No. 22-166

In the Supreme Court of the United States

GERALDINE TYLER, PETITIONER

v.

HENNEPIN COUNTY, MINNESOTA, ET AL.

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING NEITHER PARTY

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
DAVID A. HUBBERT
Deputy Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
ERICA L. ROSS
Assistant to the Solicitor General
ALISA B. KLEIN
JENNIFER M. RUBIN
KEVIN J. KENNEDY
GEOFFREY J. KLIMAS
Attorneys

Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

Under Minnesota law, the failure to pay property taxes and then to cure that default over several years may result in the vesting in the State of "absolute title" to the taxpayer's real property. Minn. Stat. § 281.18 (2014). At that point, the relevant county may sell the property to a third party. *Id.* § 282.01(1)(a). If, as is alleged in this case, the tax sale generates proceeds above what is required to pay the full tax debt, the excess proceeds are not distributed to the taxpayer, but rather to various government entities and projects. *Id.* § 282.08. The questions presented are:

1. Whether petitioner has stated a claim that respondents' actions constituted a taking requiring payment of just compensation under the Fifth Amendment, when they took absolute title to petitioner's real property and sold it to a third party without returning to petitioner the sale proceeds in excess of the unpaid taxes plus interest, penalties, and costs.

2. Whether petitioner has stated a claim that respondents' actions imposed a fine subject to the Excessive Fines Clause of the Eighth Amendment.

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Cases: Page

Cases—Continued: Page

Cases—Continued: Page

Constitution, statutes, and regulation:

Statutes and regulation—Continued: Page

Statutes and regulation—Continued: Page

Statutes and regulation—Continued: Page

Miscellaneous:

In the Supreme Court of the United States

GERALDINE TYLER, PETITIONER

v.

HENNEPIN COUNTY, MINNESOTA, ET AL.

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

BRIEF FOR THE UNITED STATES
AS AMICUS CURIAE SUPPORTING NEITHER PARTY

INTEREST OF THE UNITED STATES

This case concerns whether certain local government actions related to tax collection constitute a taking without just compensation, in violation of the Fifth Amendment to the United States Constitution, or a fine subject to analysis under the Excessive Fines Clause of the Eighth Amendment, as made applicable to the States. See *Timbs* v. *Indiana*, 139 S. Ct. 682, 689 (2019); *Chicago, Burlington & Quincy R.R.* v. *Chicago*, 166 U.S. 226, 239 (1897). Specifically, petitioner alleges that respondents took absolute title to real property worth significantly more than her tax debt (including interest, penalties, and costs); sold the property to a third party; and provided no mechanism for petitioner to recover the surplus proceeds from the sale.

Unlike Minnesota law, federal law does not authorize the taking of absolute title to real property for noncriminal nonpayment of taxes without a process for obtain-

ing proceeds from a subsequent sale. The two main procedures that the federal government uses for collecting delinquent taxes are administrative levies and civil suits to enforce tax liens. See 26 U.S.C. 6331, 6335, 6337, 7403. The Internal Revenue Code makes levying on a taxpayer's principal residence a remedy of last resort. 26 U.S.C. 6334(a)(13)(A)-(B) and (e)(1). In the event of a tax sale, the realized funds are used to pay the sale expenses, the specific tax liability on the property, and any remaining tax liabilities of the taxpayer. 26 U.S.C. 6342(a). Any surplus proceeds are then "credited or refunded" to the entitled party, which is generally the delinquent taxpayer. 26 U.S.C. 6342(b); see 26 C.F.R. 301.6342-1(b). Although federal tax-forfeiture laws thus differ substantially from the Minnesota laws at issue here, the United States has a substantial interest in the standards that apply to governmental actions under the Just Compensation Clause and the Excessive Fines Clause.

STATEMENT

1. This case concerns Minnesota's statutorily-prescribed program for recovering delinquent property-tax debts. Every January, property taxes are assessed and become a perpetual lien on the property. Minn. Stat. §§ 272.31, 273.01.[1] Taxpayers must pay those taxes the following year. *Id.* § 279.01. Unpaid taxes become delinquent and accrue interest as well as statutory "penalt[ies]" and a "service fee" to "recover all costs incurred" by the relevant county. *Ibid.*; *id.* §§ 279.03(1), 279.092. The county notifies delinquent taxpayers individually and through publication, and it commences a

[1] Citations to Minnesota Statutes are to the 2014 edition.

civil action to obtain a judgment against the property for the total tax debt. *Id.* §§ 279.05, 279.09, 279.091.

If no one answers the filing, or if the court upholds the tax assessment despite an answer, judgment is entered against the property. Minn. Stat. §§ 279.16, 279.18. The property is then sold to the State by operation of law for an amount equal to the unpaid taxes and additions. *Id.* §§ 280.01, 280.43. "[N]o money changes hands and the taxpayer remains the record owner of the property." Br. in Opp. 3. The sale vests title in the State "subject only to the [statutory] rights of redemption." Minn. Stat. § 280.41.

In most cases, the redemption period is three years. Minn. Stat. § 281.17. During that time, the property owner or anyone else claiming an interest in the land (*e.g.*, a lienholder) may redeem it by paying the full tax debt owed (*i.e.*, the delinquent taxes plus interest, penalties, and costs). *Id.* §§ 281.01, 281.02.

If the property is not redeemed, "final forfeiture occurs." Pet. App. 4a. "Final forfeiture vests 'absolute title' in the State and cancels all taxes, penalties, costs, interest, and special assessments against the property." *Ibid.*; see Minn. Stat. §§ 281.18, 282.07. In addition, "final forfeiture" cancels "all other liens against the property held by any party," Pet. App. 14a, and extinguishes the taxpayer's rights in the property, though the taxpayer may apply to repurchase it, Minn. Stat. § 282.241(1).

Once the State has absolute title, the county may use, sell, or rent the property. See Br. in Opp. 3; see generally Minn. Stat. ch. 282. In the case of a sale or rental, "[t]he net proceeds * * * shall be apportioned to the general funds of the state or municipal subdivision thereof," Minn. Stat. § 282.05, to cover certain expenses and assessments related to the forfeited land, *id.*

§ 282.08(1)-(3). "[A]ny balance" that remains "must be apportioned" for such purposes as "forest development" and "the acquisition and maintenance of county parks or recreational areas," with the remainder going to the county, town or city, and school district. *Id.* § 282.08(4); see Br. in Opp. 3. "Minnesota's tax-forfeiture plan does not allow the former owner to recover any proceeds of the sale that exceed her tax debt." Pet. App. 4a.

