

No. 22-166

IN THE
Supreme Court of the United States

GERALDINE TYLER,
Petitioner,

v.

HENNEPIN COUNTY, MINNESOTA 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

**BRIEF OF NATIONAL TAXPAYERS UNION
FOUNDATION AND MACKINAC CENTER FOR
PUBLIC POLICY AS *AMICI CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICI CURIAE*¹

Founded in 1973, the National Taxpayers Union Foundation (NTUF) is a non-partisan research and educational organization dedicated to showing Americans how taxes, government spending, and regulations affect everyday life. NTUF advances principles of limited government, simple taxation, and transparency on both the state and federal levels. NTUF's Taxpayer Defense Center advocates for taxpayers in the courts, producing scholarly analyses and engaging in direct litigation and *amicus curiae* briefs upholding taxpayers' rights, challenging administrative overreach by tax authorities, and guarding against unconstitutional burdens on interstate commerce.

The Mackinac Center for Public Policy is a Michigan-based, non-partisan research and educational institute advancing policies fostering free markets, limited government, personal responsibility, and respect for private property. The Center is a 501(c)(3) organization founded in 1987. The Mackinac Center for Public Policy has advocated against the retention of equity in excess of the tax debts owed in foreclosure matters, and against the imposition of excessive fines and penalties. Mackinac has joined with petitioner's attorneys, the Pacific Legal Foundation, as local counsel in a related matter in Michigan.

¹ Pursuant to Supreme Court Rule 37, counsel for *Amici* represents that none of the parties or their counsel, nor any other person or entity other than *Amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

Because *Amici* have worked extensively on the issues involved in this case, because this Court's decision may be looked to as authority, and because any decision will significantly impact taxpayers and homeowners, *Amici* have institutional interests in this Court's ruling.

SUMMARY OF THE ARGUMENT

A fundamental right that all citizens possess is the liberty to be free from excessive government penalties. *See, e.g.*, U.S. CONST. amend. VIII; *Timbs v. Indiana*, 586 U.S. ___, 139 S. Ct. 682 (2019). The Eighth Amendment has a strong pedigree as a fundamental right. Civil penalties, including tax sales, implicate the right to be free from excessive fines.

That the Eighth Circuit decision below focused on a distinction between civil and criminal penalties was error and compels reversal. Hennepin County, Minnesota kept a \$25,000 windfall from the sale of Ms. Tyler's home—67 percent greater than the \$15,000 that Tyler owed in property taxes. Minnesota's draconian law fails as an excessive fine.

Under this Court's precedents, an excessive fine cannot be "grossly disproportional" to the offense and the government action must be "purely remedial." *See, e.g., United States v. Bajakajian*, 524 U.S. 321, 334 (1998); *Austin v. United States*, 509 U.S. 602, 610 (1993). This is a straightforward test that should apply to tax sales where the government keeps *all* the home's equity, despite the taxes and penalties being far less. Hennepin County's confiscation of the equity beyond the statutory taxes and penalties in

Ms. Tyler's house is a grossly disproportional punishment that is not remedial since the county is keeping significantly more money than Ms. Tyler owed.

This case presents a crucial opportunity for the Court to protect citizens from predatory government actions. This case also presents this Court with an opportunity to revisit its decision in *Nelson v. City of New York*, where New York City confiscated and sold a property for \$7,000 to satisfy \$65 in unpaid water bills, and kept all the proceeds. See *Nelson v. City of New York*, 352 U.S. 103 (1956). *Nelson* was decided prior to the Excessive Fines Clause's incorporation and is the reason lower courts are reluctant to rule that state and local governments seizing and selling property for unpaid taxes and returning no money to the distressed taxpayer violates the Constitution. The Court should now overturn *Nelson* and clarify to lower courts that these predatory tax statutes violate the Constitution.

ARGUMENT

I. THE EXCESSIVE FINES CLAUSE APPLIES TO TAX SALES.

The Eighth Amendment prohibits “excessive fines imposed” for violations of the law. U.S. CONST. amend. VIII. This case presents the situation of a state authorizing the complete confiscation of property beyond what is needed to satisfy back taxes. In effect, Minnesota law allows the government to add additional fines and continue to punish Ms. Tyler, far beyond the taxes due.

A. The Excessive Fines Clause Has Deep Historical Roots.

Protection from excessive governmental fines is one of our oldest rights, copied almost verbatim to the Eighth Amendment from the Magna Carta and the English Bill of Rights. *See Timbs v. Indiana*, 586 U.S. ___, 139 S. Ct. 682, 687-88 (2019).

At the time of the ratification of the Eighth Amendment, a majority of the state constitutions protected citizens from excessive fines. *See, e.g.*, DEL. CONST., art. I, § 11 (1792); MD. CONST., Decl. of Rights, Art. XXII (1776); MASS. CONST., pt. 1, art. XXVI (1780); N.H. CONST., pt. 1, art. 1, § XXXIII (1784); N.C. CONST., Decl. of Rights, art. X (1776); PA. CONST., art. IX, § 13 (1790); S.C. CONST., art. IX, § 4 (1790); VA. CONST., Bill of Rights, § 9 (1776). Vermont specified that “all fines shall be proportionate to the offences.” VT. CONST., ch. II, § XXIX (1786).² And in federal law,

² Only one state chose to remove explicit constitutional protection against excessive fines prior to the ratification of the Eighth Amendment. Georgia’s 1777 Constitution had an

the Northwest Ordinance provided that “[a]ll fines shall be moderate; and no cruel or unusual punishments inflicted.” Ordinance of 1787, § 14, art. 2 (1787).

