No. 22-166

In The
Supreme Court of the United States

GERALDINE TYLER, on behalf of
herself and all others similarly situated,

Petitioner,

v.

HENNEPIN COUNTY, and MARK V. CHAPIN,
Auditor-Treasurer, in his official capacity,

Respondents.

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Eighth Circuit

BRIEF OF *AMICI CURIAE* DAVID C. WILKES, LEGAL SERVICES OF THE HUDSON VALLEY, AND LEGAL AID SOCIETY OF MID-NEW YORK, INC. IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

1. Whether surplus retention statutes like New York's violate the Fifth Amendment's Takings Clause, and constitute an excessive fine in violation of the Eighth Amendment of the United States Constitution?

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IDENTITY AND INTEREST OF *AMICI CURIAE*

Pursuant to Supreme Court Rule 37, David C. Wilkes, Esq., Legal Services of the Hudson Valley, and Legal Aid Society of Mid-New York, Inc. respectfully submit this brief *Amici Curiae* in support of Petitioner Geraldine Tyler, on behalf of herself and all others similarly situated.[1]

David C. Wilkes, CRE, FRICS is Executive Partner at Herman Katz Cangemi Wilkes & Clyne, LLP. He is a globally recognized leader in property taxation, the design of property tax legislation, and related litigation. He also advises clients on major real estate investment and management decisions concerning the effects of transactions on taxes and manages property taxes for major national portfolios. David is the President and a Co-Founder of the National Association of Property Tax Attorneys, and served as Chairman of The Appraisal Foundation, the Congressionally-authorized source of U.S. appraisal standards. He has been selected as the sole featured presenter to the NYS Supreme Court's Appellate Division Judges and Court

[1] Pursuant to this Court's Rule 37.2, all parties with counsel listed on the docket have consented to the filing of this brief. Counsel of record for all listed parties received notice at least 10 days prior to the due date of the *Amici Curiae*'s intention to file this brief.

Pursuant to Rule 37.6, *Amici Curiae* 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 *Amici Curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

Attorneys on the subject of property tax law, and is a member of the Real Estate Board of New York.

Legal Services of the Hudson Valley ("LSHV") is a non-profit legal services corporation that provides free civil legal services to individuals in the seven counties of the mid-Hudson Valley in the State of New York. LSHV's Foreclosure Unit provides representation to homeowners facing foreclosure, including those who are facing tax foreclosure. Many of LSHV's tax foreclosure clients are like the petitioner in this matter, elderly or disabled and unable to work. LSHV has a distinct interest in the outcome of this case as any decision in this case will affect its clients.

The Legal Aid Society of Mid-New York, Inc. ("LASMNY") is a non-profit law office that provides free counsel, advice, and legal representation in civil matters. The LASMNY service area spans 13 counties across central New York State, advocating and standing up for the most vulnerable community members. LASMNY's Foreclosure Unit provides representation to homeowners facing foreclosure, including those who are facing tax foreclosure. Many of LASMNY's tax foreclosure clients are like the petitioner in this matter, elderly or disabled and unable to work. LASMNY has a distinct interest in the outcome of this case as any decision in this case will affect its clients.

SUMMARY OF ARGUMENT

The issue presented here is whether *in rem* tax foreclosures violate either the Constitution's Takings Clause or the Eighth Amendment's Excessive Fines Clause. The State of New York, like the State of Minnesota, is one of 14 states where, upon seizing a property in a tax foreclosure, the government may retain the entire value of a home even when it exceeds what the debtor owes.

Under both New York's Real Property Tax Law ("RPTL"), and all opt-out jurisdictional statutes in New York, it is common for municipalities to foreclose on the property when a homeowner fails to redeem a property in tax arrears. Municipalities retain the surplus amounts when the value of the property at sale exceeds the total debt owed. They do not return the surplus to the debtor.

The damage caused by such seizures through *in rem* tax foreclosures is immeasurable, including but not limited to, loss of home equity, loss of generational wealth, reliance on government benefits for emergency housing, displacement, emotional and mental distress.

