No. 22-166

IN THE
Supreme Court of the United States

GERALDINE TYLER, on behalf of herself and all others similarly situated,

Petitioner,

v.

HENNEPIN COUNTY, and DANIEL P. ROGAN, AUDITOR-TREASURER, in his official capacity,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF FOR RESPONDENTS

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QUESTIONS PRESENTED

Has there been a compensable "taking" when a State treats real property as forfeited after an owner refuses to pay property taxes for five years or to otherwise take any action to preserve her interest?

Is Minnesota's property tax collection system, in which property forfeits only as a recovery mechanism of last resort, subject to the Excessive Fines Clause?

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INTRODUCTION

For five years, Petitioner Geraldine Tyler chose not to pay property taxes to Respondent Hennepin County. For five years, the County provided Petitioner multiple notices of the taxes owing and the consequences of non-payment. For five years, Petitioner could have sold her condominium and recouped any equity. Or she could have refinanced her mortgage and used any proceeds to pay her taxes. Or she could have signed up for a 10-year tax payment plan. But for five years, Petitioner refused. Only then, after those years of inaction, did Petitioner forfeit her property to the State.

Petitioner does not contest the State's need or sovereign power to treat tax-delinquent property as forfeit. Instead, she argues that, even after five years, Minnesota law did not provide her enough opportunity to secure any equity she possessed. According to Petitioner, the Constitution required the State to serve as her real estate agent, sell the property on her behalf, and write a check for the difference between the tax debt and the fair market value.

That has never been a universal common-law or constitutional rule—not for centuries of Anglo-American history. On the contrary, this Court has long affirmed the "vital importance" of States' powers to collect property taxes, *M'Culloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 425 (1819), and to enforce "reasonable conditions" on land ownership—like paying property taxes—through forfeiture of the entire underlying property interest. *Texaco, Inc.* v. *Short*, 454 U.S. 516, 526 (1982). Owners must receive notice and a meaningful

opportunity to take timely action to preserve their interests. *Nelson* v. *City of New York*, 352 U.S. 103, 110 (1956). If an owner nevertheless fails to do so, the State may treat the property as "abandoned," *Texaco,* 454 U.S. at 529, and "nothing in the Federal Constitution prevents" the State from "retain[ing] the property or the entire proceeds of its sale," *Nelson*, 352 U.S. at 110. This "Court has never required the State to compensate the owner for the consequences of his own neglect." *Texaco*, 454 U.S. at 530.

Minnesota provided ample opportunity for Petitioner, giving her five years to pay the taxes or sell the property. Either action would have preserved her equity. She has never claimed she lacked notice or even the ability to pay. She chose to do nothing for five years, and thus forfeited any interest in the property. This Court should reject Petitioner's contrary arguments.

First, Petitioner does not even allege facts sufficient to confer Article III standing. Nor, in all likelihood, could she. According to public records, Petitioner's condominium was encumbered by a $48,750 mortgage and a $11,660 homeowner's association lien. Petitioner does not allege that, accounting for these private debts and her tax debt, she had any equity.

Second, if this Court reaches the merits, it should affirm the Eighth Circuit's unanimous decision rejecting Petitioner's Takings Clause claim. A long Anglo-American tradition confirms that States may treat an entire interest in land as forfeited for failure to comply with reasonable conditions on ownership—and specifically for failure to pay property taxes—after adequate notice and opportunity to comply. Laws to that effect were prominent in Colonial America, were present

and approved of at the Founding, and have persisted ever since. Throughout that history, this Court has consistently reaffirmed that all interest in property may lawfully forfeit as a consequence of the owner's neglect. *See, e.g.*, *Texaco*, 454 U.S. at 526; *Nelson*, 352 U.S. at 109-110; *Hawkins* v. *Barney's Lessee*, 30 U.S. (5 Pet.) 457 (1831). Because Minnesota provided Petitioner abundant opportunity to preserve her interest, and she failed to do so, the resulting forfeiture is not a compensable taking.

Third, Petitioner's alternative claim under the Excessive Fines Clause also fails. Property tax forfeiture is not a fine. Minnesota's law serves remedial purposes by compensating for lost revenue and returning delinquent property to productive use. And forfeiture may benefit former owners when it discharges more debt than a delinquent property is worth. These are not the hallmarks of a punitive fine.

Petitioner claims tax forfeiture is nothing more than a windfall for governments, but that is not the case. Hennepin County works hard to keep property owners in their homes, has pioneered an innovative program to help residents, and exercises discretion to abate interest and penalties. Nor is forfeiture a source of profit—factoring in all costs, the County's program does not manage to break even.

Ruling for Petitioner would invalidate tax provisions in dozens of States, would require rewriting history, and would overrule numerous decisions from this Court. The Constitution does not require this upheaval. The Court should affirm.

JURISDICTION

This Court lacks jurisdiction because Petitioner has not plausibly alleged an Article III injury-in-fact. *See infra* pp. 11-14.

STATUTORY PROVISIONS INVOLVED

Pertinent Minnesota statutory provisions are reproduced in the addendum to this brief.

STATEMENT

A. Legal Background

1. Minnesota's counties collect real property taxes to fund public services, including schools, fire stations, and libraries. *Understanding Property Tax*, Minn. Dep't of Rev., https://www.revenue.state.mn.us/understanding-property-tax (last updated Sept. 10, 2021). Refusing to pay taxes increases the burden on everyone who does.

In Minnesota, as in many other States, real property taxes are *in rem*. An owner who does not pay faces no personal liability. Instead, the sole recourse is against the delinquent property—even when the property is worth less than the taxes. If a property owner fails to pay taxes for five years, and does not otherwise act to preserve her interest, the property forfeits to the State.

During that five-year process, the property owner receives notice of the taxes owed and the consequences of inaction. For five years, the owner retains control over the property. The owner can sell the property, pay the taxes and any private liens, and keep any surplus. The owner can also borrow against the property to pay taxes. Additionally, Minnesota law provides

payment options to prevent homeowners in general, and seniors in particular, from forfeiting their residences.

2. Here is how Minnesota's process works: In "Year Zero," property is assessed, taxpayers receive notice, and taxes become "a perpetual lien" on the property. Minn. Stat. §§ 273.01, 273.121 subd. 1, 272.31.[1] Taxpayers can—and often do—challenge their assessed value. *Id.* § 278.01 subd. 1. In "Year One," taxes are paid in two installments. *Id*. § 279.01 subd. 1. In "Year Two," unpaid taxes become delinquent, interest begins to accrue, and the county auditor files a list of delinquent properties in state court. *Id*. §§ 279.03, 279.05. The county must mail notice to owners and publish the list of delinquent properties. *Id*. §§ 279.09, 279.091.

At this point, any person with any interest in the property may file an answer asserting defenses or objections. *Id*. § 279.15. If no one files an answer—or if the court upholds the tax—the delinquent property is liable *in rem* for taxes, penalties, and interest. *Id*. §§ 279.03, 279.16, 279.18. In May of "Year Two," delinquent parcels are considered sold to the State by operation of law. *Id*. §§ 280.001-280.01. This is a formality. Owners can continue to occupy the property, sell it, or borrow against it. *See id*. § 281.18.

After the "sale" occurs in Year Two, owners typically have *three additional years* before forfeiture actually

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[1] This brief cites the most current Minnesota statutes. The law has not changed materially since the events of this case.

occurs in "Year Five." *Id.* § 281.17(a). During this period, owners receive notice by public posting, publication, mail, and personal service. *Id.* § 281.23.

3. A taxpayer has multiple options to preserve her interest. Most importantly here, a taxpayer may redeem delinquent property by paying tax debt, including by selling the property to satisfy the debt. *Id.* §§ 281.01, 281.02. If the taxpayer sells, she keeps any leftover proceeds.

Homeowners can also enter into payment plans to pay taxes over 10 years, *see id.* § 279.37 subds. 1-2, and qualifying senior citizens may apply to defer taxes on homes, *see id.* § 290B.01 *et seq.* These senior citizens' annual payments are capped, usually at three percent of annual income. *Id.* § 290B.05 subd. 1. The remaining tax is deferred until the owner dies or sells the property. *See id.* § 290B.08.

Additionally, Hennepin County has pioneered a program to help homeowners avert forfeiture. The County's "Navigator Program" connects homeowners with services, like social workers, to provide financial counseling and other assistance.[2] This program has helped hundreds of residents. The County also exercises discretionary authority to abate interest and penalties when "just and equitable." *Id.* § 375.192 subd. 2.

4. If an owner does not act, the redemption period ends in "Year Five"—five years after taxes became due. At this point, "absolute title" to the property

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[2] Daniel Rogan, *Tax Forfeiture in Hennepin County* 2 (Feb. 2023), *available at* https://www.hennepin.us/-/media/hennepinus/residents/property/tfl/tax-forfeiture-3-6-2023.pdf.

vests "in the state." *Id*. § 281.18. This event cancels the entire tax debt, along with all liens on the property. *See id*. §§ 281.18, 282.07.

But even after forfeiture, Minnesota law creates another opportunity to retain equity. Former owners—and even other interested parties, such as mortgagees—can apply to repurchase the property for the amount of the outstanding tax debt. *Id*. § 282.241 subd. 1. Counties may grant such applications to correct "undue hardship or injustice." *Id.* For homestead properties, applicants may seek to repurchase until the county resells the property. *See id.*

5. Minnesota tasks counties with returning forfeited properties to the tax rolls. This can require significant investments—including demolishing or rehabilitating dilapidated structures. *See, e.g*., *id*. § 282.04 subd. 2. The county may then sell property to other governmental entities or to a private buyer. *Id*. § 282.01. After reimbursing expenses the government incurs in connection with the property, the county distributes any remainder to the school district, city, and county. *Id*. § 282.08.

In Hennepin County, the costs of uncollected taxes and administering tax forfeiture laws exceed the revenues generated by sales of tax-forfeited parcels.[3]

B. Procedural Background

1. Petitioner Geraldine Tyler owned a condominium in Hennepin County. She walked away from her property in 2010. *See* Pet. App. 4a. She paid no taxes between 2011 and 2015, when forfeiture occurred. *See id.* Petitioner's complaint alleges that her cancelled

[3] Rogan, *supra*, at 2-3.

tax debt totaled $15,000, including taxes, penalties, and interest. *Id.* The complaint includes no allegations concerning any *non*-tax debt encumbering the property. *See* JA 2-34.

Petitioner has never alleged that she lacked notice of her property taxes or the ability to pay. *See id.* Yet, between 2011 and 2015, Petitioner chose not to pay taxes or sell her property, forcing the government to act. Pet. App. 4a. In 2015, after Petitioner had received multiple notices that her property would forfeit, absolute title transferred to the State. After forfeiture, Petitioner never sought to repurchase her property for the price of her tax debt and thus recover any equity she may have had.

Over a year after forfeiture, in November 2016, the County sold the property to a third-party for approximately $40,000. *Id.*

2. Five years after the 2016 sale, Petitioner filed this putative class action in state court asserting claims under the Takings and Excessive Fines Clauses. JA 2-34. Hennepin County removed, and the District Court dismissed for failure to state a claim. JA 1; Pet. App. 26a-44a. The Eighth Circuit unanimously affirmed, *see* Pet. App. 1a-10a, based on this Court's decision in *Nelson*. *Id.* at 8a.

