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

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF *AMICUS CURIAE*[1]

Constitutional Accountability Center (CAC) is a think tank and public interest law firm dedicated to fulfilling the progressive promise of the Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring that the Constitution is interpreted in a manner consistent with its text and history and accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

This Court has now ruled on three separate occasions that an economic sanction constitutes a "fine" within the meaning of the Excessive Fines Clause so long as it can "be explained as serving in part to punish." *Austin v. United States*, 509 U.S. 602, 610 (1993); *see United States v. Bajakajian*, 524 U.S. 321, 329 n.4 (1998); *Timbs v. Indiana*, 139 S. Ct. 682, 690 (2019). Yet the district court in this case held that Hennepin County's retention of $25,000 in surplus funds from the foreclosure sale of Geraldine Tyler's home for her failure to pay property taxes did not constitute a "fine" because the sanction's "primary purpose" was not punitive, and it was not connected to any "criminal behavior." Pet. App. 44a. The court below affirmed that conclusion in a single sentence. *Id.* at 9a. The

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[1] Under Rule 37.6 of the Rules of this Court, *amicus* states that no counsel for a 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 *amicus* or its counsel made a monetary contribution to its preparation or submission.

understanding of the Excessive Fines Clause reflected in these decisions is at odds with both the Clause's history and this Court's precedents. It should not be permitted to stand.

The Framers adopted the Excessive Fines Clause as a shield against the government's abuse of its power to extract payments, in cash or in kind, as punishment for wrongdoing. But since the era of Magna Carta, to which the Clause's "venerable lineage" extends, *Timbs*, 139 S. Ct. at 687, that shield has never been limited to economic sanctions that serve a purely punitive purpose. To the contrary, the Framers of our Constitution, like the rebel barons at Runnymede before them, were concerned with financial penalties that are "partially punitive," *id.* at 690, recognizing that when the government wields its coercive power to extract payments, the risk of abuse is not mitigated just because the funds collected happen to go toward reimbursing the state.

The Excessive Fines Clause was taken nearly verbatim from the English Bill of Rights of 1689, which in turn codified Magna Carta's guarantee that excessive financial payments—then known as "amercements"—would not be extracted. Because amercements were the "medieval predecessors of fines," *Bajakajian*, 524 U.S. at 335, their history is critical to understanding the scope of the right that the Framers inscribed into the Excessive Fines Clause. Amercements were neither civil nor criminal in nature, and though they were sometimes imposed as punishments for crimes, more frequently they were used to sanction wrongful conduct that did not rise to the level of a criminal offense. Calvin R. Massey, *The Excessive Fines Clause and Punitive Damages: Some Lessons from History*, 40 Vanderbilt L. Rev. 1233, 1267 (1987). An amercement might be levied "not only against plaintiffs who failed

to follow the complex rules of pleading and against defendants who today would be liable in tort, but also against an entire township which failed to live up to its obligations, or against a sheriff who neglected his duties." *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 269 (1989). As these examples illustrate, the amercement was used for both punitive and remedial purposes—it sanctioned the wrongdoer while also repaying the costs incurred as a result of the wrongdoing.

In spite of Magna Carta's protection against the abuse of amercements, in the seventeenth century, the Stuart kings frequently used their prosecutorial power to collect payments that were intended both to target their political enemies and to amass funds for the operation of government. The Court of Star Chamber was notorious in this regard, particularly during the reign of Charles I, who, as part of his attempt to rule without convening Parliament, relied on economic sanctions to raise revenue without levying new taxes, which required parliamentary approval. *See* J.R. Tanner, *English Constitutional Conflicts of the Seventeenth Century 1603-1689*, at 74 (1971 ed.).

One way the Crown attempted to justify its defiance of Magna Carta was by rebranding financial extractions as "fines," instead of the "amercements" that Magna Carta explicitly limited. Blackstone rejected this distinction, *see* 4 William Blackstone, *Commentaries on the Laws of England* 379 (11th ed. 1791), and rightfully so: though "fines" and "amercements" described different types of payments at the time Magna Carta was written, by the seventeenth century, the fine had become "the equivalent of an amercement," Andrew M. Kenefick, Note, *The Constitutionality of Punitive Damages Under the Excessive Fines Clause of the Eighth Amendment*, 85 Mich. L. Rev. 1699, 1715

(1987), as this Court has recognized, *see Timbs*, 139 S. Ct. at 693; *Bajakajian*, 524 U.S. at 335; *see also Browning-Ferris*, 492 U.S. at 289 (O'Connor, J., concurring in part and dissenting in part).

Nonetheless, royal abuses of economic sanctions continued, peaking around the time of the Glorious Revolution and causing widespread concern that after James II's flight, the new royal order would continue to disrespect Magna Carta's guarantees. Thus, the parliamentary convention that drafted the English Bill of Rights included a provision that "restated" Magna Carta's "right to be free of excessive financial punishment," now using the word "fine" instead of "amercement." Massey, *supra*, at 1250. Across the Atlantic, that same protection was written into the Virginia Declaration of Rights, which eventually was adopted word-for-word as the Excessive Fines Clause of the Eighth Amendment.