REASONS FOR GRANTING THE WRIT

I. New York's Surplus Retention Effectively Violates the Takings Clause and Constitutes an Excessive Fine in Violation of the Eighth Amendment

New York remains among a small minority of states that permit local governments to seize real property, *in rem*, for the nonpayment of local taxes and, upon taking title, retain for the public coffers the financial surplus that was converted from the former owner's earned equity (*see*, *e.g.*, Jenna Christine Foos, State Theft in Real Property Tax Foreclosures, 54 Real Prop. Tr. & Est. L.J. 93, 101 *et seq.*(2019)). Today, this occurs expressly by virtue of a statute codified as New York Real Property Tax Law § 1136(3), which provides, in pertinent part:

> Upon the execution of such deed, the tax district shall be seized of an estate in fee simple absolute in such parcel and all persons, including the state, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption. RPTL § 1136(3).

New York is a surplus retention state (*see* Foos, *supra*), by virtue of § 1136(3), which statute expressly cuts off all property rights and interests held by the former owner, permitting the foreclosing government to balance its budget on the backs of delinquent taxpayers (*Id.*, *and see*, *Hoge v. Chautauqua Cnty.* 173 A.D.3d 1731, 1732, 104 N.Y.S.3d 813, 815 (2019)

> ("[T]he statute provides that . . . the tax district is entitled to a deed conveying an estate in fee simple absolute and the property owners are 'barred and forever foreclosed of all . . . right, title, interest, claim, lien or equity of redemption' that they may have had in the property [*citations omitted*]. . . . [T]he former property owners are not 'entitled to any compensation upon the resale of the property' . . . and the tax district may 'retain . . . the entire proceeds from [the re]sale' [*citations omitted*].").

In response to former homeowners who have questioned the severity of the result – awarding to the public both the uncontested tax debt as well as all possessory interest in the earned equity – government representatives in many New York municipalities will often assert that to remit any surplus produced from ownership equity – often the greatest form of wealth known to the former owner – would violate the State Constitution's prohibition against governments making a "gift," because § 1136(3) vests absolute title free and clear. *N.Y. Const.* art. VIII ("Local Finances"), § 1 ("No county, city, town village or school district shall give or loan any money or property to or in aid of any individual, or private corporation or association, or private undertaking, or become directly or indirectly the owner of stock in, or bonds of, any private corporation or association.").

Notably, the entire largess becomes the acquired property of the local government entity that foreclosed. Other taxing districts that once benefited from the levy and collection of taxes upon the property, such as the school district, would not share in this windfall. Moreover, if such a taking of property without compensation for public use is permissible, who is the "public" that benefits? The taking of such a windfall into the treasury of a local town or city is not the result of the type of planning and public discussion that would accompany a purposeful and justifiable taking with compensation, and is, often, rather, simply a political tool that can be manipulated to serve the individual ends of government officials.

Indeed, the Western District of New York has referred to the RPTL's enforcement procedures as "draconian," asserting that the tax foreclosure sales that occur pursuant to the New York framework may "amount to fraudulent conveyances and result in improper windfalls for the tax district." (Kelsey R. Ruszkowski, *Due Process and Due Diligence: Claiming Surplus in New York's in Rem Tax Foreclosures*, New York State Bar Association News, May 19, 2021; *Hampton v. Ontario Cty., New York*, 2018 WL 3454688 (W.D.N.Y. 2018).)

The New York law that allows retention of the seized property's equity portion is contained among the catalog of procedures for the enforcement of the collection of delinquent real property taxes, which underwent substantial revision as of January 1, 1995. (Set forth in Article 11 of the Real Property Tax Law, as amended by Chapter 602 of the Laws of 1993, by Chapter 532 of the Laws of 1994 and Chapter 579 of the Law of 1995.) The revised scheme, among other things, established a standard redemption period of two years after lien date (RPTL § 1110) with a local option to extend the period up to four years (§ 1111).