2. Petitioner purchased a condominium in Minneapolis in 1999. Pet. App. 2a. For ten years, she lived in the condominium and paid Minnesota property taxes. *Ibid.* After petitioner moved to a senior community, she stopped paying property taxes on the condominium. *Ibid.*; Pet. 4-5. The 2010 property taxes came due in January 2011 and became delinquent in January 2012. Pet. App. 4a. In 2012, the property was sold to the State by operation of law, commencing a three-year redemption period. *Ibid.* Although petitioner received notice of the foreclosure action and of her right to redeem, petitioner took no action. *Ibid.*

The redemption period ended in 2015, and the State took absolute title to the property in July of that year, extinguishing petitioner's interest in the property and cancelling her "$15,000 tax debt," which included all interest, penalties, and costs. Pet. App. 4a. In November 2016, respondent Hennepin County sold petitioner's condominium for $40,000. *Ibid.* The proceeds were distributed to state entities as specified by the statute. *Id.* at 5a; see pp. 3-4, *supra*.

3. In 2019, petitioner filed a putative class-action complaint in state court against respondents. Pet. App. 5a. As relevant here, petitioner alleged that respondents' actions in "seiz[ing]" homeowners' real property, transferring absolute title to the State, and "retain[ing]

the excess equity or value in the property even after taxes and associated charges have been fully satisfied" constituted the taking of "private property * * * without just compensation" and "ma[de] or assess[ed] an excessive fine that is in addition to any penalties already imposed." J.A. 7-8; see J.A. 13, 21-22, 25-26. Respondents removed the case to the United States District Court for the District of Minnesota and moved to dismiss for failure to state a claim. Pet. App. 16a.

The district court granted the motion and dismissed the complaint with prejudice. Pet. App. 49a. As relevant here, the court determined that petitioner had not plausibly alleged a taking. *Id.* at 26a-39a. The court reasoned that the threshold inquiry is whether "the government took something that belonged to" petitioner. *Id.* at 28a-29a. The court understood petitioner to "argue[] that the 'something' that the County took was the surplus equity in her condo," but the court determined that Minnesota's statute did not "give the property owner even a conditional right" to that "surplus equity" "after absolute title" to the property passed from petitioner to the State. *Id.* at 29a, 32a. The court further found that Minnesota had "unambiguously abrogated" any "common-law right" to the surplus value that might have predated the statute. *Id.* at 37a.

The district court also determined that the complaint failed to state a claim that respondents had imposed a "fine" under the Excessive Fines Clause. Pet. App. 39a-44a. The court emphasized that "Minnesota's tax-forfeiture scheme bears none of the hallmarks of punishment" because, *inter alia*, tax forfeiture is not premised "on a criminal conviction—or, for that matter, even on criminal *behavior*." *Id.* at 44a.

4. The court of appeals affirmed. Pet. App. 1a-10a.

Like the district court, the court of appeals focused on whether petitioner retained any "property interest in the surplus equity *after* the county acquired the condominium." Pet. App. 6a (emphasis added). And the court of appeals determined that the statute had abrogated any such right. *Id.* at 7a. "Where state law recognizes no property interest in surplus proceeds from a tax-foreclosure sale conducted after adequate notice to the owner," the court held, "there is no unconstitutional taking." *Id.* at 8a.

The court of appeals found support in this Court's decision in *Nelson* v. *City of New York*, 352 U.S. 103 (1956), which rejected a takings challenge to a law that gave "property owners a right to redeem [a forfeited] property or to recover the surplus" from its sale. Pet. App. 8a. The court of appeals found *Nelson* "control[ling]," despite a "modest factual difference" between the New York City and Minnesota provisions. *Ibid.*

The court of appeals affirmed the dismissal of petitioner's excessive-fines claim "on the basis of" the district court's opinion. Pet. App. 9a.

SUMMARY OF ARGUMENT

I. Petitioner has stated a claim that respondents engaged in a compensable taking by obtaining absolute title to property more valuable than her tax debt.

A. The Fifth Amendment precludes the government from taking private property for public use without providing just compensation. U.S. Const. Amend. V. It is nonetheless well established that the use of certain powers that affect property rights does not constitute a taking. Most pertinent here, a government does not engage in a compensable taking by laying or collecting

taxes. The taxing power, moreover, necessarily includes the power to forfeit property sufficient to satisfy a taxpayer's total tax debt, including interest, penalties, and costs.

B. Petitioner does not contest that respondents could lawfully seize her real property to collect her tax debt. Instead, petitioner more narrowly contends that respondents violated the Just Compensation Clause when they "collect[ed] a debt" and kept "more than" petitioner owed. Pet. Br. 8 (capitalization and emphasis omitted). Properly understood, petitioner has stated a claim for a taking for which just compensation may be due. Petitioner's condominium presumably was indivisible, such that respondents could seize and sell the entire property to pay petitioner's debt. But the taxing power did not entitle respondents to take absolute title to property more valuable than petitioner's debt, extinguish her rights, and retain the excess value. Any taking thus occurred when respondents obtained absolute title, at the close of the redemption period, in 2015. Although the surplus proceeds from the later tax sale may inform the amount of compensation due, those proceeds are not themselves the relevant property interest for takings analysis.

C. Historical practice indicates that taking absolute title to property more valuable than a tax debt requires compensation. From the Founding through the Civil War, Congress and most States expressly limited tax collectors to selling no more land than necessary to satisfy a landowner's tax debt. Even in the absence of such express limitations, courts and commentators stated that background principles prohibited tax collectors from selling more land than necessary to pay a tax debt.

D. This Court's decisions support the same understanding. In three late-nineteenth-century cases, the Court construed federal tax statutes enacted during the Civil War to protect delinquent taxpayers, and specifically to protect them from the uncompensated sale of more land than necessary to satisfy a tax debt. The last of those decisions expressly stated that the government would violate the Fifth Amendment if it retained the excess value from a tax sale. *United States* v. *Lawton*, 110 U.S. 146, 150 (1884). This Court's more recent decision in *Nelson* v. *City of New York*, 352 U.S. 103 (1956), is not to the contrary: The law sustained there did not extinguish the taxpayer's ability to obtain such proceeds.

E. Petitioner has therefore plausibly alleged that respondents' actions constituted a taking. On remand, petitioner bears the burden of demonstrating that just compensation is due and the amount of such compensation.

II. If this Court holds that petitioner has stated a takings claim, it need not reach petitioner's argument that respondents' actions imposed a fine subject to the Excessive Fines Clause. If the Court reaches that contention, however, it should reject it. Minnesota's tax-forfeiture program bears none of the hallmarks of punishment.