Statutes from the period of the Eighth Amendment's ratification reinforce the Excessive Fines Clause's connection to its ancient roots, demonstrating that the Framers would have viewed the Clause as extending to partially remedial financial sanctions, just like Magna Carta's restrictions on amercements did. For instance, a slew of Founding-era statutes—both state and federal—indicate that "economic sanctions explicitly called 'fines' or 'forfeitures'" were frequently "used for remedial purposes akin to contemporary remedial sanctions." Beth A. Colgan, *Reviving the Excessive Fines Clause*, 102 Cal. L. Rev. 277, 311 (2014). Likewise, early statutes often imposed economic sanctions with expressly *remedial* qualities, such as costs of prosecution or court fees, as *punishments*. In some cases, only those found guilty of particularly culpable offenses were required to make these remedial payments, while innocent parties or those with a less

blameworthy *mens rea* were not required to pay. *Id.* at 315-17. Early American records thus make clear that the sharp line that the district court in this case drew between remedial and punitive sanctions simply did not exist at the Founding.

Recognizing that "[t]he applicability of the Eighth Amendment always has turned on its original meaning," *Ingraham v. Wright*, 430 U.S. 651, 670 n.39 (1977), all of this Court's Excessive Fines Clause cases have grappled with this important history and, consistent with it, made clear that the "primary purpose" of an economic sanction is irrelevant to its classification as a "fine." Specifically, in *Austin v. United States*, this Court rejected the argument that an *in rem* forfeiture was beyond the scope of the Excessive Fines Clause because it also served remedial purposes and was imposed in a civil—not criminal—proceeding. 509 U.S. at 610-11. In *Bajakajian*, this Court expressly reaffirmed *Austin*'s holding and noted that although the particular forfeiture at issue did not serve remedial purposes, the Court did not mean to suggest that "other forfeitures may be classified as nonpunitive (and thus not 'fines') if they serve some remedial purpose as well as being punishment." 524 U.S. at 329 n.4. Most recently, in *Timbs*, this Court expressly declined to reconsider *Austin*'s "partially punitive" test. 139 S. Ct. at 690.

In light of these precedents, the district court was wrong to conclude that there was no "fine" here, even assuming it was correct that the "primary purpose" of Respondents' tax foreclosure scheme is "remedial." And the district court's emphasis on the fact that the economic sanction imposed on Tyler was not tied to a "criminal conviction" or any "criminal behavior" has no basis in the text or history of the Excessive Fines Clause, much less this Court's precedents, which have

repeatedly recognized that "civil proceedings may advance punitive as well as remedial goals." *Austin*, 509 U.S. at 610 (quoting *United States v. Halper*, 490 U.S. 435, 448 (1989)). This Court should correct these errors and make clear the proper, straightforward test for what constitutes a "fine" under the Eighth Amendment: whether the payment serves in part to punish, period.

ARGUMENT

I. The Historical Roots of the Excessive Fines Clause Make Clear that It Applies to Financial Penalties that Serve Remedial Purposes.

A. During the period following the Norman Conquest and leading up to the sealing of the Great Charter at Runnymede, the chief method by which royal subjects made amends with the Crown was through the payment of "amercements." Assessed by a "jury of the culprit's neighbours," William Sharp McKechnie, *Magna Carta: A Commentary on the Great Charter of King John* 286 (2d ed. 1914), imposition of an amercement put the royal subject literally "'in the King's mercy' because of some act offensive to the Crown." *Browning-Ferris*, 492 U.S. at 270-71 (O'Connor, J., concurring in part and dissenting in part); *see* 2 Sir Frederick Pollock & Frederic William Maitland, *The History of English Law Before the Time of Edward I* 513-14 (2d ed. 1898) (describing the evolution of the term "amercement").

Although amercements were sometimes imposed as punishments for crimes, they were more frequently used to sanction those who committed misdeeds that were "not criminal but worthy of punishment." Massey, *supra*, at 1267. Indeed, the amercement originated prior to the development of the distinction

between criminal law and tort law, making it neither criminal nor civil in nature. *See* Kenefick, *supra*, at 1716. Accordingly, the types of wrongs meriting amercement ranged from things like "improper or false pleading," "default," "failure to appear," and "economic wrongs," to more serious misdeeds such as "trespass" and other torts and crimes. *Browning-Ferris*, 492 U.S. at 288 (O'Connor, J., concurring in part and dissenting in part).

The amercement was used as an "'all-purpose' royal penalty," *id.* at 269 (majority opinion), and conduct meriting amercement was "voluminous," *id.* at 288 (O'Connor, J., concurring in part and dissenting in part). Though amercements were often used as a sanction against litigants who abused the legal process, such as by wrongfully bringing or defending an action, or failing to respond to legal process or to admit facts later proven, *see Beecher's Case*, 8 Co. 58, 77 Eng. Rep. 559 (Ex. 1609), individuals who failed to fulfill their civic or financial obligations, whether to a court or to their communities, were also frequently amerced. For instance, in *Griesley's Case*, 8 Co. 38, 77 Eng. Rep. 530 (Ex. 1609), a man was ordered to pay five pounds for refusing to serve his appointment by a manorial court as a constable. And in *Vaughan's Case*, 5 Co. 49, 77 Eng. Rep. 128 (1598), a tenant was amerced for failing to give over the land that he occupied, as commanded by the King's writ. *See also* McKechnie, *supra*, at 286 (describing how amercements were imposed for failure to attend a county meeting).

