No. 22-166

In the Supreme Court of the United States

GERALDINE TYLER,

Petitioner,

v.

HENNEPIN COUNTY, MINNESOTA, *et al.*,

Respondents.

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

AMICUS CURIAE BRIEF OF PIONEERLEGAL, LLC IN SUPPORT OF PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES—continued

Page

TABLE OF AUTHORITIES—continued

Page

INTEREST OF *AMICUS CURIAE*[1]

Amicus respectfully asks this Court to reverse the erroneous decision of the Eighth Circuit.

PioneerLegal is a non-profit, non-partisan, legal research and litigation entity that defends and promotes accountable government, economic opportunity, and educational opportunities across the country. Through legal action and public education, PioneerLegal works to preserve and enhance constitutional and civil liberties.

The Eighth Circuit's holding that a State may, as payment for a tax debt, take private property worth *more* than the liquidated debt owed by the taxpayer goes to the core of PioneerLegal's mission to promote government accountability and economic opportunity. PioneerLegal is distinctively situated to highlight, as it does in this brief, the ways in which the tax foreclosure scheme at issue in this case conflicts with fundamental principles of the laws governing debtor-creditor relationships.

INTRODUCTION AND SUMMARY OF ARGUMENT

Petitioner asks this Court to find unconstitutional Minnesota's tax-foreclosure scheme, which resulted in the taking of a $40,000 freely-owned residential real

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[1] No counsel for a party authored this brief in whole or in part, and no counsel or party, other than *amicus* and its counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

estate asset to satisfy an approximately $15,000 tax debt—yielding a $25,000 windfall to the county. Petitioner rightly explains how that scheme is fundamentally unfair and violates the Fifth, Eighth, and Fourteenth Amendments. *Amicus* concurs with Petitioner's arguments but neither repeats nor belabors them here. *Amicus* writes separately to highlight how Minnesota's tax-foreclosure scheme unfairly interferes with the rights and interests of Petitioner's other *creditors* and upends basic principles of commercial law.

By expressly sanctioning the taking of a $40,000 asset to satisfy a $15,000 debt, Minnesota law sharply preferred one of Petitioner's creditors at the expense and to the detriment of all other creditors with claims to her assets, including the equity in the home in excess of the *de minimis* state tax claim. This result is contrary to fundamental principles upon which parties rely in extending debt in commercial transactions.

First, certain commercial transactions are impermissible and must be unwound because they fail to provide "reasonably equivalent value" to a debtor for a transfer of property or other interests. Both federal and state law relating to these "constructive fraudulent transfers" require, as a bedrock principle, that a debtor receive "reasonably equivalent value" in exchange for any property transferred to another.[2] This

[2] The laws of constructive fraudulent transfer generally require, in order for a transaction to be avoidable, that the debtor be insolvent at the time of (or rendered insolvent by) the transaction.

requirement ensures that assets are not unfairly removed from the pool of assets available to pay other creditors. Minnesota's tax-foreclosure scheme offers nothing of the sort and, instead, cedes the full surplus value to the foreclosing creditor.

Second, Article 9 of the Uniform Commercial Code, which has been adopted by all 50 states and the District of Columbia, requires all foreclosures to be conducted in a "commercially reasonable" manner. Once senior claims are satisfied from the proceeds, any surplus must flow down to junior creditors (and then, ultimately if funds remain, to the debtor). Minnesota's tax-foreclosure scheme abandons this concept of commercial reasonableness to the detriment of both creditors and the debtor.

Finally, federal law, specifically, the Bankruptcy Code, dictates a fair and equitable manner of distributing assets to creditors based on the type and relative status of claim each creditor holds. Under the Bankruptcy Code's priority scheme, each creditor receives and retains only that amount to which it is entitled, while the balance is made available to junior creditors and, ultimately, to equity.[3] That priority scheme forbids one creditor from confiscating assets worth more than its claim to obtain a windfall to the detriment of

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[3] While this case does not involve a bankruptcy, commercial law governing debtor-creditor relationships in the U.S., including the Uniform Commercial Code and the Bankruptcy Code, makes clear that a creditor should not recover more than it is owed, particularly to the detriment of other creditors and the debtor.

other creditors and interest holders; yet that is precisely the result enabled (and encouraged) by Minnesota's tax-foreclosure scheme.