A. This Court's decisions are clear that the Excessive Fines Clause applies only to punitive government actions. While the form of proceeding, civil or criminal, is not conclusive, the Court has applied the Clause only to forfeitures ordered as a sanction for criminal activity or after the property owner has already been convicted of a crime involving the forfeited property.

B. The lower courts correctly held that Minnesota's tax-forfeiture statute does not impose punishment. It

is not linked to any criminal activity or culpable conduct, and it applies regardless of the "fault" or "innocence" of the taxpayer. Forfeiture of absolute title to the property extinguishes not only the taxpayer's interest, but also the tax debt and all other liens against the property held by any party. Thus, the taxpayer may derive a financial benefit from the tax-forfeiture statute, which demonstrates that it is not punitive.

Petitioner's contrary arguments lack merit. This Court's decisions do not hold that any government action that attaches monetary consequences to conduct the government seeks to reduce or eliminate is punitive. And petitioner has pointed to nothing in the history or original meaning of the Excessive Fines Clause that would justify treating the Minnesota statute as punishment.

ARGUMENT

I. PETITIONER PLAUSIBLY ALLEGES THAT RESPONDENTS ENGAGED IN A COMPENSABLE TAKING BY OBTAINING ABSOLUTE TITLE TO PROPERTY MORE VALUABLE THAN HER TAX DEBT

A. The Government's Collection Of Delinquent Taxes And Associated Interest, Penalties, And Costs Does Not Constitute A Taking

1. The Fifth Amendment, which is made applicable to the States through the Fourteenth Amendment, states: "[N]or shall private property be taken for public use, without just compensation." U.S. Const. Amend. V; see *Chicago, Burlington & Quincy R.R.* v. *Chicago*, 166 U.S. 226, 239 (1897). As this Court has explained, "[t]he aim of the Clause is to prevent the 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.'" *Eastern Enters.* v. *Apfel*, 524 U.S. 498, 522 (1998) (plurality opinion) (quoting *Armstrong* v. *United States*, 364 U.S. 40, 49 (1960)).

This Court's decisions address different types of takings requiring just compensation. The Court has explained that "[w]hen the government physically acquires private property for a public use, the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation." *Cedar Point Nursery* v. *Hassid*, 141 S. Ct. 2063, 2071 (2021). A "physical appropriation[]"—"the 'clearest sort of taking'"—occurs when the government, for example, "uses its power of eminent domain to formally condemn property" or "physically takes possession of property without acquiring title to it." *Ibid.* (citation omitted).

In certain limited circumstances, the Court has recognized takings when the government takes outright other, less-tangible property interests—such as by destroying a lien or by requiring that interest payments be transferred to a third party for a public purpose. See, *e.g.*, *Brown* v. *Legal Found.*, 538 U.S. 216, 240 (2003); *Armstrong*, 364 U.S. at 46-47.

2. It is nonetheless well established that the government's use of certain powers that affect property rights does not fall within the Just Compensation Clause. For example, "the Fifth Amendment does not require that the Government pay for the performance of a public duty it is already owed," such as the giving of testimony or evidence in a criminal case. *Hurtado* v. *United States*, 410 U.S. 578, 588 (1973). Nor does the government engage in a compensable taking when, using its police powers, it forfeits property that constitutes or causes a public nuisance or is the instrumentality or fruit of a crime. See, *e.g.*, *Bennis* v. *Michigan*, 516 U.S.

442 (1996); *Calero-Toledo* v. *Pearson Yacht Leasing Co.*, 416 U.S. 663, 680-688 (1974); *Dobbins's Distillery* v. *United States*, 96 U.S. 395 (1878); *The Palmyra*, 25 U.S. (12 Wheat.) 1, 14 (1827). And "a Customs seizure of goods suspected of bearing counterfeit marks is a classic example of the government's exercise of the police power to condemn contraband or noxious goods, an exercise that has not been regarded as a taking for public use for which compensation must be paid." *Acadia Tech., Inc.* v. *United States*, 458 F.3d 1327, 1332 (Fed. Cir. 2006); see *Calero-Toledo*, 416 U.S. at 680-683 (tracing tradition of customs and other forfeiture laws); cf. *One Lot Emerald Cut Stones & One Ring* v. *United States*, 409 U.S. 232, 237 (1972) (per curiam) (holding that the forfeiture of goods involved in customs violations "prevents forbidden merchandise from circulating in the United States" and does not violate the Double Jeopardy Clause). The Fifth Amendment likewise requires no compensation when the government imposes "economic sanctions such as orders blocking transactions and freezing assets" to "serve substantial national security interests." *Paradissiotis* v. *United States*, 304 F.3d 1271, 1275 (Fed. Cir. 2002).

Most pertinent here, "[i]t is beyond dispute that taxes and user fees . . . are not takings." *Koontz* v. *St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 615 (2013) (brackets, citation, and internal quotation marks omitted). Indeed, more than 140 years ago, this Court explained that "taxation for a public purpose, however great," is not "the taking of private property for public use, in the sense of the Constitution." *County of Mobile* v. *Kimball*, 102 U.S. 691, 703 (1881); cf. *Houck* v. *Little River Drainage Dist.*, 239 U.S. 254, 265 (1915) (explaining that the government does not "exceed[] its taxing

power" unless "the exaction is a flagrant abuse, and by reason of its arbitrary character is mere confiscation of particular property").

And the taxing power necessarily includes the power to forfeit property sufficient to satisfy a taxpayer's tax debt (including interest, penalties, and costs). As this Court has explained, "[p]eople must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property." *Jones* v. *Flowers*, 547 U.S. 220, 234 (2006).

B. Tax-Collection Authority Did Not Entitle Respondents To Take Absolute Title To Property More Valuable Than Petitioner's Tax Debt

1. Petitioner does not dispute (Br. 2 & n.1) that respondents could assess "[p]enalties, interests, and costs" associated with the collection of her delinquent taxes. Nor does she contest (Br. 7, 23) that respondents' taxing power necessarily includes the power to seize property to pay a tax debt. Instead, petitioner contends (Br. 23-24) that if, in collecting a tax debt, the government "seizes more than it is owed" and does not "refund the surplus proceeds," it "violates the Takings Clause."

Petitioner has stated a claim that respondents' actions resulted in a taking—and that respondents thus potentially owed her just compensation—when they obtained absolute title to her property to satisfy a debt for less money than the property was worth. "The purpose of taxation is to assess and collect taxes *owed*, not [to] appropriate property *in excess of what is owed*." *Rafaeli, LLC* v. *Oakland Cnty.*, 952 N.W.2d 434, 464 (Mich. 2020). Although respondents could forfeit the property for nonpayment of taxes, to the extent respondents acquired and retained property more valuable than peti-

tioner's debt, petitioner may be entitled to just compensation.