In the majority of these instances, the amercement served both a punitive and remedial function—it was designed to punish the wrongdoer *and* to defray the costs imposed on the court or the community by the particular wrong for which it was imposed. Massey, *supra*, at 1251. The amercement went to the authority

figure with jurisdiction over the court in which it was assessed, serving as a direct remedy to compensate for the costs of the misdeed. *See* Pollock & Maitland, *supra*, at 513 (explaining that amercements imposed in royal courts went to the king, while those imposed in seignorial courts went to the lord of the manor and those imposed in county courts went to the sheriff). Moreover, failure to pay the assessed amount did not always result in imprisonment, as imprisonment itself imposed further costs on the community. Rather, amercements typically were enforced through actions in debt or detinue. Francis Buller, *An Introduction to the Law Relative to Trials at Nisi Prius* 167 (2d ed. 1775). Finally, refusals to pay the amount due frequently resulted in seizure of property in kind, as in *Griesley's Case*, where the wrongdoer's cattle were distrained for his failure to pay the five pounds assessed. 8 Co. at 39, 77 Eng. Rep. at 532-33.

The amercement's discretionary character was both its virtue and its vice: though it "permitted the penalty assessed to vary according to its peculiar, individual circumstances," Massey, *supra*, at 1251, reflecting its simultaneously remedial and punitive character, it was also subject to abuse by authorities. Thus, a body of common law emerged in the early thirteenth century that limited excessive amercement, and Magna Carta eventually codified this body of law, dedicating an entire chapter to the subject. 2 Edward Coke, *Institutes of the Laws of England* 27-28 (1776).

That chapter of Magna Carta was emblematic of the rebel barons' effort "to reduce arbitrary royal power" and "in particular to limit the King's use of amercements as a source of royal revenue, and as a weapon against enemies of the Crown." *Browning-Ferris*, 492 U.S. at 270-71. It provided that "[a] Freeman shall not be amerced for a small fault, but after

the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement." Magna Charta, 9 Hen. III, ch. 14, 1 Eng. Stat. at Large 5 (1225). As this Court has explained, Magna Carta limited royal abuses of financial payments in four distinct ways: "by requiring that one be amerced only for some genuine harm to the Crown; by requiring that the amount of the amercement be proportioned to the wrong; by requiring that the amercement not be so large as to deprive him of his livelihood; and by requiring that the amount of the amercement be fixed by one's peers, sworn to amerce only in a proportionate amount." *Browning-Ferris*, 492 U.S. at 271.

It is "[v]ery likely there was no clause in Magna Carta more grateful to the mass of the people than that about amercements." Frederic William Maitland, *Pleas of the Crown for the County of Gloucester* xxxiv (1884). Indeed amercements—and their exploitation—were ubiquitous in the era leading up to the sealing of Magna Carta. "[I]nflicted right and left upon men who ha[d] done very little that is wrong," 2 Pollock & Maitland, *supra*, at 513, the amercement was well-known to almost every Englishman, and protecting against government efforts to raise funds through petty punishment was front of mind for the citizenry throughout the medieval period.

B. Importantly, though Magna Carta referred only to amercements and not to "fines," the term "fine" had a distinct meaning when the Great Charter was written, and at that time, amercements were in fact much closer to the modern definition of "fines." Unlike the amercement, which "the law-breaker had no option of refusing, and no voice in fixing the amount," the term "fine" referred to "voluntary offerings made to the King to obtain some favour or to escape punishment." McKechnie, *supra*, at 293. Practically speaking,

during the era of Magna Carta, courts lacked the power to impose "fines," so they would sentence a wrongdoer to imprisonment, and then he might offer up a fine "[t]o avoid imprisonment" and "end[] the matter." *Browning-Ferris*, 492 U.S. at 289 (O'Connor, J., concurring in part and dissenting in part) (quoting Kenefick, *supra*, at 1715).

However, by the dawn of the seventeenth century, fines had lost their voluntary character and had begun to replace amercements as the preferred financial penalty. McKechnie, *supra*, at 293. Judges also began imposing fines themselves, whereas amercements had previously been assessed by juries. Massey, *supra*, at 1253. These shifts opened up the gateway to new abuses: even though the fine had effectively replaced the amercement and served an identical purpose, the distinction in nomenclature allowed royal authorities to claim that Magna Carta posed no obstacle to their imposition of excessive fines.

Some common law courts rejected this gamesmanship, holding that Magna Carta's chapter limiting amercements also applied to fines. *See, e.g.*, *Townsend v. Hughes*, 2 Mod. 150, 86 Eng. Rep. 994 (C.P. 1677) (North, C.J.) ("[A] man is to be fined by Magna Charta with a *salvo contenemento suo*; and no fine is to be imposed greater than he is able to pay."); *Richard Godfrey's Case*, 11 Co. 42, 77 Eng. Rep. 1199 (1615) (analyzing the validity of a fine based on the law of amercement, and holding that, as in Magna Carta, "the reasonableness of the fine shall be adjudged by the justices; and if it appears to them to be excessive, it is against law, and shall not bind"). Blackstone apparently shared this sentiment. *See, e.g.*, 4 Blackstone, *supra*, at 379 (stating that Magna Carta's amercement provisions regulated "[t]he reasonableness of fines").

