

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 DANIEL P. ROGAN,
Auditor-Treasurer, in his official capacity,

Respondents.

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

**AMICUS CURIAE BRIEF OF
HOWARD JARVIS TAXPAYERS ASSOCIATION
IN SUPPORT OF PETITIONER**

JONATHAN M. COUPAL
TIMOTHY A. BITTLE
LAURA E. DOUGHERTY

Counsel of Record

HOWARD JARVIS TAXPAYERS FOUNDATION
1201 K Street, Suite 1030
Sacramento, CA 95814
Telephone: (916) 444-9950
Email: laura@hjta.org

*Counsel for Amicus Curiae
Howard Jarvis Taxpayers Association*

TABLE OF CONTENTS

	Page
INTEREST OF <i>AMICUS CURIAE</i>	1
SUMMARY OF ARGUMENT	2
ARGUMENT	3
I. Government Profiteering From Seized Home Equity Funds Violates The Fifth And Eighth Amendments Of The United States Constitution	3
II. California’s Unique Problem With Home Equity Theft.....	6
CONCLUSION.....	10

TABLE OF AUTHORITIES

	Page
CASES	
<i>Franck v. Polaris E-Z Go Div. of Textron</i> , 157 Cal.App.3d 1107 (1984).....	3
<i>Handlery Hotels, Inc. v. Franchise Tax Bd.</i> , 39 Cal.App.4th 1360 (1995)	3
<i>Koontz v. St. Johns River Water Management Dist.</i> , 570 U.S. 595 (2013).....	4, 5
<i>Nordlinger v. Hahn</i> , 505 U.S. 1 (1992)	3
<i>Tyler v. Hennepin Cty.</i> , 26 F.4th 789 (8th Cir. 2022)	4, 5
<i>United States v. Skelly Oil Co.</i> , 394 U.S. 678 (1969).....	3
<i>Webb’s Fabulous Pharmacies, Inc. v. Beckwith</i> , 449 U.S. 155 (1980)	5
CONSTITUTIONAL PROVISIONS	
USCS Const. Amend. 5	2-4, 8, 10
USCS Const. Amend. 8	2-4, 8, 10
USCS Const. Amend. 14	4
STATUTES AND RULES	
Cal. Rev. & Tax. Code, § 3695.4	2, 7, 8
Cal. Rev. & Tax. Code, § 3695.5	7
Cal. Rev. & Tax. Code, §§ 3771-3841	8
Cal. Rev. & Tax. Code, § 3791.4	8

TABLE OF AUTHORITIES—Continued

	Page
Cal. Rev. & Tax. Code, § 3793.1	8
Cal. Rev. & Tax. Code, § 4675(a).....	6, 7
Cal. Rev. & Tax. Code, § 4675(e).....	7
Minn. Stat., § 282.08.....	2
Sup. Ct. R. 37.6	1

OTHER AUTHORITIES

Assem. Com. on Rev. and Tax., Analysis of Assem. Bill No. 1839 (2021-2022 Reg. Sess.) as amended Mar. 22, 2022, Hearing Date April 25, 2022.....	8
Assem. Com. on Rev. and Tax., Analysis of Assem. Bill No. 2021 (2021-2022 Reg. Sess.) as amended April 7, 2022, Hearing Date April 25, 2022	9
Richard W. Vitaris, <i>Remedies Against the United States for Private Property Used or Taken</i> , 16 Val. U. L. Rev. 257 (1982)	5

INTEREST OF *AMICUS CURIAE*

Howard Jarvis Taxpayers Association (HJTA) is a California nonprofit public benefit corporation with over 200,000 members. The late Howard Jarvis, founder of HJTA, utilized the People of California's reserved power of initiative to sponsor California's well-known Proposition 13 in 1978. Proposition 13 was overwhelmingly approved by California voters and added Article XIII A to the California Constitution. Proposition 13 has kept thousands of fixed income Californians secure in their ability to stay in their own homes by limiting the ad valorem property tax rate and annual escalation of property taxes¹.

HJTA has a central and ongoing interest in protecting homeowners' ability to keep their homes. In the unfortunate instance of financial distress leading to unpaid property taxes and government foreclosure, homeowners still possess important constitutional rights that must not be transgressed by government overreach. Homeowners, particularly low-income seniors on fixed incomes, are entitled to the remaining equity that, for many, is their sole economic resource. HJTA has recently supported legislation to that effect in California and written on this vital current topic known as home equity theft. (Jon Coupal & Joshua

¹ Per Rule 37, no party's counsel authored any of this brief; *amicus curiae* alone funded its preparation and submission. (See Sup. Ct. R. 37.6.)

Polk, *Stop home equity theft by the state of California*,
The Orange County Register (Mar. 27, 2022)².)

◆

SUMMARY OF ARGUMENT

The Minnesota statutes at issue violate the Fifth Amendment Takings Clause and the Eighth Amendment Excessive Fines Clause because they expressly authorize the taking of home equity without just compensation. They also take the owner’s equity as excessive punishment for non-payment of taxes, even though interest and penalties have already been charged.

