

<p>_____,</p> <p>Plaintiff,</p> <p>v.</p> <p>_____,</p> <p>Defendant.</p>	<p>SUPPLEMENTAL MEMORANDUM ON THE STATE ACTION DOCTRINE AS APPLIED TO STATUTORY LIEN ENFORCEMENT PROCEEDINGS</p> <p>Case No. _____</p> <p>District Judge _____</p>
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Plaintiff Brandon Michael Jeanpierre submits this Supplemental Memorandum to provide this Court with a comprehensive analysis of the state action doctrine as it applies to private entities exercising statutory lien powers. This legal theory operates independently from the ministerial property doctrine addressed in Plaintiff's separate Supplemental Memorandum on Religious Entanglement.

The Supreme Court has developed a nuanced framework for determining when private conduct constitutes state action subject to constitutional constraints. This analysis is not formalistic but functional, examining the nature of the action rather than merely the identity of the actor.

The Supreme Court established a three-part test to determine when private conduct constitutes state action in *\*Lugar v. Edmondson Oil Co.\**, 457 U.S. 922 (1982):

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2. The private actor must exercise "a right or privilege having its source in state authority" (\*Id.\*); and
3. The private actor must act in concert with the state or its agents (\*Id.\* at 941).

All three elements are satisfied in cases where private entities utilize statutory lien enforcement procedures.

#### B. The "Public Function" Test

Under the "public function" test, a private entity acts under color of state law when it exercises "powers traditionally exclusively reserved to the State." \*Jackson v. Metropolitan Edison Co.\*, 419 U.S. 345, 352 (1974). The Supreme Court has consistently held that the unilateral seizure and forced sale of property is precisely such a power traditionally reserved to the state.

In \*Fuentes v. Shevin\*, 407 U.S. 67, 93 (1972), the Court emphasized that "the constitutional right to be heard is a basic aspect of the duty of government to follow a fair process of decisionmaking when it acts to deprive a person of his possessions." When a private entity assumes this traditionally governmental power of forced property deprivation, it stands in the shoes of the state.

#### C. The "State Compulsion" Test

The "state compulsion" test finds state action when a state "has exercised coercive power or has provided such significant encouragement, either overt or covert, that the choice must in law be deemed to be that of the State." \*Blum v. Yaretsky\*, 457 U.S. 991, 1004 (1982).

By creating statutory lien enforcement procedures that bypass judicial oversight, states effectively "deputize" private storage facilities to perform what would otherwise be a state function. This statutory scheme represents significant state encouragement of private action that would otherwise be unlawful.

#### D. The "Nexus" Test

The "nexus" test examines whether "there is a sufficiently close nexus between the State and the challenged action of the regulated entity so that the action of the latter may be fairly treated as that of the State itself." \*Jackson\*, 419 U.S. at 351.

When a private entity's authority to seize and sell property derives directly from state statute rather than common law or private contract, the nexus requirement is satisfied. The state has not merely regulated background private action but has created and authorized a specific enforcement mechanism.

### III. APPLICATION TO STATUTORY LIEN ENFORCEMENT

#### A. Statutory Lien Enforcement Satisfies All State Action Tests

Utah's self-storage lien statute (Utah Code § 38-8-1 et seq.) creates a special statutory remedy that would not exist at common law. This statutory scheme:

1. Grants special rights to storage facilities not available to other businesses;
2. Authorizes non-judicial seizure and sale of property;
3. Provides specific procedural requirements for notices and auctions; and
4. Grants facilities immunity from liability when following these procedures.

By utilizing this statutory scheme rather than pursuing traditional contract remedies, Public Storage has stepped into the role of a state actor. This conclusion is supported by extensive Supreme Court and Circuit Court precedent.

#### B. Supreme Court Precedent Supporting State Action in Property Seizure

In *Lugar*, the Supreme Court explicitly held that private creditors utilizing state-sanctioned attachment procedures to seize property act under color of state law. The Court emphasized that "a private party's joint participation with state officials in the seizure of disputed property is sufficient to characterize that party as a 'state actor' for purposes of the Fourteenth Amendment." 457 U.S. at 941.