But other courts helped facilitate the Crown's abuses, creating complicated and seemingly nonsensical rules of law that themselves revealed the indistinguishability of fines and amercements during this period. For example, in *Griesley's Case*, discussed above, the court deemed the penalty for refusal of an appointment a "fine," yet it conducted its entire legal analysis expressly in terms of "amercement." 8 Co. at 39-41, 77 Eng. Rep. at 531-34. Then, despite concluding that Magna Carta's protections applied to both amercements and fines, it created an artificial distinction between amercements "in actions real or personal" and amercements involving the administration of justice, holding the latter category exempt from Magna Carta's command that only a jury may assess an amercement. *Id.* at 40, 77 Eng. Rep. at 533-34. Because the refusal of an appointment as constable (the misdeed in *Griesley's Case*) apparently fell into that latter category, the financial penalty was upheld despite being imposed by a judge and not a jury. *Id.*

John Hampden's Case, 9 How. St. Tr. 1054 (K.B. 1684)—decided by Chief Justice George Jeffreys, notorious for sending hundreds of innocent men to their deaths, *see Furman v. Georgia*, 408 U.S. 238, 253 (1972) (Douglas, J., concurring)—took things a step further, declaring that Magna Carta provided no protection whatsoever from fines imposed for offenses against the Crown, *John Hampden's Case*, 9 How. St. Tr. at 1124. By the time of the Glorious Revolution, decisions like these had effectively nullified the Great Charter's carefully delineated limitations on excessive financial extractions.

C. These abuses came to a head amidst the political struggles between the Crown and Parliament during the reign of Charles I. In his effort to govern without convening Parliament, the King took "advantage

of the law's technicalities" to raise revenue without the benefit of new taxes approved by Parliament. Tanner, *supra*, at 74. The infamous Court of Star Chamber was his chief tool in this endeavor. It imposed heavy fines on royal enemies, "a fact that eventually led to [its] dissolution." Massey, *supra*, at 1253.

But despite the demise of the Star Chamber, the abuses continued, as Charles II's courts persisted in imposing "ruinous fines" on the King's enemies. Lois G. Schwoerer, *The Declaration of Rights, 1689*, at 91 (1981). More and more, large fines were being imposed as criminal punishments and used by those wielding the power of the Crown "to raise revenue, harass their political foes, and indefinitely detain those unable to pay." *Timbs*, 139 S. Ct. at 688. This grew so concerning that the House of Commons convened a special committee to investigate judicial proceedings in 1680. Schwoerer, *supra*, at 90. After reviewing the transcripts of all the proceedings imposing fines in King's Bench since 1677, the committee declared that the judges had acted "arbitrarily, illegally, and partially." 9 Journal of the House of Commons 692 (1680).

These "unwelcome flexing[s] of royal authority" were the "immediate political target" of Article 10 of the English Bill of Rights of 1689. Massey, *supra*, at 1264. Its drafters were familiar with this legal history and "sought to observe and restore limitations on financial penalties imposed during the judicial process, whether by juries via amercements or by judges via fines." *Id.* Thus, when James II was overthrown in the Glorious Revolution and the Bill of Rights was codified, it "reaffirmed Magna Carta's guarantee" that excessive financial payments—regardless of what they were called or their particular purpose—would not be extracted. *Timbs*, 139 S. Ct. at 688; *see Browning-Ferris*, 492 U.S. at 291 (O'Connor, J., concurring in part

and dissenting in part) ("it appears that the word 'fine' in Article 10 was simply shorthand for all monetary penalties, whether imposed by judge or jury, in both civil and criminal proceedings (quotation marks omitted)); Schwoerer, *supra*, at 90 (the "freedom from excessive fines" conferred by the English Bill of Rights was "indisputably an ancient right of the subject"). Specifically, Article 10 of the English Bill of Rights declared that "excessive Bail ought not to be required, nor excessive Fines imposed; nor cruel and unusual Punishments inflicted." 1 Wm. & Mary, ch. 2, § 10, 3 Eng. Stat. at Large 441 (1689).

D. In the fledgling United States, "this familiar language was adopted almost verbatim, first in the Virginia Declaration of Rights, then in the Eighth Amendment." *Timbs*, 139 S. Ct. 688; *see* Va. Decl. of Rights § 9 (1776) ("excessive bail ought not to be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"); U.S. Const. amend. VIII ("[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted"). George Mason, the draftsman of the Virginia Declaration, made clear that American colonials "claim Nothing but the Liberty & Privileges of Englishmen, in the same degree, as if we had still continued among our Brethren in Great Britain." Letter to the Committee of Merchants in London (June 6, 1766), *reprinted in* 1 *The Papers of George Mason* 65, 71 (R. Rutland ed., 1970); *see also* Edmund Randolph, *Essay on the Revolutionary History of Virginia* (1809-1813), *reprinted in* 1 Bernard Schwartz, *The Bill of Rights: Documentary History* 246 (1971) (Section 9 of the Virginia Declaration was "borrowed from England"). The Virginia Supreme Court of Appeals similarly declared that the state's Excessive Fines Clause embodied the ancient legal principle that "the fine or amercement

ought to be according to the degree of the fault and the estate of the defendant." *Jones v. Commonwealth*, 5 Va. 555, 557 (1799) (opinion of Carrington, J.). In light of this history, "[t]here can be no doubt that the Declaration of Rights guaranteed at least the liberties and privileges of Englishmen," *Solem v. Helm,* 463 U.S. 277, 285-286 n.10 (1983), including their longstanding freedom from excessive financial extractions.

