In the Supreme Court of Nevada

THE CONSOLIDATED

APPEALS

CASE NO. 90929

SEBASTIAN FILUTOWSKI

Appellant,

v.

LAS VEGAS METROPOLITAN POLICE DEPARTMENT; SHERIFF KEVIN MCMAHILL IN HIS OFFICIAL CAPACITY, DETECTIVE SHANNON BROWN, IN HIS INDIVIDUAL CAPACITY

Respondents,

CASE NO. 91103

SEBASTIAN FILUTOWSKI

Appellant,

v.

STATE OF NEVADA EX REL OFFICE OF THE NEVADA ATTORNEY GENERAL; ATTORNEY GENERAL AARON FORD, IN HIS OFFICIAL CAPACITY

Respondents.

District Court Case No. A-25-913240-C
Eighth Judicial District Court

BRIEF OF THE MANHATTAN INSTITUTE, CATO INSTITUTE, AND GOLDWATER INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF APPELLANT

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NRAP 26.1 DISCLOSURES

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order so that the judges of this court may evaluate possible disqualification or recusal.

The Manhattan Institute is a nonprofit organization. It has no parent corporation, and no corporation owns 10% or more of its stock.

The Goldwater Institute is a nonprofit organization. It has no parent corporation, and no corporation owns 10% or more of its stock.

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Mark H. Hutchings, Esq. and John B. Lanning, Esq. of the law firm Hutchings Law Group represent the *Amici*, the Manhattan Institute, the Goldwater Institute, and the Cato Institute in this Court.

By: */s/ Mark. H. Hutchings*_____
Mark H. Hutchings, Esq.
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NRAP 29(C)(5) DISCLOSURE

The undersigned counsel of record certifies that no attorney for either party took part in authoring this brief, in whole or in part. In addition, undersigned counsel certifies no person or entity contributed money or other consideration to fund the preparing or submission of this brief.

By: */s/ Mark. H. Hutchings*
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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

The **Manhattan Institute** (MI) is a nonprofit public policy research foundation whose mission is to develop and disseminate new ideas that foster greater economic choice, individual responsibility, and human flourishing. MI has long produced scholarship and filed briefs supporting property rights and due process.

The **Cato Institute** is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Project on Criminal Justice was founded in 1999, and focuses on the scope of substantive criminal liability, the proper and effective role of police in their communities, the protection of constitutional and statutory safeguards for criminal suspects and defendants, citizen participation in the criminal justice system, and accountability for law enforcement.

The **Goldwater Institute** was established in 1988 as a nonpartisan public policy foundation devoted to principles of limited government, individual freedom, and constitutional protections. Through its Scharf-Norton Center for Constitutional Litigation, Goldwater litigates cases and files amicus briefs when it or its clients' objectives are implicated, and it has represented parties in asset-forfeiture cases in federal and state courts across the country.

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[1] This brief is filed pursuant to NRAP 29 and 32. Authority to file the brief derives from the accompanying motion to file.

The issues presented in this Petition turn on various elements of the U.S. Constitution, including the Takings Clause and the Due Process Clause. *Amici* have a particular and longstanding interest in preserving constitutional freedoms, and thus an interest in this Court's ruling. *Amici* have filed hundreds of *amicus* briefs and have decades of experience in assisting courts in resolving hard constitutional issues.

I. SUMMARY OF THE ARGUMENT

Sebastian Filutowski comes to this Court having never believed he would be fighting for his and others' constitutional rights in Nevada. "Kafkaesque" can be overused in law, but this case certainly qualifies. Most Americans would be shocked that such a thing could happen anywhere in this country, much less to someone haled into court in a state he hasn't visited since at least 2006.

This Court should view Nevada's system of civil forfeiture with extreme concern, because an *ex parte* seizure of property requires more process than was given here. Although the U.S. Supreme Court has not ruled civil forfeiture to be unconstitutional, it has stated in no uncertain terms that it implicates important due-process and property-right protections. Under the system used against Mr. Filutowski, no one in the country is safe from having accounts and funds seized on the say-so of a single police officer in Nevada. The U.S. Constitution demands more.