As the Eighth Circuit explained, *Nelson* "addressed the constitutionality of a tax-forfeiture scheme under which the City of New York foreclosed real property for delinquent taxes, and retained the entire proceeds of the sale." *Id. Nelson* held "that nothing in the Federal Constitution prevents this where the record shows adequate steps were taken to notify the owners

of the charges due and the foreclosure proceedings." 352 U.S. at 110.

The Eighth Circuit also rejected Petitioner's excessive fines claim, adopting the District Court's "well-reasoned" analysis. Pet. App. 9a. The District Court had explained that Minnesota's system "compensat[es] the government for the losses caused by the non-payment of property taxes" and bears "none of the hallmarks of punishment." *Id*. at 44a.

This Court granted certiorari.

SUMMARY OF ARGUMENT

I. Petitioner lacks standing. Her theory of injury rests entirely on an alleged constitutional entitlement to "equity"—defined as her "financial interest in the property after deducting encumbering liens." Pet'r Br. 10. But the complaint carefully avoids alleging that Petitioner had any such equity, and public records reveal substantial private liens, making it unlikely she possessed any equity. Petitioner has therefore failed to articulate an Article III injury-in-fact.

II. On the merits, Petitioner fails to allege a compensable taking. States may place reasonable conditions on land ownership—here, the obligation to pay taxes—and treat failure to comply with those conditions as forfeiture of the entire property. *Texaco*, 454 U.S. at 526; *Hawkins*, 30 U.S. at 467-468. Because owners can avert this result, such forfeitures have never constituted compensable takings. *Texaco*, 454 U.S. at 530-531.

The specific practice of an entire property interest forfeiting when the owner fails to pay property taxes has been employed since the Founding. Although

these laws have not been the majority rule, their persistence disproves Petitioner's theory that there is a universal, common-law rule requiring governments to liquidate property interests on behalf of delinquent taxpayers.

To the contrary, this Court has repeatedly sustained States' power to treat failure to comply with reasonable conditions on ownership as forfeiture of an entire property interest. These forfeitures are unlike compensable takings, where an owner cannot act to avert the forced taking; instead, they are a consequence of the owner's neglect or abandonment.

As the Eighth Circuit recognized, this Court applied these principles to property tax forfeiture laws in *Nelson*. There, this Court held that New York City could refuse compensation where the owners had sufficient notice and a meaningful, pre-forfeiture opportunity to preserve their interest. 352 U.S. at 109-110. Nothing in this Court's other Takings Clause precedents undermines a State's authority to treat delinquent property as forfeited. A State does not eliminate property interests "*ipse dixit*" when it enforces longstanding, reasonable conditions on ownership. *Webb's Fabulous Pharms., Inc.* v. *Beckwith*, 449 U.S. 155, 164 (1980). Nor do forfeiture laws represent a sharp break from common-law tradition, *see Phillips* v. *Wash. Legal Found.*, 524 U.S. 156, 165-168 (1998)—rather, they align with practices that pre-date the Revolution and have existed ever since.

Minnesota's law fully accords with this history and tradition. Petitioner had five years to preserve any equity she had by paying her taxes, selling her property and retaining any proceeds, or opting into a payment plan allowing her to pay over a ten-year period.

Petitioner chose none of the above, instead abandoning any interest she had.

Applying Petitioner's understanding of the Takings Clause would create inefficient incentives for property owners, impose difficult problems of administration on States, and change the law of forfeiture across the country—not just in a handful (or even a minority) of States.

III. Petitioner also fails to state a claim under the Excessive Fines Clause. That provision does not apply to laws that are remedial rather than punitive. *United States* v. *Bajakajian*, 524 U.S. 321, 328, 331, 342-343 (1998). Minnesota's tax forfeiture law is remedial for three reasons: (1) forfeiture allows counties to recover lost revenue and costs, restore abandoned and delinquent property to productive use, and ensure finality for public revenue streams; (2) forfeiture has no connection to criminal misconduct, mental state, or moral blameworthiness; and (3) forfeiture may result in a *windfall* for former owners because it may cancel more debt than delinquent property is worth. If the Court disagrees, however, it must remand for the lower courts to consider whether the "fine" was excessive given the lack of a record on that issue.

ARGUMENT

I. PETITIONER HAS NOT ADEQUATELY ALLEGED ARTICLE III STANDING.

Petitioner does not dispute that she failed to pay taxes, or the State's power to divest her of title to and control over her condominium. Instead, Petitioner alleges she is injured because the County deprived her of "equity," which she defines as her "financial interest

in the property after deducting encumbering liens." Pet'r Br. 10.[4]

But there is a fundamental problem with that claim. The complaint *never alleges Petitioner has a financial interest in the property after deducting encumbering liens*. The complaint does not even state what liens—in what amount—encumbered the property. *See* JA 2-34. Petitioner has thus failed to allege an injury-in-fact necessary for Article III standing. *See Lujan* v. *Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

This Court "has an independent obligation to assure that standing exists"—regardless of whether the issue was previously raised by the parties. *Summers* v. *Earth Island Inst.*, 555 U.S. 488, 499 (2009). On a motion to dismiss, the plaintiff's complaint "must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.' " *Ashcroft* v. *Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp.* v. *Twombly*, 550 U.S. 544, 570 (2007)). It is not enough if the allegations are "merely consistent with" the existence of an injury. *Twombly*, 550 U.S. at 557. Allegations must rule out any "obvious alternative." *Id.* at 567.

The complaint fails to satisfy this hornbook standard. In a single paragraph, the complaint states that "the outstanding taxes and fees were only $15,000," and that the property eventually sold for $40,000. JA 5. That's it. Petitioner never states that she actually had "equity," nor does she disclaim the existence of

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[4] Petitioner's theory of injury is the same for her Eighth Amendment claim. *See* Pet'r Br. 33 n.16.

other debts or encumbrances exceeding the $25,000 difference.

Public records, moreover, establish that Petitioner's property was encumbered by substantial private debt. *See Papasan* v. *Allain*, 478 U.S. 265, 268 n.1 (1986) (taking judicial notice of public records); 5B Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure, Civil* § 1357 (3d ed. 2022 update). In December 2002, Petitioner obtained an adjustable-rate 30-year mortgage with a $48,750 principal and an interest rate ranging from 7.25% to 14.2%. *See* Mortgage Between Geraldine Tyler and New Century Mortgage Corporation dated Dec. 18, 2002, at 2; Adjustable Rate Rider dated Dec. 18, 2002, at 1-2.[5] The mortgagee took the first step toward foreclosure proceedings in 2008. *See* Notice of Pendency of Proceeding and Power of Attorney to Foreclose Mortgage dated Sept. 24, 2008.[6] In 2014, Petitioner's homeowner's association recorded a separate lien for $11,660 in unpaid assessments and fees. Statement of Assessment Lien dated June 19, 2014, at 2.

Given Petitioner's failure to allege any equity in the property, and public records showing substantial encumbrances, the complaint fails to establish an Article

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[5] The public records cited in this paragraph may be located by conducting a record search here: https://www.hennepin.us/residents/property/real-estate-document-copies-and-research.

[6] It is unclear how this delinquency was resolved, but it suggests a significant remaining encumbrance. Indeed, conservatively assuming Petitioner made every payment at the minimum interest rate, according to standard amortization calculations her principal balance would still have been around $40,000 in 2015.

III injury-in-fact. Petitioner's standing problem reflects the reality that property owners with meaningful equity, who have notice that forfeiture will occur, do not stand by and forfeit their property. *See* JA 51; *Amicus Curiae* Br. of Wisconsin Realtors Ass'n 20.

If the Court is to address the constitutional questions presented, it should only do so where there is a genuine controversy. *See TransUnion LLC* v. *Ramirez*, 141 S. Ct. 2190, 2203 (2021). This Court should be especially hesitant given the serious federalism interests at stake: A decision could potentially invalidate dozens of State laws in an area where deference to States is at its height. *Infra* pp. 43-44. The Court should thus hold that Petitioner has failed to allege standing.

II. PETITIONER FAILS TO STATE A CLAIM UNDER THE TAKINGS CLAUSE.

If the Court reaches the merits, it should affirm. As Petitioner now frames this case, the critical question is whether a compensable taking occurs when title to a delinquent property transfers to the State after the owner refuses to pay taxes for five years. *See* Pet'r Br. 24. It does not.[7]

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[7] Petitioner's theory has shifted. *See* Br. in Opp. 14-15. In the lower courts, she focused on the theory that a taking occurred when the government failed to provide surplus proceeds *after* the post-forfeiture sale in 2016, and the lower courts thus focused on whether she had an independent property right to post-forfeiture sale proceeds. *See, e.g.*, C.A. Oral Arg. at 8:49-9:15 ("What we

This case lies at the intersection of two sovereign powers, neither of which implicates the Takings Clause. *First*, the power to tax is a core attribute of sovereignty, and States are owed substantial deference in exercising that power. *Nat'l Priv. Truck Council, Inc.* v. *Oklahoma Tax Comm'n*, 515 U.S. 582, 586 (1995). It is thus "beyond dispute" that taxes are not takings. *Koontz* v. *St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 615 (2013). *Second*, States similarly possess "the power to condition the permanent retention of [a] property right on the performance of reasonable conditions that indicate a present intention to retain the interest." *Texaco*, 454 U.S. at 526. When an individual fails to comply with such conditions, States may treat the entire underlying property interest—including a "fee simple estate"—as constructively abandoned and therefore forfeited. *Id.* at 527, 530. This, too, is not a " 'taking' that requires compensation." *Id.* at 530.

Minnesota's property tax laws reflect both sovereign powers. Requiring owners to pay property taxes is a reasonable, indeed quintessential, condition on land ownership. If owners repeatedly fail to pay after ample notice and opportunity to act to preserve their in-

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argue is essentially that * * * because the government failed to pay, later on, when it sold the property. * * * That's when the taking occurred, when the government failed to refund what does not rightfully belong to it."). Perhaps to associate herself with the Sixth Circuit's intervening decision in *Hall* v. *Meisner*, 51 F.4th 185 (6th Cir. 2022), *petition for cert. filed*, No. 22-874 (Mar. 9, 2023), Petitioner now argues only that the taking occurred when she forfeited her property to the State in 2015, *see* Pet'r Br. 24.

terest, then "the government may hold citizens accountable for tax delinquency by" treating their property as forfeited. *Jones* v. *Flowers*, 547 U.S. 220, 234 (2006). This is not a compensable taking; rather, it is "the consequence[] of [the owner's] neglect." *Texaco*, 454 U.S. at 530.