Indeed, the Excessive Fines Clause was the subject of almost no debate when the Eighth Amendment was proposed. *See Weems v. United States*, 217 U.S. 349, 368 (1910) (the Eighth Amendment "received very little debate"). Though Samuel Livermore of New Hampshire briefly expressed concern that the Clause, while laudable in its "express[ion] of humanity," was vague and unnecessary, 1 Annals of Cong. 782 (J. Gales & W. Seaton eds., 1789), the congressional records otherwise contain no evidence of discussion of the Clause's meaning or scope. *See also* Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 Hastings Const. L.Q. 833, 839 (2013) ("[T]he Eighth Amendment generated scant debate in . . . the state ratifying conventions.").

But as this Court has noted, this lack of debate is "not surprising." *Browning-Ferris*, 492 U.S. at 264. By the Founding era, eight states, comprising seventy percent of the young nation's population, all had constitutions with prohibitions on the imposition of excessive fines, Steven G. Calabresi et al., *State Bills of Rights in 1787 and 1791: What Individual Rights Are Really Deeply Rooted in American History and Tradition?*, 85 S. Cal. L. Rev. 1451, 1517 (2012), and even the Confederation Congress's Northwest Ordinance had declared that "[a]ll fines shall be moderate," An Ordinance for the Government of the Territory of the

Unites States Northwest of the River Ohio art. 2 (July 13, 1787).

In short, by the time it was adopted into the Constitution's Bill of Rights, the substance of the Excessive Fines Clause was well established in the new nation. Its drafters "were aware and took account of the abuses that led to the 1689 Bill of Rights," *Browning-Ferris*, 492 U.S. at 267, and so they "uncritically" adopted its language, "treating it as a shorthand expression for ancient rights rooted in the soil of English Law." Massey, *supra*, at 1241; *see* 2 Joseph Story, *Commentaries on the Constitution of the United States* 624 (Thomas M. Cooley ed., 4th ed. 1873) (the Eighth Amendment was "adopted as an admonition to all departments of the national government, to warn them against such violent proceedings as had taken place in England in the arbitrary reigns of some of the Stuarts"). Those ancient rights, dating back to Magna Carta, went far beyond limiting criminal penalties or fines that functioned only to punish; rather, they barred excessive economic sanctions of all kinds, even those that served partially remedial purposes.

E. Colonial and early American records reinforce this point, making clear that the Founding generation did not draw sharp distinctions between remedial and punitive economic sanctions, and thus would not have viewed the Excessive Fine Clause as applying only to those payments that served exclusively punitive purposes. Indeed, in early America, a wealth of economic sanctions explicitly called "fines" were used for partially, or even primarily, remedial purposes. As Professor Beth Colgan has meticulously documented, the term "fine" was used to describe "remedial charges such as court costs, costs related to law enforcement activities and incarceration, and bonds for good

behavior (similar to contemporary probation and parole fees)." Colgan, *supra*, at 311.

Early statutes expressly, and frequently, stated that fines collected as punishment would go toward these remedial purposes. For instance, the first Congress enacted a comprehensive law regulating the collection of customs duties, which contained several provisions that mandated the payment of financial penalties for the law's breach. *Act of July 31, 1789*, 1 Stat. 29. The law specified that those penalties, referred to as "fines and forfeitures," should go first toward "deducting all proper costs and charges" incurred in prosecuting the breach. *Id.* § 38, 1 Stat. at 48. The "fines" were thus designated for a plainly remedial purpose: defraying the costs incurred by the government to remedy the misdeed and bring the culprit to justice. *See also Act of August 4, 1790* § 69, 1 Stat. 145, 177 (subsequent duties statute using the same language); *Act of March 3, 1791* § 1, 1 Stat. 216, 217 ("a sum arising from the fines and forfeitures to the United States . . . is hereby appropriated for the payment of" judicial salaries, and other remedial purposes).

Early state statutes were to like effect. Connecticut's delinquency law specified that prosecution costs "shall be paid out of the Treasury into which the Fines, Forfeitures, or Penalties adjudged against such Delinquents on Conviction, are by Law to be paid." 1774 Conn. Pub. Acts 394; *see also* 1752 Conn. Pub. Acts 267-68 (for stealing, "one Half of the treble Damages recovered of the Person convicted, shall . . . belong to the said County Treasury" to be used for "the Charge of prosecuting"). Rhode Island law described the criminal sentence for counterfeiting as "One Thousand Dollars *and Cost*, as a Fine." 1771 R.I. Pub. Laws 37 (emphasis added). And Delaware law provided that "fines shall . . . be applied towards the public allowance to

jurors," thus making clear that a "fine" would go toward mitigating the court's expenses for paying jurors for their time. 1700-1775 Del. Laws 473 (1770); *see also* 1700-1769 Del. Laws 71 (1719) (providing that criminal forfeitures, "after . . . the reasonable charges of their maintenance in prison, are deducted, shall go one half . . . for the defraying of the charges of prosecution, trial, and execution of such criminals"); *see also* Colgan, *supra*, at 311-12 nn.181-83 (collecting early American statutes).

