

No. 22-166

IN THE
Supreme Court of the United States

GERALDINE TYLER,

Petitioner,

v.

HENNEPIN COUNTY, MINNESOTA, *et al.*,

Respondents.

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

**BRIEF OF COUNTY TREASURERS ASSOCIATION
OF OHIO, OHIO PROSECUTING ATTORNEYS
ASSOCIATION, AND OHIO LAND BANK
ASSOCIATION AS *AMICI CURIAE* IN SUPPORT
OF RESPONDENTS**

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QUESTIONS PRESENTED

1. Whether a tax delinquent property owner who loses her right, title, and interest in a tax-foreclosed property due to the failure to pay state property taxes in accordance with a state's tax collection laws can pursue a constitutional claim for an alleged "taking" under the Fifth and Fourteenth Amendments to the United States Constitution.

2. Whether state law is controlling in determining whether a property owner who fails to pay her state property taxes has a constitutionally protected interest in the alleged "surplus value" or "surplus equity" of a tax-foreclosed property.

3. Whether the Court should dictate to state legislatures the statutory remedies that can be imposed if a property owner fails to comply with the statutory obligation to pay state property taxes in accordance with a state's tax collection laws.

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AMICI'S STATEMENT OF INTEREST

The County Treasurers Association of Ohio (“CTAO”), the Ohio Prosecuting Attorneys Association (“OPAA”), and the Ohio Land Bank Association (“OLBA”) are filing this Amicus Brief in support of Respondent, Hennepin County, Minnesota.¹ Although this appeal involves the enforcement of Minnesota’s tax foreclosure statutes, the alleged “takings” claim presented by the Petitioner’s Brief, if adopted by this Court, would significantly undermine the tax foreclosure process in all 50 states, including Ohio, because it wrongfully seeks to use federal common law to impose a new and unprecedented constitutional restriction on how a State can enforce its own tax collection laws. Thus, if adopted, Petitioner’s constitutional theory would undermine each State’s sovereign authority to create and enforce its own state taxation laws, and to determine the remedies for the failure to pay taxes.

The outcome of this case, therefore, not only affects the tax foreclosure laws of the State of Minnesota, but also affects the tax foreclosure laws of the other 49 states, including Ohio. This Amicus Brief, therefore, has been submitted by three of the statewide associations in Ohio who have a direct and substantial interest in the proper enforcement of Ohio’s tax collection laws. The CTAO is a statewide association of the 88 county treasurers in Ohio, and the OPAA is a statewide association of the 88 county prosecutors in Ohio. The County Treasurers are statutorily responsible for the collection of state property

1. Rule 37 statement: No part of this brief was authored by any party’s counsel, and no person or entity, other than amici, contributed money to fund the preparation or submission of this brief.

taxes, and the County Prosecutors are the attorneys that actually prosecute state tax foreclosure proceedings. Similarly, the OLBA has an interest in the outcome of this case because it is a statewide association of county land reutilization corporations in Ohio that are involved in the rehabilitation of vacant and abandoned properties that become the subject of tax foreclosure orders under Ohio's tax foreclosure laws.

This Amicus Brief therefore has been filed in order to ensure that this Court does not adopt any new precedent that would undermine the ability of state legislatures to adopt and enforce their own state laws relating to the collection of state property taxes. Indeed, as discussed more fully below, this Court has never held that a "takings" claim can arise from the lawful enforcement of a state's tax collection laws. *Nelson v. City of New York*, 352 U.S. 103, 110-111 (1956). If the Petitioner were to prevail with her constitutional theory, therefore, the net result would profoundly interfere with and significantly undermine the carefully crafted tax foreclosure statutes adopted by each state legislature, and wrongfully create a financial incentive for delinquent taxpayers to ignore their legal obligations to pay real estate taxes and to participate in state tax foreclosure proceedings. Instead, it would reward the delinquent taxpayers for this neglect, which is contrary to long-standing Supreme Court precedent. *See Texaco, Inc. v. Short*, 454 U.S. 516, 530 (1982) ("[T]his Court has never required the State to compensate the owner for the consequences of his own neglect"). Accordingly, the Amici respectfully request that the Court uphold the constitutionality of Minnesota's tax foreclosure laws and affirm the Eighth Circuit's judgment.