New York revised its tax foreclosure laws due to policy concerns arising from the sale of tax liens to private parties. "The new tax enforcement system reflects the view that, as a matter of policy, delinquent taxes should be enforced by tax districts, not by private parties." (Tax Enforcement Instructions and Forms, New York State Office of Real Property Services, Office of Counsel, September 1995, at 12.) Enforcement by individuals could in practice be haphazard and result in a variety of abuses of the process that could often go unseen and unremedied. *See*, *e.g.*, *Matter of Elinor Homes Co. v. St. Lawrence*, 113 A.D.2d 25, 27 (2d Dep't 1985) (Directing County to purchase at tax sale "to allow counties to prevent abuses resulting from competitive bidding by unscrupulous tax sale speculators").

Notwithstanding the 1995 revisions, New York's surplus retention statute, RPTL § 1136(3), *infra*, has been allowed to remain in place, in substantially its original form, for nearly a century,[2] where most other

[2] Notably, as early as the 1930 Legislative Session of the New York State Legislature, a variety of interested parties weighed in on the various imbalances, fraudulent schemes, and other devices that were prevalent as a result of the sale of tax liens to private parties and the involvement of bad actors faced with the prospect of windfall profits. "Due to the uncertainty of

states in the U.S. have come to recognize the significant constitutional violation that occurs in a taking of homeowner equity as the result of a tax foreclosure. *Rafaeli, LLC v. Oakland Cnty*., 505 Mich. 429, 442, 952 N.W.2d 434, 443 (2020); *Bogie v. Town of Barnet*, 270 A.2d 898, 900, 903 (Vt. 1970); *Thomas Tool Services, Inc. v. Town of Croydon*, 145 N.H. 218, 220 (2000).

Even within New York State, the significant property rights inherent in the surplus have been legislatively recognized by certain jurisdictions that have chosen to opt out of the State scheme and follow practices that align with other states that inherently recognize the taking that occurs in retaining surplus. Ironically, *Nelson v. City of New York*, 352 U.S. 103 (1956), a decision's *dicta* that is pivotally relied upon by the Eighth Circuit herein for its ultimate holding, was based upon a then (1956) current version of the New York City Administrative Code pertaining to the foreclosure of liens for unpaid water charges.

The City Administrative Code at issue in *Nelson* was, and is, distinctly different from the New York State law, RPTL § 1136(3), that provides for the absolute retention of surplus. As recited in *Nelson*, the matter turned on whether the former owner had availed

tax titles, there has been developed what in common parlance has been known as the 'tax shark,' an individual well versed in knowledge of the law of tax sales and tax titles and, it must be said, often-times without scruples." New York Legal Services Governor's Bill Jacket 1930 Chapter 809.

himself timely of the surplus application procedure, and not whether one existed at all:

> Appellants not having taken timely action to secure the relief available under the statute although adequate steps were taken to notify them of the charges due and the foreclosure proceedings, they were not deprived of property without due process of law nor was their property taken without just compensation by reason of the City's retention of property, in one instance, and retention of the proceeds of sale, in the other instance, far exceeding in value the amounts due. *Nelson* 352 U.S. 109, 111.

Nelson is inapplicable to the matter before this Court and does not provide a complete picture of the current state of New York law on the takings question.

The crux rationale for upholding the surplus retention result that arises from RPTL § 1136(3) has consistently been that New York's statutory scheme provides an ample redemption period to the homeowner, *see infra*, of from two to four years (depending upon local option) in which a delinquency can be addressed and homeownership preserved. For example, in *Sheehan v. Suffolk*, 67 N.Y.2d 52 (1986), the leading case that is often cited on this point, New York's Court of Appeals squarely addressed and rationalized on notice grounds the absolute taking of the surplus but, in doing so, neglected to justify, or even mention, that in doing so the Court had simultaneously dispensed with the requirement of just compensation. The Court wrote:

> There is no unfairness, much less a deprivation of due process, in the county's retention of any surplus. The taxpayers in each of the statutory schemes under review are given a three-year period of redemption. During this period, plaintiffs had the opportunity to either pay the taxes and penalties due or sell the property subject to the lien and retain the surplus. This redemption period affords the taxpayer an opportunity to avoid a full forfeiture (*see*, *Chapman v. Zobelein*, 237 U.S. 135). Statutes which allow a State to retain the excess collected upon the public sale of property have been sustained where they provide for a lengthy redemption period (*Chapman v. Zobelein*, *supra*; *Turner v. New York*, 168 U.S. 90, 94; *Balthazar v. Mari Ltd.*, 301 F.Supp. 103, *aff'd* 396 U.S. 114).
>
> A three-year redemption period, as set forth in the challenged statutes, gives sufficient opportunity for a taxpayer to reclaim the property. It is not unjust for a legislative body to declare that once a taxpayer has abandoned rights in property after such a period has expired, the taxing authority may take a deed in fee. At that point, the former owner can no longer claim any just compensation upon its resale (*Texaco, Inc. v. Short*, 454 U.S. 516, 530, *supra*). Full forfeiture has already occurred upon the taxpayer's failure to redeem the property before it has been resold.

While the *Sheehan* Court's rationale is facially appealing, the real import of the holding is that it would be permissible to abrogate the Constitutional requirement of just compensation for a public taking merely by ensuring that adequate notice was given. Current New York State law thus provides, according to *Sheehan, infra*, that a taking of a material property right and interest without just compensation is sanctioned so long as due process, in the form of statutory notice, is provided.

The requirement to pay just compensation upon a public confiscation of property, whether personal or real, is categorical, *Horne v. Dep't of Agriculture*, 576 U.S. 350 (2015), and therefore could not be abrogated by allegedly sufficient advance notice as held in *Sheehan, infra*.

Arguably, if the former homeowners were to expressly acknowledge notice of the tax delinquency and passing of the redemption period, and present no defense whatsoever to nonpayment, a taking would be effected under the law and the Constitutional requirement of just compensation is triggered for any portion of homeowner equity that was converted to surplus upon a sale of the property.[3] A longer redemption

[3] Relevant in this regard, the would-be claimant to the surplus under New York law is entitled to the protections of the federal requirements notwithstanding that the issue arose in the State courts: "Of course, federal law is 'supreme' and binding on state courts, "any Thing in the Constitution or Laws of any state to the Contrary notwithstanding." 3. *U.S. Const.* art. VI, Cl. 2. Yet due to the Madisonian Compromise, state courts often serve as frontline arbiters of federal rights – not as mere conscripts in the

period does not supplant the requirement of just compensation.

In this regard, this Court's recently expressed views concerning the remedial opportunity available in the federal courts for an improper taking in the state courts, and thus overruling the prior scheme set forth in *Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985) is worth recalling:

> The San Remo preclusion trap should tip us off that the state-litigation requirement rests on a mistaken view of the Fifth Amendment. The Civil Rights Act of 1871, after all, guarantees "a federal forum for claims of unconstitutional treatment at the hands of state officials," and the settled rule is that "exhaustion of

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federal court system, but as semi-autonomous actors that apply their own procedural and jurisdictional rules.4. *See*, *e.g.*, *Howlett v. Rose*, 496 U.S. 356, 367 (1990); *Tafflin v. Levitt*, 493 U.S. 455, 464–67 (1990); *id.* at 469–70 (Scalia, J., concurring); *see also* James Madison, *Notes of the Committee of the Whole* (June 5, 1787), *in* 1 The Records of the Federal Convention of 1787, at 125 (Max Farrand ed., Yale Univ. Press 1911) (statement of James Madison and James Wilson). In particular, as courts of general jurisdiction, state courts are presumed to be available to hear claims for relief under federal law, including claims against the states themselves.5. *See* James E. Pfander, *Principles of Federal Jurisdiction* § 7.4.4, at 208 (2d ed. 2011) (describing "a fairly impressive collection of cases in which the Court appeared to assume that state courts were open for the enforcement of federal rights"). And given the whole host of barriers to access to federal court, the reality is that many claimants "depend, as a practical matter, entirely on state judges for the vindication of their federal rights." *Reconciling State Sovereign Immunity with the Fourteenth Amendment*, Note, 129 Harv. L. Rev. 1068 (2016).

