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

BRIEF FOR *AMICI CURIAE* NATIONAL ASSOCIATION OF REALTORS®, MINNESOTA REALTORS®, AND AMERICAN PROPERTY OWNERS ALLIANCE IN SUPPORT OF PETITIONER

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INTEREST OF *AMICI CURIAE*[1]

Amicus curiae the National Association of REALTORS® is a national trade association, representing 1.53 million members, including its institutes, societies, and councils involved in all aspects of the residential and commercial real estate industries. Members are residential and commercial brokers, salespeople, property managers, appraisers, counselors, and others engaged in the real estate industry. Members belong to one or more of the approximately 1,200 local and 54 state and territory associations of REALTORS®, and support private property rights, including the right to own, use, and transfer real property. REALTORS® adhere to a strict Code of Ethics, setting them apart from other real estate professionals for their commitment to ethical real estate business practices.

Amicus curiae Minnesota REALTORS® is a non-profit trade association with over 22,000 members who are licensed to engage in the brokerage, sale, rental and management of real property in the state of Minnesota. Among the Minnesota REALTORS'® purposes is preserving private rights to real property.

Amicus curiae the American Property Owners Alliance is a nonprofit advocacy organization dedicated to representing the rights and interests of property owners throughout the country.

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

Amici are interested in this case because it involves one of many troubling examples of government encroachment on private property rights. Tax-foreclosure regimes—such as the one employed in Minnesota and 13 other States—empower governments to vitiate constitutionally protected property interests. The equity that homeowners build in their properties is among the most cherished and important property rights protected by law. Yet more than a dozen States permit governments foreclosing on tax-encumbered properties to retain *all* equitable value in those properties without compensating their owners. Permitting the government to erase these vested property rights by the stroke of a pen undermines a core premise of property ownership. These takings significantly impact the real estate industry because they divest property owners of hundreds of millions of dollars in equity each year. *Amici* thus have an interest in seeing that property owners are not stripped of their equity interests without the just compensation required by the Fifth Amendment.

SUMMARY OF ARGUMENT

The Takings Clause guarantees that "private property" shall not "be taken for public use, without just compensation." U.S. Const., amend. V. This constitutional provision "shield[s] against the arbitrary use of governmental power" exercised to deprive citizens of vested property interests, *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980), and ensures that public programs are "borne by the public as a whole," *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

Yet governments up and down our federalist system are routinely finding ways to encroach upon private property rights. Rather than protecting private property, governments have conscripted it into service of the state without compensation. These intrusive (and unconstitutional) government interventions range from eviction moratoria and draconian rent-control regimes to egregious tax-foreclosure regimes—like Minnesota's—that purport to divest property owners of long-recognized property interests.

Hennepin County violated the Takings Clause when it kept the surplus equity in Geraldine Tyler's home. No one disputes that her home was worth at least $40,000. Nor does anyone dispute that the County was entitled to sell the home to recoup approximately $15,000 in taxes, penalties, interest, and costs that Ms. Tyler owed on her home. But the remaining $25,000 represents Ms. Tyler's pre-sale equity in her home—equity that was entirely unencumbered. By keeping the $25,000, the County took Ms. Tyler's property without just compensation.

By virtue of the foreclosure on Ms. Tyler's home, Minnesota law purports to have erased Ms. Tyler's $25,000 interest. According to the County, absolute title belongs to the State and Ms. Tyler has no property interest at all. The Eighth Circuit agreed that this was not a taking because Ms. Tyler lacks a cognizable property interest in her home equity under state law. That decision cannot stand.

As an initial matter, the Eighth Circuit is analytically wrong. The Eighth Circuit asked whether Ms. Tyler "had a property interest in the surplus equity after the county acquired the

condominium." App.6a. But that gets the relevant snapshot in time wrong. Virtually any time government seizes property, the former owner is left with nothing—and thus, it will almost always be the case that the owner has "no property interest." *Id*. at 8a. As a result, it makes no sense to focus solely on the state of affairs after the State took "absolute title" to Ms. Tyler's property. *Hall v. Meisner*, 51 F.4th 185, 196 (6th Cir. 2022). Instead, the Eighth Circuit should have considered the state of affairs before the State took absolute title as well: "Before that event, [Ms. Tyler] held equitable title; after it, [she] held no title at all." *Id*. That is a textbook taking.