If the government forfeited a hypothetical taxpayer's bank account containing $100,000 to pay a $30,000 tax debt, it would seem clear that the government had engaged in a taking. See, *e.g.*, *Koontz*, 570 U.S. at 614 (finding "a '*per se* [takings] approach'" appropriate "when the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a bank account or a parcel of property") (quoting *Brown*, 538 U.S. at 235) (brackets in *Koontz*). The government's power to assess and collect taxes would not entitle it to the excess $70,000, nor exempt that taking from the requirement of just compensation.

Analogous reasoning applies to the transfer of real property to pay a tax debt. Of course, petitioner's condominium may have been more difficult to divide than the hypothetical bank account, such that respondents could seize the entire property as a necessary incident of their ability to collect the tax debt. But respondents' tax-collection authority does not justify keeping the entire property or its equivalent monetary value. Petitioner's ownership interest did not "vanish[] into thin air," *Armstrong*, 364 U.S. at 48, simply because her property was indivisible when the county took the entire parcel. Cf. *Webb's Fabulous Pharmacies, Inc.* v. *Beckwith*, 449 U.S. 155, 164 (1980) (a State cannot, by "*ipse dixit*," define away a property interest).

2. "Because the Constitution protects rather than creates property interests, 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." Br. in Opp. 7 (quoting *Phillips* v.

Washington Legal Found., 524 U.S. 156, 164 (1998)). Here, the lower courts (and at times, the parties) framed the question as whether petitioner could "show that" state law provided her a "property interest in the surplus equity *after* the county acquired the condominium." Pet. App. 6a (emphasis added); see Pet. 4; Br. in Opp. 21-22. That understanding mistakenly assumes that the taking of absolute title in 2015 could properly extinguish *all* of petitioner's property interest—even though the transfer was justified only by an allegedly smaller tax debt.

The pertinent fact, however, is that petitioner remained the "owner" of the condominium until the State took "absolute title" in 2015. See p. 3, *supra*; Pet. Br. 4. If, as petitioner claims, the value of the property exceeded the debt, then respondents' actions constituted a compensable taking at that time. See *Knick* v. *Township of Scott*, 139 S. Ct. 2162, 2170 (2019) ("[A] property owner has a claim for a violation of the Takings Clause as soon as a government takes property for public use without paying for it."); *Hall* v. *Meisner*, 51 F.4th 185, 196 (6th Cir. 2022) (finding the event triggering takings analysis was the taking of "'absolute title' to the plaintiffs' homes"). A calculation of what the parties and the lower courts have called "surplus equity"—the difference between petitioner's total tax debt and the price for which respondents sold the condominium in 2016—may inform the amount of compensation due, see pp. 23-24, *infra*, but it is not the relevant property interest for takings analysis.

C. Historical Practice Indicates That Taking Absolute Title To Property More Valuable Than A Tax Debt Requires Compensation

1. a. By 1801, the federal government and ten States expressly authorized tax collectors to sell the land of delinquent taxpayers. Those statutes struck a balance between facilitating tax collection and protecting delinquent taxpayers' property rights, with most making a sale of real property the remedy of last resort. Most pertinent here, the laws of Congress and nine States provided that tax collectors could sell only as much land as was necessary to satisfy a landowner's tax debt. See Act of July 14, 1798, ch. 75, § 13, 1 Stat. 601; 1 Del. Laws 1259-1260, §§ 25-26 (1796); 1791 Ga. Laws 9, 14; 1799 Ky. Acts 89, § 18; 1786 Mass. Acts 358, 360; 1791 N.H. Laws 296; 1801 N.Y. Laws 498-499, § XVII; 1792 N.C. Sess. Laws 23, § V; 1787 Vt. Acts & Resolves 125, 126; Hudson & Goodwin, *Acts and Laws of the State of Connecticut in America* 349, 356-357 (1796) (¶¶ 32, 36).

Courts generally interpreted those provisions to mean that if a tax collector sold more land than necessary, the sale was void. For example, in *Stead's Executors* v. *Course*, 8 U.S. (4 Cranch) 403 (1808), this Court considered whether the defendant had title to lands in Georgia based on a "sale thereof, by the collector of taxes for the county in which they lie." *Id.* at 412. Because the collector sold the "whole tract of land * * * when a small part of it would have been sufficient for the taxes," the Court determined that "the collector unquestionably exceeded his authority" under Georgia law and the plea of a valid sale "cannot be sustained." *Id.* at 414; see, *e.g.*, *Ainsworth* v. *Dean*, 21 N.H. 400, 407 (1850); *Avery* v. *Rose*, 15 N.C. (4 Dev.) 549, 556 (1834).

b. The primary outlier during that period was Virginia's 1790 statute, which authorized a tax collector to search the land of a delinquent taxpayer and sell any personal property. 1790 Va. Acts ch. V, § II. If such property was insufficient and the landowner failed to pay the tax within three years, then title to the land was "lost, forfeited and vested in the Commonwealth," with no express provision made for the repayment of any excess to the landowner. *Id.* § V; see 3 St. George Tucker, *Blackstone's Commentaries* *153 n.3 (1803) (noting the Virginia statute).[2] Although an 1801 Kentucky statute also authorized forfeiture, it applied only to individuals who failed to register land by the time taxes were due. 1801 Ky. Acts 77, 80 § 5. An adjacent provision addressed nonpayment of taxes on registered land and allowed the sale of only "so much" of the land "as shall be sufficient to pay the tax." *Id.* at 79, § 4.

The Virginia statute was later acknowledged as an outlier. In *Martin* v. *Snowden*, 59 Va. (18 Gratt.) 100 (1868), aff'd *sub. nom. Bennett* v. *Hunter*, 76 U.S. (9 Wall.) 326 (1870), the Supreme Court of Appeals of Virginia explained that the 1790 Virginia statute was unprecedented and thus had little relevance for determining Founding-era practices. *Martin* (and later *Bennett*, which is discussed at pp. 19-21, *infra*) concerned the proper interpretation of an 1861 federal statute authorizing forfeiture of real property, and a challenge to that statute on due process grounds. See *id.* at 133-134. The Virginia court began by explaining that "forfeiture of the land to the Crown does not appear to have been a

---

[2] Tucker's footnote also cited Section 13 of the July 14, 1798 federal statute, but that provision authorized sale only of a "dwelling house, or so much of the tract of land, (as the case may be) as may be necessary to satisfy the taxes due thereon." 1 Stat. 601.

means recognized and employed in England, at any period of its history, for enforcing the payment of taxes or other debts to the Crown." *Id.* at 136. Turning to the argument that the 1790 Virginia statute provided a historical precedent, the court explained that an "act of a single State, adopting a new and exceptional mode of proceeding, could have no weight in the argument." *Id.* at 138; see *id.* at 141 (interpreting Virginia statute to apply only where the land had been "abandoned").

