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

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

1. Whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the Takings Clause.

2. Whether the forfeiture of property worth far more than needed to satisfy a debt, plus interest, penalties, and costs, is a fine within the meaning of the Eighth Amendment.

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INTRODUCTION AND STATEMENT OF INTEREST OF *AMICUS CURIAE*[1]

The Chamber of Commerce of the United States of America is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community.

The Minnesota statute at issue purports to give the State the right to seize real property to satisfy a tax debt, even where the value of the property seized far exceeds the size of the applicable debt. "[S]uch an appropriation is a *per se* taking that requires just compensation." *Horne* v. *Dep't of Agric.*, 576 U.S. 350, 358 (2015). Minnesota's attempt to skirt any review of whether the value of the property seized exceeds the value of the outstanding debt conflicts with the text, history, and purpose of the Takings Clause, as well as this Court's precedents. Moreover, because the equity taken from Tyler did not serve purely "remedial" purposes—the value of the property seized had nothing to

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[1] Pursuant to Rule 37.6, *amicus curiae* states that no counsel for any party authored this brief in whole or in part, and no entity or person, other than *amicus curiae*, its members, and its counsel made any monetary contribution intended to fund the brief's preparation or submission.

do with the government's costs in seizing it—it is a penalty and violates the Excessive Fines Clause of the Eighth Amendment.

The Chamber files this brief to urge the Court to reject the Eighth Circuit's contrary view. Restrictions on the seizure of private property to satisfy tax debts date to Magna Carta and were deeply embedded in the common law by the time the Framers' adopted the Constitution. Minnesota law thus revives old tyrannies, and a decision sustaining it would encourage governments nationwide to run roughshod over core property rights—to the detriment of all private property owners, including the Nation's businesses.

STATEMENT

Geraldine Tyler, a 94-year-old woman, owned a condominium. To collect around $2,300 in property taxes and $12,700 in penalties, interest, and costs, Hennepin County seized her home, selling it for $40,000. After being made whole, however, the County took the $25,000 surplus and ran.

Tyler sued, arguing that the County violated the Takings Clause. The Eighth Circuit sided with Minnesota, holding "that any common-law right to surplus equity" had "been abrogated by statute." Pet. App. 7a. In its view, even if "Tyler had a property interest in surplus equity under Minnesota common law as of 1884, she ha[d] no such property interest" anymore. Pet. App. 8a. Based on that conclusion and a misreading of dicta from *Nelson* v. *City of New York*, 352 U.S. 103, 110 (1956), the court saw "no unconstitutional taking." Pet. App. 8a. Tyler thus lost the entire value of her home, all so that the government could satisfy taxes amounting to a fraction of its value.

SUMMARY OF ARGUMENT

I. The Takings Clause of the Fourteenth Amendment invalidates Hennepin County's attempt to seize Tyler's home to satisfy a minor tax debt without paying just compensation for the home's surplus value. From the time of Magna Carta, the Crown could lawfully seize land only to the point that a debt was satisfied. As a corollary principle, a tax collector who seized and sold more than was needed to fulfill a debt was obligated to return the "overplus" to the debtor. 2 William Blackstone, *Commentaries* *452. The common law defined the landowner's residual rights in property subject to seizure as "equitable title." *Hall* v. *Meisner*, 51 F.4th 185, 190 (6th Cir. 2022); accord *Pawlett* v. *Attorney General*, 145 Eng. Rep. 550, 551 (1678).

Minnesota was one of the many States to recognize such equitable title. In the event of a sale, the value of this equitable title was the excess of sales proceeds over the tax liability or other debt on the home. *E.g.*, *Farnham* v. *Jones*, 19 N.W. 83, 85 (Minn. 1884); *People ex rel. Seaman* v. *Hammond* 1 Doug. 276, 281 (Mich. 1844); *infra* at 11-12 n.3. Had Tyler's case arisen in the late-1800s, everyone would agree that she was entitled to compensation.

The Eighth Circuit could conclude otherwise only by declaring that Tyler's equitable title—a property interest deeply embedded in the common law both in England and in the United States—was not a property interest in the *specific* circumstance of a government tax foreclosure. By the court's lights, Minnesota could by statute "abrogate" homeowners' property interest in their homes, leaving the State free to collect any windfall that remained in the event of the tax sale.

Under the court's theory, Tyler and homeowners like her continue to hold their equity against all other claimants except the State, but not when the State is the lienholder. That is not any sort of lawful redefinition of a property interest. It is a taking.

"The State may not put so potent a Hobbesian stick into the Lockean bundle." *Palazzolo* v. *Rhode Island*, 533 U.S. 606, 627 (2001). A rule affirming the decision below would upend core Takings Clause principles, in conflict with both precedent and common sense. As this Court has long recognized, "a State, by *ipse dixit*, may not transform private property into public property without compensation." *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith*, 449 U.S. 155, 164 (1980). "This is the very kind of thing that the Takings Clause of the Fifth Amendment was meant to prevent." *Ibid.* A long line of cases —ranging from *Webb's* and *Kaiser Aetna* to *Horne* and *Cedar Point Nursery*—bars States from exacting a taking by writing the property interest at issue out of existence. That rule disposes of this case.