The Eighth Circuit also incorrectly held that Minnesota law can eliminate Ms. Tyler's equitable interest. The central guarantee of the Takings Clause—that no "private property [shall] be taken for public use, without just compensation," U.S. Const., amend. V—would be "a dead letter" if government could simply write out of existence the very private property interest it seeks to take. *Hall*, 51 F.4th at 190 . For that reason, this Court has unequivocally explained that "a State, by *ipse dixit*, may not transform private property into public property without compensation." *Webb's*, 449 U.S. at 164. This case is at the very heartland of the Takings Clause, especially because "long-settled principles" of law and equity recognize the private property interest in equity that Minnesota by statute seeks to destroy. *Hall*, 51 F.4th at 194.

At its core, the Takings Clause does not permit the government to retain value in excess of an owed amount. The Court should reverse, both to vindicate Ms. Tyler's property interests in her home's equity,

and also to signal to governments across the country that private property rights cannot be taken without just compensation.

ARGUMENT

I. GOVERNMENT RESTRICTIONS ON PRIVATE PROPERTY ARE EXPLODING NATIONWIDE.

Minnesota's tax-foreclosure regime is another example of federal and state governments moving aggressively to encroach on private property rights without even a thought of the Takings Clause.

Eviction Moratoria. The Court is familiar with one of the most egregious recent examples: During the pandemic, the federal government and dozens of States imposed moratoria on residential evictions. *See Alabama Ass'n of Realtors v. Dep't of Health & Human Servs.*, 141 S. Ct. 2485 (2021); *Chrysafis v. Marks*, 141 S. Ct. 2482 (2021). Under the federal eviction moratorium, the Centers for Disease Control and Prevention (CDC) ordered that "a landlord, owner of a residential property, or other person with a legal right to pursue eviction or possessory actions shall not evict any covered person"—even those who had "violat[ed]" their "contractual obligation[s]" by failing to provide a "timely payment of rent." 85 Fed. Reg. 55,292, 55,294, 55,296 (Sept. 4, 2020).

The CDC's eviction moratorium put "millions of landlords across the country … at risk of irreparable harm by depriving them of rent payments with no guarantee of eventual recovery." *Alabama Ass'n of Realtors*, 141 S. Ct. at 2489. "And preventing them from evicting tenants who breach their leases intrude[d] on one of the most fundamental elements of property ownership—the right to exclude." *Id.*

(citing *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982)).

After this Court blocked the CDC's eviction moratorium, property owners sought compensation for this taking in the Court of Federal Claims. But precisely because this Court had determined that the CDC exceeded its authority, the Claims Court concluded that the property owners were not entitled to compensation. *Darby Dev. Co. v. United States*, 160 Fed. Cl. 45 (2022), *appeal filed*, No. 22-1929 (Fed. Cir. 2022). So even though the CDC had taken property unlawfully, the Claims Court held that property owners had no cognizable claim for compensation against the United States.

The federal government was not the only government to respond to the pandemic by restricting residential evictions. Minnesota also mandated "a statewide residential eviction moratorium." *Heights Apts., LLC v. Walz*, 30 F.4th 720, 723 (8th Cir. 2022). Like the federal mandate, the Minnesota moratorium obligated property owners to indefinitely permit tenants to remain in place even if those tenants failed to pay rent or otherwise breached their contractual obligations. *Id.* at 724. Following this Court's reasoning in *Alabama Association of Realtors*, the Eighth Circuit concluded that the property owners had alleged a taking because Minnesota had "deprived [property owners] of [their] right to exclude existing tenants without compensation." *Id.* at 733.

Rent Control. Though more enduring than these eviction moratoria, various rent-control regimes around the country pose similar—and more subversive—threats to property owners. "Rent

control statutes come in all types, shapes and sizes." Richard A. Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 Brook. L. Rev. 741, 742 (1988). Some peg the allowable rent to historic rents, while others limit the increases permitted within particular time periods. *See id.*; Val Werness, Legal Research Center, Inc., Rent Controls 7–9 (2017) (describing various regimes). But for all of their differences, the regimes uniformly interfere with property owners' ability to use, control, and profit from their properties. And these restrictions "transfe[r] windfalls from landlords to tenants, where neither side has any special claim to privilege." Epstein, *supra*, at 750.