2. Before the Civil War, several additional States adopted statutes requiring the sale of only the least amount of land necessary to satisfy the owner's debt. See, *e.g.*, 1845 Ill. Laws 13 § 51; 1860 Iowa Code Tit. VI, § 766; 1860 Minn. Laws 58 § 23. Ohio, for example, directed a public sale to "the person or persons, who will pay the [debt] *for the least number of acres*." 1822 Ohio Laws 27, § 7 (emphasis added). If the land was "not sold for the want of bidders," then the land was "forfeited to the [S]tate." *Id.* at 28, § 10. Thus, the State took title only if the market determined that the land was less valuable than the tax debt.

Laws that unambiguously authorized a complete forfeiture, without any excess returned to the taxpayer, remained rare. Although two late-nineteenth-century treatises describe total forfeiture as a tax-collection method, they identify only two additional statutes that authorized forfeiture of more land than necessary to pay a tax debt without expressly requiring a return of excess proceeds to the taxpayer: 1836 Me. Laws 325, § 4, and 1869 La. Acts 159, § 63.[3] Mississippi enacted a

---

[3] See Henry Campbell Black, *A Treatise on The Law of Tax Titles* §§ 194-195, at 242 & nn.1, 3 (2d ed. 1893); W.H. Burroughs, *A Treatise on the Law of Taxation as Imposed by the States and their Municipalities, or Other Subdivisions, and as Exercised by the Gov-*

similar statute, but the State's High Court of Errors and Appeals held that it violated provisions of the Mississippi Constitution requiring "due course of law" and prohibiting the taking of private property for "public use" "without just compensation first made." *Griffin* v. *Mixon*, 38 Miss. 424, 439 (1860); see *id.* at 451-452.

3. Several courts suggested that, even in the absence of a statute's express limitation, background principles prevented tax collectors from selling more land than necessary to pay a tax debt. Chancellor James Kent found it indisputable "that a sheriff ought not to sell, at one time, more of the defendant's property than a sound judgment would dictate to be sufficient to satisfy the demand." *Tiernan* v. *Wilson*, 6 Johns. Ch. 411, 414 (N.Y. Ch. 1822). He traced that principle back to a 1595 case that deemed it unlawful for a sheriff to sell five oxen worth £5 each to satisfy a £2 debt. See *id.* at 414 (discussing *Wooddye* v. *Baily* (1595) 74 Eng. Rep. 1027 (Q.B.)). Kent also discussed *Stead's Executors* and found that the "rule must be the same, without any [statute]," as it "rests on principles of obvious policy and universal justice." *Ibid.*; see, *e.g.*, *O'Brien* v. *Coulter*, 2 Blackf. 421, 425 (Ind. 1831) (per curiam).

Other influential commentators agreed. Thomas Cooley observed that even if there were no "statute limiting the officer's right to sell, to so much as would be requisite to pay the tax and charges, a restriction to this extent would be intended by the law." Thomas M. Cooley, *A Treatise on the Law of Taxation, Including the Law of Local Assessments* 343 (1876) (Cooley). It was "not for a moment to be supposed that any statute would be adopted without this or some equivalent pro-

---

ernment of the United States, Particularly in the Customs and Internal Revenue § 110, at 277-278 (1877).

vision." *Ibid.*; see Robert S. Blackwell, *A Practical Treatise on the Power to Sell Land for the Non-Payment of Taxes* 288 (2d ed. 1864) (finding the principle's application in the absence of a statute was "clearly the correct rule of law"). Cooley further explained that "[a] sale of the whole when less would pay the tax is void, and a sale of the remainder after the tax had been satisfied by the sale of a part would also be void." Cooley 343-344 (footnote omitted). "[T]he very plain reason [was] that the power to sell would be exhausted the moment the tax was collected." *Id.* at 344.[4]

D. This Court's Decisions Support The Same Conclusion

Although the Court has not squarely addressed the question presented here, several of its decisions support the conclusion that petitioner has plausibly alleged a taking.

1. In a trilogy of late-nineteenth-century cases, this Court considered a federal tax enacted to raise funds during the Civil War. Those decisions construed the statutes to protect delinquent taxpayers, including from the uncompensated sale of more land than necessary to pay their tax debts.

a. The 1861 statute at issue in *Bennett* v. *Hunter*, 76 U.S. (9 Wall.) 326 (1870), "laid a direct tax of twenty millions of dollars upon lands," which was "apportioned * * * among the several States." *Id.* at 333; see Act of Aug. 5, 1861 (1861 Act), ch. 45, § 8, 12 Stat. 294. The statute authorized the sale of personal property to collect the tax and, if that proved insufficient, the sale of

[4] Cooley observed that he was not "aware of any constitutional principle" that prohibited legislative forfeiture of lands as opposed to public sale. Cooley 318. But that discussion focused on the differences between procedures. *Ibid.*

so much of the land as might be necessary to satisfy the taxes due. 1861 Act § 36, 12 Stat. 304. If the land was not divisible, the government could sell the whole parcel, with the surplus proceeds "paid to the [former] owner of the property" or, if he could not be found, "deposited in the Treasury of the United States, to be there held for the use of the owner" upon his "application." *Ibid.* Thus, like the statutes discussed above, the 1861 Act protected taxpayers' interests in the excess value of land, even during wartime exigencies.

The question in *Bennett* was whether the 1861 Act authorized the tax commissioners to "make a sale for taxes, notwithstanding a previous tender of the amount due" by an individual acting on the owner's behalf. 76 U.S. (9 Wall.) at 333. That depended on the proper understanding of an 1862 enactment, which provided that "title" to any parcel of land with unpaid taxes would be "forfeited to the United States, and, upon the sale hereinafter provided for, shall vest in the United States or in the purchasers at such sale, in fee simple, free and discharged from all prior liens, incumbrances, right, title, and claim whatsoever." Act of June 7, 1862 (1862 Act), ch. 98, § 4, 12 Stat. 423. If title vested in the United States at "forfeit[ure]," then the offer to pay the taxes came too late; but if the owner retained his interest until the sale, then the offer to pay was timely. *Ibid.*; see *Bennett*, 76 U.S. (9 Wall.) at 337-338.