Nor does *Culley v. Mashall*, 601 U.S. 377 (2024), control. That case is narrow and distinguishable on the facts. The Court in *Culley* held that the Constitution

requires a timely forfeiture hearing, but not a preliminary hearing before that. It did not address the type of seizure here, performed *ex parte* and occurring for 199 days but never reaching a forfeiture hearing.

Finally, such seizures unquestionably implicate the Takings Clause of the Fifth Amendment. Takings can occur through a variety of means, and it is undisputed that Mr. Filutowski was deprived of his property for more than half a year. A taking is not automatically justified by law-enforcement authorization, and the fact that Mr. Filutowski's property was returned goes to compensation, not whether a taking occurred.

The Court should review this case and enter the requested injunction.

II. ARGUMENT

A. The Federal Constitution Establishes a Floor that Civil-Forfeiture Regimes Must Meet

1. Three Principles Define What Due Process Requires

The Due Process Clause of the Fourteenth Amendment guarantees that no state shall deprive a person of property without due process of law. U.S. Const. amend. XIV, sec. 1. That guarantee is not satisfied by the eventual availability of a forfeiture proceeding. It requires a meaningful opportunity to be heard at a meaningful time. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The deprivation begins at seizure, and the constitutional obligation to justify that deprivation runs from that moment forward. *United States v. James Daniel Good Real Property*, 510

U.S. 43, 53 (1993). Three principles follow from that baseline, and together they define the minimum that any civil forfeiture regime must provide.

First, the government bears the burden of justifying continued possession. Due process is not a mechanism by which the government takes property and then waits to see whether the owner complains loudly enough to get it back. It is a guarantee that deprivations of property are justified before, or promptly after, they occur. *Fuentes v. Shevin*, 407 U.S. 67, 80−82 (1972). The party asserting the right to retain seized property is the government, and it is the government that must carry the burden of establishing a lawful basis for that retention. *Nelson v. Colorado*, 581 U.S. 128, 136−37 (2017). A system that places that burden on the owner does not merely inconvenience innocent people; it inverts the constitutional order. The owner has done nothing to forfeit the presumption that his property is his. The government has asserted a claim against that property, and the Constitution requires it to prove that claim. Placing the burden on the owner to disprove the government's assertion assigns the risk of error to the individual rather than the party seeking to justify the deprivation. That allocation is incompatible with due process, and it compounds the injury by making deprivation look like the owner's fault rather than the government's choice. *Id*.; *Fuentes*, 407 U.S. at 80−82.

Second, review must be prompt. The constitutional requirement of a meaningful opportunity to be heard is not satisfied by a hearing that occurs only after

the deprivation has already run its course. *Mathews*, 424 U.S. at 333. Due process requires review at a time when it can prevent or correct wrongful deprivation, not after months of possession have done the damage a hearing was supposed to stop. *James Daniel Good Real Property*, 510 U.S. at 53−56. The U.S. Supreme Court has been explicit on this point: a forfeiture proceeding initiated long after seizure does not cure the constitutional defect created by the absence of prompt review. *Id*. at 54. Delay works systematically to the government's advantage: it exhausts owners financially and psychologically, forces them to weigh the cost of litigation against the value of the property at stake, and allows agencies to retain the use of seized assets while the owner bears the full cost of the deprivation. *United States v. $8,850*, 461 U.S. 555, 563−65 (1983). A system calibrated to produce delay is a system calibrated to produce deprivations without adjudication. The owner who cannot afford to litigate for 199 days—the time it took Filutowski to regain his property—simply loses, not because the government proved its case but because it never had to. That is the practical meaning of a regime without prompt review, and it is what due process was designed to prevent.

Third, review must be before a neutral decisionmaker free from financial interest in the outcome. Due process has never permitted the party that initiates a deprivation to adjudicate its continuation. *James Daniel Good Real Property*, 510 U.S. at 55−56. The neutrality requirement does real constitutional work. A hearing

before a decisionmaker who has already decided, or who benefits from a particular outcome, is not review at all. The U.S. Supreme Court has long held that a decisionmaker with a direct personal financial interest in the outcome is constitutionally disqualified. *See*, *e.g.*, *Tumey v. Ohio*, 273 U.S. 510, 523 (1927). That principle extends to institutional financial interest as well: where the adjudicating body itself benefits financially from a particular outcome, the neutrality requirement is violated even absent personal gain by any individual officer. *Ward v. Village of Monroeville*, 409 U.S. 57, 60−62 (1972).