History and precedent confirm that forfeitures of an entire interest in property for failure to pay property taxes are not compensable "takings." Similar forfeiture provisions existed well before the Founding. Admittedly, these laws have largely represented a minority rule. But the persistence of such forfeiture laws throughout the "long journey" of "Anglo-American history," *New York State Rifle & Pistol Ass'n* v. *Bruen*, 142 S. Ct. 2111, 2156 (2022), disproves Petitioner's efforts to manufacture an "accepted rule" against such forfeiture. *Ramos* v. *Louisiana*, 140 S. Ct. 1390, 1396 n.15 (2020). Petitioner has fallen well short of assembling the "wealth of authority" necessary to establish a constitutional limitation. *Gamble* v. *United States*, 139 S. Ct. 1960, 1975-76 (2019). Constitutional interpretation "must acknowledge a practice that was accepted by the Framers and has withstood the critical scrutiny of time and political change." *Town of Greece* v. *Galloway*, 572 U.S. 565, 577 (2014).

Moreover, this Court has repeatedly sustained the States' power to impose complete forfeiture as a consequence of owners' neglect. In *Nelson*, for example, this Court expressly held that forfeiture of an entire interest in property for failure to pay taxes does not run afoul of the Takings Clause. 352 U.S. at 109-110. This Court should not, by judicial fiat, prohibit this well-known exercise of sovereign power "practiced for

two hundred years." *See Jackman* v. *Rosenbaum Co.*, 260 U.S. 22, 31 (1922).

A. Minnesota's Forfeiture Law Is Deeply Rooted In Anglo-American History.

From thirteenth century England to the present, laws have treated an owner's entire interest in land as forfeited when owners refuse to pay their taxes. Such forfeitures served as a key mechanism to return abandoned land to productive use and the tax rolls. Throughout this long Anglo-American history, judicial focus has been on ensuring ample notice and a meaningful opportunity to act to avert forfeiture. When the owner fails to take advantage of that opportunity, she constructively abandons her interest. Minnesota law falls within that long tradition. Minnesota provided Petitioner ample warning and *five years* to act, including by selling the property herself to claim any equity. Imposing forfeiture as a consequence of Petitioner's neglect is not a compensable taking.

1. Minnesota's forfeiture practices trace back to the Statute of Gloucester.

The roots of Minnesota's authority to treat delinquent or abandoned property as forfeited trace back to medieval England. The Statute of Gloucester, enacted in 1278, empowered lords to recover land through the writ of *cessavit per biennium* if occupants failed to pay feudal obligations for two years, and the lord could not recover the debt by distraining personal property. Delinquent occupants could redeem the land "before judgment" by paying "arrears" and "damages." David Ibbetson, *Civilian and Canonist Influence on the Writ of* Cessavit Per Biennium, *in Laws, Layers and Texts: Studies in Medieval Legal History in Honour of Paul*

Brand, 87, 88 (Susanne Jenks et al., eds. 2012) (quoting Statute of Gloucester). But if the occupant "delay[ed] until [the land] be recovered by judgment, he shall be barred for ever" from his entire interest. *Id*. (same).

The writ of *cessavit* mirrored and may have derived from an earlier English practice known as *stakement*, or even older sixth century Roman law. *Id*. at 91-94. This writ reflected an English lord's authority to escheat—that is, reclaim—unoccupied and unproductive land in a variety of contexts. *See* 1 Sir Frederick Pollock and Frederic William Maitland, *The History of English Law Before the Time of Edward I*, at 332-335 (2d ed. 1898).

2. Laws like Minnesota's were common in colonial America.

Abundant "evidence of an early American practice" confirms that delinquent or absentee landowners forfeited their entire interest in land when they failed to pay a land tax called quit-rent. *Bruen*, 142 S. Ct. at 2142; *see Ramos*, 140 S. Ct. at 1396.

Quit-rent originated as a feudal charge on land in England. The charge "quit" the landowner "from all other annual feudal charges." Beverly W. Bond, Jr., *The Quit-Rent System in the American Colonies* 25 (1919). In colonial America, quit-rent was analogous to a modern real property tax; it flowed either to colonial proprietors (such as Maryland's Lord Baltimore) or the Crown and at times funded colonial government. *See id*. at 30, 32, 234, 249-250, 280-283, 330-331, 346-348, 443-444. In at least Maryland, Virginia, South Carolina, North Carolina, and Georgia, a landowner's failure to pay quit-rent could result in the

land's complete forfeiture, by colonial legislation or the terms of a land grant. *See id*. at 120-121, 127, 177, 230, 301, 320; *see also id*. at 363-366, 372, 375 (describing the practice elsewhere in the British Empire).

Thus, in 1710, 1712, and 1748, Virginia's Assembly provided that "upon failure of payment" for three years "all the estate, right, and title of" a landowner "shall be determined and *utterly void*." 4 William Waller Hening, *The Statutes at Large; Being A Collection of all the Laws of Virginia from the First Session of the Legislature in the Year 1619*, at 41 (1820) ("Hening") (emphasis added); *see* 3 Hening, at 526-527; 5 Hening, at 418-420. Land similarly forfeited "for want of cultivation." *See, e.g.*, *Wilcox* v. *Calloway*, 1 Va. (1 Wash.) 38, 39 (1791).

In some cases, early colonial States did not treat land as forfeit where the owner lacked legal capacity to act, confirming that these legislatures saw due process as a key limitation to protect property rights. Thus, Maryland's Assembly carved out an exemption for "Orphans vnder sixteene yeares of age." *Proceedings and Acts of the General Assembly of Maryland, January 1637/8-September 1664*, at 289 (William Hand Browne, ed. 1883). But for those who had capacity to act—like Petitioner—the law required owners to pay or forfeit their land. *Id.*

New York's colonial legislature required authorities to sell the minimum portion of delinquent land necessary to satisfy outstanding quit-rent. *See* Bond, *supra*, at 272-275. But other colonial assemblies declined to adopt New York's policy, disproving Petitioner's theory that English law imposed a limit on the State's substantive power to return abandoned land to productive use and the tax rolls.

3. Laws like Minnesota's persisted through the Founding Era.

Shortly after the Founding, at least two States provided that an owner's failure to fulfill land tax obligations resulted in forfeiture of the entire delinquent property. In 1790, Virginia law provided that if "the tax on any tract of land" "shall not be paid for the space of three years, the right to such lands *shall be lost, forfeited and vested in the Commonwealth*." 1790 Va. Acts 5 (emphasis added). The law thus provided for forfeiture of the entire "tract of land" taxed. *Id.* Virginia required notice before forfeiture and provided that "infants" and those "non compos mentis" had "three years to save" the land "from forfeiture after such disability be removed." *Id*. But Virginia otherwise authorized forfeiture of delinquent land, and provided no right to surplus. *See id.*

In 1801, Kentucky law similarly provided that any mentally competent adult "claiming lands in this state, and failing to list the same for taxation" "shall for, and *in consequence of such failure*, forfeit his or her claim to this commonwealth." 2 William Littell, *Statute Law of Kentucky* 463-464 (1810) (emphasis added). As in Virginia, there was no provision for the owner to recover surplus. *See id.*

The Founders considered such statutes lawful. St. George Tucker composed one of "the most important early American edition[s] of Blackstone's Commentaries," which has frequently guided this Court's historical inquires. *District of Columbia* v. *Heller*, 554 U.S. 570, 594 (2008); *see, e.g.*, *Dobbs* v. *Jackson Women's Health Org.*, 142 S. Ct. 2228, 2251 (2022). Tucker explained that Virginia had abolished forfeiture of property "upon conviction of any felony," "[b]ut

where the owner of lands neglects to pay the taxes thereon for three years, *this operates as a forfeiture under our present laws*." 2 *Blackstone's Commentaries* 154 n.3 (St. George Tucker ed., 1803) (emphasis added).

According to Tucker, the State's authority to treat delinquent lands as forfeited rested "upon the principle implied in every government, that those who enjoy property under it, shall contribute to support it." *Id*. Tucker did not suggest that Virginia's 1790 law—or earlier colonial laws, *see id.* at 43 n.24—violated constitutional or common-law principles because they failed to provide a right to surplus equity.

Indeed, as a judge on the Virginia Supreme Court of Appeals, Tucker approved Virginia's forfeiture laws. In 1808, Tucker construed Virginia's 1790 statute to require a "legal proceeding" before the entire property interest was forfeited, citing among other things the Magna Carta provision that is considered the basis for the Constitution's Due Process Clause. *Kinney* v. *Beverley*, 12 Va. (2 Hen. & M.) 318, 334, 336 (1808) (Tucker, J.). But Tucker—and the full Virginia court—confirmed Virginia had authority to treat an entire interest in delinquent property as forfeited, just as the King did if "quit-rent was not paid." *Id*. at 333; *see also id*. at 344 (Roane, J.) ("I cannot for a moment doubt the power of the Legislature to pass the law in question * * * ."). This historical focus on notice and due process—which Minnesota provided Petitioner here—protected property rights by ensuring owners could act to secure their interests.

Other courts similarly enforced *procedural* protections before forfeiture, without suggesting the complete forfeiture of the land was *substantively* unlawful.

See, e.g., *Barbour* v. *Nelson*, 11 Ky. (1 Litt.) 59, 62 (1822) (per curiam). This history cuts sharply against Petitioner's theory. If ancient principles obviously prohibited these laws, surely Tucker and these contemporaneous courts would have said so.

4. Laws like Minnesota's continue to the present.

Throughout the Nineteenth and into the Twentieth Centuries, States consistently exercised the power to treat delinquent property as forfeited without providing any ability to claim surplus equity after forfeiture.

For example, in 1836, Maine provided that, if taxes went unpaid for four years on unincorporated land, the land "shall be *wholly* forfeited and vest in the State—free and quit from *all* claims by any former owner or owners." 1836 Me. Laws 323, 325 (emphases added); *see also* 1848 Me. Laws 78-81; 1849 Me. Laws 115-118.

In 1843, North Carolina's legislature passed a law providing that landowners who failed to pay taxes on swamp lands within 12 months "shall forfeit and lose *all* right, title and interest." 1842 N.C. Sess. Laws 64 (emphasis added); *see also* 1889 N.C. Sess. Laws 256. North Carolina courts required owners to receive meaningful "notice" and the ability "to defend his right, if he shall see fit." *E. Carolina Land, Lumber & Mfg. Co.* v. *State Bd. of Educ.*, 7 S.E. 573, 577 (N.C. 1888). But they did not question the State's authority to impose such a forfeiture after sufficient process.

In 1869, Louisiana law provided for the forced sale of tax-delinquent land, without providing the owner any proceeds. *See* 1869 La. Acts 159, § 63. And in 1895, California law required the State to sell delinquent land to the "highest bidder" and then distribute

the proceeds to the State, county, and city. 1895 Cal. Stat. 338-339. These laws disprove Tyler's theory that Minnesota's law is a historical anomaly.

Other States limited the government to selling the minimum fraction of land necessary to pay the tax debt. But many of these States *also* provided that if the delinquent property failed to sell at auction, for whatever reason, the property completely forfeited to the government. *See, e.g.*, 1822 Ohio Laws 28; 1837 Ark. Acts 16-17; 1859 Wis. Sess. Laws 23; 1903 Neb. Laws 461-462.[8]

One State that provided surplus specifically rejected Petitioner's theory of the basis for that right. In 1884, West Virginia's Supreme Court held that the State's payment of surplus did not reflect an ownership "interest in the land and its proceeds." *McClure* v. *Maitland*, 24 W. Va. 561, 580 (1884). Instead, any "grant or claim thus conferred" "is a simple matter of grace, a gift without any consideration therefor * * * . It is a mere bounty gratuitously bestowed by the State, which she had the undoubted right to give or withhold." *Id*.