The Eighth Circuit reached a contrary conclusion based on a misreading of dicta from *Nelson*. Pet. App. 8a-9a (quoting 352 U.S. at 110). But the Court there did not overrule this Court's observation in *United States* v. *Lawton*, 110 U.S. 146, 150 (1884), that to "withhold the surplus from the owner would be to violate the fifth amendment." Rather, the Court in *Nelson* concluded that the New York statute before it was not implicated by *Lawton* because a feature of that statute allowed the property owner to obtain the surplus. Minnesota law has no such feature, making that statement from *Nelson*—itself "dictum contained in a rebuttal to a counterargument" that "was not then

fully argued" (*Kirtsaeng* v. *John Wiley & Sons, Inc.*, 568 U.S. 519, 548 (2013))—irrelevant.

Nor can Hennepin County claim that it did not seize anything because it first took "absolute title" in the property, and only later sold it. The Takings Clause does not permit the government to play shell games. Whether "just compensation" has been paid is determined by reference to the value of that which was taken; the government may not avoid that requirement by attempting to sever its seizure of title from its realization of the property's value. In short: Tyler is owed $25,000.

II. The County's actions also violated the Excessive Fines Clause. The Court has long recognized that fines are punitive when they do not serve a purely "remedial" purpose. Here, the value of the property seized had nothing to do with the government's costs in seizing it—indeed, part of her $15,000 debt to the government *already accounted for* those costs. That the sanction here is not remedial is further confirmed by the fact that the government would have seized her home and kept the surplus whether it cost $40,000 or $400,000. And because the amount of the fine far exceeds a reasonable "punishment" for Tyler's minor tax debt, the County violated the Excessive Fines Clause. In cases like this one, the court should calculate the value of the home, subtract the tax debt, and award the surplus to the homeowner.

III. The unacceptable practical consequences of the Eighth Circuit's rule confirm that this Court should reverse. "The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public

burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong* v. *United States*, 364 U.S. 40, 49 (1960). That principle is vital to protecting business investment in real estate. But Minnesota's rule threatens that investment both directly—when businesses themselves are seized—and indirectly—when banks or other financial institutions hold liens in homes that are extinguished by the seizure without compensation.

That threat is far from hypothetical, not least because local governments have increasingly turned to devices like civil asset forfeiture and general police citation practices to raise vast amounts of money. Upholding Minnesota's scheme would give those governments another potent weapon in their arsenal. This Court should vindicate Tyler's interest in her home, blocking the County from realizing a windfall merely because it seized property from the elderly.

ARGUMENT

I. Minnesota's seizure of Tyler's home without paying for her equitable interest in the home violates the Takings Clause.

Under principles dating back to Magna Carta, Minnesota's seizure of Tyler's property to cover a tax debt was a taking requiring just compensation. For property owners like her, whose tax liability is but a fraction of the value of the seized property, "just compensation" means the surplus value that the government seized. This Court should vindicate that property interest.

A. Anglo-American law has long forbidden the government from seizing more property than is required to satisfy a tax debt.

1. The Takings Clause states that "private property" shall not "be taken for public use, without just compensation" (U.S. Const., amend. V), and that rule is "incorporated against the States by the Fourteenth Amendment" (*Nollan* v. *Cal. Coastal Comm'n,* 483 U.S. 825, 829 (1987)). As this Court has recognized, the Clause embodies the "principles of Magna Carta" that "[t]he colonists brought * * * to the New World, including that charter's protection against uncompensated takings." *Horne*, 576 U.S. at 358.

Among its various protections for private property, Magna Carta made clear that the power of the Crown to seize land to satisfy debts to the government was strictly limited. As relevant here, Magna Carta prohibited the Crown from "seiz[ing] any land or rent in payment of a debt, so long as the debtor ha[d] movable goods sufficient to discharge the debt." Magna Carta ¶ 9 (1215). Only if the debtor's chattels were insufficient could his land be taken—and then, *only to the extent necessary* to satisfy the debt. *Ibid*. (permitting seizure "until they have received satisfaction for the debt that they paid for him"); *Den ex dem. Murray* v. *Hoboken Land & Improvement Co.*, 59 U.S. 272, 277 (1855). "Just as the Magna Carta protected property owners from uncompensated takings, it * * * recognized that tax collectors could only seize property to satisfy the value of the debt payable to the Crown, leaving the property owner with the excess." *Rafaeli, LLC* v. *Oakland County*, 952 N.W.2d 434, 455 (Mich. 2020).

That rule became one of the enduring legacies of the great charter. Blackstone wrote that officials who seized property for delinquent taxes were "'bound, by an implied contract in law' to return it if the debt [wa]s paid before sale, or to sell it and 'render back the overplus.'" 2 Blackstone *452 (internal citation omitted). Under the common law, therefore, where the property seized was worth more than the tax owed, any surplus "would be paid back to the owner." *Rafaeli*, 952 N.W.2d at 455 (citing *Martin* v. *Snowden*, 59 Va. 100, 110 (Va. 1868)).

2. The rule that a landowner was entitled to the surplus value of the property after a tax sale was consistent with the common law's recognition of the landowner's "equitable title." "In Anglo-American legal history, the rules governing equitable interests in real property arose primarily in the context of what we now call mortgages." *Hall*, 51 F.4th at 190. The original practice was severe: a mortgagor who failed to make full payment by a specific date—the "law day"—had no recourse; the land was, in Lord Coke's words, "taken from him forever, and so dead to him." *Ibid.* (quoting 1 Edward Coke, Institutes of the Laws of England, 205a (1628)).

