Iowa Takings Clause).

A. State Law Is Not the Only Source of Property Rights for Purposes of the Takings Clause

Neither the Federal Takings Clause nor Iowa's Takings Clause defines "property." As this Court put it, "property for just compensation purposes includes 'every sort of interest the citizen may possess.'"

Bormann v. Bd. of Supervisors, 584 N.W.2d 309, 315 (Iowa 1998) (quoting *United States v. General Motors Corp.*, 323 U.S. 373, 378 (1945)). Generally, "[s]tate law determines what constitutes a property right." *Id.* But while "[s]tate law is one important source," it "cannot be the only source." *Tyler*, 598 U.S. at 638.

That is because a state cannot manipulate property rights to "simply exclude from its definition of property any interest that the state wished to take." *Hall*, 51 F.4th at 190. The U.S. Supreme Court has consistently applied this principle. *See, e.g.*, *Armstrong v. United States*, 364 U.S. 40, 48 (1960) (holding that it was a taking when government "for its own advantage destroyed the value of the liens, something that the Government could do because its property was not subject to suit, *but which no private purchaser could have done*") (emphasis added); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) (holding that "a State, by *ipse dixit*, may not transform private property into public property without compensation"); *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 167 (1998) (rejecting Texas's argument that it did not follow the general rule for interest because Texas's claimed exceptions were "entirely consistent" with background principles of property law

and thus could not be used to show that Texas did not follow the general rule); *Tyler*, 598 U.S. at 639 (holding that Minnesota could not "make an exception only for itself, and only for taxes on real property."). In short, government "may not sidestep the Takings Clause by disavowing traditional property interests long recognized under state law." *Phillips*, 524 U.S. at 167. This remains true for a state Takings Clause—it "would be a dead letter" otherwise. *See Hall*, 51 F.4th at 190.

Referring to state law not only helps determine what constitutes a property right, but it also helps determine whether a state is treating property differently when it is the one taking it. In addition to state law, the U.S. Supreme Court has "look[ed] to 'traditional property law principles,' plus historical practice and [its] precedents." *Tyler*, 598 U.S. at 639. (quoting *Phillips*, 524 U.S. at 167). This Court has likewise looked to its precedents and "other persuasive authorities" to ensure consistency when determining whether property is protected by the Takings Clause. *Livingood*, 991 N.W.3d at 741 (citing cases holding that state income tax refunds were protected property involving attorney fees, marital asset division, bankruptcy, and debtor's estates).

B. Home Equity Is Private Property Protected by Iowa's Takings Clause

Iowa's Takings Clause protects "every sort of [property] interest the citizen may possess.'" *Bormann*, 584 N.W.2d at 315 (quoting *General Motors Corp.*, 323 U.S. at 378). Home equity is private property. In other contexts, Iowa law recognizes a protected property interest in home equity. For private mortgage foreclosures, Iowa law requires a court to sell the mortgaged property "or so much thereof as is necessary . . . to satisfy the judgment." Iowa Code § 654.5. Any surplus "remaining after satisfying the mortgage and costs . . . shall be paid to the mortgagor." Iowa Code § 654.7. And over 40 years ago, Iowa "authorized home equity loans." *Blue Grass Sav. Bank v. Cmty. Bank & Trust Co.*, 941 N.W.2d 20, 26 (Iowa 2020); *see* Iowa Code § 535.10 (current statute authorizing home equity loans). The value of home equity is also used when distributing marital assets in a divorce proceeding. *See In re Marriage of Hitchcock*, 309 N.W.2d 432, 436 (Iowa 1981); *In re Kloppe*, 2025 Iowa App. LEXIS 879, at *11–12 (Iowa Ct. App. Oct. 15, 2025).