Nineteenth century treatises likewise confirmed the State's authority to treat delinquent land as forfeited,

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[8] The United States suggests (at 17) these statutes were constitutional because "the market" necessarily "determined that the land was less valuable than the tax debt." That appears to be factually incorrect. Because tax sales are forced, forfeited properties typically sell for under fair market value, *see infra* pp. 40-42, and sales may fail to garner bids for many reasons. At least one of these statutes contemplated forfeited land might later sell for more than "taxes and penalties due" and directed surplus to "the school fund." 1837 Ark. Acts 21.

and rejected Petitioner's theory that States must provide owners any surplus. Consider Henry Campbell Black's treatise. The very page Petitioner quotes (at 15-16) says that in those States that "declar[e] a forfeiture of the estate for non-payment of the taxes, there *can of course be no question*" that whatever amount is collected when forfeited property is sold, "*it clearly belongs to the State alone*." Henry Campbell Black, *A Treatise on The Law of Tax Titles* § 157, at 199 (1888) (emphases added).[9]

Thomas Cooley similarly explained that no "constitutional principle * * * entitles a party to have his duty coerced by a public sale of property, rather than by a forfeiture of it." Thomas M. Cooley, *A Treatise on the Law of Taxation* 318 (1879). A forced sale might be "most advantageous to the person taxed, because it might leave to him some portion of his property after the tax was satisfied." *Id*. But Cooley recognized "there is no imperative principle" requiring the legislature "to fix upon those [rules] which would be most for the advantage of a negligent or defaulting citizen." *Id*.

Other authors confirmed that, although "it is usual to provide for the sale of the real estate," in some States "the land is declared to be forfeited." W. H. Burroughs, *A Treatise on the Law of Taxation* § 110, at 277-278 (1877). Legislatures were thus free to choose "forfeiture[] for the neglect of the owner of an estate to list his land, or pay the tax assessed upon it." Robert

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[9] Black distinguished between States that provided forfeiture of the entire "estate" and those that provided for a tax sale. Black, *supra*, § 157, at 199. He identified a right to "surplus" only in the latter States. *Id.*

S. Blackwell, *Blackwell on Tax Titles* 537 (1855). These authors did not suggest that, in States choosing forfeiture of the entire interest, a surplus was necessary.

Finally, at the turn of the twentieth century, States, including Minnesota, sold delinquent property to the purchaser willing to pay the tax debt and charge the former owner the least penalty or lowest interest rate to redeem delinquent property. If the former owner did not redeem, the purchaser kept the entire property. *See, e.g.*, 1895 Ill. Laws 299; 1901 Colo. Sess. Laws 322-323, 326; 1902 Minn. Laws ch. 2, tit. III, §§ 24-25; 1918 N.J. Laws 888, 896; 1929 Ariz. Sess. Laws 134, 143. Such laws did not include any provision for owners to receive surplus, and they reflected States' broad authority to structure property tax laws to achieve competing policy goals.

5. Petitioner's selective history is flawed.

Petitioner claims her legal theory reflects ancient principles, but marshals little more than "spotty" *dictum*. *Gamble*, 139 S. Ct. at 1969. This Court should not enshrine Petitioner's flawed history into constitutional law.

First, and most critically, Petitioner's history is incomplete and inaccurate. She misses the long Anglo-American tradition permitting forfeiture of delinquent land. Indeed, Petitioner quotes Black's treatise, but omits language appearing *on the very same page* that directly contradicts her theory. *See* Black, *supra*

§ 157, at 199.[10] Petitioner similarly cites (at 15-16) Cooley, but omits text confirming States' authority to treat delinquent land as forfeited. Cooley, *supra*, at 318.[11]

Second, Petitioner conflates historical limitations on collecting *in personam* tax debts with the longstanding tradition of forfeiting property interests for failure to pay *in rem* property taxes. Under Anglo-American tradition, when a land tax goes unpaid and the owner receives ample notice but fails to act, the entire interest in land may lawfully forfeit to the State. *Supra* pp. 17-25. Because this case involves an unpaid real property tax, that longstanding rule governs this case.

Petitioner cites (at 14) Chapter 26 of the Magna Carta, which provided that the Crown could seize only so much "*chattels*" as necessary to pay outstanding *in personam* debts. William Sharp McKechnie, *Magna Carta: A Commentary on the Great Charter of King John* 322 (2d ed. 1914) (emphasis added). This applied, however, to movable goods unrelated to the underlying debt. Under the Statute of Gloucester enacted in the same era as Magna Carta, if an occupant did not pay feudal charges linked to land, a lord initially distrained movable goods to recover the debt.

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[10] Contrary to Petitioner's characterization (at 16), Black expressed concern only where forfeiture occurred "without a judicial ascertainment and assertion of the delinquency." *See* Black, *supra*, § 71, at 92.

[11] The United States suggests (at 19 n.4) that Cooley used "forfeiture" to mean only a non-judicial procedure, followed by an administrative sale. This is incorrect: Cooley cited the 1790 Virginia law, which did not provide any sale proceeds to former owners. *See* Cooley, *supra*, at 316.

But if no goods were present, the entire property forfeited to the lord. *See* Ibbetson, *supra*, at 88; Bond, *supra*, at 30.

Petitioner (at 14) similarly "reads volumes into a flyspeck" of Blackstone, *Gamble*, 139 S. Ct. at 1974, dealing with the law of bailment and the seizure of distrained goods. 2 William Blackstone, *Commentaries* *452-453. The nineteenth century cases Petitioner cites (at 16) likewise dealt with the sale of "goods and chattels" for tax debts. *Seekins* v. *Goodale*, 61 Me. 400, 402 (1873); *see Cone* v. *Forest*, 126 Mass. 97, 97 (1879). These precedents are simply inapplicable to the question presented here involving an *in rem* tax linked to the land.

Third, a careful read of those cases Petitioner identifies that involved delinquent land (at 16-17) confirm there was no ancient rule against land forfeiture when owners fail to pay land taxes. *Martin* v. *Snowden*, 59 Va. (18 Gratt.) 100, 123-124 (1868), *aff'd sub nom. Bennett* v. *Hunter*, 76 U.S. (9 Wall.) 326 (1869), rebounds on Petitioner. *Martin* relied on perceived differences between the taxing power of States and that of Congress. 59 Va. at 131. The court stated that a "State legislature may provide that lands shall be forfeited to the State in case the taxes due upon them are not paid" "unless [the power] has been denied to [the legislature]," but believed Congress lacked the same power. *Id.* When reviewing *Martin*, this Court did not even adopt that limitation on Congress' authority. *Bennett*, 76 U.S. at 333; *see infra* pp. 34-35 (discussing *Bennett*).

Griffin v. *Mixon*, 38 Miss. 424 (1860), struck down Mississippi's 1850 forfeiture law primarily because forfeiture occurred "without hearing, without inquiry,

without notice." *Id*. at 451-452. And *Shattuck* v. *Smith*, 69 N.W. 5 (N.D. 1896), suggested in passing that a statute with "no provision" for "surplus" "*might*" constitute "a violation of the constitutional provision against taking property without due process of law." *Id*. at 12 (emphasis added). These reeds are too slender to establish the uniform rule Petitioner claims existed.[12]

Even if these cases took a firm position on the question presented, they hardly represented a unanimous consensus. In fact, more than a century ago, the California Supreme Court rejected the very argument Petitioner makes here: that it violates "fundamental, equitable principle[s]" not to pay the "original owner" any "surplus." *Fox* v. *Wright*, 91 P. 1005, 1006 (Cal. 1907). The *Fox* court stressed that a delinquent owner had a "full period of five years" to act before California resold delinquent land. *Id*. The court recognized that other States chose to provide "surplus moneys" "as an act of generosity" that did not reflect "a constitutional duty." *Id*. at 1007; *see also McClure*, 24 W. Va. at 580.[13]

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[12] The United States identifies (at 18) two more cases: *Tiernan* v. *Wilson*, 6 Johns. Ch. 411 (N.Y. Ch. 1822), and *O'Brien* v. *Coulter*, 2 Blackf. 421, 425 (Ind. 1831). Neither moves the needle. *Tiernan* relied on an English case involving *chattel goods*, not taxes on land. And although the decision is unclear, *O'Brien* appears to rest on Indiana's "revenue act of 1818." 2 Blackf. at 424.

[13] This Court's opinion in *Stead's Executors* v. *Course* rested on the Georgia "law under which [the] sale was made," not universal common-law rules. 8 U.S. (4 Cranch) 403, 414 (1808).

Fourth, the United States as *amicus curiae* agrees that, since the Founding, States have permitted forfeiture where a landowner fails to pay property taxes. U.S. Br. 16-18. The United States dismisses such laws as "rare" "outlier[s]," *id*. at 16-17, but that is not true. The United States misses the extensive colonial experience with land forfeiture, which disproves the United States' characterization of Virginia's 1790 law as "new" or "exceptional." *Id*. at 17 (quoting *Martin*, 59 Va. at 138). And the United States similarly misses key datapoints after 1790. Minnesota's property tax law reflects a longstanding practice that has persisted throughout American history.

B. Minnesota's Approach Comports With A Long Line Of This Court's Precedents.

This Court's precedent accords with the long history of forfeiture. Since the early days of the Republic, this Court has confirmed that States may "extinguish[]" interests in land when the owner fails to comply with reasonable ownership conditions and effectively abandons her property. *Texaco*, 454 U.S. at 518. *Nelson* applied these principles to the failure to pay real property taxes, and confirmed that that the State need not provide a right to claim equity after forfeiture. This Court should adhere to that precedent.

1. *This Court has long recognized that failure to comply with reasonable conditions on property ownership may result in forfeiture of the entire property.*

In 1831, the Court upheld a Kentucky statute that extinguished a former owner's real property interest through adverse possession. *See Hawkins*, 30 U.S. at

467. As this Court explained, every society must possess the power to determine when "an individual [has] abandoned his rights or property." *Id.* A person has no "right * * * to complain, when a reasonable time has been given him, if he has not been vigilant in asserting his rights." *Id.* at 466. The Court directly analogized the challenged provision to provisions from "the early settlement of the country" that declared lands forfeited for failure "to seat and improve" them. *Id.* at 467-468.

This Court has repeatedly sustained laws imposing similar consequences when property owners fail to act. *See, e.g.*, *Jackson ex dem. Hart* v. *Lamphire*, 28 U.S. (3 Pet.) 280, 290 (1830) (holding it "within the undoubted power of state legislatures to pass recording acts" where noncompliance resulted in the "deed" becoming "fraudulent and void"); *Wilson* v. *Iseminger*, 185 U.S. 55, 60-62 (1902) (a party owning a perpetual right to rents on land may "debar himself of the right to assert the same in the courts by his own negligence or laches" (quotation marks omitted)); *City of El Paso* v. *Simmons*, 379 U.S. 497, 498 (1965) (sustaining a law permitting "forfeiture" of formerly public lands sold by the State for "nonpayment of interest").