"But irrevocable forfeiture of the debtor's entire interest in the land, no matter what the reason for the borrower's failure to pay on the law day—for example if, on that day, the lender was nowhere to be found—was before long regarded as an intolerably harsh sanction for the borrower's default." *Ibid.* Courts of equity thus recognized that "[t]he mortgagor 'had an equitable estate in the land'"—an "Equity of Redemption." *Ibid.* (quoting 6 Holdsworth, A History of English Law 663 (1924), and *Dutchess of Hamilton* v. *Countess of Dirlton and Lord Cranborne*, 21 Eng. Rep.

539 (1654)). As those courts recognized, a mortgage was "in substance 'but a Security,'" which was considered personal property. *Ibid.* (quoting *Emanuel College* v. *Evans*, 21 Eng. Rep. 494, 494-495 (1625)). "[T]he mortgagee's right" was thus re-conceived "as a right to money rather than land." *Ibid.* (quoting Sugarman & Warrington, *Land Law, Citizenship, and the Invention of "Englishness"*, in *Early Modern Conceptions of Property* 111, 120 (1995)). Conversely, the mortgagor's interest was, as Lord Hale put it, "a title in equity." *Ibid.* (quoting *Pawlett*, 145 Eng. Rep. at 551). "And this equitable estate * * * could be devised or conveyed like any other interest." *Id.* at 192 (citing *Casborne* v. *Scarfe*, 26 Eng. Rep. 377, 379 (1737)).

3. These features of the common law—that the government could not seize more than it was owed, that it was obligated to return any surplus collected, and that landowners possessed an equitable interest in their property—were each embraced at the Founding and beyond. The courts broadly agreed that the government was limited to seizing only as much property as needed to satisfy the taxes owed. Thomas M. Cooley, A Treatise on the Law of Taxation 343 (1876).

For example, Chief Justice Marshall wrote for this Court that a tax collector had "unquestionably exceeded his authority" when he sold more land than "necessary to pay the tax in arrear." *Stead's Ex'rs* v. *Course*, 8 U.S. 403, 414 (1808). While early decisions often interpreted particular statutes, it is not the case that, but for the statutes, tax collectors faced no limitations. Instead, it was widely understood that "[t]he rule must be the same," even "without any positive law for the purpose." *Tiernan* v. *Wilson*, 6 Johns. Ch. 411, 414 (N.Y. Ch. 1822) (citing *Course*, 8 U.S. 403)).

That understanding reflected the widespread belief that a just government's ability to seize property was necessarily limited. As South Carolina's high court put it just after the Bill of Rights was adopted: "It was against common right, as well as against Magna Charta, to take away the freehold of one man and vest it in another; and that too, to the prejudice of third persons, without any compensation." *Bowman* v. *Middleton*, 1 S.C.L. 252, 252 (S.C. 1792). And just as the general principle of just compensation for a taking was grounded in "reason, justice and moral rectitude" (*VanHorne's Lessee* v. *Dorrance*, 2 U.S. (2 Dall.) 304, 310 (C.C.D. Pa. 1795)),[2] so too was the principle forbidding over-collection grounded in "principles of obvious policy and universal justice." *Tiernan*, 6 Johns. Ch. at 414; see *Margraff* v. *Cunningham's Heirs*, 57 Md. 585, 588 (Md. 1882) (same).

4. Similarly, both before and after adoption of the Fourteenth Amendment, the courts repeatedly recognized that landowners were owed any surplus arising from tax sales. In *Seaman*, for example, the Supreme Court of Michigan held that "[t]he surplus money produced by the tax sale" rightly belonged to the landowner, as "although the surplus spoken of is produced by the sale of land, yet the right to receive and control it, no more follows the title to the land, than does the ownership of the cattle and farming utensils that a man may happen to have on his farm when it is sold

[2] See also *Gardner* v. *Vill. of Newburgh*, 2 Johns. Ch. 162, 166 (N.Y. Ch. 1816) (the principle of "fair compensation" is "adopted by all temperate and civilized governments, from a deep and universal sense of its justice").

for taxes, and the purchaser may, with as much propriety, claim a right to the latter as the former." 1 Doug. at 281.

Alabama too recognized that the "legal owners" of a property, which "the tax collector lawfully seized and sold * * * for a sum which, after paying the taxes and costs, left a surplus * * * were entitled, on demand, to receive [the surplus]." *McDuffee* v. *Collins*, 23 So. 45, 46 (Ala. 1898). Alabama's statutes on that point were "merely declaratory of the law as it already existed," where "surplus proceeds in the hands of the tax collector represented property" of the landowner. *Ibid*. Thus, "the right of a property owner to recover excess funds that are generated from a tax sale is a vested right that existed at common law." *Douglas* v. *Roper*, 2022 WL 2286417, *11-*12 (Ala. June 24, 2022) (collecting cases).