Equity has also been recognized as a property interest throughout legal history, even when government is the one collecting a debt. When government collects a debt, "it may not take more from a taxpayer than

she owes." *Tyler*, 598 U.S. at 639. That principle, which dates "at least as far back as Runnymede in 1215," *id.* (discussing Magna Carta of 1215, § 26 (H. Summerson et al. trans., The Magna Carta Project)), "became rooted in English law," *id.*, "made its way across the Atlantic," *id.* at 640, and "held true through the passage of the Fourteenth Amendment," *id.* at 641. While government may seize and sell property to collect a debt, it does so "bound by an implied contract in law" to fairly sell the property, collect the debt, and refund any excess to the former owner. 2 William Blackstone, *Commentaries on the Laws of England* *452 (10th ed. 1787).

Iowa historically abided by these common law property protections for equity. *See, e.g.*, *Fortin v. Sedgwick*, 110 N.W. 460, 462–63 (Iowa 1907) (the longstanding protections of debtors' equity is "so just and reasonable in itself as to command the assent of both the judgment and conscience of every fair–minded man."); Iowa Code §§ 492–493, 496, 498, 501 (1851) (requiring personal goods sold first, and if tax debt still owed, then land sold to person offering to pay the debt for the "smallest portion" of property); *Cook v. Jenkins & Co.*, 30 Iowa 452, 454 (Iowa 1871) (setting aside forced sale, noting the "gross injustice and oppression" caused by the sale, where property worth $800 was sold for $535 to discharge that judgment

of $21, plus $20 costs); *Kramer v. Rebman*, 9 Iowa 114, 119 (1859) ("It will be remembered that we have before said, that in this State, the method is to foreclose by ordering a sale of the property, instead of by what is term a strict foreclosure.").

On that basis, Iowa courts have long protected property rights by requiring that forced sales be conducted fairly. *See Daniels v. Holtz*, 794 N.W.2d 813, 822 (Iowa 2010) ("[E]ven without a grossly inadequate price, a court may set aside a sheriff's sale for irregularity, unfairness, or fraud causing a prejudicial effect on the sale."); *see also Slater v. Maxwell*, 73 U.S. 268, 276 (1867) ("It is essential to the validity of tax sales . . . that they should be conducted with entire fairness. Perfect freedom from all influences likely to prevent competition in the sale should be in all such cases strictly exacted.").

Both before and after *Tyler*, state and federal courts have recognized that the Federal Takings Clause or state analogs protect debtors' right to be paid for excess property seized to pay a tax. *See Griffin v. Mixon*, 38 Miss. 424, 436–37 (Miss. Err. & App. 1860) (violation of due process and just compensation guarantee); *Farnham v. Jones*, 19 N.W. 83, 85 (Minn. 1884) ("[T]he right to surplus exists independently of such

statutory provision"); *King v. Hatfield*, 130 F. 564, 579–80 (C.C.D.W. Va. 1900) (taking); *Bogie v. Barnet*, 129 Vt. 46, 49 (Vt. 1970) (Vermont Takings Clause); *Thomas Tool Servs. v. Town of Croydon*, 145 N.H. 218, 220 (N.H. 2000) (New Hampshire Takings Clause); *Rafaeli*, 505 Mich. 429 (Mich. 2020) (Michigan Takings Clause); *Hall*, 51 F.4th at 195 (6th Cir. 2022) (Federal Takings Clause); *Cont'l Res. v. Fair*, 10 N.W.3d 510, 520 (Neb. 2024) (Nebraska and Federal Takings Clauses); *Roberto*, 327 A.3d at 1191 (Federal Takings Clause); *see also Johnson v. City of E. Orange*, No. A-2486-23, 2025 WL 1774717, at *2 (N.J. Super. Ct. App. Div. June 27, 2025) (New Jersey Takings Clause).