> state remedies 'is *not* a prerequisite to an action under [42 U.S.C.] § 1983.'" *Heck v. Humphrey*, 512 U.S. 477, 480 (1994) (quoting *Patsy v. Board of Regents of Fla.*, 457 U.S. 496, 501 (1982)). But the guarantee of a federal forum rings hollow for takings plaintiffs, who are forced to litigate their claims in state court. We now conclude that the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the rest of our takings jurisprudence, and must be overruled. A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it. *Knick v. Township of Scott, Pennsylvania*, ___ U.S. ___ 139 S.Ct. 2162 (2019) (Roberts, C.J.).

Notwithstanding the sweeping changes made in the 1990s, the New York State Legislature left the key language contained now in RPTL § 1136(3), *see infra*, unchanged. It may be said that while lawmakers sought to prohibit individuals from profiting at the misfortune of their neighbors, they were unwilling to go so far as to deprive local governments of the opportunity to do the same. This Court now has the opportunity to address this.

Here, to the extent that New York State law would erroneously deprive a property owner of the guaranty of just compensation, the Fourteenth Amendment steps in to correct the wrong:

> At the Founding, states were generally seen as a bulwark protecting the people from the

> predations of a distant and potentially tyrannical national government. But now the states had revealed themselves as independent threats to individual liberty. And the Fourteenth Amendment sought to meet this newly realized danger on two fronts: First, the Amendment restrained the states directly by limiting their ability to, among other things, "deprive any person of life, liberty, or property, without due process of law." 52. *U.S. Const.* amend. XIV, § 1. Second, it gave new powers to the federal government to enforce those limits through section 5, the Fourteenth Amendment's enforcement arm. *Reconciling State Sovereign Immunity with the Fourteenth Amendment*, Note, 129 Harv. L. Rev. 1068, 1075 (2016).

Even were an abundance of advance notice to warrant the negation of the right to just compensation – which is not conceded – nothing in the New York State scheme or actual practice results in the kind of predictable outcome the Legislature presumably sought to induce by its 1990s amendments. In practice, local governments would, and do, pursue enforcement at the time of their own choosing. Some local governments aggressively enforce delinquent taxes at every opportunity available and others not at all. In short, as applied, the timing for enforcement of a delinquent property tax lien in New York State can be said to be random or even non-existent, dependent upon local political will and interest, and surely unpredictable for the homeowner who is in arrears. The notion that a homeowner who is delinquent can have any reliable sense of the period in which a property may be taken in New York State is a fiction.

For one notorious but by no means unusual example, the Town of Greenburgh (Westchester County), in which the aforementioned revisions to the enforcement procedures were enacted, allowed tax delinquencies to remain unaddressed from 1977 through the mid 1990s. As a practical matter, a homeowner in New York, then and now, would have little reason to suspect that the loss of their home and all rights in it were imminent even where notices of delinquency were received. This reality contradicts the *dicta* contained in *Sheehan v. Suffolk*, 67 N.Y.2d 52 (1986), which is frequently cited for the proposition that full forfeiture is permitted ("This redemption period affords the taxpayer an opportunity to avoid a full forfeiture. . . ." *Id.* at 59).

Surplus retention statutes that persist in a small minority of states that include New York should be recognized as the effective violation of the constitutional guaranty of just compensation that they have always been. The New York State surplus retention statute, like those at issue in *Tyler v. Hennepin County*, 26 F.4th 789 (8th Cir. 2022) excessively take far more than what is due the government and go well beyond an appropriate deterrent to those homeowners who would ignore a tax delinquency. A citizen in such circumstances is forced to make the government whole on the taxes owed, pay penalties and interest at rates often far in excess of market terms, and lose the place they call home. The merits, effectiveness, and legal muster of such system is conceded. However, built-up home equity, represented by the surplus funds that may remain after government sale, is a property interest that is protected by the Takings Clause and may not be abrogated by statutory notice. Homeownership is a means to societal advancement; however, local governments in New York may take a potentially significant property, one's home equity wealth, and despoil a fundamental American value.

