

No. 25-491

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IN THE  
**Supreme Court of the United States**

GILLIAN FILYAW,

*Petitioner,*

v.

STEVE CORSI, IN HIS OFFICIAL CAPACITY AS CHIEF  
EXECUTIVE OFFICER OF THE NEBRASKA DEPARTMENT  
OF HEALTH AND HUMAN SERVICES, ET AL.,

*Respondents.*

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

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**Brief of the Liberty Justice Center as  
Amicus Curiae Supporting Petitioner**

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November 20, 2025

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### **Question Presented**

When a suit alleges that state officials are depriving a plaintiff of property in violation of due process, does the suit allege an ongoing violation of the law for which prospective relief is available under *Ex parte Young*?

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## Interest of the Amicus Curiae

The Liberty Justice Center is a nonprofit, nonpartisan public-interest litigation firm that pursues strategic, precedent-setting litigation aimed at revitalizing constitutional restraints on government power and protecting individual rights. The Liberty Justice Center is interested in this case because the protection of private property rights is a core value vital to a free society.<sup>1</sup>

## Summary of Argument

“Property rights are necessary to preserve freedom, for property ownership empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them.” *Murr v. Wisconsin*, 582 U.S. 383, 394 (2017). Property is autonomy—the right to self-determine one’s own preferences and priorities, and to use that which one is entitled to in the manner which one pleases. Gillian Filyaw has been denied that autonomy, and unable to pursue her own preferences, because of a government decision for which she has received no adequate notice, no opportunity to be heard, no supporting evidence, and no compensation.

And yet the court below held that she had no grounds to complain as such because the equitable relief she asked for—an injunction resolving

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<sup>1</sup> Rule 37 statement: No counsel for any party authored any part of this brief, and no person or entity other than Amicus funded its preparation or submission. All parties received timely notice of Amicus’s intent to file this brief.

insufficient procedures and ensuring that these property rights should be protected going forward—was deemed to be some simple collateral consequence of the decision to deny her in the first place. The court below treated this as a past act unlikely to recur. But the deprivation of Filyaw’s property recurs every month when she’s denied benefits. If she was a recipient of private health insurance, no one doubts she could seek redress if that insurance company cut her off. But because her insurer is the government, protected by sovereign immunity, the Eight Circuit held that she cannot get injunctive or declaratory relief.

As this case comes to the Court, there is no live dispute that Filyaw’s benefits constitute a property interest, that she was denied those property interests without a hearing, or that in principle she should have never been cut off. But since she was cut off, a minority of Circuits hold that she has no recourse, because *Ex Parte Young*, 209 U.S. 123 (1908), only allows prospective relief. Yet prospective relief is all she asks for. She is not asking for a windfall, or some special treatment, or to maintain benefits she is not entitled to. Rather, she simply asks that she not be denied her property without process, which is the present state of affairs, and could be remedied by equitable relief directing Nebraska to maintain benefits until a recipient receives adequate notice of the reasons for the termination, and an opportunity to contest those reasons. Filyaw has received neither—in violation of her right to the process due to her under law.

This Court should grant the petition, reverse the decision below, and hold that *Ex Parte Young* allows prospective relief, even where the harm that relief would alleviate happens to be the collateral consequence of an earlier, discrete mistake.

## ARGUMENT

### **Ongoing denials of property rights require injunctive relief**

Gillian Filyaw has a property interest, conceded by Nebraska, that was allegedly taken from her without notice, an opportunity to be heard, or anything else that could be called adequate process. As this court has repeatedly recognized, the “protection of property rights is ‘necessary to preserve freedom’ and ‘empowers persons to shape and to plan their own destiny in a world where governments are always eager to do so for them.’” *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 147–49 (2021) (quoting *Murr v. Wisconsin*, 137 S. Ct. 1933 (2017)); *see also Culley v. Marshall*, 601 U.S. 377, 390–91 (2024) (analyzing historical examples).