In *Texaco*, this Court held that the Takings Clause does not apply when owners fail to comply with conditions of ownership. That case concerned mineral rights under Indiana law, which the State treated as "fee simple titles." 454 U.S. at 525-526 (quotation marks omitted). Indiana completely "extinguished" any such rights that had "not been used for twenty years." *Id.* at 518 (quotation marks omitted). The law defined a "use" to include paying "taxes" "on such mineral interest," Ind. Code § 32-5-11-3 (1976), paying

rents or royalties, or recording a claim. *Texaco*, 454 U.S. at 519-520 & n.6.

The Court rejected the argument that forfeiture constituted an uncompensated taking, explaining that the State may "condition the retention of a property right upon the performance of an act within a limited period of time." *Id.* at 529. When an owner fails to act, "[i]t is the owner's failure to make any use of the property—and not the action of the State—that causes the lapse of the property right." *Id.* at 530. This "Court has never required the State to compensate the owner for the consequences of his own neglect"; under these circumstances, "there is no 'taking' that requires compensation." *Id.*

Nelson applied these principles to property tax forfeiture. There, New York law provided that real property forfeited if property taxes went unpaid for four years. *See* JA 57. New York allowed owners 20 days to file a formal answer before forfeiture and assert the property's value "substantially exceed[ed] the tax due." *Nelson*, 352 U.S. at 104 n.1, 110; JA 61-64. If an owner filed an answer, she could "receive the surplus." *Nelson*, 352 U.S. at 110. But if the owner failed to act, New York "retain[ed] the property or the entire proceeds of its sale." *Id.*

This Court explained that New York's law did not constitute "a taking without just compensation" even though the property's value or "proceeds of sale" "far exceed[ed] in value the amounts due." *Id.* at 109-110. Instead, New York may "foreclose real property for charges four years delinquent" and "retain the property or the entire proceeds of its sale" absent "timely action to redeem or to recover[] any surplus." *Id.* at 110.

As the Eight Circuit recognized, *see* Pet. App. 9a, *Nelson* requires only that the delinquent owner receive an opportunity to take "timely action" to protect her interest. 352 U.S. at 110. Minnesota law afforded Petitioner *five years* to collect any equity by either paying the delinquent taxes or selling the property herself—as opposed to the much shorter period approved in *Nelson*.

Petitioner says precious little about *Nelson*. She claims its takings discussion was *dictum* because it was not presented in the lower courts. *See* Pet'r Br. 30-31. But *Nelson* articulated a clear holding, using the phrase "[w]e hold." *Nelson*, 352 U.S. at 110. This Court regularly reaffirms its authority to reach legal issues that might otherwise be forfeited. *See Polar Tankers, Inc.* v. *City of Valdez*, 557 U.S. 1, 13-14 (2009); *United States* v. *Locke*, 471 U.S. 84, 93 (1985).

Petitioner also suggests *Nelson* is out of step with more recent Takings Clause precedent, which Petitioner contends allows an owner to sue for compensation in federal court notwithstanding "a state law procedure that will eventually result in just compensation." Pet'r Br. 31 (quoting *Knick* v. *Township of Scott*, 139 S. Ct. 2162, 2171 (2019)). But this case involves an antecedent question: whether a compensable taking has occurred at all. *Nelson* confirms that, when a party refuses to pay taxes or to take action to preserve her interest, the resulting forfeiture is not a taking.

Moreover, this Court's pre-*Knick* precedent requiring takings plaintiffs to exhaust *post*-deprivation remedies could not have explained *Nelson*. *See Knick*, 139 S. Ct. at 2167. New York law allowed the owner to request surplus only *pre*-forfeiture; the Court cited no

provision for owners who waited to act until *after* forfeiture had occurred. *Nelson*, 352 U.S. at 104 n.1, 109-110. *Knick* thus has nothing to do with *Nelson*.

This Court should adhere to *Nelson*. *See Gamble*, 139 S. Ct. at 1969 ("[S]omething more than ambiguous historical evidence is required before we will flatly overrule a number of major decisions of this Court." (quotation marks omitted)). *Nelson* reflects a long history of land forfeiture where a delinquent property owner fails to pay land taxes. *See supra* pp. 17-25. The Court has repeatedly embraced *Nelson*'s basic principles for centuries. *See, e.g.*, *Texaco*, 454 U.S. at 530-531; *Hawkins*, 30 U.S. at 465-468. Indeed, this Court has affirmed a decision applying *Nelson* to reject an analogous claim for "surplus value." *Balthazar* v. *Mari Ltd.*, 301 F. Supp. 103 (N.D. Ill. 1969) (per curiam), *aff'd*, 396 U.S. 114 (1969) (per curiam). More recently, the Court clearly reaffirmed that "[p]eople must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property," without suggesting the Takings Clause imposed any limit on that power. *Jones*, 547 U.S. at 234; *see also Bennis* v. *Michigan*, 516 U.S. 442, 452 (1996) (holding no taking occurred when a "forfeiture proceeding" complied with Fourteenth Amendment due process requirements).

Nelson has also engendered substantial reliance interests in numerous States. *See infra* pp. 43-44 (discussing the implications for States); *see, e.g.*, *Ritter* v. *Ross*, 558 N.W.2d 909, 485-486 (Wis. Ct. App. 1996); *City of Auburn* v. *Mandarelli*, 320 A.2d 22, 31 (Me. 1974). Overruling it would raise thorny questions

about substantial retroactive exposure for those jurisdictions. There is no reason to overturn longstanding precedent and unsettle this area of the law.

2. The Civil War-era cases confirm that Minnesota's law is constitutional.

Both Petitioner and the United States argue that a "trilogy" of cases interpreting a Civil War-era statute support Petitioner's position. U.S. Br. 19-22; *see* Pet'r Br. 12-14. But those three cases—and another involving the same statute—reinforce the principle that owners may forfeit property interests through inaction.

Bennett v. *Hunter*, 76 U.S. (9 Wall.) 326 (1869), considered a property forfeited for nonpayment of federal taxes. The critical question was whether title to delinquent property transferred to the United States at the moment of non-payment of taxes, or only after a public sale. *See id.* at 335.

The Court held that the statute did not transfer title until after the sale. *Id.* at 336-337. The Court did not doubt that title "can be divested by forfeiture and vested absolutely in" the sovereign for failure to pay property taxes. *See id.* at 336. Consistent with the historical focus on due process in this context, the Court questioned *only* whether forfeiture could occur automatically or required additional process. *See id.* at 335-336. The Court suggested that automatic forfeiture would be "highly penal." *Id.* at 336. But the Court did not suggest that "absolute[]" forfeiture *after* sufficient process would be a departure from "general principles of the law of forfeiture." *Id.* at 335-336.

Bennett thus reinforces the proposition that the limitations on tax forfeiture derive from the Due Process Clause, not the Takings Clause. *See supra* pp. 19-22.

The Court confronted the same statute in *United States* v. *Taylor*, 104 U.S. 216 (1881), which involved whether a forfeited property's former owner could claim sale proceeds beyond the amount necessary to pay his tax debt. *Id.* at 217. The Court found such a right relying purely on statutory interpretation principles. *Id.* at 217-218. *Taylor* did not invoke principles of constitutional avoidance or universal, common-law rules. *See Nelson*, 352 U.S. at 110 (*Taylor* had no "constitutional overtones").

The last installment in the "trilogy" is *United States* v. *Lawton*, 110 U.S. 146 (1884). *Lawton* was not materially distinguishable from, and was therefore "governed by," *Taylor*. *Lawton*, 110 U.S. at 149. In a single sentence, the Court stated that withholding the statutory surplus payment would violate both the Due Process and Takings Clauses. *See id.* at 150. *Lawton* thus stands for the uncontroversial proposition that, where the government has granted a gratuitous statutory right to surplus, withholding that surplus would violate the Fifth Amendment. *Cf. Goldberg* v. *Kelly*, 397 U.S. 254, 262 & n.8 (1970) (discussing Fifth Amendment protections for "statutory entitlement[s]" that are "a privilege and not a right" (quotation marks omitted)). It does not answer the question here—whether a landowner who takes no action to protect her tax-delinquent property is nevertheless entitled to surplus proceeds in the absence of a statutory right.

Another case involving the same federal statute provides yet further support for Minnesota's law. In

Turner v. *Smith*, 81 U.S. (14 Wall.) 553 (1871), an individual claimed the right to collect perpetual rent on forfeited property, and asserted that his right survived forfeiture. *See id.* at 560. The Court rejected that claim, holding that the forfeiture "discharged" the property "from *all liens*." *Id.* at 563 (quotation marks omitted). Notably, although the statute included a right for the former owner to claim surplus proceeds, Act of Aug. 5, 1861, § 36, 12 Stat. 292, 304, the Court did not suggest other people with interests in the property, such as the right to perpetual rent, could claim any such proceeds. *See Turner*, 81 U.S. at 562-564.

3. Petitioner's remaining arguments are wrong.

Petitioner relies on a handful of additional decisions, but none supports her position.

a. Petitioner stresses (at 25) the statement in *Webb's* that "a State, by *ipse dixit*, may not transform private property into public property without compensation." 449 U.S. at 164. But *Webb*'s involved an entirely unavoidable loss of interest on money deposited into a court interpleader fund. *Id.* at 159-160. The Court emphasized the absence of any "police power justification" or any other "reasonable basis" for the taking of the interest money. *Id.* at 163. There is therefore no conflict between *Webb's* and the longstanding principle—reaffirmed just two years later in *Texaco*—that

States may enforce forfeiture when owners fail to comply with reasonable conditions on ownership fully within their control.[14]

Similarly, this case does not involve a State "disavowing traditional property interests long recognized." *Phillips*, 524 U.S. at 167; *see* Pet'r Br. 25. As Respondents have explained, forfeiture of an entire interest in land has a long historical pedigree, including in the specific context of the failure to pay property taxes. *Supra* pp. 17-25.

Minnesota law had no contrary tradition. To be sure, before 1902, Minnesota provided a *statutory* right to claim surplus proceeds in some circumstances. *See* 1862 Minn. Laws 33. Since 1902, however, Minnesota has offered no post-forfeiture surplus. *See* 1902 Minn. Laws ch. 2, tit. III, § 24; tit. V, § 56. Petitioner cites (at 17-18) a pre-1902 case, *Farnham* v. *Jones*, 32 Minn. 7 (1884), to argue Minnesota law recognized a "common law" right to surplus proceeds. The cited language in *Farnham* is pure *dictum*. The issue in the case was whether the State could consolidate multiple parcels at a tax sale. The Minnesota court held the statute's clear language forbade the practice. *Id.* at

[14] *Cedar Point Nursery* v. *Hassid* likewise involved the unavoidable cession of the right to exclude; an owner could not have averted the State's imposition by meeting reasonable and traditional ownership conditions. 141 S. Ct. 2063, 2069 (2021).