C. Iowa's Tax Deed Process Is Confiscatory

At first glance, Iowa's convoluted tax foreclosure law might look as if it would avoid confiscation,[1] but a closer look reveals the process is confiscatory. The County purports to sell "the smallest percentage of the parcel," Iowa Code § 446.16(1), but only a Tax Sale Certificate and the County's delinquent tax lien is immediately conveyed to the purchaser, Iowa Code §§ 446.16(3), 446.29. Fee simple title is not conveyed, although

[1] The process is so confusing, that when amicus curiae PLF undertook a 50-state survey, it originally thought that it protected private property by selling fractional shares of real property. But in reality, it sells liens.

after two years, if the owner does not pay the tax debt, the County Treasurer "shall make out a deed for each parcel sold . . . upon the return of the certificate of purchaser." Iowa Code § 448.1(1). When a deed is substantially executed and recorded, it "shall vest in the purchaser all the right, title, interest, and claim of the state and county to the parcel, and all the right, title, interest, and estate of the former owner in and to the parcel conveyed." Iowa Code § 448.3(1). Thus, if the property is worth more than the debt, the statute transfers "all the right, title, interest, and estate of the former owner" without paying just compensation.

In this case, the Trust purchased the County's lien on the property for $2,441.46. Outside the tax-lien context, enforcing a normal lien on real or personal property requires a judicial sale with the proceeds distributed according to the lien. *See* Iowa Code § 572.21 (enforcing a mechanic's lien on land requires a judicial sale with the proceeds distributed according to the lien); § 554.7210 (enforcing a warehouse lien involves selling the goods in a "commercially reasonable manner"); § 554.7308 (same for a carrier lien). But after two years of collecting 24% interest per year on the liens, Iowa Code § 447.1, tax lienholders may apply for a tax deed and take the property without a judicial sale, extinguishing any

interest the original owner had.[2] So, instead of seeking a forced sale of Mr. Woods's home, being forced to sell his property, and the proceeds distributed according to the lien, the Trust was allowed to take a home worth $37,480 to satisfy a $2,441.46 lien—something which "no private [lien] could have" authorized. *Armstrong*, 364 U.S. at 48. Thus, Iowa's tax lien law manipulates property rights "to avoid paying just compensation when it is the one doing the taking." *Tyler*, 598 U.S. at 639.

The lack of surplus proceeds from a sale of the lien here, which is by statutory design, cannot mean that the value of the equity is equal only to the amount of the lien. It may well be that sometimes a property's value is "the price it sells for at a forced auction, even if it is not the 'fair market value' of the property." *Edmondson Cmty. Org., Inc. v. Mayor of Baltimore*, 797 F. Supp. 3d 497, 525 (D. Md. 2025). But the County is not selling, and the purchaser is not buying, fee simple title to the property.

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[2] For perspective, that is the highest annual interest rate among states that sell tax liens. *See Tax Sale State Map & State Info*, SECRETS OF TAX LIEN INVESTING, https://www.secretsoftaxlieninvesting.com/tax-sale-map, (Alabama (12%); Arizona (16%); Colorado (9% + prime interest rate); Florida (18%); Kentucky (12%); Maryland (18%); Mississippi (18%); Missouri (10%); Montana (10%); Nebraska (14%); New Jersey (18%); South Carolina (12%); South Dakota (10%); Vermont (12%); Wyoming (15%)).

See id. Put another way, the County cannot sell its lien on the property and claim the lien's sale price is the value of the property for just compensation—just compensation must be "measured by the value of the *property*." *United States ex rel. & for Use of Tenn. Valley Auth. v. Powelson*, 319 U.S. 266, 284 (1943) (emphasis added).

Iowa used to recognize that it could not convert a tax lien into full title without additional protections for the debtor. For example, in 1879 this Court explained how a tax lien law "merely gave the tax sale purchaser a lien for the taxes, and required that the lien created by a tax sale and deed should be foreclosed as a mortgage." *Tredway v. McDonald*, 51 Iowa 663, 666 (1879). The protection requiring that the lien be foreclosed as a mortgage was necessary to avoid taking far more property than necessary to collect a debt. By abandoning that protection in the statute's current form, state law authorized the unconstitutional taking here.