Statutory language from the Founding era also "often reflected an understanding that sanctions that served remedial purposes were, in fact, punishment," demonstrating that the Framers saw no sharp distinction between remedial and punitive purposes. *Id.* at 313. For instance, under eighteenth-century Maryland law, theft offenses were "punished" via certain traditional forms of physical retribution, like pillory and whipping, but also via restitution, a classic remedial sanction. 1715 Md. Laws 88. So too for "crimes inferior to murder" in Pennsylvania, for which "punishments" included "restitution" along with "imprisonment." 1718 Pa. Laws 101; *see also* 1666 Va. Acts 42 (requiring criminal defendants to pay for their prosecution so that they did not receive "too favourable [a] Censure" and thereby "escape their deserved Punishment"); Colgan, *supra*, at 313-15 nn.188-92 (listing other analogous laws).

In other jurisdictions, even if laws did not explicitly refer to financial extractions that served to reimburse the government as "punishments," those extractions were embedded in statutory schemes that made clear that they were designed to further punitive ends. One early Massachusetts statute required defendants to pay the costs of their prosecution only where the violation of the law was found to be willful and

malicious, as opposed to accidental. 1773 Mass. Acts 302-03. In other words, a remedial payment (court costs) was imposed only when the conduct charged was sufficiently blameworthy (willful and malicious). Similarly, other states ensured that the costs of prosecutions would be imposed only on parties who were convicted. *See, e.g.*, 1791 S.C. Acts 19-24; *The Charter or Fundamental Laws of West New Jersey* ch. XXII (1676). The federal government itself codified this rule within months of the ratification of the Eighth Amendment, *see Act of May 8, 1792* § 5, 1 Stat. 275, 277-78 (where "judgment is rendered against the defendant he shall be subject to the payment of costs"), demonstrating the Framers' understanding that sanctions with remedial features could be—and frequently were—imposed as punishment.

II. Under this Court's Precedents, a Remedial Sanction Falls Within the Ambit of the Excessive Fines Clause so Long as It Also Serves Some Punitive Purpose.

A. Consistent with this history, this Court has repeatedly held that the Excessive Fines Clause applies to all economic sanctions that can "be explained as serving in part to punish." *Austin*, 509 U.S. at 610. Recognizing "that sanctions frequently serve more than one purpose," *id.*, this Court has made clear that "a civil sanction that cannot fairly be said *solely* to serve a remedial purpose, but rather can . . . be explained as also serving either retributive or deterrent purposes, is punishment, as we have come to understand the term," *id.* at 621 (emphasis in original) (quoting *Halper*, 490 U.S. at 448). Put simply, this means that remedial financial sanctions fall within the ambit of the Excessive Fines Clause so long as they also serve some punitive function.

This Court first made its "partially punitive" rule explicit in its unanimous decision in *Austin v. United States*. As relevant here, following Austin's conviction of possession with intent to distribute, the United States filed a civil *in rem* action seeking forfeiture of Austin's mobile home and auto shop for their alleged involvement in the crime. 509 U.S. at 604.

In assessing whether the forfeiture constituted a "fine" within the meaning of the Eighth Amendment, this Court first rejected the argument that the civil nature of an economic sanction necessarily puts it beyond the reach of the Excessive Fines Clause. Observing that consideration of the Eighth Amendment in the House of Representatives immediately followed consideration of the Fifth Amendment—during which the Framers confined the Self-Incrimination Clause to criminal proceedings—this Court found it telling that there were no similar proposals to limit the Eighth Amendment in such a fashion. *Id.* at 608-09 (citing *Browning-Ferris*, 492 U.S. at 294 (O'Connor, J., concurring in part and concurring in the judgment)). Then, reiterating that the original purpose of the Excessive Fines Clause was "to limit the government's power to punish," *id.* at 609, this Court made clear that "civil proceedings may advance punitive as well as remedial goals, and, conversely, . . . both punitive and remedial goals may be served by criminal penalties," *id.* at 610 (quoting *Halper*, 490 U.S. at 447). Thus, the question of whether a particular economic sanction constitutes a fine turns not on whether it is considered "civil" or "criminal," but on whether it is, at least partially, a form of government punishment.

To answer that question for the particular forfeiture at issue in *Austin*, this Court began by surveying the history of civil forfeiture at the time the Eighth Amendment was written. Finding that forfeiture was

historically used in response to wrongful conduct, serving "either retributive or deterrent purposes," *id.* at 610 (quoting *Halper*, 409 U.S. at 448), this Court concluded that it was partially punitive in nature, *see id.* at 611-18. Indeed, even though the concurring opinions emphasized the fact that forfeiture served "other purposes" at the Founding, the Court explicitly rejected the significance of that fact. *Id.* at 618 n.12. Those "other purposes" were irrelevant as long as forfeiture was also considered punitive.

Applying that history to the modern forfeiture statutes in Austin's case, this Court found "nothing in [them] or their legislative history to contradict the historical understanding of forfeiture as punishment." *Id.* at 619. And, for a second time, this Court rejected the argument that the forfeiture did not constitute a "fine" because the particular statutes that authorized it allegedly also served some remedial purposes. "[E]ven assuming" this were true, the Court explained, the argument still "must fail" because the government could not show that the forfeiture "serves *solely* a remedial purpose." *Id.* at 621-22 (emphasis added). In sum, this Court in *Austin* made clear that, consistent with the deeply rooted history of the Excessive Fines Clause, remedial sanctions should be considered "fines" whenever they also serve punitive purposes.