Finally, in Minnesota—whose law is at issue here—it was accepted that "[a]fter the lien of the state is satisfied, any surplus realized from the sale must revert to the owner." *Farnham*, 19 N.W. at 85; see *Baker* v. *Kelley*, 11 Minn. 480, 499 (1866) (statute could not "do more than confer on the State the power to take such further steps as were necessary in the collection of the delinquent taxes"). Other jurisdictions were in accord.[3]

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[3] *State* v. *Wilson*, 68 A. 609, 611 (Md. 1908) ("tax collector's bond is liable to the owner for any surplus" after "sales of property" for "taxes"); *Farmer* v. *Ward*, 71 A. 401, 402 (N.J. Ch. 1908) (mortgagee is entitled to "any excess paid by the purchaser over and above the tax lien"); *Moore* v. *Rogers*, 99 S.W. 1023, 1024 (Tex. 1907) (landowner had the right to any "excess in the bid over the amount which the sheriff could lawfully collect" and "the right to make the

Those decisions followed the general rule that an individual's interest in land was retained as "equitable title" even where legal title was terminated. As this Court explained in the mortgage context, under "long-settled rules of law and equity in all of the states whose jurisprudence has been modelled upon the principles of the common law," a debtor retained "equitable title" to the land even where, due to missed payments, "legal title" vested in the creditor. *Bronson* v. *Kinzie*, 42 U.S. 311, 318 (1843). "To 'extinguish the equitable title of the' debtor, the creditor was required 'to go into the Court of Chancery and obtain its order for the sale of the whole mortgaged property (if the whole is necessary,) free and discharged from the equitable interest of the' debtor." *Hall*, 51 F.4th at 194 (quoting *Bronson*, 42 U.S. at 318-319). And "[u]nder those same long-settled principles, the debtor would then be entitled to any surplus proceeds from the sale, which represented the value of the equitable title thus extinguished." *Ibid.*; see *supra* n.3. As relevant here, the same rule applied to foreclosures for "payment of

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sheriff account to him"); *Brockway* v. *Humphrey*, 94 N.W. 625, 625 (Neb. 1903) (purchaser would "pay the surplus into court, and then step out and leave the holder of the equity and the mortgagee to contest for it"); *Hughes* v. *Kelley*, 38 A. 91, 91 (Vt. 1897) (debt collector may give notice, "sell the property at public auction," "deduct[] the tax and his charges," and, "on demand, return the balance realized from the sale to the person whose property was distrained"); *People ex rel. McColgan* v. *Palmer*, 10 A.D. 395, 396 (N.Y. App. Div. 1896) (recognizing right of owner to "take the surplus arising on the sale"); *Irish* v. *Johnston*, 11 Pa. 483, 488 (Pa. 1849) (right to "surplus tax-money" belonged to owner with "an interest in the land, however small," who "had a right to have it sued").

unpaid taxes." *Hall*, 51 F.4th at 193; see *Snowden*, 59 Va. at 110 (surplus put "in trust for claimants"), aff'd sub nom. *Bennett* v. *Hunter*, 76 U.S. 326 (1869).

B. Under those longstanding rules, Hennepin County violated the Takings Clause.

Hennepin County's seizure of Tyler's home and refusal to return the surplus from the tax sale is thus a taking of a long-recognized property interest, requiring the payment of just compensation. Indeed, as this Court observed in *Lawton*, "withhold[ing] the surplus from the owner would be to violate the fifth amendment to the constitution, and * * * take his property for public use without just compensation." 110 U.S. at 150.

How, then, did the Eighth Circuit hold otherwise? The court's fundamental error—indeed, the only reason it gave for ruling for the County—was the notion that Tyler lacked an interest in the surplus value obtained by the tax sale. The court acknowledged *Farnham*'s rule that, in Minnesota, the landowner's "right to the surplus" of a tax sale "exist[ed] independently" from the state statutory provisions then in place. Pet. App. 7a (quoting *Farnham*, 19 N.W. at 84). Nevertheless, it held that "any common-law right to surplus equity recognized in *Farnham* ha[d] been abrogated" by later statutes—*i.e.*, the very statutory framework that Tyler challenges. *Ibid*. In other words, the State by definition could not have taken property without just compensation if, by statutory enactment, it declared that Tyler lacked any property interest to take.

That circular reasoning was grounded in confusion about the rule that the "existence of a property interest is determined by reference to 'existing rules or understandings that stem from an independent source

such as state law.'" *Phillips* v. *Wash. Legal Found.*, 524 U.S. 156, 164 (1998) (emphasis added) (quoting *Bd. of Regents of State Colls.* v. *Roth*, 408 U.S. 564, 577 (1972)). That statement from *Phillips* is correct—so far as it goes. But it does not allow a State to avoid scrutiny under the Takings Clause merely because it proceeds by statutory enactment, particularly where the common law recognizes a property interest. Nor does the Takings Clause allow a State to recognize a property interest in private contexts—such as Minnesota's recognition that equity is marital property subject to division, see *Antone* v. *Antone*, 645 N.W.2d 96, 101 (Minn. 2002)—but then disclaim that interest when doing so serves its own interests. See also Minn. Stat. § 580.10 (excess proceeds from *mortgage* foreclosure returned to the owner). As the Court in *Phillips* went on to explain, "a State may not sidestep the Takings Clause by disavowing traditional property interests long recognized under state law." 524 U.S. at 167.