New York's rent-control regime is particularly disconcerting. For over half a century, New York has forced property owners to subsidize the State's housing policies. The purpose of New York's mandate, as with all other rent-control laws, is to stabilize costs and improve housing conditions. But in 2019, New York amended its rent-control provision to make it even more difficult for property owners to recover property from tenants, to decontrol units, and to recoup costs of improvements. *See* 2019 N.Y. Laws ch. 36, *available at* https://perma.cc/TH4B5WNQ. These restrictions make it nearly impossible for property owners to decline to renew the leases for tenants in rent-stabilized apartments, or to recover their property for other uses—including personal uses. The Second Circuit recently upheld this onerous regime against a Takings Clause challenge. *Community Housing Improvement Program v. City of New York*, 59 F.4th 540 (2d Cir. 2023).

Rent control is not just a problem in the Empire State. Oregon, for example, in 2019 adopted the first

statewide rent control regime. Ore. Rev. Stat. § 90.323; *see* Mihir Zaveri, *Oregon to Become First State to Impose Statewide Rent Control*, N.Y. Times (Feb. 26, 2019). This innovation was followed shortly thereafter by California. Cal. Civ. Code § 1946.2; *see* Conor Dougherty & Luis Ferré-Sadurní, *California Approves Statewide Rent Control to Ease Housing Crisis*, N.Y. Times (Nov. 4, 2019). And other States and localities are considering similar legislation. *See, e.g.*, Seth Klamann, *This Colorado legislation would remove a state-level ban on rent control*, Denver Post (Jan. 25, 2023); Katy O'Donnell & Lisa Kashinsky, *Renters strike back as cities cap price hikes by landlords*, Politico (Nov. 26, 2021) (cataloging various new city rent-control measures); Brianna Kelly, *Rent Control Campaign Heats Up in Illinois*, Crain's Chicago Business (Sept. 27, 2018).

This debate over rent control has even migrated to Washington, D.C., where a coalition of prominent national elected officials recently endorsed a nationwide rent-control program. *See* Letter from Senator Elizabeth Warren, Representative Jamaal Bowman, and 48 other members of Congress to Joseph R. Biden, President of the United States (Jan. 9, 2023), *available at* https://perma.cc/9S5R-LYB3 (urging the President to order federal agencies to enact national rent control policies). And in response to these legislator prompts, President Biden released a "Renters Bill of Rights" setting forth his agenda to cap housing costs at no more than 30 percent of household income, and encouraging federal agencies to work toward the implementation of various national rent-control policies. *See* The White House Blueprint for a Renters Bill of Rights (Jan. 2023), *available at*

https://perma.cc/U59R-3SZM. These statements evince a concerning shift of the federal government to restrict property interests. And if implemented, these policies threaten to further undermine pathways to home ownership—a proven source of generational wealth. *See generally* Scholastica (Gay) Cororaton, *Single-Family Homeowners Typically Accumulated $225,000 in Housing Wealth Over 10 Years*, National Association of Realtors: Economists' Outlook (Jan. 7, 2022), *available at* https://perma.cc/4PXC-Y4L5.

Tax-Foreclosure Regimes. Fourteen States permit various governments and agencies to retain excess debt after foreclosing on tax-encumbered properties. *See* Pet. 29–33 & nn.10–16 (listing states and detailing various regimes). These regimes vary in their operation—some permit the government itself to reap the windfall free and clear, *see, e.g.*, Minn. Stat. Ann. § 280.29, others grant foreclosed equity value to private investors in tax liens, *see, e.g.*, Ariz. Rev. Stat. § 42-18201, *et seq.*, while still others vest seemingly absolute discretion in the governments to spend it as they prefer, *see, e.g.*, Mass. Stat. tit. 60, §§ 43, 53. Yet, for all of their differences, a common thread unites them: each of these statutes deprives property owners of vested property interests without compensation.