SUMMARY OF ARGUMENT

1. As this Court has repeatedly held, the Constitution “did not abolish the sovereign powers of the States, which retained ‘a residuary and inviolable sovereignty.’” *See Murphy v. National Collegiate Athletic Ass’n*, --- U.S. ----, 138 S. Ct. 1461, 1475 (2018) (citing *The Federalist* No. 39, p. 245). Indeed, out of all of the powers reserved to the States, there is no power more central to a state government’s sovereignty than the power to tax, *Dep’t of Revenue v. ACF Indus., Inc.*, 510 U.S. 332, 345 (1994), which this Court long ago recognized as “indispensable to [the States’] existence.” *Gibbons v. Ogden*, 22 U.S. 1, 199 (1824). The “power of self-government,” in fact, “cannot exist distinct from the power of taxation.” *Providence Bank v. Billings*, 29 U.S. 514, 548 (1830). Thus, where the federal government unduly interferes with the States’ sovereign power to adopt and enforce its own taxation laws, it fundamentally threatens the dual nature of our federalist system, and threatens “the liberties that derive from the diffusion of sovereign power.” *Bond v. United States*, 564 U.S. 211, 221 (2011) (quoting *New York v. United States*, 505 U.S. 144, 181 (1992)).

For this reason, this Court has long recognized the overriding importance of allowing States to exercise their sovereign taxation powers without any interference from the federal courts. As Justice Field articulated in the late 19th century, “it is upon taxation that the several States chiefly rely to obtain the means to carry on their respective government, and it is of the utmost importance to all of them that the *modes* adopted to enforce the taxes levied should be interfered with as little as possible. Any delay in the proceedings of the officers, upon whom the

duty devolves of collecting the taxes, may derange the operations of government, and thereby cause serious detriment to the public.” *Dows v. City of Chicago*, 78 U.S. 108, 110 (1870) (emphasis added). Thus, this Court has held that “it is not within either the disposition or power of this court to revise the necessarily complicated taxing systems of the states for the purpose of attempting to produce what might be thought to be a more just distribution of the burdens of taxation than that arrived at by the state Legislatures.” *Dane v. Jackson*, 256 U.S. 589, 598-599 (1921).

Based upon the inherent sovereignty of each State to adopt and enforce its own internal taxation laws, there are wide array of state-law procedures and remedies that have been adopted by state legislatures for persons who fail to pay their property taxes, including forfeiture, which is a long-standing remedy for the enforcement of federal and state tax laws. *See Direct Mktg. Ass’n v. Brohl*, 575 U.S. 1, 10 (2015) (noting the federal tax code provides a number of statutory remedies when a person fails to pay their taxes, “including liens, § 1560, distraint, § 1580, forfeiture, and other legal proceedings, § 1640.”) (emphasis added). While this Court has held that due process requires notice and an opportunity to be heard, it also has recognized that it is up to the state legislatures – not the federal courts – to determine the remedy for the failure to pay state taxes. *See Nelson*, 352 U.S. at 109-111 (rejecting takings claim arising from New York’s “retention of property, in one instance, and proceeds of sale in the other” because “nothing in the Federal Constitution prevents this where the record shows adequate steps to notify the owners of the charges due and the foreclosure proceedings,” and observing that “relief from the hardship imposed by a

state statute is the responsibility of the state legislature and not the courts”).