Webb's is precisely on point. There, Florida attempted to seize monetary interest earned on certain funds by recharacterizing it as "public money" (449 U.S. at 164)—*i.e.*, by attempting to "abrogate" the fundholder's property right in the interest. Cf. Pet. App. 7a. But as this Court explained, "[n]either the Florida Legislature by statute, nor the Florida courts by judicial decree, may accomplish the result the county seeks simply by recharacterizing the principal as 'public money.'" 449 U.S. at 164. Rather, what matters is that the relevant property interest is recognized in American jurisprudence. See *id*. at 162 (collecting cases); accord *Phillips*, 524 U.S. at 165-168 (looking to the common-law principle that interest follows principal to evaluate takings claim); *Lucas* v. *S.C. Coastal Council*, 505 U.S. 1003, 1031 (1992) (the scope

of the nuisance exception to the total takings rule is defined by "common-law principles").

"To put it another way: a State, by *ipse dixit*, may not transform private property into public property without compensation." *Webb's*, 449 U.S. at 164. "This is the very kind of thing that the Takings Clause of the Fifth Amendment was meant to prevent." *Ibid.* As this Court recently reiterated, a State may not exact a taking by creating a "mismatch" between the property taken and the specific property interest under state law. *Cedar Point Nursery* v. *Hassid*, 141 S. Ct. 2063, 2076 (2021) (citing *Webb*'s). After all, "the Takings Clause would be a dead letter if a state could simply exclude from its definition of property any interest that the state wished to take." *Hall*, 51 F.4th at 190.

Following that principle, this Court has repeatedly rejected attempts to exact takings by redefining the underlying right. The year before *Webb's*, for example, the Court in *Kaiser Aetna* v. *United States*, 444 U.S. 164, 170, 179 (1979), held that the United States could not force a marina to open its private pond to the public by reclassifying the pond as part of the navigable waters of the United States. Instead, "if the Government wishe[d] to make [the pond] into a public aquatic park," it would have to "invok[e] its eminent domain power and pay[] just compensation." *Id.* at 180.

More recently, this Court held in *Horne* that the federal government could not avoid liability for taking raisin growers' produce simply by passing a statute that either abrogated their right to their raisins or conditioned their right to sell *any* raisins on relinquishing whatever percentage the government demanded. 576 U.S. at 365-367. As the Court explained,

"property rights 'cannot be so easily manipulated'"; the government cannot avoid compensation by recasting "basic and familiar uses of property." *Id.* at 365-366. If the decision below were right, *Horne* would have come out the other way.

The Eighth Circuit did not even cite *Webb's*, *Cedar Point Nursery*, *Kaiser Aetna*, *Horne*, or the most relevant portion of *Phillips*, let alone distinguish these authorities. But those decisions control this case. Building on Magna Carta, the common law has long prohibited the government from seizing more property than necessary to satisfy a tax debt. Like other States, Minnesota itself formerly endorsed the common law rule that in the event of tax sales, landowners are entitled to the surplus value of their properties. Moreover, Minnesota continues to treat equity as property in private contexts—the State asserts the power to seize equity free and clear only when doing so is to its own financial advantage. Under the Takings Clause, however, "[n]either the [Minnesota] Legislature by statute, nor the [Minnesota] courts by judicial decree," may eradicate Tyler's $25,000 property interest by mere "*ipse dixit* * * * without compensation." *Webb's*, 449 U.S. at 164.

C. Neither *Nelson* v. *City of New York* nor the County's title shell game warrants a different result.

The State offers two responses, neither of which holds water.

1. The first response, which animated the majority opinion below, reads this Court's decision in *Nelson* as declining to recognize a landowner's property interest in the surplus value of his property. Pet. App. 8a (citing *Nelson*, 352 U.S. at 110). But the New York

statute there *did* recognize the landowner's interest in that surplus. As the Court explained, the statute provided that where the owner "assert[ed] his property had a value substantially exceeding the tax due," "upon proof of this allegation a separate sale should be directed so that the owner might receive the surplus." *Nelson*, 352 U.S. at 110. That was the very reason the Court found no conflict with its reasoning in *Lawton*: because the New York statute did not "absolutely preclude[] an owner from obtaining the surplus proceeds of a judicial sale," the Takings Clause was not implicated. *Ibid.*

The Eighth Circuit's description of that difference as "immaterial"—given Tyler's distinct right of redemption—is baffling. Pet. App. 9a. "[T]he express basis for the decision in *Nelson* * * * was that the plaintiffs had not taken any 'timely action' to force a public foreclosure sale and 'to recover[] any surplus,' even though the New York statute expressly gave them opportunity to do so." 51 F.4th at 196 (quoting *Nelson*, 352 U.S. at 110). The court below thus brushed off *the* key feature that saved New York law: if permitting a "timely action to redeem" was sufficient to uphold the statute (*Nelson*, 352 U.S. at 110), the Court in *Nelson* would have just said so.