II. MINNESOTA'S TAX-FORECLOSURE SCHEME VIOLATES THE TAKINGS CLAUSE.

The Minnesota tax-foreclosure scheme at issue in this case authorizes state-sanctioned "theft" of private property. *Hall*, 51 F.4th at 196. The government cannot take the excess equity value of foreclosed property to satisfy a tax debt without just compensation. In upholding Minnesota's scheme, the

Eighth Circuit committed two key errors that derailed its Takings Clause analysis. First, the Eighth Circuit focused solely on whether Ms. Tyler had a property interest *after* the taking already had occurred, rather than whether she also had a property interest *before* the taking occurred. Second, without acknowledging this Court's precedents to the contrary, the Eighth Circuit held that Minnesota law can abrogate the longstanding rule that surplus proceeds belong to the landowner who previously held equitable title.

A. The Government Takes Property Anytime It Deprives A Person Of A Vested Interest.

1. Central in every Takings Clause case is whether there is a taking. And whether there is a taking depends on what happened on either side of the alleged taking: Did the plaintiff previously hold some property interest (*before* the alleged taking) that she thereafter lost (*after* the alleged taking)?

This temporal link is the *sine qua non* of a taking. For example, in *Armstrong*, the petitioners' liens against various ship-manufacturing materials were transferred to the United States. 364 U.S. at 46. "The result of this was a destruction of all petitioners' property rights under their liens," "because of the sovereign immunity of the Government and its property from suit." *Id.* This "total destruction," the Court said, had "every possible element of a Fifth Amendment 'taking'"—including its temporal aspect: "Before the liens were destroyed, the lienholders admittedly had compensable property. Immediately afterwards, they had none." *Id.* at 48.

The Sixth Circuit made a similar point in *Hall*. *See* 51 F.4th at 196. There, as here, the taking "event" was "the County's taking of 'absolute title' to the plaintiffs' homes." *Id.* And one question the Sixth Circuit was asked to decide was which of the named defendants actually "effected" the taking. *Id.* To answer that question, the Sixth Circuit focused on the point in time at which the taking of absolute title occurred: "Before that event, the plaintiffs held equitable title; after it, they held no title at all. Thus, so far as the Takings Clause is concerned, the County alone is responsible for the taking of the plaintiffs' property." *Id.* As cases like *Armstrong* and *Hall* illustrate, whether a taking occurred depends on the state of affairs immediately preceding and following the alleged taking.

2. In this case, however, the Eighth Circuit puzzlingly looked at only one half of that equation—the post-taking state of affairs. Specifically, the Eighth Circuit recognized that it must begin by "identify[ing] the interest in private property that allegedly has been taken." App.6a. To that end, the Eighth Circuit noted that Ms. Tyler "does not argue that the county lacked lawful authority to foreclose on her condominium." *Id.* No one disputes that; Ms. Tyler challenges only "the county's retention of the surplus equity." *Id.* But the Eighth Circuit then concluded that, for Ms. Tyler to state a Takings Clause claim, "she must show that she had a property interest in the surplus equity *after* the county acquired the condominium." *Id.*

That makes no sense. The State's taking of "absolute title to Tyler's condominium" (App.4a) destroyed any interests she otherwise had. Indeed,

this is the very essence of an outright physical taking. *See, e.g.*, *Horne v. Dep't of Agriculture*, 576 U.S. 350, 361–62 (2015) (noting that "[t]he Government's actual taking of possession and control of the reserve raisins gives rise to a taking as clearly as if the Government held full title and ownership," and that raisin growers lost "the entire 'bundle' of property rights" (quotation omitted)). It is thus entirely meaningless to ask—as the Eighth Circuit did—whether Ms. Tyler had any property interests *after* the taking occurred: The answer is obviously no; the State took them all.

In focusing solely on *post*-taking affairs, the Eighth Circuit overlooked the critical *pre*-taking question whether Ms. Tyler previously held a property interest. She did. She held "equitable title" in her home to the tune of $25,000. *Hall*, 51 F.4th at 195; *see* Section B, *infra*. And her "right to [the $25,000] surplus after [the] foreclosure sale … follows directly from her possession of equitable title before the sale." *Hall*, 51 F.4th at 195. As the Sixth Circuit concisely put it, "[t]he surplus is merely the embodiment in money of the value of that equitable title." *Id.*

Had the Eighth Circuit acknowledged Ms. Tyler's pre-taking property interest—equitable title in her home—it would have (or should have) readily recognized that the State's *taking* of absolute title, thereby destroying that equitable title, was a *taking* as clear as day. Again, "[b]efore that [taking], [Ms. Tyler] held equitable title; after it, [she] held no title at all." *Id.* at 196. That is a taking—period.