This Court held that the statute should be read to permit redemption until the later date. *Bennett*, 76 U.S. (9 Wall.) at 335-337. The Court declined to decide a due process question. *Id.* at 336. Instead, it interpreted "the first clause," providing for forfeiture of title to the United States, to "declare the ground of the forfeiture of title, namely, non-payment of taxes, while the second

clause was intended to work the actual investment of the title through" the sale. *Ibid.*[5]

b. The Court addressed the same statute in *United States* v. *Taylor*, 104 U.S. 216 (1881), where the question was whether a property owner could recover the surplus proceeds from a tax sale under Section 36 of the 1861 Act, notwithstanding that the 1862 Act "ma[de] no mention of the right" to the surplus. *Id.* at 218. The Court refused to read the 1862 Act as implicitly repealing the 1861 Act. *Ibid.* And the Court explained that the 1861 Act placed "no time within which application must be made for the proceeds of the sale"; rather, "[t]he person entitled to the money could allow it to remain in the treasury for an indefinite period without losing his right to demand and receive it." *Id.* at 221. Although no constitutional question was presented in *Taylor*, the decision underscores the importance of not retaining surplus proceeds after seizing real property worth more than the tax debt being satisfied.

c. This Court's decision in *United States* v. *Lawton*, 110 U.S. 146 (1884), put that understanding in constitu-

---

[5] The government's brief in *Bennett* unsuccessfully argued that the owner's authority to redeem ceased on the earlier date and was in any event limited to the owner himself. See U.S. Br. at 14-23, *Bennett* v. *Hunter*, *supra* (No. 74). Addressing the due process question, the government stated that Congress's power to "lay and collect" taxes and the Necessary and Proper Clause afforded it the authority to "declare a forfeiture of land for the non-payment of taxes laid thereon, or authorize a sale, by summary proceedings on the part of the executive branch of the government, of the whole of such land." *Id.* at 9; see *id.* at 13 (stating that the Just Compensation Clause does not "impose[] any restraint upon the legislative power in regard to taxation"). In support, the government relied on different iterations of the Virginia, Maine, Mississippi, Kentucky, and Ohio statutes discussed above. See *id.* at 10-12; pp. 16-18, *supra*.

tional terms. The facts of *Lawton* "differ[ed] from" *Taylor* "only" in that "the land" in *Lawton* was "bought in by the tax commissioners for the United States, and no money was paid on the sale." *Id.* at 149. The Court nonetheless held that because the land was "'struck off for,' and 'bid in' for, the United States at the sum of $1,100" "the surplus of that sum, beyond the $170.50" tax debt, "must be regarded as being in the treasury of the United States * * * for the use of the owner." *Ibid.* The Court explained that "[t]o withhold the surplus from the owner would be to violate the Fifth Amendment of the Constitution and to deprive him of his property without due process of law, or to take his property for public use without just compensation." *Id.* at 150.

2. The court of appeals in this case relied (Pet. App. 8a-9a) on *Nelson* v. *City of New York*, 352 U.S. 103 (1956). In *Nelson*, this Court considered a law authorizing the city to engage in a judicial foreclosure of tax liens on real property. *Id.* at 104 n.1. If the taxpayer did not answer or redeem the property, a default judgment of foreclosure would be entered, the city would acquire title, and it could sell the property to a private party. *Id.* at 105-106.

Although *Nelson* primarily concerned challenges under the Equal Protection and Due Process Clauses, see 352 U.S. at 107-109, the taxpayers argued in reply that "the City's retention of property, in one instance, and proceeds of sale in the other, far exceeding in value the amounts due," constituted "a taking without just compensation." *Id.* at 109. In rejecting that argument, *Nelson* distinguished *Lawton* on the ground that it had relied on *Taylor*'s prior statutory-construction holding. See *id.* at 110.

The Court further explained that the law challenged in *Nelson* did not "absolutely preclude[] an owner from obtaining the surplus proceeds of a judicial sale." 352 U.S. at 110. Rather, the state courts had construed the law to mean that if the owner filed a timely answer in a foreclosure proceeding arguing that the property's value far exceeded the tax due, "a separate sale should be directed *so that the owner might receive the surplus*." *Ibid.* (emphasis added). The Court's determination that "nothing in the Federal Constitution" rendered the law unconstitutional, *ibid.*, necessarily took account of that holding. Thus, contrary to the court of appeals' suggestion (Pet. App. 9a), the difference between the law at issue in *Nelson* and the Minnesota statute at issue here is not "immaterial." The New York City provision permitted the property owner to obtain the excess value of her property, while the Minnesota statute does not.

E. Petitioner Bears The Burden Of Demonstrating Her Entitlement To Just Compensation On Remand

For the reasons already discussed, to the extent respondents took and retained the value of more of petitioner's real property than was necessary to satisfy her total tax debt, they engaged in a taking. Petitioner's entitlement to "just compensation" depends on whether the property taken was worth more than the tax debt (and any other outstanding interests in the property, such as liens) when the State obtained absolute title, following expiration of the redemption period, in 2015. Although just compensation is generally measured as of the date of the taking, see, *e.g.*, *United States* v. *564.54 Acres of Land*, 441 U.S. 506, 511 (1979), in the tax-forfeiture context, the surplus proceeds from a tax sale may constitute an appropriate measure of just compen-

sation. See, *e.g.*, *Rafaeli*, 952 N.W.2d at 486 & n.86 (Viviano, J., concurring) (stating that by failing to redeem or sell the property, a taxpayer "might be considered to have agreed to the value produced by the tax-foreclosure sale").

The basic principle underlying the constitutional requirement of just compensation is one of indemnity. The amount is "measured by the property owner's loss rather than the government's gain." *Brown*, 538 U.S. at 235-236. "[T]he private party 'is entitled to be put in as good a position pecuniarily as if his property had not been taken. He must be made whole but is not entitled to more.'" *Ibid.* (quoting *Olson* v. *United States*, 292 U.S. 246, 255 (1934)). To award a landowner "less would be unjust to him; to award him more would be unjust to the public." *Bauman* v. *Ross*, 167 U.S. 548, 574 (1897); see, *e.g.*, *United States* v. *Cors*, 337 U.S. 325, 332 (1949). As the landowner, petitioner bears the burden of establishing the proper amount of compensation. *United States ex rel. TVA* v. *Powelson*, 319 U.S. 266, 273 (1943).

Because the district court granted respondents' motion to dismiss, and the court of appeals affirmed that judgment, no court has yet considered whether petitioner's real property in fact was worth more than her tax debt and other interests in the property when respondents obtained absolute title, or the proper amount of compensation that might be due. The lower courts should address those issues on remand.