In this regard, this Court has consistently rejected the argument that a takings claim can arise from a property owner’s failure to comply with a State’s statutory conditions for the ownership of real property. *Texaco*, 454 U.S. at 530 (no takings claim arises from the failure to comply with statutory conditions for maintaining ownership of underground mineral interests). As explained in *Texaco*, this “Court has never required the State to compensate the owner for the consequences of his own neglect.” *Id.* Moreover, with respect to state tax laws, this Court has recognized that “[p]eople must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property.” *Jones v. Flowers*, 547 U.S. 220, 234 (2006). Thus, there is nothing in the U.S. Constitution that prohibits state legislatures from adopting laws that terminate a property owner’s right, title, and interest in a tax-foreclosed property for the failure to pay taxes so long as they provide notice and an opportunity to be heard. *Nelson*, 352 U.S. at 110-111.

By suggesting that delinquent taxpayers who lose their interest in real property as a result of the failure to pay taxes can pursue a valid takings claim in federal court, therefore, the Petitioner and her amici supporters are seeking to advance a novel proposition of law that not only conflicts with existing Supreme Court precedent, but would significantly undermine the ability of state legislatures throughout the country to remedy the unique problems posed by property owners who abandon their property and fail to pay their taxes. Each State has the sovereign authority to not only adopt taxation laws; but to

determine the rights and remedies that are available if a property owner fails to pay their taxes. It would directly undermine each State's sovereign authority, therefore, if this Court were to adopt the Petitioner's legal theory and impose its own judicial mandate about how each State must dispose of a tax foreclosed property that becomes subject to sale or forfeiture as a result of the failure to pay taxes. Rather, it should be left to each State to define what remedies should be available to enforce the State's own taxation laws subject only to the constitutional guarantee of due process of law.

2. Although Petitioner and her amici supporters want this Court to believe that she and other innocent and unsophisticated property owners were unsuspectingly and unconstitutionally stripped of their alleged "property rights," this is an inherently flawed concept that grossly distorts the tax foreclosure process and eschews any personal accountability for compliance with a State's tax laws. Moreover, it is based upon the false premise that an abandoned, tax-foreclosed property actually has surplus "value" that has been taken by the State. Indeed, if "surplus value" truly existed, the property owner could have easily listed the property for sale in order to generate proceeds to pay the outstanding taxes and assessments, or would have taken the necessary steps to enter into a payment plan. In this case, however, Tyler did not take advantage of any of the available statutory rights to avoid the forfeiture of her property, and yet she now wants this Court to believe that she and a whole class of tax delinquent property owners – who received multiple notices of unpaid taxes – innocently woke-up one day to find that their "valuable" equity had been allegedly "stripped" from them.

Indeed, in Ohio, delinquent taxpayers are provided with multiple opportunities to pay their taxes before they ever become subject to a tax foreclosure proceeding or one of the multiple statutory remedies that may be imposed under Ohio law, which include sale, forfeiture, or transfer. In Ohio, for example, a typical defendant in a tax foreclosure proceeding filed against a vacant and abandoned property has already made the deliberate, economic decision to abandon the property in question. They generally have not paid their real estate taxes for many years, and have not invested any money to keep the properties from becoming a blight on the community and negatively impacting the tax base. They themselves have essentially chosen not to “throw good money after bad.” Moreover, many of these tax-foreclosed properties are owned by deceased individuals whose heirs have never undertaken to probate the property, and have effected a de facto disclaimer of their interest, because they did not perceive the property to have any value. Thus, in the vast majority of tax foreclosure actions filed in Ohio, the property owners (and any other interested parties) generally do not contest the tax foreclosure proceedings or attend any of the tax foreclosure hearings.

The only reason why a property owner loses their interest in a tax-foreclosed property, therefore, is because the property owner has taken no action to pay their taxes or to take advantage of any of the statutory protective rights and remedies set forth in the Ohio Revised Code. *See State ex rel. US Bank Trust, NA v. Cuyahoga County*, Slip Op. No. 2023-Ohio-1063, ¶ 29 (Ohio Apr. 4, 2023). In fact, before a property ever becomes subject to a final tax foreclosure order in Ohio, the following events would have occurred:

- The owners fail to pay their taxes. In order for a tax foreclosure to be initiated in Ohio, the property must have been delinquent for at least two (2) years. In the case of vacant and abandoned properties, in fact, the delinquency has existed for many years, often more than a decade. Thus, in order to become subject to a tax foreclosure proceeding, the owner must have ignored their statutory obligation to pay taxes for many years.
- The owner receives written notices (often multiple times) from the County Treasurer asking that the outstanding taxes be paid, all of which are ignored.
- The County Auditor publishes a list of tax delinquent properties in the newspaper in an effort to encourage collection, again all of which are ignored by the owner and junior lienholders.
- A tax foreclosure case eventually gets filed and, based upon a title search, a Notice of Summons and the Complaint are served upon all persons who may have an interest in the property in accordance with the Ohio Rules of Civil Procedure. Most property owners, however, ignore the Summons and fail to file a timely Answer in the tax foreclosure proceeding.
- After the tax foreclosure action is filed, the property owner again fails to pay their taxes

or enter into a payment plan. Ohio Rev. Code § 323.31 provides that a tax delinquent property owner may enter into a payment plan to avoid foreclosure and terminate the proceeding. This right, therefore, is also ignored by the delinquent owner.

- The property owner has the right to participate in the tax foreclosure proceedings and raise any and all claims or defenses, including the right to transfer the proceedings to state court where they can raise any claims or assert any rights, but the vast majority of delinquent taxpayers disregard and ignore these statutory remedies.
- After a properly noticed final hearing, the taxpayer does not attend the hearing—again ignoring all notices of the final hearing;
- After the case is adjudicated and a decree of foreclosure is journalized, the property owner has a statutory right under Ohio Rev. Code § 323.78 to exercise the right to redeem the property by paying the taxes owed, which also is ignored;
- Any aggrieved party has a statutory right to file a *de novo* appeal with the court of common pleas under Ohio Rev. Code § 323.79, which allows them to pursue any constitutional claims. This judicial remedy also is ignored.

Thus, under Ohio law, a property owner does not lose their right, title, and interest in a tax-foreclosed property unless they fail to pay their taxes for many years and fail to take advantage of the multiple opportunities that are made available by the Ohio Revised Code to avoid the foreclosure.

3. Given the undisputed facts about how Tyler’s property became subject to forfeiture under Minnesota law, Tyler’s alleged takings claim fails to state a claim upon which relief can be granted because Petitioner’s alleged injury was the result of her failure to pay taxes, not the exercise of eminent domain authority. As this Court has held, a takings claim cannot arise if the property was “lawfully acquired under the exercise of governmental authority other than the power of eminent domain.” *See Bennis v. Michigan*, 516 U.S. 442, 452 (1996). Thus, no takings claim can arise as a matter of law because Hennepin County’s lawful enforcement of Minnesota’s tax foreclosure statutes involves the exercise of the State’s taxing power, not the power of eminent domain. *See Leber v. United States*, 146 Fed. Cl. 9, 12 (Ct. Cl. 2019) (“It is well settled that ‘the lawful exercise of the Government’s tax collection powers does not amount to a taking’ “).

Moreover, given that Tyler lost of all of her right, title, and interest in the property as a result of the failure to comply with Minnesota’s tax collection laws, she does not have a constitutionally protected property interest in the “surplus equity” of her tax-foreclosed property. Rather, given that property interests are created and defined by state law, the Eighth Circuit properly ruled that Minnesota’s tax statutes were controlling in determining whether Tyler had a constitutionally protected interest in

recovering the “surplus value” or “surplus equity” of a tax-foreclosed property over one year after it was foreclosed upon and forfeited as a result of Tyler’s failure to pay taxes. *Tyler v. Hennepin County*, 26 F.4th 789, 792-793 (8th Cir. 2022). Accordingly, for all of these reasons, this Court should uphold Minnesota’s sovereign authority over the adoption and enforcement of state tax collection laws, and affirm the judgment of the Eighth Circuit Court of Appeals.

ARGUMENT

I. IF THE COURT WERE TO ADOPT PETITIONER’S LEGAL THEORY, IT WOULD NEGATIVELY IMPACT THE ABILITY OF STATE LEGISLATURES TO REMEDY THE UNIQUE PROBLEMS POSED BY PROPERTY OWNERS WHO ABANDON THEIR PROPERTIES AND FAIL TO PAY THEIR TAXES.