Americans at the founding and in the early Republic viewed property as a natural, pre-political right. *See Gutierrez v. Saenz*, 606 U.S. 305, 332 (2025) (Thomas, J., dissenting) (citing, *inter alia*, *Calder v. Bull*, 3 U.S. 386, 388–89 (1798) (Opinion of Chase, J.)). Recent cases decided by this Court underscore this nation’s long-held understanding of property rights. *See Culley*, 601 U.S. at 390–91 (analyzing historical practice to support requiring a timely post-seizure forfeiture hearing); *Tyler v. Hennepin Cnty.*, 598 U.S.

631, 638 (2023) (“we also look to ‘traditional property law principles,’ plus historical practice and this Court’s precedents.”); *Cedar Point Nursery*, 594 U.S. at 147 (“The Founders recognized that the protection of private property is indispensable to the promotion of individual freedom.”).

Procedural due process imposes constraints on governmental decisions which deprive individuals of ‘liberty’ or ‘property’ interests.” *Mathews v. Eldridge*, 424 U.S. 319, 332 (1976). As this Court has explained, “*Mathews* dictates that the process due in any given instance is determined by weighing the private interest that will be affected by the official action against the Government’s asserted interest, including the function involved and the burdens the Government would face in providing greater process.” *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (internal quotation marks omitted). These constraints require that those subject to government power be provided “notice of the reasons for the deprivation, an explanation of the evidence against him, and an opportunity to present his side of the story.” *D.B. v. Cardall*, 826 F.3d 721, 743 (4th Cir. 2016) (quoting *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985)). At minimum, this must mean that a person cannot be denied process perpetually simply because she was denied it once before.

“An essential principle of due process is that a deprivation of life, liberty, or property ‘be preceded by notice and opportunity for hearing appropriate to the nature of the case.’” *Cleveland Bd. of Educ.*, 470 U.S. at 542-44 (citing *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 313 (1950)). There was no

such adequate notice here—the case at this stage proceeds on that assumption. Whatever manner of hearing is appropriate to the case never took place. Rather, Nebraska asks this Court to endorse its complete intransigence. It should demur.

“*Young* has been focused on cases in which a violation of federal law by a state official is ongoing as opposed to cases in which federal law has been violated at one time or over a period of time in the past.” *Papasan v. Allain*, 478 U.S. 265, 277–78 (1986). Filyaw’s injury *is* ongoing—to this day, she is suffering the injury of the denial of benefits in which she has, all parties concede, a property right. The decision to deny her that property right was not simply a discrete action without ongoing effect. She experiences the denial every month she goes without benefits.

This court has, in recent years, questioned whether *Goldberg v. Kelly*, 397 U.S. 254, 261–63 (1970) was rightly decided. *See, e.g., Gutierrez*, 606 U.S. at 332 (Thomas, J., dissenting). But Nebraska does not challenge that here. As the case comes to this Court, it is conceded that Filyaw has a property interest in her benefits. And this case matters outside the *Goldberg* context: many property interests involve a right to ongoing payment. A trustee who chooses not to distribute funds is subject to challenge. Can Respondents point to any case where a trustee was allowed to deny a beneficiary the money they were otherwise entitled to on the grounds that the trustee’s choice was in the past? An intransigent trustee would be the proper subject of an injunction to disburse funds as appropriate because that equitable relief

would simply reflect the enforcement of the legal duties the trustee holds to make such distributions.

Petitioner has “alleged [an] ongoing constitutional violation,” which is “precisely the type of continuing violation for which a remedy may permissibly be fashioned under *Young*.” *Papasan*, 478 U.S. at 282 (“the essence of the equal protection allegation is the present disparity in the distribution of the benefits of state-held assets and not the past actions of the State.”). *Papasan* was an equal protection case complaining of unequal distribution of resources. The decision to misallocate those resources had occurred years before, as here; and the Court found that such a decision could be challenged under *Young*. The Court should do the same here. *Id.* at 282 (“We discern no substantive difference between a not-yet-extinguished liability for a past breach of trust and the continuing obligation to meet trust responsibilities asserted by the petitioners”).