Ms. Tyler’s case is well within the ambit of the protections of the Excessive Fines Clause. As the Alabama and Michigan Supreme Courts recently recognized, a property right in the excess funds (*i.e.*, the home equity) after a tax sale was protected in American common law at the founding. *See Douglas v. Roper*, ___ So.3d ___, No. 1200503, 2022 WL 2286417 at *11 (Ala. Jun. 24, 2022); *Rafaeli, LLC v. Oakland Cnty.*, 952 N.W.2d 434, 454-55 (Mich. 2020) (discussing English common law at the founding of the United States). And “the excess funds that result from a tax sale are representative of the property itself.” *Douglas*, No. 1200503, 2022 WL 2286417 at *11. Taking more than what is owed in taxes and penalties constitutes an extra fine levied, simply because the home has excess equity. It’s punishment beyond what the tax law would otherwise allow.

B. Civil Penalties, Like Tax Sales, Implicate the Excessive Fines Clause.

The Eighth Circuit’s distinction between civil and criminal law in applying the Eighth Amendment disregarded this Court’s repeated statements that the Excessive Fines Clause applies to both civil and criminal law: “[t]he notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law.” *Austin v.*

excessive fines clause, GA. CONST., art. LIX (1777), but its 1789 Constitution did not.

United States, 509 U.S. 602, 610 (1993) (quoting *United States v. Halper*, 490 U.S. 435, 447-448 (1989)); see also *Hudson v. United States*, 522 U.S. 93, 103 (1997) (determining that “the Eighth Amendment protects against excessive civil fines, including forfeitures”) (collecting cases). There should therefore be no doubt that a civil action like a tax sale can be a “fine” for the purposes of the Excessive Fines Clause.

Nonetheless, homeowners like Ms. Tyler are repeatedly told that the Excessive Fines Clause is limited only cases connected to criminal activity. The District Court here, for example, refused to find a valid Excessive Fines claim because “Minnesota’s tax-forfeiture scheme does not condition the loss of surplus equity on a criminal conviction—or, for that matter, even on criminal *behavior*.” *Tyler v. Hennepin County*, 505 F. Supp. 3d 879, 897 (D. Minn. 2020) (emphasis in original). The Eighth Circuit agreed in a brief paragraph with little analysis. See *Tyler v. Hennepin County*, 26 F.4th 789, 794 (8th Cir. 2022).

There is no history suggesting that the right to be free from excessive fines should only apply in the criminal context; the word “fine” by its original meaning can include a civil penalty. It is true that this Court has noted that the Excessive Fines Clause would not apply to private lawsuits with large damages awards issued by juries. See *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989). But in doing so, *Browning-Ferris* recognized that “at the time of the drafting and ratification of the [Eighth] Amendment, the word ‘fine’ was understood to mean a payment to a sovereign as punishment for some offense.” *Id.* at 265; *id.* at 265 n.6 (citing 2 T. Cunningham, *A New and Complete Law—*

Dictionary (1771) which defined “fines for offences” as “amends, pecuniary punishment, or *recompence* for an offence committed against the King and his laws, or against the Lord of a manor.”) (emphasis added).

In accord with this view, this Court later clarified that asset forfeiture (transferring property to the government as punishment for some offense) is subject to the Eighth Amendment. *See Austin*, 509 U.S. at 622 (1993); *Hudson*, 522 U.S. at 103. Indeed, the case that incorporated the Eighth Amendment to apply to the states was in the context of a civil action to satisfy a fine. *See Timbs*, 139 S. Ct. at 686 (“The State engaged a private law firm to bring a civil suit for forfeiture of Timbs’s Land Rover,... [seeking] more than four times the maximum \$ 10,000 monetary fine assessable against him for his drug conviction.”).

The Eighth Circuit’s distinction between civil and criminal law in applying the Eighth Amendment was error. Tax sales implicate the Excessive Fines Clause.

II. MINNESOTA’S SCHEME PRODUCES GROSSLY DISPROPORTIONATE FINES.

Minnesota’s law fails this Court’s two-part test for deciding when the Excessive Fines Clause is violated. A penalty is an excessive fine when the fine is “grossly disproportional” to the offense and the government action cannot be understood as “purely remedial.” *See United States v. Bajakajian*, 524 U.S. 321, 334 (1998); *Austin*, 509 U.S. at 610 (1993).

In this case, the fine is grossly disproportional. The offense was \$15,000 in unpaid property taxes, fines, and interest. Hennepin County seized and sold the property for \$40,000, keeping the balance. The

\$25,000 windfall “bears no articulable correlation to any injury suffered by the Government,” *Bajakajian* 524 U.S. at 340, because the only harm the government suffered was unpaid tax revenue. Hennepin County in effect imposed a fine of 1.67 times the unpaid taxes and fees. A confiscatory punishment like the one Hennepin County imposed is grossly unfair and unjust.