II. It Strains the Social Welfare System When *In Rem* Tax Foreclosures Impoverish Homeowners by Extinguishing Their Equity and Homestead Exemption

LSHV and LASMNY serve homeowners who are often elderly or disabled. These clients frequently lack the sophistication and resources to refinance their homes or pay the property tax arrears on their own. Homeowners often end up seeking government benefits to meet their basic needs after their homes are taken.

A. The Impact of *In Rem* Foreclosures on Taxpayers and Vulnerable Homeowners

New York's tax foreclosure scheme has devastating consequences for homeowners such as Herbert Walker[4]. Mr. Walker is a 67-year-old man in Orange

[4] In order to protect the privacy of Legal Services of the Hudson Valley's clients all names listed here are pseudonyms. All

County whose home was seized for an $8,000 tax debt. Mr. Walker's home is valued at approximately $400,000. There were no other liens on Mr. Walker's home. His local government caused him to be evicted and deprived him of nearly $400,000 in equity.

Barry is a 59-year-old residing in Westchester County. Barry's income was reduced because he became disabled. Barry struggled to pay his property taxes with his savings and disability income. He presently owes almost $90,000 in property taxes. If he is unable to satisfy his full debt, his village government could seize his $1.5 million home. Barry can satisfy the debt by selling his home but due to a major repair issue, he is unlikely to get reasonable value in a distress sale.

Walter is a 77-year-old man residing in Ulster County who has struggled to pay his taxes even with a senior exemption after his taxes were increased last year. Like many elderly homeowners he has had to rely on assistance from his family, specifically his nieces, in paying his taxes. However due to the COVID-19 pandemic Walter's nieces were unable to afford to send him money to pay the taxes. He owed over $26,000 in property taxes for a home that is worth at least $300,000. Walter was only able to prevent the total loss of his home equity by parceling out lots of his 33-acre property. While the *in rem* foreclosure was delayed due to procedural defects had it gone through

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other facts regarding their cases are reported accurately and with the knowing consent of the client.

Walter would have lost over 90% of the value of his property.

Laverne is a single mother of three children whose Orange County condominium lies on the boundary line between two municipalities. Both municipalities assess property taxes for the entire lot. As such she is taxed twice as much as her neighbors per square foot, because her condominium is considered to be two lots instead of one. Laverne owes $12,000 in property taxes based on this combined tax bill. Her condominium is worth approximately $278,000. Thus, if the county were to repossess her home, she could lose over $200,000 in home equity. Thus, if she cannot afford to pay both taxes while the issue is being disputed then she could lose all her home equity to the tax scheme.

Hanna is an elderly Ulster County resident. She is the sole caretaker of her husband who is disabled and unable to work. Hanna and her husband have lived in the home since 2013 but they have found it difficult to pay the increasingly high property taxes, especially after their Social Security information was destroyed in a flood. They decided to sell their home to protect the equity in it. Hanna made that difficult decision because Ulster County would have seized the entirety of the home equity leaving Hanna and her husband without any financial means to find a more affordable home. Hanna owed $91,000 in property taxes. The home was sold for $121,213 in a sale intended to offload the property for enough to repay the property taxes and retain some equity before auction. Unfortunately, the speedy distress sale caused Hanna and her husband to lose out on over $500,000 in home equity since market estimates indicate the average value of the home is $688,000.

Rebecca is an elderly woman in Ulster County. Her household income was reduced during the COVID-19 pandemic, and she fell behind on her property taxes. She applied for assistance with the New York Homeowner Assistance Fund ("HAF") to pay her $8,000 tax lien. Rebecca did not receive a HAF reward letter in time to redeem the property. However, HAF did not make the payment until after the redemption deadline. Ulster County sold the property and rejected the HAF payment. The third-party purchaser bought her home for a fraction of its worth at $78,000. The County now demands that Rebecca pay it $78,001, one dollar more than the highest purchase offer. The NY HAF program agreed to pay the original $8,000 and the additional $70,001 to help Rebecca purchase her home from the County. Ulster County enriched itself by $70,001 at the expense of an elderly woman, and the U.S. taxpayers who funded the HAF program.