II. THE RETENTION OF SALE PROCEEDS IN EXCESS OF PETITIONER'S TAX DEBT DID NOT CONSTITUTE A "FINE" SUBJECT TO THE EXCESSIVE FINES CLAUSE

If the Court holds that petitioner has plausibly alleged a taking, it need not reach petitioner's argument that retaining the excess sale proceeds constitutes a fine under the Excessive Fines Clause. Cf. Pet. Br. 33 n.16 ("[P]aying [petitioner] just compensation should eliminate the challenged fine."). But if the Court rejects the takings claim, petitioner's Excessive Fines Clause argument lacks merit.

A. The Excessive Fines Clause Applies Only To Punitive Actions

1. The Eighth Amendment provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." U.S. Const. Amend. VIII. "Taken together, these Clauses place 'parallel limitations' on 'the power of those entrusted with the criminal-law function of government.'" *Timbs* v. *Indiana*, 139 S. Ct. 682, 687 (2019) (quoting *Browning-Ferris Indus. of Vt., Inc.* v. *Kelco Disposal, Inc.*, 492 U.S. 257, 263 (1989)). The Excessive Fines Clause, in particular, "limits the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" *Ibid.* (quoting *United States* v. *Bajakajian*, 524 U.S. 321, 327 (1998)).

As this Court has explained, "at the time the Constitution was adopted, the word 'fine' was understood to mean a payment to a sovereign as punishment for some offense." *Bajakajian*, 524 U.S. at 327 (citation and internal quotation marks omitted). "Then, as now," fines were typically imposed as punishments in criminal prosecutions. *Browning-Ferris Indus.*, 492 U.S. at 265. But the Court has found the Clause applicable to some pay-

ments that a defendant is ordered to make in civil *in rem* forfeiture actions that "are at least partially punitive." *Timbs*, 139 S. Ct. at 689; see *Austin* v. *United States*, 509 U.S. 602, 619-622 (1993). The form of proceeding, "civil or criminal," is therefore not entirely dispositive; the question remains whether a particular payment is "punishment for some offense" against the sovereign. *Austin*, 509 U.S. at 610, 622 (citation omitted). Even so, each of this Court's decisions applying the Excessive Fines Clause has involved a forfeiture ordered as a sanction for criminal conduct after an adjudication of guilt in a criminal proceeding, see *Bajakajian*, 524 U.S. at 325-326; *Alexander* v. *United States*, 509 U.S. 544, 547-548 (1993), or a civil action brought after the property owner had already been convicted of a crime, seeking forfeiture of property used in the commission of the crime, see *Timbs*, 139 S. Ct. at 686; *Austin*, 509 U.S. at 605. See *United States* v. *Jalaram, Inc.*, 599 F.3d 347, 354 (4th Cir. 2010) ("[T]he [Supreme] Court consistently focused on whether the forfeiture stemmed, at least in part, from the property owner's criminal culpability.").

2. This Court's decisions in *Austin* and *Bajakajian* are particularly instructive. In *Austin*, the Court considered the civil *in rem* forfeiture of properties used in connection with unlawful drug transactions for which the owner had already been convicted under state law. 509 U.S. at 604-605; see 21 U.S.C. 881(a)(4) and (7). The Court explained that a sanction is "subject to the limitations of" the Excessive Fines Clause if "it can only be explained as serving in part to punish." 509 U.S. at 610. That requirement was satisfied in *Austin*, where the federal statute "tie[d] forfeiture directly to the commission of drug offenses" and provided "an 'innocent

owner' defense," which focused "on the culpability of the owner." *Id.* at 619-620.

Bajakajian considered a criminal, rather than a civil *in rem*, forfeiture. The defendant in that case attempted to leave the United States without reporting that he was transporting $357,144 in currency—far more than the $10,000 that triggered the federal reporting requirement. *Bajakajian*, 524 U.S. at 324; see 31 U.S.C. 5316(a)(1)(A), 5322(a). The United States prosecuted him under criminal laws, which included a provision for forfeiture of "any property, real or personal, involved in such offense, or any property traceable to such property." 18 U.S.C. 982(a)(1); see *Bajakajian*, 524 U.S. at 325.

This Court had "little trouble concluding that the forfeiture of currency ordered by § 982(a)(1) constitutes punishment." *Bajakajian*, 524 U.S. at 328. Such forfeiture is "imposed at the culmination of a criminal proceeding and requires conviction of an underlying felony"; it also "cannot be imposed upon an innocent owner of unreported currency, but only upon a person who has himself been convicted of a § 5316 reporting violation." *Ibid.* The Court further emphasized that the forfeiture of currency in this context does not "serve the remedial purpose of compensating the Government for a loss" because failing to report causes the government to lose only "information." *Id.* at 329.

The Court in *Bajakajian* distinguished that forfeiture provision from a "class of historic forfeitures of property tainted by crime." 524 U.S. at 329. The Court explained that "traditional civil *in rem* forfeitures"—such as forfeitures imposed for violations of the customs laws—were "inapposite" because they were "historically considered nonpunitive" and thus "traditionally

were considered to occupy a place outside the domain of the Excessive Fines Clause." *Id.* at 330-331; see *id.* at 340-341. By contrast, in *Bajakajian*, the government had "not proceeded against the currency," but brought a criminal prosecution against the defendant. *Id.* at 332. As in *Austin*, the forfeiture was "designed to punish the offender, and [could not] be imposed upon innocent owners." *Ibid.*

B. Minnesota's Tax Forfeiture Program Is Non-Punitive

1. Unlike the forfeiture provisions at issue in *Austin* and *Bajakajian*, there is no suggestion that Minnesota's civil tax-forfeiture program is intended to be, or is in fact, a penalty for a criminal offense. See Pet. App. 44a. All individuals who owe a tax have several opportunities to pay it, and thus avoid forfeiture. The statute appears to be designed not to punish the nonpayment of taxes, but to ensure that the State receives the money it is due. See *Helvering* v. *Mitchell*, 303 U.S. 391, 401 (1938) (holding that a civil tax-fraud penalty is remedial and therefore not "punishment" for purposes of the Double Jeopardy Clause).

Under Minnesota's law, the forfeiture of absolute title does not depend on criminal activity or culpable conduct. See Pet. Br. 40. There is no "innocent owner" defense; regardless of the reason a landowner failed to pay taxes due, the provisions apply in the same way. Indeed, forfeiture may sometimes leave landowners *better off* from an economic perspective. Final forfeiture not only "vests 'absolute title' in the State"; it also "cancels all taxes, penalties, costs, interest, and special assessments against the property." Pet. App. 4a. Thus, if the property owner owes the State more than the property is worth, the excess debt is forgiven. In addition, "final forfeiture" cancels "all other liens against the property

held by any party." Pet. App. 14a; see J.A. 50-53. A program with those potential benefits to taxpayers—without any consideration of "fault" or "innocence"—cannot be considered punitive.