A procedural-due-process violation occurs when a plaintiff can show: “(i) [a] deprivation by state action of a protected interest in life, liberty, or property, and (ii) inadequate state process.” *Reed v. Goertz*, 598 U.S. 230, 236 (2023). That is exactly what Filyaw alleges. Her Complaint alleges that she received inadequate notice and was therefore deprived of something Nebraska agrees is a property right. To treat a denial letter as a discrete act that will never recur is a category error: every month she goes without benefits because of the procedurally inadequate denial she suffers an ongoing injury. This is not *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983), where the victim

has no way of showing a future recurrence of the same illegal action—the illegal action here recurs monthly.

Nor can Respondents simply fall back on some general proposition that the benefits at issue are subject to state regulation—they of course are, and pursuant to the proper procedures the state could deny such benefits where appropriate. The “essential question is not . . . whether the government action at issue comes garbed as a regulation (or statute, or ordinance, or miscellaneous decree),” but rather “whether the government has,” in this instance, “taken property for itself or someone else—by whatever means.” *Cedar Point Nursery*, 594 U.S. at 149.

Filyaw’s claim is not based on her interest in procedures—those are required to protect the operative interest in her property. But “the availability of any particular compensation remedy . . . cannot infringe or restrict the property owner’s federal constitutional claim—just as the existence of a state action for battery does not bar a Fourth Amendment claim of excessive force.” *Knick v. Twp. of Scott*, 588 U.S. 180, 190–91 (2019). Indeed, “later payment of compensation may remedy the constitutional violation that occurred at the time of the taking, but that does not mean the violation never took place.” *Id.* As in the takings context, so too here: Filyaw’s claim is ripe, and any mitigating concerns are a question of damages, not liability or standing or justiciability.

In *Super Tire Eng’g Co. v. McCorkle*, 416 U.S. 115, 125 (1974), this Court recognized that it is sufficient

for injunctive relief that “the litigant show the existence of an immediate and definite governmental action or policy that has adversely affected and continues to affect a present interest.” Even if the need for an injunction had passed, declaratory relief was still appropriate where there was “governmental action directly affecting, and continuing to affect, the behavior of citizens in our society.” *Super Tire*, 416 U.S. at 125. There is a definite government action here: the denial letter. It continues to affect her present interest in receiving benefits and her behavior and the behaviors of the putative class. Injunctive relief is an appropriate remedy under those circumstances.

In *Roman Catholic Diocese v. Cuomo*, 592 U.S. 14 (2020), the New York Governor issued COVID-19 orders limiting attendance at religious services depending on whether their locality was categorized as a “‘red’ or ‘orange’ zone.” 141 S. Ct. at 16. He also “regularly change[d] the classification of particular areas without prior notice.” *Id.* at 20. The Governor even changed the capacity limits for the religious groups’ locality after they asked this Court for an emergency stay. *Id.* But then the governor relented, somewhat, and therefore the complained-of orders were no longer in effect.

This Court held that “injunctive relief is still called for because the applicants remain under a constant threat that the area in question will be reclassified as red or orange.” *Id.* at 20. The Court noted: “If that occurs again, the reclassification will almost certainly bar individuals in the affected area from attending services before judicial relief can be obtained.” *Id.*

Filyaw is not under constant threat of deprivation—she is actively deprived, each day she lives without the property that was taken from her without notice.

In concurrence, Justice Gorsuch reasoned that the fact that churches and synagogues “had been subject to unconstitutional restrictions for months” and that the Governor recently changed the restrictions for their location “only advances the case for intervention.” *Id.* at 26. He pointed out that “just as this Court was preparing to act on their applications, the Governor loosened his restrictions, all while continuing to assert the power to tighten them again anytime as conditions warrant.” *Id.* Declining review would “sacrifice” the rights at stake because “nothing would prevent the Governor from reinstating the challenged restrictions tomorrow” and “the Governor has fought this case at every step of the way.” *Id.*

Declining review here would affect Filyaw’s rights just as much and would deprive her of her fundamental right in those benefits which constitute her conceded property interest.

**Conclusion**

For the forgoing reasons, and those stated by Petitioner, the Petition should be granted, and the decision below reversed.

Respectfully submitted,

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