D. The Government Does Not Convert an Unconstitutional Taking into a Constitutional One by Involving Private Lienholders

The government's unconstitutional activity is not cleansed by involving a private party. Indeed, the County and the Trust could both be

held liable to for the taking because they acted in concert. The County is liable because the "act of the taking" is the "event which gives rise to the claim for compensation." *Knick v. Township of Scott*, 588 U.S. 180, 190 (2019). And the County issued the tax deed that took Mr. Woods's equity.

The Trust is likewise liable because it exercised a power "traditionally exclusively reserved to the State." *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352 (1974); *see Roberto*, 327 A.3d at 1191 ("The collection of tax revenue is a quintessential, traditional public function."). That is, the Trust exercised "the power to seize property from owners for their failure to pay taxes to the sovereign," *Fair*, 10 N.W.3d at 521, and in the process, seized and sold more property than the taxpayer owed.

Even when a county's role is limited to a ministerial duty, a private party may be liable to pay just compensation because "[a] permanent physical occupation authorized by state law is a taking without regard to whether the State, or instead a party authorized by the State, is the occupant." *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 432 n.9 (1982); *Loretto v. Teleprompter Manhattan CATV Corp.*, 58 N.Y.2d 143, 149 (1983) (holding on remand that cable company must pay property owner for taking caused by installation of cable boxes); *Keokuk*

Junction Ry. Co. v. IES Indus., Inc., 618 N.W.2d 352, 362 (Iowa 2000) (holding that a private for-profit company acting as a public utility was required to pay just compensation for a power line easement because the failure to require such payment would allow the utility "to get something for nothing."); *see also Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149–52 (2021).

II. Tax Foreclosure Laws Like Iowa's Overwhelmingly Harm Society's Most Vulnerable Members

Tax foreclosure laws that enable the government to confiscate a homeowner's surplus equity are most likely to 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, 86–87 (2014). 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." Francis, *supra* at 88–89. Take PLF client Uri Rafaeli, for example. At 84 years old, he 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 an $8.41 debt, sold it for $24,500, and kept all the profits. *See also Foss v. City of New Bedford*, 621 F. Supp. 3d 203, 206 (D. Mass. Aug. 10, 2022) (confiscatory foreclosure law took an indigent senior's $240,000 home over a $9,626 tax debt).

And 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." Rao, *supra* at 5. For example, Benjamin Coleman, a 76-year-old veteran, failed to pay a $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. Sep. 30, 2014); *see also Cont'l Res. Fair*, 971 N.W.2d 313, 318 (Neb. 2022) (owner was caring for wife who was dying of multiple sclerosis).

Even trial judges who regularly hear tax foreclosure and related cases have noted that those who lose their homes this way are often from especially vulnerable populations. *See, e.g.*, *Cherokee Equities, L.L.C. v. Garaventa*, 887 A.2d 1203, 1210 (Ch. Div. Oct. 14, 2005) (tax foreclosure defendants are often "among society's most unfortunate"); Joint Appendix, *Tyler v. Hennepin County*, No. 22-166, 2023 WL 2558477, at *51–52

(U.S. Feb. 27, 2023) (district court noting "disproportionate impact on the poor, the elderly, the infirm").

The "protection of private property is indispensable to the promotion of individual freedom." *Cedar Point*, 594 U.S. at 147. This Court should ensure that Iowa's tax foreclosure law defends property rights against uncompensated takings.

CONCLUSION

This Court should hold that the Iowa Constitution, like the U.S. Constitution, prohibits the government from using the toehold of a tax debt to take more than what is owed without just compensation.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the typeface requirements and type-volume limitation of Iowa R. App. P. 6.906(4) and Iowa R. App. P. 6.903(1)(i) because this brief contains 3,428 words, excluding the parts of the brief exempted by Iowa R. App. P. 6.903(1)(i)(1),

and this brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(g) and the type-style requirements of Iowa R. App. P. 6.903(1)(b) because this brief has been prepared in a proportionally space typeface using Century Schoolbook in 14-point font.

CERTIFICATE OF SERVICE

I hereby certify that on February 27, 2026, a copy of the foregoing was served on all parties, through counsel, by EDMS.

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