Petitioner’s legal theory advances the novel proposition that a delinquent taxpayer who fails to pay their state property taxes and fails to take advantage of the statutory remedies afforded by state law should nevertheless be entitled to recover just compensation for an alleged “taking” based upon the difference between the alleged “fair market value” of the property and the amount of taxes owed. As discussed more fully below, this legal theory is not only inconsistent with existing precedent; it would, if adopted, significantly interfere with and undermine the ability of state legislatures to remedy the unique problems posed by property owners who abandon their property and fail to pay their taxes.

In Ohio, for example, most of the properties that become subject to tax foreclosure proceedings are vacant and abandoned properties where the property owner has completely vacated the premises and left behind a tax delinquent property that is in poor and deteriorated condition. Prior to 2006, Ohio law previously provided that all tax-foreclosed properties must be sold at a sheriff's auction for the minimum bid, which was the total amount of tax impositions and costs owed. *See* Ohio Revised Code § 5721.19 and § 5723.01. While this statutory remedy may work for some tax delinquent properties, it did not work for the vast majority of vacant and abandoned properties because 99% of the vacant and abandoned properties in Ohio are not sold at a sheriff's auction, and are forfeited to the State, which, in turn, would sell the Property to a speculator for some nominal amount that was far less than the taxes owed. The speculator would, in turn, fail to pay any taxes on the property, resulting in cycle after cycle of tax foreclosure proceedings without any collection of taxes.

In order to remedy this tax collection problem, the Ohio General Assembly in 2006 adopted an expedited tax foreclosure procedure for vacant and abandoned lands that are codified in Sections 323.65 to 323.79 of the Ohio Revised Code. Under the operative statutes, where a tax delinquent property involves "abandoned" land, as defined by Ohio Rev. Code § 323.65(A), the county treasurer may initiate a tax foreclosure proceeding with the county board of revision, which, upon an adjudication of foreclosure, may order disposition of the abandoned land by public auction or may transfer the property to a land bank under Ohio Rev. Code § 323.78(B). In so doing, the Ohio legislature sought to redress the unique problems relating to vacant

and abandoned properties that generally were not sold for the minimum bid at sheriff's auctions and were not resulting in tax collections.

Importantly, this statutory remedy can be imposed *only if* a property owner or other interested party fails to pay the outstanding taxes in accordance with Ohio's tax collection laws. Under Ohio Rev. Code § 323.72, in fact, the owner or any other interested party has the unilateral and unconditional right to terminate a tax foreclosure proceeding at any time by paying all outstanding taxes, or by showing that the impositions have been paid. Ohio Rev. Code §§ 323.72(A)(2), 323.72(B). Moreover, Ohio Revised Code § 323.31 and § 5721.25 provide that a property owner may enter into a tax delinquent installment contract to pay the outstanding taxes over time. Indeed, even if the foreclosure and direct transfer of a property has been ordered under Ohio Rev. Code § 323.78(B), Ohio's tax collection laws provide that the property owner shall be granted an additional 28-day period to redeem their interest in the tax-foreclosed property by paying the outstanding taxes and other impositions owed. *See* Ohio Rev. Code § 323.65(J) and § 323.78. Thus, there are *multiple* opportunities available for a property owner (or junior lienholder) to prevent the sale, transfer, or forfeiture of a tax delinquent property under Ohio law. *See State ex rel. US Bank Trust*, 2023-Ohio-1063, at ¶ 29-31 (explaining that Ohio tax laws provide a property owner with multiple opportunities "to try to avoid any property loss," and that "US Bank has not shown that it could not have protected its security interests through the available court proceedings").