It is undisputed that unconstitutionally seized home equity proceeds were ostensibly diverted to “public use.” The Minnesota statute that distributed Ms. Tyler’s \$25,000 in home equity is titled “APPOR-TIONMENT OF PROCEEDS TO TAXING DIS-TRICTS.” (Minn. Stat., § 282.08.) The more subtle variety of home equity theft in California also admits “public use” in statute. (Cal. Rev. & Tax. Code, § 3695.4.)

Amicus writes separately to highlight the subtle forms of home equity theft that will likely expand without a reversal of the state court decision. California is threatened by home equity theft as well in different, but no less dangerous, ways that could be prevented by

² “<https://www.ocregister.com/2022/03/27/stop-home-equity-theft-by-the-state-of-california/>”

the enforcement of Ms. Tyler's constitutional rights in this case.

◆

ARGUMENT

I. Government Profiteering From Seized Home Equity Funds Violates The Fifth And Eighth Amendments Of The United States Constitution.

Governments do not allow taxpayers to take tax windfalls. (See *United States v. Skelly Oil Co.*, 394 U.S. 678, 685 (1969); *Handlery Hotels, Inc. v. Franchise Tax Bd.*, 39 Cal.App.4th 1360 (1995); *Franck v. Polaris E-Z Go Div. of Textron*, 157 Cal.App.3d 1107 (1984).) Governments must likewise not be allowed to take tax windfalls. Governments should not be trespassers, but trustees, particularly to tragedy-befallen persons, such as Ms. Tyler, who happen to own a home or other real property that can be levied to satisfy a tax debt.

When this Court validated California's well-known Proposition 13 in 1992, it acknowledged public concern for distressed homeowners that is applicable here to Ms. Tyler. Concern included that a homeowner in financial distress "might be forced to sell his home or to divert his income away from the purchase of food, clothing, and other necessities." (*Nordlinger v. Hahn*, 505 U.S. 1, 13 (1992).) In Ms. Tyler's case, her home was sold *and* Minnesota took from her the very little money she should have had left for food, clothing, and other necessities, not to mention securing new housing.

Given the homelessness crises in California and other states, it is imperative that home equity theft schemes be dismantled immediately. They will otherwise be contributors to homelessness by further impoverishing those on the edge of it.

In this case, as in certain related instances in California, a vulnerable member of society was exploited by her government following a tax sale of her property to cover a delinquency. The Eighth Circuit seems to sanction this as punishment for a distressed homeowner's normal human weaknesses when it writes: "Only after [Ms. Tyler] declined to avail herself of these opportunities did 'absolute title' pass to the State." (*Tyler v. Hennepin Cty.*, 26 F.4th 789, 793 (8th Cir. 2022).) Thus, while the primary issue seems to be whether the retention of Ms. Tyler's \$25,000 home equity is a taking under the Fifth Amendment because it was her property, the Eighth Amendment's Excessive Fines Clause is at issue as well. (USCS Const. Amend. 5; Amend. 14; Amend. 8.) The taking of home equity is clearly intended as a punishment for non-payment of taxes and inability to redeem the debt. Minnesota's tax windfall here is approximately \$25,000 in "net proceeds" from the sale of Ms. Tyler's condominium to satisfy her delinquent property tax bill. (*Tyler*, 26 F.4th at 790-791.) The extensive current and historical legal support for these proceeds belonging to Ms. Tyler is well set out in the Brief for Petitioner, pages 8-33, and will not be repeated here, except to concur that relevant takings jurisprudence directly applies. (*Koontz v. St. Johns River Water Management*

Dist., 570 U.S. 595 (2013); *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980).) Additionally, because the \$25,000 retained is clearly more than what Minnesota already charged Ms. Tyler in penalties, it can be characterized as nothing other than an excessive fine for her unfortunate inability to pay her property taxes. (Brief for Pet. at 33-44.) Minnesota’s tax windfall at Ms. Tyler’s expense must be stricken. *Amicus* HJTA submits that the “various purposes” of Minnesota Statute section 282.08 (*Tyler*, 26 F.4th at 791) are clearly the same purposes for which taxes are imposed and collected. Accordingly, Minnesota has created a tax loophole for its own benefit at a vulnerable homeowner’s expense, a behavior that is repeated in many states as the Petition for Certiorari explained. Minnesota’s claim to Ms. Tyler’s \$25,000 in home equity is a taking and an excessive punishment and anything else is fiction. (Principles of unjust enrichment are also relevant here although “[t]heoretically, there is no remedy against the [federal] government for unjust enrichment. . . . [H]owever, a claim in unjust enrichment may be brought under one of the alternative theories [restitution and Takings] discussed above.”) Richard W. Vitaris, *Remedies Against the United States for Private Property Used or Taken*, 16 Val. U. L. Rev. 257 (1982).