Relatedly, some courts have mistakenly concluded that *Nelson* discarded *Lawton*, but *Nelson* itself forecloses that conclusion. The petitioner there did not raise *Lawton at all* until its reply brief on the merits before this Court. 352 U.S. at 107. In response, the Court: (1) noted *Lawton*'s reasoning; (2) explained that *Lawton* built on *United States* v. *Taylor*, 104 U.S. 216 (1881), which had not raised constitutional issues; and (3) explained that, in any event, the statute in *Nelson* permitted recovery of the surplus. 352 U.S. at

110. Courts reasoning that *Nelson* somehow undermined *Lawton* have thus simply misread the key paragraph. *E.g.*, *Ritter* v. *Ross*, 558 N.W.2d 909, 912 n.6 (Wisc. Ct. App. 1996) (confusing *Nelson*'s focus on the New York statute's right to the surplus proceeds with *Lawton*'s endorsement of the same); *City of Auburn* v. *Mandarelli*, 320 A.2d 22, 31 (Me. 1974) (misattributing *Nelson*'s discussion of *Taylor* as if it were about *Lawton*). If that were not enough, as "dictum contained in a rebuttal to a counterargument" that "was not then fully argued" (*Kirtsaeng*, 568 U.S. at 548), the Court's language in *Nelson* surely did not eradicate a centuries-old rule not properly before it.

Moreover, the ruling below ignores that the American common law embraced the landowner's right to the surplus *after* foreclosure by sale—a break from the English rule, which was limited to redemption. *Hall*, 51 F.4th at 193. That innovation provided "a means of avoiding the draconian consequences of strict foreclosure." *BFP* v. *Resol. Tr. Corp.*, 511 U.S. 531, 541 (1994). By exalting Tyler's purported right of redemption, the court below thus married an extinct rule to Minnesota's desire to seize equitable title to her property. But nothing in this Court's jurisprudence—from *Lawton* to *Nelson* to *Webb's*—suggests that States may avoid the Takings Clause's requirement of paying just compensation via a bare right of redemption, which requires the victim of the seizure to come up with *additional* funds to avoid the taking.

2. Nor is it any answer to say that Hennepin County did not "take" any surplus value in the property because it first seized an "absolute" interest in the property. Opp. 21. On that theory, Tyler could not have any "right" in the funds generated by a sale,

because the surplus resulted from a later transfer of an absolute interest that she had already lost.

That argument is convenient for the government, but wrong as a matter of first principles. Magna Carta's prohibition against the government seizing more land than was necessary to satisfy a debt had no "unless the Crown took *absolute* title" exception. Nor did the common law provide any such exception. The fact that the surplus money was raised by "the *resale* of the condo" (Opp. 25) after her property was seized simply has no bearing on whether a seizure occurred without just compensation. Cf. *Taylor*, 104 U.S. at 221 (landowners were entitled to the surplus arising from tax sales even though U.S. treasury initially took possession of those funds).

For Takings Clause purposes, then, it is irrelevant whether the county first "acquired title" before selling the property and realizing the surplus. What matters is whether the government seized something of significantly greater value to satisfy a tax debt. If so, it exacted a taking without just compensation. Adding a layer of "ownership" between the initial acquisition and the County's eventual realization of the surplus does nothing to diminish that constitutional violation —and Hennepin County's position is exactly the sort of gamesmanship that the Framers sought to prevent.

In all events, the County's position ignores the longstanding common law tradition recognizing equitable title as a discrete property right. "The owner's right to a surplus after a foreclosure sale * * * follows directly from her possession of equitable title before the sale." *Hall*, 51 F.4th at 195. "The surplus is merely the embodiment in money of the value of that equitable title." *Ibid.* "By taking absolute title to the

plaintiff['s] property, the County took [her] equitable title[]," and it "did so without a public foreclosure sale and without payment to the plaintiff[] for the value of those titles." *Id.* at 194. The County thus pursued "a strict foreclosure—a practice that English courts had steadfastly prevented as far back as the 1600s and that American courts * * * effectively eradicated as 'unconscionable' and 'draconian' some 200 years ago." *Ibid.* (citations omitted). Because that foreclosure "took the plaintiffs' property without just compensation," it was unconstitutional. *Id.* at 196.

II. This Court may also hold that the seizure was an Excessive Fine.

There is also a strong basis for holding that this particular seizure violated the Excessive Fines Clause of the Eighth Amendment. That clause "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" *United States* v. *Bajakajian*, 524 U.S. 321, 328 (1998) (quoting *Austin* v. *United States*, 509 U.S. 602, 609-610 (1993)). Like the Takings Clause, the Excessive Fines Clause traces its "lineage back to at least 1215, when Magna Carta guaranteed that '[a] Free-man 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.'" *Timbs* v. *Indiana*, 139 S. Ct. 682, 687-688 (2019) (quoting § 20, 9 Hen. III, ch. 14, in 1 Eng. Stat. at Large 5 (1225)). "Magna Carta required that economic sanctions 'be proportioned to the wrong.'" *Ibid.* (quoting *Browning-Ferris Indus. of Vt., Inc.* v. *Kelco Disposal, Inc.*, 492 U.S. 257, 271 (1989)).

Because the "purpose of the Eighth Amendment * * * was to limit the government's power to punish"

(*Austin*, 509 U.S. at 609), purely remedial fines—such as those that solely reimburse the government for its costs—are beyond its scope. *United States* v. *Halper*, 490 U.S. 435, 448 (1989), abrogated in unrelated part by *Hudson* v. *United States*, 522 U.S. 93 (1997). But even if a fine serves remedial purposes, it is subject to the clause if it simultaneously pursues other ends, such as deterrence or retribution. *Ibid*. "Forfeitures —payments in kind—are thus 'fines' if they constitute punishment for an offense." *Bajakajian*, 524 U.S. at 328.