B. The Government Cannot Transform Private Property Into Public Property Through Legislative *Ipse Dixit*.

Avoiding that straightforward analysis, the Eighth Circuit instead spent significant time assuring Ms. Tyler that Minnesota was well within its rights to simply legislate "any common-law right to surplus equity" out of existence. App. 7a. That is wrong under this Court's decisions in *Webb's*, 449 U.S. at 157, and *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998), which the Eighth Circuit never confronted.

1. A State may not extinguish a longstanding property interest by the stroke of a pen. In *Webb's*, this Court confronted an attempt by Florida to classify as public property the interest earned on private funds deposited in state-court interpleader accounts. 449 U.S. at 157. Florida's argument reflected the syllogism presented by the County—namely, that state law is unbounded in its authority to classify the nature of property interest without concern for formerly vested rights. *Id.* at 158. But this Court was unconvinced. It explained that "a State, by *ipse dixit*, may not transform private property into public property without compensation." *Id.* at 164. Instead, relying on the common-law rulings of several state and federal courts, this Court found the "usual and general rule" to be that "any interest on an interpleaded and deposited fund" belonged to "those who are ultimately to be the owners of that principal." *Id.* at 162. In other words, the Court found the *common law* and not *a particular State's law* to govern the nature of the property interest. And notwithstanding the State's classification, under the

common law, the interest amounted to private property, the retention of the funds amounted to a taking, and the Takings Clause mandated compensation. *See id*. at 164–65.

Similarly in *Phillips*, 524 U.S. at 164–65, the Court reviewed a Texas rule that treated interest generated from private deposits into particular trust accounts as public property. Like the scheme in *Webb's*, Texas had attempted to recast these interests as public (rather than private) property under state law. *Id.* But surveying the common law, the Court explained that the "interest follows principal" rule had "been established under English common law since at least the mid-1700's" and had become entrenched in the "common law of various states" including "Texas." *Id.* at 165–66 (citing, *inter alia*, *Beckford v. Tobin*, 1 Ves. Sen. 308, 310, 27 Eng. Rep. 1049, 1051 (Ch. 1749)). And under the well-established common-law rule, the State was without authority to recast the private property as something else by operation of state law. *Id.*

If state laws could surmount the just compensation requirement by merely recasting formerly existent property interests then the Takings Clause would amount to little more than a vestige of our common-law past. States could theoretically deprive any and all property owners of vested property rights by operation of legislative action. But this Court has never deemed the Takings Clause to be dead letter. To the contrary, this Court's precedents have continuously found the Takings Clause to be a critical constraint on arbitrary government deprivations no matter whether state law permits them. *See, e.g.*, *Horne*, 576 U.S. at 356 (striking down longstanding

California statute deeming certain percentages of rains to be property of government, and not asking whether California law deemed the expropriation to be a taking); *Armstrong*, 364 U.S. 40 (finding government expropriation of lien-encumbered property to the exclusion of other lien holders to be a taking, and not asking whether government thought the taking was legal).

2. In light of the clear rules set forth in *Webb's* and *Phillips*, one would expect the Eight Circuit to have provided a full discussion of these precedents, or at least an attempt to distinguish them. But it did not. Instead, in a breezy six pages, the court referenced the general rule that common law can be abrogated by statute, found that Minnesota's statutory definition of property interests governed, and entered some decretal language. App.6a–10a. This was an error on several fronts.

First, the Eighth Circuit said that *Phillips* compelled it to "look to Minnesota law to determine whether Tyler has a property interest in surplus equity." *Id.* But that is not all that *Phillips* says. It is true that state law rather than federal law generally defines the scope of property interests. *See Bd. of Regents of State Coll. v. Roth*, 408 U.S. 564, 577 (1972) ("Property interests … are created and their dimensions are defined by existing rules or understandings that stem from an independent source *such as* state law." (emphasis added)). But if state statutory law were the *only* source of law relevant, then *Webb's* and *Phillips* would have come out differently: Both Florida and Texas vehemently argued that the generated interest was *public* property, not *private* property as this Court held.