2. Petitioner's contrary arguments lack merit.

a. Petitioner emphasizes (Br. 36-37) this Court's statement in *Austin* that "a civil sanction that cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes, is punishment," 509 U.S. at 610. Petitioner notes (Br. 38) that respondents have "admit[ted] that the statute serves" in part "as a deterrent." See J.A. 42.

Petitioner's reliance on *Austin*'s reference to "deterrence" is misplaced. In *Austin*, 509 U.S. at 610, the Court was quoting *United States* v. *Halper*, 490 U.S. 435, 448 (1989), which had held that the Double Jeopardy Clause encompasses certain types of civil sanctions. But as the Court later explained in rejecting "*Halper*'s test for determining whether a particular sanction is 'punitive,'" "all civil penalties have some deterrent effect." *Hudson* v. *United States*, 522 U.S. 93, 102 (1997). Merely attaching monetary consequences to conduct that the government seeks to reduce or eliminate is not the kind of deterrent effect to which *Austin* referred. In context, the Court was referring to sanctions with the purpose of deterring *criminality*, such as the drug-trafficking *in rem* forfeiture laws at issue in that case. See 509 U.S. at 622; *id.* at 627 (Scalia, J., concurring in part and concurring in the judgment) (similarly concluding that such forfeitures "are certainly *payment* (in kind) *to a sovereign* as *punishment* for an *offense*"). Here, respondents invoked only "civil deterrence," not "deterrence * * * to prevent crime." J.A. 42.

Petitioner's contrary reading of *Austin* would threaten to transform every civil penalty or forfeiture into a form of punishment for Eighth Amendment purposes, given that every civil penalty or forfeiture presumably deters to some extent the conduct for which it is assessed. See *Hudson*, 522 U.S. at 102. Nothing in the text or original meaning of the Excessive Fines Clause, or in this Court's precedent, compels such a sweeping application.

b. Petitioner next attempts (Br. 37) to analogize Minnesota's tax-forfeiture statute to the civil-forfeiture provisions at issue in *Austin*. Petitioner asserts the value of the property forfeited will "[v]ar[y] so dramatically that any relationship between the debt owed and the amount of the sanction is merely coincidental." *Ibid.* (quoting *Austin*, 509 U.S. at 622 n.14). But this Court has rejected the proposition that a penalty or forfeiture is punitive simply because the government may receive more than necessary to make it whole. See *Bajakajian*, 524 U.S. at 331; *id.* at 344-345 (Kennedy, J., dissenting). And here, the variability of the government's recovery (if any) under the Minnesota statute demonstrates that it is *not* punitive, because it will sometimes result in a net benefit to the taxpayer. Cf. *Austin*, 509 U.S. at 625 n.* (Scalia, J., concurring in part and concurring in the judgment) ("[T]he statutory forfeiture must *always* be at least 'partly punitive,' or else it is not a fine.").

Petitioner suggests (Br. 38) that the Minnesota statute "presumes that those who fail to make timely tax payments or redeem their property are culpable for their loss." But as petitioner elsewhere observes (Br. 44), a failure to pay taxes or redeem may reflect financial or other constraints that have nothing to do with

culpability. In addition, *anyone* with an interest in the property (such as a lien) may redeem the property and avoid its forfeiture, and will lose their interest if "final forfeiture" occurs, regardless of whether they bear any responsibility for the failure to pay. The Minnesota statute thus includes nothing like the "innocent owner" defense the Court found suggestive of an "intent to punish" in *Austin*, 509 U.S. at 619.

c. Finally, petitioner suggests that "[t]he history and original meaning of the Excessive Fines Clause supports its application" to the Minnesota statute. Br. 39 (capitalization altered; emphasis omitted). But petitioner identifies nothing in that history or original meaning to support the view that the Minnesota statute constitutes punishment.

Petitioner points (Br. 39) to the Court's statement in *Browning-Ferris* that when punitive damages are awarded in a private civil lawsuit, the State "has not * * * used the civil courts to extract large payments or forfeitures for the purpose of raising revenue or disabling some individual." 492 U.S. at 275. But the Court there was reasoning in the alternative, having first explained that "the text of the Amendment points to an intent to deal only with the prosecutorial powers of government." *Ibid.*; see *ibid.* (paragraph on which petitioner relies, beginning "even if we were prepared to extend the scope of the Excessive Fines Clause"). That echoed the Court's discussion of history, which found "clear support for reading [the] Excessive Fines Clause as limiting the ability of the sovereign to use its prosecutorial power, including the power to collect fines, for improper ends." *Id.* at 267.

Petitioner further contends (Br. 40-43) that the Court erred in *Bajakajian* when it stated that "tradi-

tional civil *in rem* forfeitures," including in the customs context, "traditionally * * * occup[ied] a place outside the domain of the Excessive Fines Clause." *Bajakajian*, 524 U.S. at 330-331; see *id.* at 340-344. The Court's thorough analysis, however, belies petitioner's contention. And while petitioner prefers (Br. 42) the discussion of traditional *in rem* forfeitures in *Austin*, four Justices agreed that the "entire discussion" was "dictum." 509 U.S. at 626-627 (Scalia, J., concurring in part and concurring in the judgment); see *id.* at 628 (Kennedy, J., joined by Rehnquist, C.J., and Thomas, J., concurring in part and concurring in the judgment).

More important, the proper understanding of historical forfeiture laws has little bearing on whether forfeitures under Minnesota's statute "are properly considered punishment today." *Austin*, 509 U.S. at 619 (turning to this question after taking the view that at least some historical forfeiture statutes were punitive); cf. Pet. Br. 40 (suggesting that the forfeiture here differs from traditional *in rem* forfeitures). The factors discussed in *Austin* (and reiterated in *Bajakajian*) demonstrate that it is not. The Minnesota statute includes no "innocent-owner defense[]," and it lacks any "direct[]" "tie" to the commission of a "crime." *Austin*, 509 U.S. at 619-620. And although the State's recovery under the statute "vari[es]," *id.* at 621, the program permits taxpayers to be made better off by the cancellation of all tax debts and other liens on the land. Those factors preclude a finding that the tax-forfeiture statute is punitive in nature.

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General
DAVID A. HUBBERT
Deputy Assistant Attorney General
CURTIS E. GANNON
Deputy Solicitor General
ERICA L. ROSS
Assistant to the Solicitor General
ALISA B. KLEIN
JENNIFER M. RUBIN
KEVIN J. KENNEDY
GEOFFREY J. KLIMAS

MARCH 2023