11. Tellingly, Petitioner cites no case where Minnesota courts actually applied a common-law rule to award a former owner any proceeds.[15]

But, even assuming Minnesota once recognized a common-law right to post-sale surplus, this is not a situation where the Constitution constrains the legislature's sovereign authority to modify State law. *Phillips* suggested there might be such a limit in the face of an unbroken legal tradition, both within the State and beyond it. 524 U.S. at 165-168 & n.5. Here, however, the opposite is true: Since the Founding, various States have consistently provided for complete forfeiture of land for failure to comply with ownership conditions, including paying property taxes.

In *Hall*, the Sixth Circuit recently read *Webb's* and *Phillips* to mean that States may only exercise powers identical to private mortgagees. *See* 51 F.4th at 190. But the court did not consider the long history of property forfeiting to the government when landowners fail to pay property taxes or meet other conditions of ownership. That history shows that, when taxing and setting conditions on property ownership, States act in a unique sovereign capacity that had no analogue in *Webb's* and *Phillips*, where States ventured into non-

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[15] Petitioner's other Minnesota cases are irrelevant. *Baker* v. *Kelly*, 11 Minn. 480, 499 (1866), involves an issue analogous to the one this Court confronted in *Bennett*, 76 U.S. at 335-336—namely, whether a statute can extinguish title without formal proceedings. *State ex rel. Burnquist* v. *Flach*, 6 N.W.2d 805 (Minn. 1942), held only that when a State exercises eminent domain to take a property after it has already been forfeited for tax purposes, the former owner may apply to receive the value as compensation *after* repurchasing the forfeited property by paying off the tax debt. *Id.* at 808-809.

sovereign commercial activities. *See Webb's*, 449 U.S. at 161 (noting the absence of a "police power justification"). The Sixth Circuit erred by ignoring this critical difference.

b. Petitioner also invokes cases involving *federal* attempts to abrogate state-law property rights. Those cases are even further afield. In *Armstrong* v. *United States*, 364 U.S. 40 (1960), the government purported to extinguish a security interest under Maine law. *See id.* at 44. And in *Horne* v. *Department of Agriculture*, 576 U.S. 350 (2015), the United States required raisin "growers in certain years to give a percentage of their crop to the Government, free of charge." *Id.* at 355. Like in *Webb's* and *Phillips*—and unlike here—the owners in *Armstrong* and *Horne* could not act to preserve their property rights.[16] Moreover, the federal government did not create the underlying state-law property interests in those cases. The governmental actions therefore could not possibly be justified by a State's power to enforce conditions on property ownership. *See Texaco*, 454 U.S. at 525-526, 529-530.

This Court's decision in *Locke* shows why *Armstrong* and *Horne* are inapplicable. *Locke* involved mineral rights on federal land, which are property interests defined by federal law. 471 U.S. at 86. Congress required owners to register such rights "annually 'prior

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[16] In *Horne*, the United States argued that growers could avoid the seizure by planting other crops or using grapes for other purposes. *See* 576 U.S. at 365. The Court disagreed because this would not have allowed the owner to preserve the specific right at issue: producing *raisins*. *See id.* Property taxes are not comparable; Petitioner had every opportunity to preserve her entire interest.

to December 31,' " and provided that failure to register "extinguish[ed] those claims." *Id.* at 90, 100. The plaintiffs in *Locke* filed their notice one day late, and this Court upheld the complete forfeiture of their rights. *See id.* at 90. The Court reaffirmed the traditional sovereign power to "condition" "vested property rights" "on performance of certain affirmative duties," so long as they are "reasonable" and "further legitimate legislative objectives." *Id.* at 104. Enforcing those conditions through forfeiture was not a compensable taking; "it was [the owners'] failure to file on time—not the action of Congress—that caused the property right to be extinguished." *Id.* at 107. The same is true here: Petitioner abandoned her interest through her own inaction over five years.

C. Federalism Principles Favor Upholding Minnesota's Law.

The State of Minnesota and Hennepin County do everything possible to *avoid* forfeiture, making the Takings Clause a particularly poor fit for this situation. Delinquent property only forfeits after absentee owners like Petitioner fail to act for five years. During that period, Minnesota fully enables owners to preserve their equity by simply paying their taxes, or by selling the property. But Minnesota's legislature also determined that five years is long enough. This Court has "long recognized that principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration." *Nat'l Private Truck Council*, 515 U.S. at 586. For four reasons, this Court should respect Minnesota's reasonable tax policy judgment here.

First, Minnesota's policy creates efficient incentives for owners and government alike. An owner who has

meaningful equity has every motivation to maximize it. Moreover, because owners can sell delinquent property "at leisure and pursuant to normal marketing techniques," they can obtain a better price for the property, and recoup more surplus, than the government can at a forced sale. *See BFP* v. *Resol. Tr. Corp.*, 511 U.S. 531, 539 (1994). Requiring the government to act as a real estate agent would result in lower sale prices and greater administrative costs borne by taxpayers.

Precisely because Minnesota offers ample opportunity to maximize surplus, in Respondents' experience, it is *extremely* rare for an owner to walk away from meaningful equity. *Cf.* Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 Ind. L.J. 747, 757-758 (2000) (discussing factors that might lead an owner to abandon property). Petitioner's handful of eyepopping allegations from other jurisdictions (at 28-29), if even accurate, are rare exceptions. Indeed, the vast majority of forfeited parcels in Hennepin County are *not* homesteads and there is no significant surplus equity of any kind.[17] Petitioner's accusation (at 44) that Minnesota intentionally preys on "the weak, poor, and the unfortunate" is false. Hennepin County has pioneered a program to keep residents in their homes. *See supra* p. 6.

Nor does Hennepin County reap any "windfall." *See, e.g.*, Pet'r Br. 9, 26, 43. The opposite is true. Hennepin County's tax forfeitures do not break even.[18] Petitioner's assertion that States "confiscate hundreds of

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[17] Rogan, *supra*, at 2-3.

[18] Rogan, *supra*, at 3.

millions of dollars," *id.* at 7, relies on extra-record, untested, and undisclosed proprietary property valuations, and does not reflect reality on the ground.

To be sure, Minnesota relies on all property owners to "diligent[ly]" act in their own interests. *Id*. at 44. That is eminently reasonable. Many legal rules—including statutes of limitations—require people to affirmatively act or forfeit rights. Minnesota's law gave Petitioner *five years*. At a certain point, enough must be enough. *See Hawkins*, 30 U.S. at 466 (invoking the public interest in finality).

Second, ruling for Petitioner would pose serious practical problems. Petitioner argues that a taking occurs, and she must receive compensation, at the moment absolute title vests in the State. Pet'r Br. 24. But some States, like Minnesota, take title before any sale occurs. *See, e.g.*, Or. Rev. Stat. § 312.270; Wis. Stat. § 75.36(2); Mass. Gen. Laws ch. 60, § 52; Minn. Stat. § 282.04 subd. 2. Petitioner would require those governments to pay *before* selling the property. *See Knick*, 139 S. Ct. at 2179. Moreover, at the time of forfeiture, Hennepin County cannot know the extent of its costs for caring for a property until it returns to the tax rolls and thus cannot accurately deduct those costs from any compensation.

Petitioner exacerbates these problems by suggesting she should be compensated for fair market value rather than through any realized post-sale proceeds. *See* Pet'r Br. 24. Because they are forced, tax sales typically do *not* garner fair market value. *See BFP*, 511 U.S. at 538-539. As a result, former owners will likely claim *more* than the government will be able to recover from the property. States and localities may also be exposed to litigation about whether they did enough to

maximize a sale price—effectively asking the government to further subsidize the cost of tax delinquency.

Apparently recognizing this problem, the United States suggests the Court could redefine the constitutional measure of just compensation to mean something other than fair market value in this context, and delay the owner's right to compensation until the moment of sale. *See, e.g.*, U.S. Br. 23-34. This would introduce problems of government-created value between forfeiture and sale. And the fact that such a special rule would be *necessary* shows why the Takings Clause does not fit this case. This Court should not write a constitutional ticket good in this circumstance only and sow doubt on precedent in other areas.

Third, the disruption from ruling for Petitioner would be wide-ranging. At least nine states and the District of Columbia mirror Minnesota's approach in most cases.[19] At least ten more states allow governments to retain property without first attempting a sale in some circumstances.[20] And yet more States allow the government to purchase the property if no one

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[19] Or. Rev. Stat. § 312.270; N.Y. Real Prop. Tax Law § 1131; Mass. Gen. Laws ch. 60, § 64; Me. Stat. tit. 36, §§ 949, 943-C; 35 Ill. Comp. Stat. §§ 200/22-40, 200/22-55; Neb. Rev. Stat. §§ 77-1807(2)(c), 77-1916; Colo. Rev. Stat. § 39-11-115(1); N.J. Stat. Ann. § 54:5-32; Ariz. Rev. Stat. Ann. § 42-18303(C); D.C. Code § 47-1382(g), (h).

[20] Wis. Stat. § 75.36(2m); Idaho Code § 31-808(9); 44 R.I. Gen. Laws § 44-9-8.1; La. Stat. Ann. §§ 47:2205, 47:2236; Alaska Stat. § 29.45.460; Ark. Code Ann. § 22-6-501; Ind. Code § 6-1.1-24-6; Fla. Stat. § 197.592(3); Ohio Rev. Code Ann. § 323.78(B); Cal. Rev. & Tax. Code §§ 3791, 3791.5.

else bids more than the delinquent taxes and costs, regardless of the objective fair market value.[21] Under Petitioner's theory, each of these States—indeed, maybe *every* State—violates the Constitution because none accounts for fair market value after every forfeiture.

Fourth, Petitioner's proposed rule is fundamentally arbitrary and does not necessarily better protect owners in practice. Some States that allow a post-forfeiture claim for proceeds also provide very short windows for filing such a claim. *See, e.g.*, Alaska Stat. § 29.45.480(b) (six months); Nev. Rev. Stat. § 361.610(4) (one year); Mo. Rev. Stat. § 140.230(2), (3) (setting default at just 90 days). By contrast, Minnesota provided Petitioner a generous *five* years to act and preserve her interest. There is no reason to prefer shorter, post-forfeiture periods over a longer period pre-forfeiture. *Cf. Rummel* v. *Estelle*, 445 U.S. 263, 282 (1980) ("constitutionally imposed uniformity" is "inimical to traditional notions of federalism").[22]

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[21] *See, e.g.*, Kan. Stat. Ann. § 79-2804; Md. Code Ann., Tax-Prop. § 14-824; Del. Code Ann. tit. 9, § 8753; 72 Pa. Stat. Ann. § 5860.612-1; Wash. Rev. Code § 84.64.200; Tex. Tax Code Ann. § 34.01(j).

[22] Ruling for Petitioner could call into question the legality of setting deadlines to claim surplus—at least where those periods are shorter than the limitations period for takings claims—by converting statutory surplus claims into constitutional takings claims. *Compare* Nev. Rev. Stat. § 361.610 (one-year period to claim surplus), *with Nevada Yellow Cab Corp.* v. *State*, 521 P.3d 418 (Nev. 2022) (three-year statute of limitations for takings claims).