Austin confirms that Hennepin County's seizure was an excessive fine. Where, as here, a piece of property is not the instrumentality of a crime, "[t]he 'forfeiture of [real] property * * * [is] a penalty that ha[s] absolutely no correlation to any damages sustained by society or to the cost of enforcing the law.'" *Austin*, 509 U.S. at 621 (quoting *United States* v. *Ward*, 448 U.S. 242, 253-254 (1980)). As the Court in *Austin* recognized, that distinguishes forfeitures *in rem* of property involved in criminal activity, as well as cases permitting the seizure of goods for violating tariff regulations. *E.g.*, *One Lot Emerald Cut Stones & One Ring* v. *United States*, 409 U.S. 232, 237 (1972).

A seizure cannot be purely remedial when the value of the property bears *no* relationship to the size of the relevant tax delinquency. That is precisely the case here: whatever the size of Tyler's tax debt, the government may seize her entire home, keeping for itself any surplus proceeds that remain after her tax debt is paid. Had her $40,000 home been worth $4 million, but her tax debt remained $15,000, the government would have realized a $3.985 million windfall. By contrast, had her tax debt been just $1,000,

but her home had remained a $40,000 asset, the government would have realized a $39,000 windfall. The notion that this scheme serves only "remedial" purposes is preposterous.

Indeed, Tyler's $15,000 tax debt *included* the statutory penalties. Of that $15,000, only $2,300 was assessed as property taxes. Pet. 5. The other $12,700 includes statutory penalties (Minn. Stat. § 279.01 subd.1), interest on the "unpaid taxes and penalties" (*id*. § 279.03 subd.1a), and all costs associated with collecting the debt (plus interest) (*id*. § 279.092). And since the $15,000 already includes the penalty that the legislature presumably determined to be reasonable, any excess—a product of happenstance—is utterly unconnected to any remedial objective.

III. Upholding Minnesota's rule would encourage the government to improperly interfere with vital private property rights.

Beyond the doctrinal problems with any rule that permits the government to strip Tyler and others like her of equitable title without paying for it, affirming the decision below would also create a host of practical problems—including major disincentives for ordinary citizens and business owners to invest in, and develop, private property.

No constitutional provision is more essential than the Takings Clause for fostering the investment necessary for national prosperity. As James Madison wrote, "What farmer or manufacturer will lay himself out for the encouragement given to any particular cultivation or establishment, when he can have no assurance that his preparatory labors and advances will not render him a victim to an in-constant government?" The Federalist No. 62, 381-382.

Minnesota's rule damages not only private homeowners, but also businesses that own real property—as well as all those holding liens against affected properties. For each group, the Takings Clause is a vital protection against government overreach. Requiring the government to categorically pay just compensation for takings is not just a matter of fairness, but a practical guarantee that policymakers will objectively weigh the benefits of public use against the costs to private owners. "The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong*, 364 U.S. at 49. When the public gets the benefit, the public must pay the cost; there is no political gain from overstating one or understating the other. But if policymakers may pick and choose who bears the cost, then factional politics will reign. Only the categorical requirement of just compensation for physical takings prevents this result.

A. The decision below not only hurts homeowners, but damages property and business interests generally.

1. Minnesota's system threatens business interests in at least two ways. First, businesses are as vulnerable to a taking as any other property owner. Indeed, one recent Minnesota auction featured the

$290,000 purchase of a commercial building that was obtained via the exact same method.[4]

Nor is this problem limited to Minnesota. In *Automatic Art, L.L.C.* v. *Maricopa County*, 2010 WL 11515708 (D. Ariz. Mar. 18, 2010), for example, a company purchased a parcel of land via a quitclaim deed. *Id.* at *1. The property was subject to a tax debt, which the company was willing to pay. *Ibid.* The County put the property up for auction to satisfy the debt, and the company bid that amount. *Id.* at *2. A private developer, however, bid substantially more—and thus "the auction generated more money than the tax debt." *Ibid.* But when the company "demanded the return of this difference," the County "refused." *Ibid.* And the district court held that there was no taking of these surplus funds because "any interest [that the company] had in the equity it once held in the subject property was eliminated when the treasurer's deed issued." *Id.* at *3.

As these examples demonstrate, the system that prevails in several States damages investment by displacing business-owners' property interests in favor of government seizures. If the decision below were affirmed, nothing would prevent the government from seizing small businesses' most valuable properties, selling them to satisfy comparatively minor tax liabilities, and pocketing the extra cash. So long as the

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[4] Ramsey County, Minnesota: *Tax Forfeited Public Sales* (2019), at https://www.ramseycounty.us/sites/default/files/Property/Taxpayer%20services/TFL%20Auctions/TFL%20Auction%20Results_060719.pdf#overlay-context=residents/property-home/property-sales/tax-forfeited-auctions

State's laws make clear that landowners have no protected property interest in the equity of any property seized to satisfy some outstanding tax liability, then such a seizure is—according to the Eighth Circuit—fair game. Any limited right of redemption will be cold comfort for small business owners who may lack the cash on hand to redeem their properties.

2. Legal regimes like Minnesota's could also harm business interests by extinguishing their valid liens, even where the property's sale price would cover not only the government's taxes, penalties, interest, and costs, but also the business's lien. This threat is a significant issue for the many businesses—including not only banks and other financial institutions, but also electricians, plumbers, and others entitled to mechanics' liens—that are lien holders. Minnesota candidly admits that its process extinguishes outstanding liens. Opp. 20 (citing Minn. Stat. § 281.23, subd. 9).