This Court has expressly reaffirmed this holding in every case to interpret the Excessive Fines Clause since *Austin*. First came *United States v. Bajakajian*, where this Court held that a criminal *in personam* forfeiture of over $300,000 for failure to report exported currency was an excessive fine. 524 U.S. at 324-25. Although the opinion suggested in dicta that, contrary to *Austin*, *in rem* forfeitures were not considered

punitive at the Founding, *id.* at 330-34,[2] it expressly reaffirmed *Austin*'s holding that as long as an economic sanction serves a partially punitive purpose, it falls within the ambit of the Excessive Fines Clause, *id.* at 329 n.4. The forfeiture in *Bajakajian* easily met that standard, *id.* at 328, because it was *entirely* punitive, "serv[ing] no remedial purpose," *id.* at 332. But as in *Austin*, this Court made clear that it did not intend to "suggest that . . . other forfeitures may be classified as nonpunitive (and thus not 'fines') if they serve some remedial purpose as well as being punishment for an offense." *Id.*

To the extent that, in the wake of *Bajakajian*, there remained any confusion about the ongoing validity of the "partially punitive" rule, this Court's decision in *Timbs v. Indiana* put it to rest. *Timbs* involved a civil *in rem* action seeking forfeiture of a criminal defendant's vehicle, and Indiana invited this Court to reconsider *Austin*'s central holding as part of its argument against incorporation of the Excessive Fines Clause against the states. 139 S. Ct. at 690. This Court unanimously "decline[d] the State's invitation," reiterating that "civil *in rem* forfeitures are fines for purposes of the Eighth Amendment when they are at least partially punitive." *Id.*

B. The fact that a "fine" need only be partially punitive stems directly from this Court's recognition that the Clause was codified "as a bulwark against the abuse of prosecutorial power that may accrue where

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[2] This discussion was dicta because *Bajakajian* involved a criminal *in personam* forfeiture, not a civil *in rem* forfeiture. 524 U.S. at 333; *see also Leonard v. Texas*, 137 S. Ct. 847, 847 (2017) (statement of Thomas, J., respecting denial of certiorari) ("Modern civil forfeiture statutes are plainly designed, at least in part, to punish the owner of property used for criminal purposes." (citing *Austin*, 509 U.S. at 618-19)).

fines are used 'for the purpose of raising revenue.'" Beth A. Colgan, *The Excessive Fines Clause: Challenging the Modern Debtors' Prison*, 65 UCLA L. Rev. 2, 20 (2018) (quoting *Browning-Ferris*, 492 U.S. at 275). Accordingly, even when an economic sanction goes primarily toward reimbursing government expenses or serves other remedial purposes, there is still an intolerable risk of government overreach when it arises from the government's use of its coercive, prosecutorial power.

Indeed, in the only case in which this Court has ever held that an economic sanction—specifically, punitive damages paid to the prevailing civil litigant—was not a "fine," this Court rested its decision in part on the fact that the government had neither "prosecuted the action nor [had] any right to receive a share of the damages awarded." *Browning-Ferris*, 492 U.S. at 264; *compare id.* at 270-72 (discussing how amercements were subject to abuse because they served as "a source of royal revenue"). In the absence of any direct benefit to the government from a punitive damages award, the risk of government abuse was diminished and so too was the connection to the history and purpose of the Clause, according to this Court. *Id.* at 264.

Conversely, financial sanctions accruing to the government's benefit should be scrutinized especially closely because they "are a source of revenue," while other forms of punishment "cost a State money." *Harmelin* v. *Michigan*, 501 U.S. 957, 978 n.9 (1991) (opinion of Scalia, J.); *see U.S. Tr. Co. of N.Y. v. New Jersey*, 431 U.S. 1, 26 (1977) ("A governmental entity can always find a use for extra money, especially when taxes do not have to be raised."). To exclude partially remedial sanctions from this scrutiny would enable the sort of abuses that led to the adoption of the Excessive

Fines Clause and its historical predecessors in the first place. This Court's cases foreclose that result.

III. The Courts Below Erred by Fixating on the "Primary Purpose" of the Financial Penalty and the Fact that It Was Not Linked to Any Criminal Conduct.

The district court and the Eighth Circuit fundamentally misconstrued this Court's precedents, leading them to erroneously conclude that the County's retention of the surplus funds from the sale of Tyler's home did not constitute a "fine."

The district court's first error (affirmed by the Eighth Circuit "on the basis of that opinion," Pet. App. 9a) was focusing on the "primary purpose" of Minnesota's tax forfeiture scheme, which the court found to be "plainly remedial: assisting the government in collecting past-due property taxes and compensating the government for the losses caused by the non-payment of property taxes." Pet. App. 44a. Even assuming that statement to be accurate, this Court has never held that the "primary" purpose of a financial payment determines whether it is a fine. To the contrary, as previously noted, in both *Austin* and *Bajakajian*, this Court made clear that a "sanction that cannot fairly be said *solely* to serve a remedial purpose" may still be considered a fine. *Austin*, 509 U.S. at 621; *see Bajakajian*, 524 U.S. at 329 n.4 ("Even if the Government were correct in claiming that the forfeiture of respondent's currency is remedial in some way, the forfeiture would still be punitive in part," which would be "sufficient to bring [it] within the purview of the Excessive Fines Clause."). Thus, as long as a payment serves at least some punitive purpose, it is a fine *even if* its "primary purpose" is remedial.