Although both *Tumey* and *Ward* involved judicial rather than law-enforcement officers, the underlying principle is not limited to formal adjudications. Where an agency exercises adjudicative functions over property it has seized and stands to benefit from retaining, the conflict is the same regardless of the label attached to the proceeding.

As Justice Gorsuch observed in *Culley*, civil forfeiture has generated structural incentives for law enforcement agencies to seize property for financial gain—incentives that due process must account for rather than ignore. *Culley v. Marshall*, 601 U.S. 377, 396−99 (2024) (Gorsuch, J., concurring). When the seizing agency also controls whether and how to characterize seized property, and what disposition to recommend, without any prompt check by an independent judicial officer, the neutrality requirement is violated. *James Daniel Good Real Property*,

510 U.S. at 55−56. In this case, the policy of Metro's Cyber Investigative Group (CIG) authorized detectives to act as investigator, adjudicator, and distributor of seized assets simultaneously, without judicial oversight at any stage. Opening Br. at vi, 41. The constitutional remedy is not a better designed agency process, but a prompt judicial review by a court that has no stake in the outcome.

2. Applying *Mathews* to the Present Case

Applied to Nevada, *Mathews* does not present a close call. The Nevada regime fails each factor, and each one makes the others worse.

The first *Mathews* factor asks what private interest is affected by the government's action. *Mathews*, 424 U.S. at 335. Here, the answer is unambiguous. The property at stake is money, and money is among the most fungible and immediately consequential forms of property a person can hold. Its loss disrupts employment, undermines financial obligations, forces borrowing, and can destroy a small business before any adjudication occurs. *Krimstock v. Kelly*, 306 F.3d 40, 61−62 (2d Cir. 2002). Mr. Filutowski's funds were frozen in November 2024 and not returned for 199 days. Opening Br. at 2−4. During that period, he was forced to retain counsel, engage in expensive discovery, and attend an evidentiary hearing simply to recover property Metro's own detective acknowledged Filutowski had done nothing wrong to lose. Opening Br. at 3−4. The private interest at stake here, and in every case in which Nevada law enforcement seizes liquid assets, is severe.

The second *Mathews* factor asks about the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards. *Mathews*, 424 U.S. at 335. Nevada's procedures maximize rather than minimize that risk. The owner bears the initial burden to show that the government's retention is facially unreasonable—a threshold that places the first obstacle on the individual rather than on the government that seized the property. *In re 12067 Oakland Hills, Las Vegas, Nevada 89141*, 134 Nev. 799, 805 (Nev. Ct. App. 2018). No adversarial hearing is required promptly after seizure, and critically, in this case, Metro did not invoke Nevada's forfeiture statutes at all. Instead, it relied on CIG policy to make an unreviewable administrative determination that Filutowski was a "secondary" victim not entitled to the return of his property without filing a forfeiture complaint, without an adversarial hearing, and without any judicial oversight at any stage. That is not a system with an acceptable risk of erroneous deprivation, but one in which the government substitutes its own judgment for the constitutional process that judgment was supposed to trigger.

The third *Mathews* factor asks about the government's interest, including the fiscal and administrative burdens of additional procedural requirements. *Mathews*, 424 U.S. at 335. The government has a legitimate interest in preserving property that may be subject to forfeiture and in enforcing the law, and this brief does not dispute that. *James Daniel Good Real Property*, 510 U.S. at 53−56. But those interests do

not require the absence of prompt review. A prompt adversarial hearing does not prevent the government from seizing property when it has a lawful basis to do so. It requires only that the government be prepared to articulate and defend that basis before a neutral court withing a reasonable time after seizure. The administrative burden of that requirement is modest. Where, as here, the government bypasses the forfeiture process entirely and substitutes an internal administrative policy for judicial oversight, the government's interest in avoiding prompt review is not merely modest. It is constitutionally insufficient to justify what amounts to a unilateral determination that seized property will not be returned.

B. *Culley v. Marshall* Does Not Authorize Nevada's Regime

The State relies on *Culley v. Marshall* for the proposition that due process does not require a preliminary hearing in civil forfeiture cases involving personal property. That reliance misreads both the scope of the holding and the significance of what the Court left unresolved.