Third parties with interests in affected properties may also be injured if they attempt to collect on that interest before a tax sale. For example, in *U.S. Bank Trust National Association* v. *Walworth County*, 2022 WL 317728, *1 (E.D. Wis. Jan. 6, 2022), U.S. Bank foreclosed on a home mortgage. With interests and other costs, the court awarded U.S. Bank a default judgment of $215,775.50 based on the mortgage. *Ibid.* U.S. Bank then bought the property at auction for close to $70,000. *Ibid.* But two months later, "based on delinquent taxes," the county court entered a judgment against the bank that "forever barred and foreclosed of any right, title, interest, claim, lien or equity of redemption in the subject property." *Id.* at *2.

The County then sold the property at a second auction and "retained the entire sale price," even though

the property sold for $14,000 more than the County was owed. *Id.* at *2, *4. In response, U.S. Bank sued, "asserting that the county's retention of the proceeds" was unconstitutional. *Id.* at *4. But the district court held that "nothing in the state's constitution or tax codes provide[d] property owners a right to excess funds received in a tax sale." *Id.* at *5. Thus, "the county's foreclosure terminated any interest US Bank had in the property"—such that, "when the county retained the surplus it received from the sale, it was not 'taking' anything belonging to US Bank." *Ibid*. By the district court's lights, "Wisconsin law unambiguously gives counties the right to take ownership of property —in fee simple absolute—to settle tax debts. Wisconsin law does not give foreclosed-upon former owners any rights to proceeds." *Id.* at *6. These are just some of "the draconian consequences of strict foreclosure" (*BFP*, 511 U.S. at 541) that banks now face.

Such legal regimes have predictable downstream effects. When banks (or other lienholders) are unable to recoup some of their investment due to government interference, it necessarily raises the marginal cost of providing loans or mortgages to those buyers. Even if willing to underwrite loans, that is, such institutions must charge higher interest rates to account for the risk of the government canceling their interests if a homeowner fails to pay even a small amount of tax, and then fails to follow the state procedure to redeem the property on the State's timetable. Ultimately, both prospective homeowners and lenders bear the brunt of such policies.

B. The government should not be able to fund itself via windfalls taken from parties who are innocent or lack the wherewithal to fight City Hall.

Allowing States to profit from windfalls generated via tax sales also creates perverse incentives. Such a system encourages the government, whenever a landowner faces a tax debt, to take the most valuable piece of property that the individual possesses to satisfy the debt. As seen in other contexts, such as civil asset forfeiture and general law enforcement, this is no idle threat. *E.g.*, *Leonard* v. *Texas*, 137 S. Ct. 847, 848 (2017) (Thomas, J., respecting denial of certiorari) ("civil forfeiture has in recent decades become widespread and highly profitable," and "because the law enforcement entity responsible for seizing the property often keeps it, these entities have strong incentives to pursue forfeiture"); *Rivera* v. *Orange County. Prob. Dep't*, 832 F.3d 1103, 1112 n.10 (9th Cir. 2016) (citing Department of Justice report that the Ferguson Police Department issued citations specifically to generate revenue). Minnesota's scheme gives the same local governments that have become exceedingly effective at turning minor violations of local laws into cash cows yet another weapon in their arsenal.

Sadly, the victims are typically society's weakest members—those that lack the resources or mental acuity to proactively protect their rights. As this case exemplifies, elderly citizens are especially vulnerable: Tyler was 89 years old when Minnesota took her home. Not only are the elderly less likely to be able to navigate the State's foreclosure system and to understand its drastic consequences, they are also more likely to have moved into senior or medical facilities, or their children's homes, and thus to miss lawful notices. See

Jennifer C.H. Francis, Comment, *Redeeming What is Lost: The Need to Improve Notice for Elderly Homeowners Before and After Tax Sales*, 25 Geo. Mason U. Civ. Rts. L.J. 85 (2014).

The district court recognized that the elderly are particularly vulnerable, stating: "I see this a lot. * * * This wouldn't be the first statute that has a disproportionate impact on the poor, the elderly, the infirm." JA51-52. *Armstrong*'s lesson that the Takings Clause "was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole" (364 U.S. at 49) resonates with particular force when those compelled to bear the burdens face sizeable hurdles to defend themselves.

Minnesota's seizure methods echo those "employed in England in early times for the collection of debts to the Crown," which were "turned to purposes of oppression" before "*Magna Charta* provided for their restraint." *Snowden*, 59 Va. at 136. As Magna Carta counseled, the better rule is that when the government must seize property to recover unpaid taxes, it may seize only as much property as is needed to cover the debt. Magna Carta ¶ 9. Minnesota's scheme takes the very opposite approach.

This is no idle choice among incentive structures. Government abuses its authority when it keeps more than it is owed. If a small tax liability allows the government to take private property without providing compensation, thus circumventing the Constitution, then no landowner is secure against the myriad tax, regulatory, and other restrictions that permeate modern life. This Court should not allow Minnesota to become the Land of Ten Thousand Takes.

CONCLUSION

For the foregoing reasons, the judgment below should be reversed.

Respectfully submitted,

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