ARGUMENT

As explained below, underpinning federal and state commercial law are the principles of commercial reasonableness, equality of distribution, and equity and fairness among creditors. Minnesota's tax-foreclosure law defiles these principles. The current tax foreclosure regime in Minnesota threatens the free and fair deployment of capital as well as the taxpayer's right to a fresh start. The windfall afforded a single creditor holding a *de minimis* claim by Minnesota's tax-foreclosure scheme is irreconcilable with those foundational commercial principles. This unlawful scheme should be rejected by this Court.

To be clear, *amicus* acknowledges and has no quarrel with taxpayers' responsibility for the payment of taxes. Nor does *amicus* doubt taxing authorities' right to collect on tax debts in full. *Amicus* writes instead to highlight for the Court the extent to which the practices of a minority of states—Minnesota among them—operate in a manner at odds with established law and expectations concerning the debtor-creditor relationship by permitting one creditor to take more than it is owed.

I. Minnesota's tax-foreclosure scheme authorizes commercial transactions for an exchange of less than reasonably equivalent value.

The Bankruptcy Code and most states' debtor-creditor laws make transactions in which an insolvent debtor did not receive "reasonably equivalent value" voidable. See 11 U.S.C. § 548(a)(1)(B); Uniform Voidable Transactions Act § 4(a)(2).[4] These "constructive fraudulent transfers" are voidable regardless of the motives of the parties involved. Instead, "reasonably equivalent value" turns on whether the transaction is fair, financially, to *all* of a debtor's creditors.

The Bankruptcy Act of 1898 and the Uniform Fraudulent Conveyance Act (model Act adopted in 1918) deemed voidable transfers of a debtor's property for which the debtor did not receive "fair consideration." Bankruptcy Act of 1898 § 67(d)(2); Md. Code Ann., Com. Law § 15-206.[5] Under these frameworks, "fair consideration" turned on both the value the debtor received and whether she made the transaction in good faith. See Md. Code Ann., Com. Law § 15-203.

As fraudulent transfer law evolved, the concept of "reasonably equivalent value" replaced "fair consideration" in both the current Bankruptcy Code and the relevant model Act, the Uniform Voidable Transac-

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[4] Minnesota has adopted the Uniform Voidable Transactions Act. See Minn. Stat. § 513.41 *et seq.*

[5] Maryland is the only state that applies the Uniform Fraudulent Conveyance Act.

tions Act. A key difference between these two concepts is that, unlike "fair consideration," the modern concept of "reasonably equivalent value" focuses exclusively on the value exchanged, without regard to the motives of the parties involved. See 5 COLLIER ON BANKRUPTCY ¶ 548.05[2][a] n.9 (Richard Levin & Henry J. Sommer eds., 16th ed. 2022) (noting this difference). This paradigm shift is consistent with the general principle animating modern bankruptcy and related laws: equality of distribution among creditors. See, *e.g.*, *Begier* v. *I.R.S.*, 496 U.S. 53, 58 (1990) ("Equality of distribution among creditors is a central policy of the Bankruptcy Code."). Whether a transaction was undertaken in good faith has little to do with the assets a particular transaction makes available to creditors, and so the question of good faith has been eliminated from the standard by which a transaction's avoidability is determined.

Some degree of market price-testing is required to ensure that a transaction involves an exchange of "reasonably equivalent value." This Court has held that, when it comes to nonconsensual asset sales like real-estate mortgage foreclosures, market forces are invoked sufficiently "so long as all the requirements of the State's foreclosure law have been complied with." *BFP* v. *Resolution Trust Corp.*, 511 U.S. 531, 545 (1994). Even where "fair market value" is unlikely to be achieved, given the constraints of the foreclosure process, some semblance of market pressure must be applied for the reasonably equivalent value standard to be met. See *id.* at 548 (in the foreclosure context, "normal free-market rules of exchange are replaced by the far more restrictive rules governing forced sales").

The Court also emphasized that, while state foreclosure law requirements were sufficient in the context of forced real-estate mortgage foreclosure sales, "[t]he considerations bearing upon other foreclosures and forced sales (to satisfy tax liens, for example) may be different." *Id.* at 537 n.3.