The Court explained that when private parties "invoke the aid of state officials to take advantage of state-created attachment procedures," they act under color of state law. *Id.* This principle applies with equal force to statutory lien enforcement, which similarly involves private parties utilizing state-authorized procedures to seize and sell property.

#### C. Circuit Court Precedent Supporting State Action in Lien Enforcement

The Tenth Circuit has consistently recognized that private parties utilizing statutory remedies to seize property act under color of state law. In *\*Coleman v. Turpen\**, 697 F.2d 1341, 1345 (10th Cir. 1982), the court held that a private towing company that "jointly participated" with state officials in seizing property pursuant to state law was a state actor subject to constitutional constraints.

Similarly, in *\*Anaya v. Crossroads Managed Care Systems, Inc.\**, 195 F.3d 584, 596 (10th Cir. 1999), the court found state action when private entities perform functions "traditionally exclusive to the state."

The Fifth Circuit has specifically addressed statutory lien enforcement, holding in *\*Davis Oil Co. v. Mills\**, 873 F.2d 774, 780 (5th Cir. 1989), that "the execution of a lien and sale of property" is traditionally a state function. When a private party conducts such activities pursuant to statutory authority, it acts under color of state law.

#### IV. DISTINGUISHING *\*FLAGG BROTHERS\** AND RELATED CASES

Defendants may attempt to rely on *\*Flagg Bros., Inc. v. Brooks\**, 436 U.S. 149 (1978), which limited state action for certain warehouse liens. However, *\*Flagg Brothers\** is distinguishable for several critical reasons:

1. The Court in *\*Flagg Brothers\** specifically distinguished cases involving "explicit state authorization" (436 U.S. at 164), precisely what Utah Code § 38-8-1 provides to Public Storage;
2. *\*Flagg Brothers\** involved a self-help remedy with ancient common law roots, whereas Utah's self-storage lien statute creates a modern statutory remedy that would not exist at common law;
3. The Court's subsequent decision in *\*Lugar\** clarified that private parties utilizing state-sanctioned attachment procedures to seize property do act under color of state law; and
4. Unlike the warehouse lien in *\*Flagg Brothers\**, modern self-storage lien statutes provide comprehensive statutory schemes that effectively delegate traditional state authority to private entities.

The Supreme Court's more recent decision in *\*Brentwood Academy v. Tennessee Secondary School Athletic Ass'n\**, 531 U.S. 288, 295 (2001), further clarifies that state action exists where there is "such a close nexus between the State and the challenged action that seemingly private behavior may be fairly treated as that of the State itself." The statutory authority for lien enforcement creates precisely such a nexus.

## V. PUBLIC STORAGE'S ACTIONS CONSTITUTE STATE ACTION

Applying these principles to the facts of this case, Public Storage's statutory lien enforcement against Plaintiff's religious property constitutes state action for the following reasons:


1. Public Storage's authority to seize and sell Plaintiff's property derives directly from Utah Code § 38-8-1 et seq. rather than common law or private contract;
2. The seizure and forced sale of property has traditionally been an exclusive state function requiring judicial process;
3. Utah's self-storage lien statute creates a comprehensive statutory scheme that effectively delegates traditional state authority to private entities; and
4. Without this statutory authorization, Public Storage's unilateral seizure and sale of Plaintiff's property would constitute conversion or theft under state law.

When Public Storage chose to exercise statutory lien enforcement powers rather than pursue traditional breach-of-contract remedies through judicial process, it stepped into the role of a state actor subject to constitutional constraints, including the Free Exercise Clause and RFRA.

## VI. CONCLUSION

For the foregoing reasons, Public Storage acts under color of state law when exercising statutory lien enforcement powers, making its actions subject to First Amendment and RFRA scrutiny. This Court should find that Plaintiff has demonstrated a substantial likelihood of success on the merits of his claims and grant the requested Temporary Restraining Order.

Respectfully submitted,  
Brandon Michael Jeanpierre  
Pro Se Plaintiff

Executed on \_\_\_\_\_  
Signature:   
Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_