Even in states where the law recognizes a potential return of excess home equity, there is opportunity for government to under-prioritize the noticing procedures and thereby increase the likelihood of taxing authorities quietly, passively retaining the funds that

rightfully belong to the taxpayer. For example, in California, proceeds are not automatically delivered, but must be claimed within one year. (Cal. Rev. & Tax. Code, § 4675(a).) Government bureaucracy can be slow or inefficient enough for notices to be misplaced or sent to the wrong address in that short time. Even when notices timely arrive at the right address, distressed former homeowners may—conveniently for California governments—not be in sufficient physical or mental condition to file a claim nor have the aid of someone who can. After one year with no claim filed, the property belongs to the State of California, as it is in Minnesota. Striking Minnesota’s tax windfall will help California and other states to clean up their tax collection laws to comport with the U.S. Constitution as it pertains to what is typically an American’s most vital asset and symbol of financial stability and prosperity: a home.

II. California’s Unique Problem With Home Equity Theft.

Although no judicial decision arising out of California is among the extensive split of authority among states on the issue of home equity theft, California’s tax sales statutes reveal a more subtle abuse of homeowners. Under California law, the entire value of a property can be taken when municipalities claim the indebted property for a public use or economic revitalization.

In California, a tax-defaulting homeowner generally has one year to claim remaining home equity from a tax sale like the one Ms. Tyler's property underwent. (Cal. Rev. & Tax. Code, § 4675(a).) When property is sold at a tax auction, and a claim is filed, disbursement of the excess funds proceeds as follows:

(A) First, to lienholders of record prior to the recordation of the tax deed to the purchaser in the order of their priority.

(B) Second, to any person with title of record to all or any portion of the property prior to the recordation of the tax deed to the purchaser.

(*Id.* at 4675(e).)

Though far from perfect, this provision comports more with the Constitution than does the Minnesota law in this case.

But there is another California law which causes home equity theft like Minnesota's. Working with a nonprofit organization, the state or a local government may file an "objection" with the county tax collector to stop the open-market sale under section 4675 and redirect the sale to exclusive no-bid proceedings under another statutory scheme. (Cal. Rev. & Tax. Code, § 3695.4.) The state or local government may do this for "any property that is or may be needed for public use." (*Ibid.*) A nonprofit organization may also file an "objection" on its own to trigger such special proceedings by providing a written promise to sell or rent to low-income persons. (Cal. Rev. & Tax. Code, § 3695.5.)

In these cases, not only are no proceeds returned to the homeowner, but the homeowner will not be able to claim their remaining home equity as they could have within one year under section 4675 because it will be taken by design. Their remaining home equity is taken for “public use” by government, developers, or nonprofits. (Cal. Rev. & Tax. Code, § 3695.4.)

This special procedure is known as a Chapter 8 sale. (See Cal. Rev. & Tax. Code, §§ 3771-3841.) The nonprofit organization or government-partnered developer gains an exclusive agreement to purchase the property for just the total amount due to the government. (*Id.* at §§ 3791.4; 3793.1.) This absorbs the home equity because it is not an open-market sale. And home equity interests, similar to Ms. Tyler’s, are taken for “public use” thereby. (Cal. Rev. & Tax. Code, § 3695.4.) This clearly violates the Fifth and Eighth Amendments.

Up to now, California legislators have been unmotivated to bring these statutes into compliance with the Takings Clause or Excessive Fines Clause. On February 7, 2022, Assembly Bill 1839 was introduced. AB1839 would have required that an open public auction occur before any Chapter 8 sale, thus at minimum affording every defaulted homeowner one chance to recover their remaining home equity. The California Association of County Treasurers and Tax Collectors supported the bill, and no one opposed. (Assem. Com. on Rev. and Tax., Analysis of Assem. Bill No. 1839 (2021-2022 Reg. Sess.) as amended Mar. 22, 2022, at p. 3, Hearing Date April 25, 2022.)

Unfortunately, AB1839 died in committee on April 26, 2022. What is worse, other legislation had been simultaneously proposed to *expand* the definition of an eligible nonprofit under the Chapter 8 sales proceedings, thus intending to make home equity theft more likely. (Assem. Com. on Rev. and Tax., Analysis of Assem. Bill No. 2021 (2021-2022 Reg. Sess.) as amended April 7, 2022, at p. 1, Hearing Date April 25, 2022 [“Expands eligible uses for which a nonprofit organization may object to a sale of tax-defaulted property by public auction or sealed bid”].)

The potential for *expansion* of equity theft is clearly movement in the wrong direction. California, as many other states, sorely need application of the Takings Clause and Excessive Fines Clause to return home equity proceeds to distressed homeowners following the sales of their homes to repay tax debts.



CONCLUSION

Without a ruling in Petitioner's favor, states like California will slip further into patterns and practices violating the Fifth and Eighth Amendments as to their most vulnerable citizens.

DATED: March 3, 2023

Respectfully submitted,

JONATHAN M. COUPAL

TIMOTHY A. BITTLE

LAURA E. DOUGHERTY

Counsel of Record

HOWARD JARVIS TAXPAYERS FOUNDATION

1201 K Street, Suite 1030

Sacramento, CA 95814

Telephone: (916) 444-9950

Email: laura@hjta.org

Counsel for Amicus Curiae

Howard Jarvis Taxpayers Association