Kiesha's municipality seized her home because they demanded $1,800. Municipalities have discretion to reject partial payments and Kiesha disputed the amount due, documenting that she only owed $1,200 because of an exemption. Her municipality then sold her home for $1,200, while she was in the process of disputing this minor debt. Keisha filed for bankruptcy protection to void the fraudulent transfer pursuant to 11 U.S.C. § 548, but her *pro se* petition was dismissed because of procedural defects. The home was later sold for $225,000. The equity in Keisha's home was more valuable than her New York Homestead Exemption of $125,000 (NY CPLR Sect. 5206). In any other type of foreclosure proceeding, she would have been able to claim the surplus funds, or at a minimum, her $125,000 homestead exemption. This local tax foreclosure scheme deprived Kisha of $125,000 and evicted her from her home over a disputed $600 tax obligation.

Government benefits can prevent these *in rem* foreclosures, as illustrated above. Unfortunately, vulnerable homeowners are at high risk of losing their homes and the equity in them for even the smallest of tax debt. Those who lose their homes are often forced to rely on government benefits to supplement the shocking loss of their wealth.

B. The Impact of *In Rem* Foreclosures on Heirs

Many New Yorkers inherited their first home due to the death of a relative. New York's tax foreclosure proceedings happen in a much shorter period than its probate procedures. NY RPTL § 1184(b) permits eligible homeowners to enter repayment plans with the local municipality to repay their tax debt. However, many municipalities maintain a policy of refusing to provide repayment plans to heirs without clear title. Heirs who are unable to pay delinquent taxes in full lose their entire inheritance to tax foreclosure.

Allison was 19 when her parents died, first her mother to breast cancer and then her father to suicide. Allison inherited her parents' Rockland County home and has struggled to pay the property taxes while their estates are being probated. She owes $16,000 to the county and has been unable to organize a repayment plan due to not being named the administrator of her parents' estate. While she was able to repay her tax lien with a loan from New York State, if her home was foreclosed on, she stood to lose over $400,000 in home equity and generational wealth.

Roger is a 45-year-old who is employed by the State of New York. He is currently on family medical leave to care for his wife, who suffers from cancer. Roger inherited his mother's home and moved into the property alongside his wife, children, and brother. Roger sent his mother's will to an estate attorney to have the estate probated. Unfortunately, the attorney retired without returning the will to him. Roger could neither refinance the home nor sell it without a clear title. He is ready and willing to pay all taxes moving forward but his municipality will not give him a payment plan without clear title to the property. Roger and his family may soon lose $500,000 in generational wealth to tax foreclosure. It is more lucrative for Roger's municipality to take his home than allow him to repay the debt over two years as title holders.

LSHV and LASMNY are being inundated with tax foreclosures. Homeowners are shocked when they learn that the government can seize their homes. Foreclosure is a distressing process for homeowners because the loss of the property often signifies a loss of community and security. Tax foreclosures are particularly terrifying because the homeowner knows that they will also lose their equity if they cannot find a distress-sale-buyer before the property is seized by the government.

CONCLUSION

Homeownership has long been accepted as a core component of the American dream, as it confers several economic benefits on homeowners, including the ability to accumulate wealth by accessing credit, building equity, and reducing housing costs. New York's fast paced *in rem* foreclosure scheme deprives homeowners of these benefits without just compensation. *In rem* foreclosures often push elderly and disabled homeowners into extreme poverty, forcing them to rely on government benefits despite the wealth they accumulated in their homes.

This Court should grant the Tyler petition for certiorari and resolve the problems created by *Nelson*'s dicta so that homeowners in New York may have their property rights restored. There is another pending petition raising similar questions that the

Court should also grant, *Fair v. Continental Resources*, No. 22-160.

Respectfully submitted,

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