The district court's second error was to fixate on the fact that the "scheme does not condition the loss of surplus equity on a criminal conviction—or, for that matter, even on criminal *behavior*." Pet. App. 44a (emphasis in original). Instead of brushing aside the possibility of punitive intent on that basis—which lacks any foundation in this Court's precedent—the court should have followed *Austin* and assessed whether the scheme serves in part to penalize individuals for conduct the state deems wrongful. 509 U.S. at 610-11.

After all, this Court has never held, or even suggested, that civil sanctions unconnected to criminal behavior cannot constitute fines. True enough, the civil sanctions found to be fines in *Austin* and *Timbs* were connected to criminal conduct, but this Court was careful to make clear that such a connection is not required. "The notion of punishment . . . cuts across the division between the civil and the criminal law," and civil penalties "may advance punitive as well as remedial goals." *Austin*, 509 U.S. at 610 (quoting *Halper*, 490 U.S. at 447-48); *see Timbs*, 139 S. Ct. 690 (reaffirming *Austin*). "Thus, the question is not . . . whether [an economic sanction] is civil or criminal, but rather whether it is punishment." *Austin*, 509 U.S. at 610. And for good reason: the Excessive Fines Clause "would mean little if the government could evade constitutional scrutiny under the Clause's terms by the simple expedient of fixing a 'civil' label on the fines it imposes and declining to pursue any related 'criminal' case." *Toth v. United States*, 143 S. Ct. 552, 553 (2023) (Gorsuch, J., dissenting from denial of certiorari).

The district court's third error was to dismiss as irrelevant the fact that under Minnesota's tax-forfeiture scheme, there are many cases (like this one) in which the government receives far more than a taxpayer owes when it takes and sells the taxpayer's

property. Even if the district court were correct that a penalty cannot be deemed punitive *solely* because the government "receives more than what is necessary to make it whole," Pet. App. 42a, neither can the inquiry ignore the fact that a state is extracting huge monetary profits from people it accuses of shirking their property tax obligations. Indeed, this Court on multiple occasions has noted that the outsized amount of a financial charge may indicate punitive intent. *See Dep't of Revenue of Mont. v. Kurth Ranch*, 511 U.S. 767, 780 (1994) (explaining that a "remarkably high tax" could be "at least consistent with a punitive character," given its deterrent effects); *United States v. Constantine*, 296 U.S. 287, 295 (1935) (observing that "the exaction in question is highly exorbitant," which "points in the direction of a penalty"). Accordingly, the district court should not have been so quick to cast aside Tyler's argument regarding the gross discrepancy between the amount of her unpaid property taxes and the amount of the government's windfall.

Many of the district court's errors, it seems, stem from the misunderstanding of *Bajakajian* reflected in *United States v. Lippert*, 148 F.3d 974 (8th Cir. 1998). In that case, the Eighth Circuit expressed confusion about the proper test for whether an economic sanction constitutes a fine. After accurately describing "*Austin*'s expansive test," it claimed that *Bajakajian* gave a "strong conflicting signal" that penalties with remedial qualities "may not be subject to the Excessive Fines Clause at all." *Id.* at 977-78. Relying on *Lippert*, the district court suggested that *Bajakajian* "narrowed" *Austin*'s test for identifying punitive purposes. Pet. App. 43a. This, even though *Bajakajian* expressly reaffirmed *Austin*'s central holding, and *Timbs*—decided after *Bajakajian*—likewise reaffirmed that financial penalties "fall within the Clause's protection

when they are at least partially punitive." *Timbs*, 139 S. Ct. at 689 (citing *Austin*, 509 U.S. 602); *see supra* Section II.A.

The Eighth Circuit is not alone in its confusion. The Fourth Circuit has noted the tension between *Austin*'s holding and dicta in *Bajakajian*, *see United States v. Ahmad*, 213 F.3d 805, 812-13 (4th Cir. 2000), as have other courts across the country, *see Colgan*, *Modern Debtors' Prison*, *supra*, at 17-18 n.87 (collecting cases). Thus, even if this Court ultimately determines that this case may be decided on alternative grounds, it should not let the opportunity pass to rectify the flawed analysis of the Excessive Fines Clause by the courts below and to clarify the law in this area.

* * *

Drawing on ancient rights dating back at least to thirteenth-century England, the Framers wrote the Excessive Fines Clause to limit the government's power to extract financial payments as punishment, regardless of whether those payments also further remedial purposes. Consistent with that history, this Court has repeatedly held that an economic sanction need only be partially punitive to fall within the Clause's ambit. The holding of the courts below directly contradicts this history and precedent, greatly diminishing the "fundamental" and "deeply rooted" protections of the Excessive Fines Clause. *Timbs*, 139 S. Ct. at 690. This Court should correct those errors and ensure that the Clause can continue to play its important role in guarding against government abuse and overreach.

CONCLUSION

For the foregoing reasons, this Court should vacate the judgment of the court below.

Respectfully submitted,

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