The Eighth Circuit's cramped reading of *Webb's* and *Phillips* missed the forest for the trees. What *Phillips* instead explained—contrary to the Eighth Circuit's reading—was that a court must look to "existing rules or understandings that stem from an independent source *such as* state law." 524 U.S. at 164 (emphasis added; quotation omitted). Not necessarily state law, and not even necessarily the law of the State at issue. As the analyses in *Webb's* and *Phillips* reflect, common law in England, the States, and the federal courts is not only fair game but perhaps also essential to identifying the relevant "'background principles' of property law." *Id.* at 168. The Eighth Circuit was simply wrong to say that it was required to look at—and only at—Minnesota law. *See Hall*, 51 F.4th at 189 (holding that the district court erred by assuming that "the question whether the County took the plaintiffs' property is answered solely by reference to Michigan law").

Second, without heeding the Court's warnings on *ipse dixit* in *Webb's* and *Phillips*, the Eighth Circuit did exactly what the Court said not to do. Under longstanding common law principles, property owners enjoy a right to "surplus [equity]" and that right is "independen[t] of [any] statutory provision." *Farnham v. Jones* 19 N.W. 83, 85–86 (Minn. 1884). Given this long-recognized right, the Eighth Circuit accepted the background "common-law rule that gave a former landowner a right to surplus equity." App.7a. But it nevertheless explained that any such right had been abrogated by statute. *Id.* at 7a–8a.

3. Had the Eighth Circuit followed this Court's instruction to determine whether Minnesota improperly "disavowed traditional property interests

merely by defining them away" by statute, *Hall*, 51 F.4th at 190, the answer would have been obvious. Under ancient principles stretching back to the Magna Carta, a landowner holds "equitable title" in his property—and is "entitled to any surplus proceeds from a sale," including any valuable equity taken by the State *Id.* at 194.

The Sixth Circuit did yeoman's work in *Hall* by explicating this critical history, *see id.* at 190–94; there is no need to retread that ground here. But one key data point is this: Early American courts were "uniformly hostile to strict foreclosure in cases—like this one—where the land's value exceeded the amount of the debt." *Id.* at 192; *see Stead's Executor v. Courser*, 8 U.S. (4 Cranch) 403, 414 (1808) (Tax collector had "unquestionably exceeded his authority" by selling more land than "necessary to pay the tax in arrear."). That hostility was reflected in the advent of foreclosure-by-sale, by which American courts could return any surplus equity to the landowner. Indeed, all nine Justices in *BFP v. Resol. Tr. Corp.*, 511 U.S. 531 (1994), agreed that a central feature of the modern foreclosure-by-sale system is that any ultimate surplus goes to the debtor. *See id.* at 541 ("The next major change took place in 19th-century America, with the development of foreclosure by sale (with the surplus over the debt refunded to the debtor) as a means of avoiding the draconian consequences of strict foreclosure."); *id.* at 564 (Souter, J., dissenting) ("At a typical foreclosure sale, a mortgagee has no incentive to bid any more than the amount of the indebtedness, since any 'surplus' would be turned over to the debtor (or junior lienholder)….").

Under these well-established principles, equity is property, Ms. Tyler owned the equity in her home, and the State has no entitlement to those proceeds. Delinquent taxes are an ancient problem, but ancient law provides the solution: after satisfying a debt, the government must, under the Takings Clause, return the equity to its rightful owner. Otherwise, it will have effected an unconstitutional taking without compensation.

Common sense and the common law are aligned here. A State may not, by function of state law, divest property owners of longstanding property interests. The absurd result urged by the County here would make mush of the Takings Clause and of property rights more generally. To bless the County's inequitable taking here will leave the Takings Clause as a dead letter for vast swaths of property rights. States and the federal government alike will rush to reclassify and recategorize private property as public. And formerly vested property rights will be on the chopping blocks of governments all too happy to offload public liabilities onto private property owners. This Court should reject such dystopian innovations in our centuries old property regime and instead reaffirm the sacrosanct position of property rights under our constitutional order.

CONCLUSION

This Court should reverse the Eighth Circuit's judgment.

Respectfully submitted,

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