The Uniform Voidable Transactions Act similarly provides: "a person gives a reasonably equivalent value if the person acquires an interest of the debtor in an asset pursuant to a regularly conducted, noncollusive foreclosure sale or execution of a power of sale for the acquisition or disposition of the interest of the debtor upon default *under a mortgage, deed of trust, or security agreement*." Uniform Voidable Transactions Act § 3(b) (emphasis added). Like the Court's clarification in *BFP*, official comments to the Uniform Voidable Transactions Act make clear that this rule "does not apply to a sale foreclosing a nonconsensual lien, such as a tax lien." *Id.* § 3 cmt. 5.

The Uniform Voidable Transactions Act makes this same distinction in the context of transfers that result from the "enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code." *Id.* § 8(e)(2). Such a transfer is not voidable. *Ibid.* This rule "does not extend to" cases of "strict foreclosure" precisely "because compliance with the rules of Article 9 relating to strict foreclosure *may not sufficiently protect the interests of the debtor's other creditors* if the debtor does not act to protect equity the debtor may have in the asset." *Id.* § 8, cmt. 5 (emphasis added).

The courts of appeals have since grappled with whether and how *BFP*'s rule for consensual liens applies when determining whether nonconsensual tax-lien foreclosures were transactions for "reasonably equivalent value." The courts of appeals have uniformly held that some form of competitive bidding is necessary for such foreclosures to result in "reasonable equivalent value." See *Gunsalus* v. *Cnty. of Ontario*, 37 F.4th 859, 865–66 (CA2 2022) (*BFP* did not apply where New York's law allowing strict foreclosure of tax lien could not have "convey[ed] to the debtor value that is substantially comparable to the worth of the transferred property"); *Hackler* v. *Arianna Holdings Co. (In re Hackler)*, 938 F.3d 473, 479–80 (CA3 2019) (*BFP* did not apply to insulate tax foreclosure in preference action under § 547 of the Bankruptcy Code where, among other things, property was not subjected to public auction); *Tracht Gut, LLC* v. *Los Angeles City Treasurer & Tax Collector (In re Tracht Gut, LLC)*, 836 F.3d 1146, 1155 (CA9 2016) (tax sale that contained procedural safeguards that apply to mortgage foreclosures "conclusively establishes that the price received at the tax sale was for reasonably equivalent value"); *Smith* v. *SIPI, LLC (In re Smith)*, 811 F.3d 228, 238 (CA7 2016) (*BFP* did not apply to interest rate bidding procedure employed in Illinois tax sales where there is "no correlation between the sale price and the value of the property"); *Kojima* v. *Grandote Int'l Ltd. Liab. Co. (In re Grandote Country Club Co.)*, 252 F.3d 1146, 1152 (CA10 2001) (transfer of property through regularly conducted tax sale subject to competitive bidding procedure constituted reasonably equivalent value under Colorado Uniform Fraudulent Transfer Act); *T.F. Stone Co.* v. *Harper (In re T.F. Stone Co.)*, 72 F.3d 466, 472 (CA5 1995) (tax sale transfer of land that was noncollusive and conducted in conformity with state law "satisfied § 549(c)[of the Bankruptcy Code]'s requirement that the sale be 'for present fair equivalent value'").[6]

Thus, it is well established that *even in cases involving forced sales*, where prices are inevitably depressed, *some* market-competitive process must be used to ensure that creditors receive the best value reasonably available from the transaction. Minnesota's tax-foreclosure scheme disregards this principle entirely, allowing a governmental entity to simply take whatever excess results from a tax foreclosure without consideration of other creditors or the taxpayer. Which is to say, Minnesota's scheme gives the government a windfall at the expense of not merely of the homeowner but also the homeowner's other creditors.

II. Contrary to Minnesota's tax-foreclosure scheme, the Uniform Commercial Code demands "commercially reasonable" disposition of collateral for the benefit of all creditors.