The *Culley* majority addressed a single, narrow question: whether due process categorically requires a distinct preliminary hearing between seizure and forfeiture at trial. 601 U.S. at 383. It held that it does not, provided the forfeiture proceeding itself is timely. *Id*. The Court explicitly declined to reweigh the broader due process arguments presented, concluding instead that two earlier cases had already resolved the timing question. *Id*. at 385−86 (citing *United States v. $8,850*, 461 U.S. 555

(1983) and *United States v. Von Neumann*, 474 U.S. 242 (1986)). What the majority did not do is equally important. It did not hold that any forfeiture regime automatically satisfies due process so long as a forfeiture hearing eventually occurs. It also did not address burden-shifting or a regime that places the obligation to seek return of property on the owner rather than the government. And it said nothing about a system in which law enforcement bypasses the forfeiture process altogether, making extrajudicial redistribution decisions through internal policy while retaining unchecked administrative control over seized property for months without judicial oversight. None of those questions were before the *Culley* Court.

Five justices made clear that the majority's narrow holding left the most serious constitutional questions about modern forfeiture practice entirely open. Meanwhile, Justice Gorsuch wrote that, as originally understood, due process required the government to bear the burden of proof before a neutral adjudicator before depriving a person of property, and that it is far from clear whether the post-deprivation practices historically tolerated in admiralty and customs proceedings carry any legitimate authority outside those narrow contexts. *Culley*, 601 U.S. at 396–99 (Gorsuch, J., concurring). Justice Sotomayor, in a dissent joined by Justices Jackson and Kagan, would have held that the government must make available some meaningful means of contesting the propriety of continued retention promptly after seizure, and that a system calibrated to delay that opportunity fails due process

regardless of whether forfeiture trial is eventually provided. *Id*. at 404 (Sotomayor, J., dissenting). The majority's silence on these questions was not an endorsement of the status quo, but a deferral that leaves *Mathews* intact as the governing standard for challenges to the structure and adequacy of forfeiture procedures.

Nevada's regime presents precisely the questions *Culley* did not answer. The challenge here is not that Nevada fails to provide a forfeiture trial, but that its system combines burden-shifting, extended delay, and the absence of neutral oversight in a way that *Mathews* condemns regardless of what *Culley* held about preliminary hearings. And in Mr. Filutowski's case, the problem runs deeper because Metro never initiated forfeiture proceedings at all. Instead, it used an *ex parte* warrant and an internal policy to seize and redistribute private property without any of the procedural mechanisms, however inadequate, that Nevada's forfeiture statutes nominally provide. Opening Br. at vi, 38.

Culley addressed whether due process requires a hearing before a forfeiture trial, but it had nothing to say about a regime in which no trial is ever contemplated and law enforcement serves as investigator, adjudicator, and distributor of seized assets. A regime can comply with *Culley*'s holding and still violate due process if its overall structure creates an unacceptable risk of erroneous deprivation. Nevada's regime does—and the *Mathews* framework, which five justices reaffirmed as the analytical tool to use for evaluating property deprivations, compels that conclusion.

C. Prolonged Retention Without Process Constitutes an Uncompensated Taking

Nevada's forfeiture regime does not merely violate due process. It causes an uncompensated taking in violation of the Fifth Amendment, U.S. Const. amend. V, incorporated against the states through the Fourteenth Amendment. The two violations are different in kind but share a common cause: the government takes possession of private property and retains it without the process required to establish any lawful basis for doing so.

When the government seizes and retains private property, it physically appropriates that property within the meaning of the Takings Clause. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021). A physical appropriation bears only on the amount of compensation due, not on whether a taking has occurred. *Id*. at 141. The constitutional inquiry turns on what the government does, not what it calls its actions. *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980). A seizure characterized as evidence retention, asset preservation, or civil forfeiture is still a seizure. The government has taken possession of private property, excluded the owner from its use, and exercised dominion over it for its own purposes. That is a taking. *Tyler v. Hennepin County*, 598 U.S. 631, 639−41 (2023).

Metro's characterization of Mr. Filutowski's funds as property held for victim redistribution is no different in constitutional terms from any other government assertion of dominion over private property, and the victim-restitution framing

makes the constitutional problem worse, not better: Metro was not merely retaining property pending adjudication but actively transferring private property to a third party without any judicial authorization whatsoever. Opening Br. at vi.