The vast majority of states do not follow Minnesota’s practice. At least 34 states, when seizing property to satisfy a tax debt, return any excess to the taxpayer after the tax debt has been satisfied. *See, e.g.*, ALA. CODE § 40-10-28; ALASKA STAT. ANN. § 29.45.310(b); COLO. REV. STAT. § 39-21-114(b); FLA. STAT. ANN. § 45.032(3)(a); GA. CODE § 48-4-5(a); KAN. STAT. ANN. § 79-2803; LA. CODE CIV. PROC. ANN. art. 2373; ME. REV. STAT. tit. 36, § 992; OHIO REV. CODE ANN. § 323.73(C); UTAH CODE ANN. § 57-1-29(3); VA. CODE ANN. § 58.1-3967.

That the fine here is essentially 67% greater than the value of the unpaid taxes also undermines any claim the County’s action was “purely remedial” because a solely remedial action would only be to keep what it was owed in unpaid tax. This government action goes beyond remedial and “can only be explained as serving in part to punish.” *Austin*, 509 U.S. at 610. Therefore, Hennepin County’s action violates the Excessive Fines Clause.

Governments that seize and sell property for unpaid taxes and then retain excess proceeds are engaged in unjust, excessive confiscation. These schemes unfairly wipe away entire home equity when the only offense is a few thousand dollars in unpaid

property taxes. This Court should strike down these predatory schemes as violative of the Eighth Amendment.

III. NELSON V. CITY OF NEW YORK SHOULD BE OVERTURNED.

The major roadblock for applying the Excessive Fines Clause or the Takings Clause to tax sales is that this Court in the 1950s approved foreclosure schemes where the government kept the windfall. Indeed, the Eighth Circuit here relied on *Nelson v. City of New York*, 352 U.S. 103 (1956), to deny Ms. Tyler her home's equity. *See Tyler*, 26 F.4th at 793–94. But with the recent incorporation of the Eighth Amendment to apply to the states, this Court should fix the problems created in the 1950s.

In *Nelson*, the City foreclosed on properties to satisfy unpaid water bills—one bill was as low as \$65, or the equivalent of about \$705 today.³ *Nelson*, 352 U.S. at 105-06. The City eventually sold the property for what today would be about \$76,000.⁴ That windfall was 107 times the value of the unpaid water bills. Nevertheless, this Court ruled that New York's actions did not violate the Fifth Amendment's Takings

³ Or \$704.57 to be exact in comparing dollars in December 1956, the date of decision for *Nelson*, to dollars to January 2023, the latest calculation date available. Bureau of Labor Statistics, CPI Inflation Calculator *available at*: <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=65&year1=195612&year2=202301>.

⁴ Using the same criteria as the water bill above. Bureau of Labor Statistics, CPI Inflation Calculator *available at*: <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=7000&year1=195612&year2=202301>.

Clause. *See id.* at 109-110. A key fact here also distinguishes *Nelson*: New York's procedures authorized an action to receive the excess proceeds while the Minnesota statute does not. *Compare id.* (requiring a citizen to file a "timely answer in a foreclosure proceeding" to preserve the chance to retain the equity in the property) *with* MINN. STAT. § 280.29. A New Yorker had one last chance to keep their equity, even if it was a thin chance. Ms. Tyler did not even have that opportunity.

The ruling in *Nelson* is creates confusion in lower courts since it is seemingly at odds with this Court's more recent jurisprudence. Lower courts in particular miss a key phrase in *Nelson*: "relief from the hardship imposed by a state statute is the responsibility of the state legislature and not of the courts, *unless some constitutional guarantee is infringed.*" *Nelson*, 352 U.S. at 110 (emphasis added).

That is the situation here. *Nelson* was decided prior to incorporation of the Excessive Fines Clause to the states in *Timbs*. Therefore, New York's scheme in *Nelson* of seizing and selling a property worth over 100 times the value of the debt and keeping all the proceeds should be decided differently today because the Excessive Fines Clause would be available to the parties for a constitutional challenge.

Furthermore, allowing homeowners in Ms. Tyler's situation to bring an Excessive Fines challenge will simplify future cases. Courts would only need to answer whether the government's action was grossly disproportionate to the unpaid tax and whether the action was purely remedial, rather than the more complicated Takings Clause analysis of whether the

statute creates a property right interest in the surplus equity and if state common law also grants this right. In the Excessive Fines context, courts would not need to answer these questions of state law.

The limits and bounds of the Excessive Fines Clause, and whether punitive government actions like Minnesota’s are grossly disproportionate to the offense of unpaid property taxes, are critical to answer for taxpayers and for constitutional interpretation. Ms. Tyler’s case highlights the manifest unjust results of letting local governments keep windfall profits from tax sales. Indeed, the end effect is another fine—this time for all the home’s equity—for failing to pay property taxes.

CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests that this Court reverse the decision below.

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