Every state and the District of Columbia has adopted Article 9 of the Uniform Commercial Code (with, in some cases, non-uniform amendments not relevant here). Article 9 provides that "[e]very aspect of a disposition of collateral … must be commercially

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6 See also *Lowry* v. *Southfield Neighborhood Revitalization Initiative (In re Lowry)*, 2021 WL 6112972, at *4 (CA6 2021) (unpublished) (*BFP* did not apply to tax foreclosure where local government was permitted to purchase property without an auction for the amount of outstanding taxes due).

reasonable." UCC § 9-610(b). One critical element of a "commercially reasonable" disposition is to ensure that the price paid for the collateral is tested by the marketplace. If the price paid in a commercially reasonable disposition exceeds the amount of the secured obligations, any surplus is returned to the debtor. See UCC § 9-615(d). This return of surplus to *the debtor* is for the benefit of the debtor and *the debtor's other creditors*. As the First Circuit has explained: "the lender normally is entitled to the value of the collateral up to the amount of the outstanding debt. *The balance belongs to the borrower or, if the borrower is then bankrupt, to the bankruptcy trustee on behalf of the other creditors*." *Bezanson* v. *Fleet Bank*, 29 F.3d 16, 20 (CA1 1994) (emphasis added).

Minnesota's tax-foreclosure scheme scorns commercial reasonableness—and any surplus that would result from a commercially reasonable disposition—to the detriment of the taxpayer and creditors. When taxing authorities keep for themselves the surplus funds from tax foreclosures, they do so at the expense of other creditors' interests. This result is at odds with the policies undergirding the Uniform Commercial Code.

III. The Minnesota tax-foreclosure scheme's windfall to one creditor is irreconcilable with the Bankruptcy Code's priority rules for payment of creditors.

The Bankruptcy Code's priority rules, see, *e.g.*, 11 U.S.C. §§ 506, 507, 726, prevent senior creditors from taking a windfall while more junior creditors remain unpaid. These rules dictate the order in which different types of claims against a debtor's estate are paid from available assets. Often thought of as a ladder, the priority rules require claims at the highest rung be paid first, then claims at the next rung, then the next, and so on, until all claims are paid or the estate's assets are depleted.[7]

The Court has declared this priority system to be the Bankruptcy Code's "most important and famous rule" and that it is "a basic underpinning of business bankruptcy law." *Czyzewski* v. *Jevic Holding Corp.*, 137 S. Ct. 973, 983–84 (2017). Fairness and equity are at the center of the priority rules, which provide creditors with predictability to know where in line their claims stand following a liquidation or restructuring event. The rules ensure that a debtor's assets are distributed "in an orderly manner … in accordance with established principles rather than on the basis of the inside influence or economic leverage of a particular creditor." *Id.* at 984. Inherent in the priority rules is the idea that privileged creditors may not "use the reorganization process to gain an unfair advantage." *Id.* at 987 (citing *Bank of Am. Nat'l Trust & Sav. Ass'n* v. *203 N. LaSalle St. P'ship*, 526 U.S. 434, 444 (1999)). Instead, the priority rules promote consistency, fairness, equity, and integrity.

Minnesota's tax-foreclosure scheme does the opposite: it gives one creditor—the tax-lien holder—the right to payment in full *plus* all the equity in the home, regardless of other creditors' interests and

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[7] Generally, each creditor that holds a claim that cannot be paid in full receives a pro rata share of the debtor's remaining assets.

claims. Other creditors are left holding the proverbial bag, while the tax-lien holder receives more than its due.

In addition, under the Bankruptcy Code's priority framework, any surplus remaining after all creditors have been paid reverts to the debtor (chapter 7), 11 U.S.C. § 726(a)(6), or holder of equity interests (chapter 11), 11 U.S.C. § 1129(b)(2)(C). Indeed, even "[i]n the absence of any express statutory authority governing the disposition of surplus funds, bankruptcy courts have commonly recognized the debtor's right to recover surplus bankruptcy funds under general equitable principles." *Georgian Villa, Inc.* v. *United States (In re Georgian Villa, Inc.)*, 55 F.3d 1561, 1563 (CA11 1995). The debtor/taxpayer's right to the excess proceeds is fundamental to the oft-cited bedrock principle that the debtor may use those assets to aid in the debtor's fresh start. Minnesota's tax-foreclosure scheme contravenes these rights of junior creditors and equity, well-established under federal law, and instead traps all value in the hands of a single secured creditor.

CONCLUSION

For the foregoing reasons, *amicus* respectfully requests that this Court reverse the judgment of the Eighth Circuit.

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