Due process establishes the conditions under which the government may lawfully deprive a person of property. *James Daniel Good Real Property*, 510 U.S. at 53−56. When those conditions are not met, the government's possession is not a lawful exercise of police power, but a retention of private property without constitutional authority. A government that seizes property without providing the process required to justify that seizure has appropriated property it has no lawful right to hold and has committed a procedural violation. That appropriation, unaccompanied by just compensation, violates the Fifth Amendment independently of the due process violation that produced it. *Tyler*, 598 U.S. at 639−41; *Webb's Fabulous Pharmacies*, 449 U.S. at 164. The Constitution does not permit the government to transform an unlawful retention into a lawful one just by invoking a statutory forfeiture scheme or an internal administrative policy. *Tyler*, 598 U.S. at 642−43. In Mr. Filutowski's case, Metro did not even invoke the forfeiture scheme, but instead relied on the CIG policy to justify 199 days of possession.

The State has invoked *Bennis* for the proposition that civil forfeitures do not implicate the Takings Clause. *Bennis v. Michigan*, 516 U.S. 442 (1996). But this reliance fails for two reasons, the first being that *Bennis* addressed a completed

forfeiture under a procedurally adequate statutory scheme, and it did not consider whether the Takings Clause applies when the government retains property through procedures that themselves fail constitutional scrutiny. Second, the takings analysis in *Bennis* spans three sentences and was not central to the holding. At least one court has recognized it as dicta. *Baker v. City of McKinney, Texas*, 601 F. Supp. 3d 124, 128 (E.D. Tex. 2022). It does not bind this Court on a question the U.S. Supreme Court has never addressed.

The facts of this case are shocking and unjust but not exceptional. Situations like Mr. Filutowski's are what this system produces. Mr. Filutowski's funds were physically appropriated for 199 days through a process in which the only judicial involvement was an *ex parte* warrant issued without notice to him and based solely on the government's own presentation. He received no compensation for that appropriation, and under *Cedar Point* that is a taking for which just compensation is owed regardless of how the retention was characterized. 594 U.S. at 149. More broadly, every property owner subjected to Nevada's forfeiture regime, or to the extrajudicial mechanisms that operate alongside it, faces the same deprivation. The Takings Clause does not permit a government taking simply because that program is administered through a civil rather than criminal proceeding, or because it is dressed in the language of victim restitution rather than forfeiture. *Tyler*, 598 U.S. at 639−41. Nevada's regime causes uncompensated takings as a matter of ordinary

operation.

III. CONCLUSION

For the foregoing reasons and those stated in the petition, this Court should grant review and permanently enjoin Nevada's system of unchecked property seizures.

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IV. CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 21(d), NRAP 32(a)(4) and NRAP 32(c)(2), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

1. This Amicus Curae brief has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point times new roman.

2. I further certify that this brief complies with the page- or type-volume limitations of NRAP 32(a)(7) because, excluding the partes of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more and contains 3,104 words which does not exceed type/volume limitations set forth in NRAP 21(d) and NRAP 32(a)(7).

3. Finally, I hereby certify that I have read this *Amicus Curae* brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript of appendix where the matter relied on is to be found.

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of Nevada Rules of

Appellate Procedure.

Dated this 27th day of April, 2026.

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V. CERTIFICATE OF SERVICE

I am employed in the County of Clark, State of Nevada. I am over the age of 18 and not a party to the within action. My business address is 400 South 4th Street, Suite 550, Las Vegas, Nevada 89101.

On the date set forth below, I served the document(s) described as:

BRIEF OF THE MANHATTAN INSTITUTE, CATO INSTITUTE, AND GOLDWATER INSTITUTE AS *AMICI CURIAE* SUPPORTING APPELLANT

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__X__ (BY ELECTRONIC SERVICE) Pursuant to Eighth Judicial District Court Administrative Order 14-2 and N.E.F.C.R. 9, I caused the document(s) described above to be transmitted electronically to the addressee(s) as set forth above.

__X__ (STATE) I declare under penalty of perjury under the laws of the State of Nevada that the above is true and correct.

Dated: April 27, 2026

/s/Helen Perez
An employee of HUTCHINGS LAW GROUP