III. Tyler Fails To State A Claim Under The Excessive Fines Clause.

Petitioner's alternative Eighth Amendment claim fails because Minnesota's property tax is not a fine. Instead, Minnesota law serves remedial purposes: compensating government for lost revenue and expenses, restoring properties to productive use and the tax rolls, and ensuring finality for public revenue streams. Tax forfeiture also lacks any relationship to blameworthiness and can even confer windfalls on former owners.

A. Minnesota's Law Is Remedial, Not Punitive.

1. The Excessive Fines Clause constrains governments' ability to extract "a payment to a sovereign as punishment for some offense." *Browning-Ferris Indus. of Vermont, Inc.* v. *Kelco Disposal, Inc.*, 492 U.S. 257, 265 (1989). Civil forfeitures qualify as fines "if they constitute punishment for an offense." *Bajakajian*, 524 U.S. at 328. But where forfeitures serve a "remedial purpose," the clause does not apply. *See id.* at 331, 342. To determine whether a forfeiture has remedial or punitive purposes, the Court determines whether "it can only be explained as serving in part to punish." *Austin* v. *United States*, 509 U.S. 602, 610 (1993).

Two guideposts direct this inquiry. *First*, forfeitures are "remedial," rather than punitive, when they serve the "purpose of reimbursing the Government for the losses." *Bajakajian*, 524 U.S. at 342. Forfeitures can "provide[] a reasonable form of liquidated damages" as well as "serve[] to reimburse the Government for in-

vestigation and enforcement expenses." *One Lot Emerald Cut Stones & One Ring* v. *United States*, 409 U.S. 232, 237 (1972) (per curiam).

Second, forfeitures are punitive when tied to a culpable mental state. In *Austin*, the Court held that forfeiture statutes were punitive in part because they "focus[ed] * * * on the culpability of the owner" and were tied "directly to the commission of [criminal] drug offenses." 509 U.S. at 620-622. Similarly, in *Bajakajian*, the Court had "little trouble concluding" that forfeiture constituted punishment when "imposed at the culmination of a criminal proceeding and requires conviction of an underlying felony." 524 U.S. at 328. The Court has only applied the Excessive Fines Clause to forfeitures connected to crimes. *See* U.S. Br. 26-30.

2. Under this precedent, Minnesota's property tax law does not impose an Eighth Amendment "fine." The law allows recovery of costs associated with lost tax revenues and tax administration—including significant resources spent rehabilitating properties in serious disrepair. Forfeiture also returns delinquent properties to productive use and the tax rolls, stemming future government losses from unpaid taxes or more extensive remediation. And forfeiture secures finality for public revenue streams. Forfeiture of the entire property serves the latter goals in particular because it gives the State clean, marketable title and ensures localities can count on the revenue they receive.

Minnesota's property tax statute is also not linked in any way to criminal conduct, as Petitioner concedes. *See* Pet'r Br. 40. *In rem* forfeiture constitutes the *exclusive* enforcement provision for failure to pay property taxes. There is no criminal penalty. *Supra* pp. 5-

7. Indeed, forfeiture has no relationship to the taxpayer's mental state. Even if a taxpayer intentionally refuses to pay taxes when they are first due, a taxpayer may avoid forfeiture by paying taxes during the redemption period. *See* Minn. Stat. §§ 281.01, 281.02, 281.19. Conversely, even if delinquency results from non-blameworthy reasons, the underlying property forfeits to the State.

True, property tax forfeiture can be considered a "consequence[] of [the owner's] neglect" because owners may avert forfeiture by paying the tax. *Texaco*, 454 U.S. at 530; *supra* pp. 29-31. But that does not mean forfeiture is imposed to *punish* neglect. On the contrary, forfeiture remediates the consequences of the owner's neglect by recouping losses, returning the property to productive use and the tax rolls, and ensuring finality.

Finally, property tax forfeitures will redound to owners' *benefit* when they extinguish more tax than the property is worth.[23] Property tax forfeiture thus cannot "only be explained as serving in part to punish" because, under these circumstances, forfeiture inflicts no pecuniary loss. *Austin*, 509 U.S. at 610; *see also id.* at 625 n.* (Scalia, J., concurring in part and concurring in the judgment) ("statutory forfeiture must *always* be at least 'partly punitive,' or else it is not a fine").

3. Petitioner suggests anything that deters undesirable conduct must be considered punitive. *See* Pet'r Br. 38. This proves too much. Of course "civil penalties, civil forfeitures, and taxes all * * * deter certain

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[23] *See* Rogan, *supra*, at 3.

behavior." *Dep't of Revenue of Montana* v. *Kurth Ranch*, 511 U.S. 767, 778 (1994). For example, governments frequently impose consumption taxes to deter unhealthy behaviors. *Id.* at 780-781. But even "an obvious deterrent purpose" does not "automatically mark[] [such a] tax as a form of punishment." *Id.* at 780. Deterrence may serve as an indicator of punishment when the law deters *criminal* behavior. *See id.* at 783 (a tax "imposed on criminals and no others" became "a form of punishment"); *accord Austin*, 509 U.S. at 620 (noting Congress's desire to deter the criminal drug trade). Here, however, Petitioner's failure to pay property taxes was not criminal and did not even result in personal liability.

Kokesh v. *Securities & Exchange Commission*, 581 U.S. 455, 457 (2017), which held that a securities disgorgement order is a statutory "penalty," is fully in accord. *Kokesh* explained that "[s]anctions imposed for the purpose of deterring infractions of public laws are inherently punitive." *Id.* at 464. But *Kokesh* did not displace the longstanding rule that even policies "obvious[ly]" intended to deter are not "automatically" punishment. *Kurth Ranch*, 511 U.S. at 780. *Kokesh* instead considered all aspects of disgorgement in a particular statutory context and concluded that it was "intended to punish, and label defendants wrongdoers." *Id.* at 467 (quotation marks omitted).

Petitioner also asserts that the absence of a "relationship between the debt owed and the sanction imposed" renders property tax forfeiture punitive. Pet'r Br. 37. But forfeiture does not *merely* recover the unpaid tax debt, or even tax debt plus the costs of administration—although, empirically, Hennepin County's

tax forfeitures do not break even on those costs.[24] Instead, forfeiture returns property to productive use, restores it to the tax rolls, and secures finality for public revenue streams. These purposes *do* bear a clear relationship to forfeiture of the entire delinquent property. The State must obtain clean, marketable title and cut off competing claims to accomplish all its ends.

B. History Does Not Support Treating Property Tax Forfeiture As Punitive.

History counsels against applying the Excessive Fines Clause to tax forfeitures. Despite the existence of tax forfeiture since the Founding, *supra* pp. 20-25, Petitioner cites *no* sources suggesting such forfeitures were then viewed as punishment. *See* Pet'r Br. 39-43. Particularly telling, the Framers directly modeled the federal Excessive Fines Clause on a comparable provision in the Virginia Declaration of Rights. *Browning-Ferris*, 492 U.S. at 266. At the same time, Virginia treated delinquent property as forfeited for nonpayment of property taxes and failure to satisfy other conditions of land ownership. *See supra* pp. 20-21; *Hawkins*, 30 U.S. at 467-468. Yet Petitioner has identified nothing suggesting that Virginia courts analyzed those forfeitures through the lens of its Excessive Fines Clause. The same goes for other States that had both an excessive fines prohibition and property forfeiture during the early Republic. *See, e.g.*, N.C. Declaration of Rights of 1776, art. X; Ky. Const. of 1792, art. XII, § 15; Me. Const. of 1820, art. 1, § 9.

To muster historical support, Petitioner compares property tax forfeiture to customs forfeiture. *See* Pet'r

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[24] Rogan, *supra*, at 2-3.

Br. 42-43. But *Bajakajian* squarely rejected the notion that customs forfeitures were historically viewed as punishment. 524 U.S. at 331-334; *see also Leonard* v. *Texas*, 137 S. Ct. 847, 849 (2017) (Thomas, J., statement respecting denial of certiorari). Scholars have too. *See, e.g*, Caleb Nelson, *The Constitutionality of Civil Forfeiture*, 125 Yale L.J. 2446, 2456 (2016). And, regardless, the context here is very different from federal customs forfeitures: This Court has long acknowledged States' difficulties with unproductive or abandoned land. *See Hawkins*, 30 U.S. at 467-468. These problems make the attempted comparison to customs forfeitures inapt.

C. If Property Tax Forfeiture Constitutes Punishment, A Remand Is Required.

If the Court disagrees and concludes Petitioner's forfeiture constituted punishment, a remand will be required to determine whether it was "excessive." This Court has held that "a punitive forfeiture violates the Excessive Fines Clause" only when "it is grossly disproportional to the gravity of a defendant's offense." *Bajakajian*, 524 U.S. at 334. To determine whether any fine here is "grossly disproportional," the parties would need to litigate, among other issues, the extent of Petitioner's alleged equity in the property (if any),

and the "loss to the public fisc" from unpaid tax revenues and other enforcement and maintenance costs. *Id.* at 339.[25]

Finally, Petitioner suggests (at 33-34 n.16) that the Court could reverse and remand on *both* issues. But Petitioner's claims are mutually exclusive. The power to fine necessarily entails the power to exact property without compensation, subject only to the "grossly disproportional" standard. *Bajakajian*, 524 U.S. at 334. Just as a tax is not a taking for Fifth Amendment purposes, neither is a fine. *Cf. Koontz*, 570 U.S. at 615.

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[25] Petitioner claims that a service fee charged when the delinquent property list is published must include "*all* costs associated with collecting the debt," Pet'r Br. 3, but that is clearly wrong. The cited fee is a *de minimis* charge that covers only the costs "to prepare and publish the delinquent tax list and to enter judgment." Minn. Stat. § 279.092.

CONCLUSION

For the foregoing reasons, the judgment of the Eighth Circuit should be affirmed.

Respectfully submitted,

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MARCH 2023

ADDENDUM

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ADDENDUM

STATUTORY PROVISIONS INVOLVED

1. **Minn. Stat. § 279.09 provides:**

279.09. Publication of notice and list

The county shall cause the notice and list of delinquent real property to be published once in each of two weeks in the newspaper designated, the first publication of which shall be made on or before March 20 immediately following the filing of such list with the court administrator of the district court, and the second not less than two weeks later. The county shall deliver the list to the newspaper designated at least ten days before the date upon which the list is to be published for the first time. Not less than five days before the second publication, the county shall submit a revised list to the newspaper. A taxpayer who has paid delinquent taxes since the first publication must be removed by the county from the second publication.

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2. **Minn. Stat. § 279.18 provides:**

279.18. Judgment

If, after hearing, the court sustain the taxes and penalties, in whole or in part, against any parcel of land, judgment shall be rendered against the same for the amount as to which such taxes and penalties shall be sustained, with costs and disbursements, and interest at one percent per month from and after the expiration of the 20 days named in the published notice, unless the court otherwise direct. The judgment may be substantially in the form prescribed

in cases where no answer is filed, except that, in addition, it shall state that it was rendered after answer and trial; and after the description of each parcel shall be stated the name of the person answering as to the same. If the court sustain the defense or objection as to any parcel, the judgment shall discharge such parcel from the taxes in such list charged against it, or from such portion of such taxes as to which the defense or objection is sustained, and from all penalties. If such defense or objection is not sustained for the entire amount of taxes charged against any parcel, judgment shall be rendered against the same for the amount as to which the defense or objection is not sustained. The court may, in its discretion, award disbursements for or against either party.

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3. **Minn. Stat. § 279.37 provides in pertinent part:**

279.37. Confession of judgment for delinquent taxes

Subdivision 1. Composition into one item. Delinquent taxes upon any parcel of real estate may be composed into one item or amount by confession of judgment at any time prior to the forfeiture of the parcel of land to the state for taxes, for the aggregate amount of all the taxes, costs, penalties, and interest accrued against the parcel, as provided in this section. Taxes upon property which, for the previous year's assessment, was classified as mineral property, employment property, or commercial or industrial property are only eligible to be composed into any confession of judgment under this section as provided

in subdivision 1a. Delinquent taxes for property that has been reclassified from 4bb to 4b under section 273.1319 may not be composed into a confession of judgment under this subdivision. Delinquent taxes on unimproved land are eligible to be composed into a confession of judgment only if the land is classified under section 273.13 as homestead, agricultural, rural vacant land, or managed forest land, in the previous year or is eligible for installment payment under subdivision 1a. The entire parcel is eligible for the ten-year installment plan as provided in subdivision 2 if 25 percent or more of the market value of the parcel is eligible for confession of judgment under this subdivision.

* * *

Subd. 2. Installment payments. (a) The owner of any such parcel, or any person to whom the right to pay taxes has been given by statute, mortgage, or other agreement, may make and file with the county auditor of the county in which the parcel is located a written offer to pay the current taxes each year before they become delinquent, or to contest the taxes under chapter 278 and agree to confess judgment for the amount provided, as determined by the county auditor. By filing the offer, the owner waives all irregularities in connection with the tax proceedings affecting the parcel and any defense or objection which the owner may have to the proceedings, and also waives the requirements of any notice of default in the payment of any installment or interest to become due pursuant to the composite judgment to be so entered. Unless the property is subject to subdivision 1a, with the offer, the owner shall (i) tender one-tenth of the amount of the delinquent taxes, costs, penalty, and interest, and

(ii) tender all current year taxes and penalty due at the time the confession of judgment is entered. In the offer, the owner shall agree to pay the balance in nine equal installments, with interest as provided in section 279.03, payable annually on installments remaining unpaid from time to time, on or before December 31 of each year following the year in which judgment was confessed.

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4. **Minn. Stat. § 280.41 provides:**

280.41. Ownership by state

Title to all parcels of land bid in for the state shall vest in the state subject only to the rights of redemption set forth in chapter 281.

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5. **Minn. Stat. § 281.01 provides:**

281.01. Tax sale, right of redemption

Any person claiming an interest in any parcel of land bid in by the state at a tax sale may redeem the same within the time and in the manner in this chapter provided.

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6. **Minn. Stat. § 281.02 provides:**

281.02. Amount payable

Any person redeeming any parcel of land shall pay into the county treasury, the amount for which the same was bid in, the amount of all subsequent delinquent taxes, penalties, costs, and interest thereon at the rate provided in section 279.03.

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7. **Minn. Stat. § 281.17 provides in pertinent part:**

281.17. Period of redemption

(a) Except for properties described in paragraphs (b) and (c), or properties for which the period of redemption has been limited under sections 281.173 and 281.174, the period of redemption for lands sold to the state at a tax judgment sale shall be three years from the date of sale to the state of Minnesota.

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8. **Minn. Stat. § 281.18 provides:**

281.18. Lands may be redeemed

Every parcel of land heretofore sold to the state at any tax judgment sale and now subject to redemption shall continue subject to redemption until the expiration of the time allowed for redemption after the giving of notice of expiration as provided by law. Upon the expiration of such time absolute title to such parcel, if not theretofore redeemed, shall vest in the state.

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9. **Minn. Stat. § 281.23 provides in pertinent part:**

281.23. Notice

Subdivision 1. Duty of auditor. In case any parcel of land bid in for the state at any tax judgment sale has not been redeemed by 120 days before the expiration of the period of redemption of such parcel, it shall be the duty of the county auditor thereupon forthwith to give notice of expiration of the time for

redemption of such parcel, as herein provided; provided, that delay in giving such notice shall not affect the validity thereof.

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10. **Minn. Stat. § 282.07 provides:**

282.07. Auditor to cancel taxes

Immediately after forfeiture to the state of any parcel of land, as provided by sections 281.16 to 281.25, the county auditor shall cancel all taxes and tax liens appearing upon the records, both delinquent and current, and all special assessments, delinquent or otherwise. When the interest of a purchaser of state trust fund land sold under certificate of sale, or of the purchaser's heirs or assigns or successors in interest, shall by reason of tax delinquency be transferred to the state as provided by law, such interest shall pass to the state free from any trust obligation to any taxing district and free from all special assessments and such land shall become unsold trust fund land.

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11. **Minn. Stat. § 282.08 provides:**

282.08. Apportionment of proceeds to taxing districts

The net proceeds from the sale or rental of any parcel of forfeited land, or from the sale of products from the forfeited land, must be apportioned by the county auditor to the taxing districts interested in the land, as follows:

(1) the portion required to pay any amounts included in the appraised value under section 282.01, subdivision 3, as representing increased value due to

any public improvement made after forfeiture of the parcel to the state, but not exceeding the amount certified by the appropriate governmental authority must be apportioned to the governmental subdivision entitled to it;

(2) the portion required to pay any amount included in the appraised value under section 282.019, subdivision 5, representing increased value due to response actions taken after forfeiture of the parcel to the state, but not exceeding the amount of expenses certified by the Pollution Control Agency or the commissioner of agriculture, must be apportioned to the agency or the commissioner of agriculture and deposited in the fund from which the expenses were paid;

(3) the portion of the remainder required to discharge any special assessment chargeable against the parcel for drainage or other purpose whether due or deferred at the time of forfeiture, must be apportioned to the governmental subdivision entitled to it; and

(4) any balance must be apportioned as follows:

(i) The county board may annually by resolution set aside no more than 30 percent of the receipts remaining to be used for forest development on tax-forfeited land and dedicated memorial forests, to be expended under the supervision of the county board. It must be expended only on projects improving the health and management of the forest resource.

(ii) The county board may annually by resolution set aside no more than 20 percent of the receipts remaining to be used for the acquisition and maintenance of county parks or recreational areas as

defined in sections 398.31 to 398.36, to be expended under the supervision of the county board.

(iii) Any balance remaining must be apportioned as follows: county, 40 percent; town or city, 20 percent; and school district, 40 percent, provided, however, that in unorganized territory that portion which would have accrued to the township must be administered by the county board of commissioners.

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12. **Minn. Stat. § 282.241 provides in pertinent part:**[1]

282.241. Repurchase after forfeiture

Subdivision 1. Repurchase requirements. The owner at the time of forfeiture, or the owner's heirs, devisees, or representatives, or any person to whom the right to pay taxes was given by statute, mortgage, or other agreement, may repurchase any parcel of land claimed by the state to be forfeited to the state for taxes unless before the time repurchase is made the parcel is sold under installment payments, or otherwise, by the state as provided by law, or is under mineral prospecting permit or lease, or proceedings have been commenced by the state or any of its political subdivisions or by the United States to condemn the parcel of land. The parcel of land may be repurchased for the sum of all delinquent taxes and assessments computed under section 282.251, together with penalties, interest, and costs, that accrued or would have accrued if the parcel of land had not forfeited to the state. Except for property

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[1] In 2014, the repurchase period for nonhomestead properties changed from 1 year to 6 months.

which was homesteaded on the date of forfeiture, repurchase is permitted during six months only from the date of forfeiture, and in any case only after the adoption of a resolution by the board of county commissioners determining that by repurchase undue hardship or injustice resulting from the forfeiture will be corrected, or that permitting the repurchase will promote the use of the lands that will best serve the public interest. If the county board has good cause to believe that a repurchase installment payment plan for a particular parcel is unnecessary and not in the public interest, the county board may require as a condition of repurchase that the entire repurchase price be paid at the time of repurchase. A repurchase is subject to any easement, lease, or other encumbrance granted by the state before the repurchase, and if the land is located within a restricted area established by any county under Laws 1939, chapter 340, the repurchase must not be permitted unless the resolution approving the repurchase is adopted by the unanimous vote of the board of county commissioners.

The person seeking to repurchase under this section shall pay all maintenance costs incurred by the county auditor during the time the property was tax-forfeited.

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13. **Minn. Stat. § 290B.03 provides in pertinent part:**

290B.03. Deferral of property taxes

Subdivision 1. Program qualifications. The qualifications for the senior citizens' property tax deferral program are as follows:

(1) the property must be owned and occupied as a homestead by a person 65 years of age or older. In the case of a married couple, at least one of the spouses must be at least 65 years old at the time the first property tax deferral is granted, regardless of whether the property is titled in the name of one spouse or both spouses, or titled in another way that permits the property to have homestead status, and the other spouse must be at least 62 years of age;

(2) the total household income of the qualifying homeowners, as defined in section 290A.03, subdivision 5, for the calendar year preceding the year of the initial application may not exceed $60,000;

(3) the homestead must have been owned and occupied as the homestead of at least one of the qualifying homeowners for at least 15 years prior to the year the initial application is filed;

(4) there are no state or federal tax liens or judgment liens on the homesteaded property;

(5) there are no mortgages or other liens on the property that secure future advances, except for those subject to credit limits that result in compliance with clause (6); and

(6) the total unpaid balances of debts secured by mortgages and other liens on the property, including unpaid and delinquent special assessments and

interest and any delinquent property taxes, penalties, and interest, but not including property taxes payable during the year or debts secured by a residential PACE lien, as defined in section 216C.435, subdivision 10d, does not exceed 75 percent of the assessor's estimated market value for the year.

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14. **Minn. Stat. § 290B.05 provides in pertinent part:**

290B.05. Maximum property tax amount and deferred property tax amount

Subdivision 1. Determination by commissioner. The commissioner shall determine each qualifying homeowner's "annual maximum property tax amount" following approval of the homeowner's initial application and following the receipt of a resumption of eligibility certification. The "annual maximum property tax amount" equals three percent of the homeowner's total household income for the year preceding either the initial application or the resumption of eligibility certification, whichever is applicable. Following approval of the initial application, the commissioner shall determine the qualifying homeowner's "maximum allowable deferral." No tax may be deferred relative to the appropriate assessment year for any homeowner whose total household income for the previous year exceeds $60,000. No tax shall be deferred in any year in which the homeowner does not meet the program qualifications in section 290B.03. The maximum allowable total deferral is equal to 75 percent of the assessor's estimated market value for the year, less

the balance of any mortgage loans and other amounts secured by liens against the property at the time of application, including any unpaid and delinquent special assessments and interest and any delinquent property taxes, penalties, and interest, but not including property taxes payable during the year.

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