Over the past 15 years since it was first adopted, Ohio's tax foreclosure statutes have worked in solving the unique problem caused by vacant and abandoned properties. Rather than going through cycle after cycle of tax foreclosure proceedings, vacant and abandoned tax-foreclosed properties are transferred to a land bank, which invests significant funds to improve the property and make it suitable for sale. Moreover, the land banks can ensure that the property is sold to a new property owner who has not been tax delinquent in the past, and who will pay the taxes owed on the property. As a result, tax collections in Ohio have increased, and the public policy goals of the Ohio General Assembly in enforcing the State's tax collection laws have been advanced.

Under the Petitioner's theory of the case, however, the Ohio legislature would not have any flexibility in drafting legislation to remedy the unique problems posed by vacant and abandoned properties. Moreover, if the Petitioner's theory were adopted, no county treasurer would ever initiate a tax foreclosure proceeding because it would open the door to potential takings claims for "just compensation" based upon the alleged "fair market value" of the tax-foreclosed property. Indeed, even if a property owner failed to appear at any of the tax foreclosure proceedings or otherwise exercise their rights under Ohio's tax foreclosure laws, they nevertheless would be able to file suit in federal court after the tax foreclosure process was concluded, and seek just compensation based upon the difference between the alleged "fair market value" of the property and the amount of taxes owed. The net result would be a financial windfall for the owners of vacant and abandoned properties who did not see any "equity" in their properties before they were foreclosed

upon, but yet will be entitled to receive compensation that would not otherwise be granted to most other property owners who have their tax-foreclosed property sold for the minimum bid at a Sheriff's auction or forfeited to the State due to the lack of a minimum bid.

Under Petitioner's legal theory, therefore, taxpayers would have a financial incentive to both fail to pay their taxes and to fail to appear at any of the tax foreclosure proceedings to object to any foreclosure or transfer. Indeed, even though the owner of a vacant and abandoned tax-foreclosed property did not see any value or equity in a vacant and abandoned property before it was foreclosed upon by the County, he or she will nevertheless be able to recover compensation from the law-abiding taxpayers of the County for an alleged "taking" simply by arguing, after the fact, that the "fair market value" of the property was actually greater than the taxes owed. As a result, such a ruling would open the door to a whole host of new litigation in which competing appraisers will submit disputed opinions over whether the true "value" of a tax foreclosed property was greater or less than the amount of taxes owed at the time of the foreclosure.

This is a critical point because any determination of "fair market value" will, by definition, require an intensive, highly individualized factual inquiry that is not susceptible to expeditious resolution by the courts. Indeed, the valuation of real property depends on a large number of individualized facts and circumstances, including but not limited to the size, location, use, and condition of the property and the relevant market conditions at the time of the alleged taking. *Tarrify Properties, LLC v. Cuyahoga Cnty., Ohio*, 37 F.4th 1101, 1106 (6th Cir. 2022).

Thus, because the market and physical conditions of each property and the dates of each foreclosure will vary, states and counties would be forced to incur the cost of obtaining individualized appraisals for each tax-foreclosed property to determine whether the “fair market value” was greater than the amount of taxes owed, which has never been required in the tax foreclosure context. The property owner, in turn, would have the ability to obtain its own independent appraisal, resulting in significant litigation over the alleged “value” of the tax foreclosed property.

Given the risk of liability and the significant cost of obtaining appraisals and litigating just compensation claims, therefore, there is no question that the adoption of Petitioner’s theory will have a significant chilling effect on the enforcement of state tax collection laws. Given the potential liability and costs of litigation, in fact, most states and counties would likely stop initiating tax foreclosure proceedings altogether, or adopt different tax foreclosure laws that require that all tax foreclosed properties must be sold at a public auction, which would force counties to incur the additional time and expense of unproductive tax sales and endless cycles of tax foreclosure proceedings that do not actually result in the collection of taxes. Indeed, even if a tax-foreclosed property were subject to a tax sale, a tax delinquent property owner still might be able to argue under Petitioner’s theory that she is constitutionally entitled to recover *more* than the difference between the auction sale price and the taxes owed because the Takings Clause allegedly entitles her to recover the difference between the alleged “fair market value” of the property and the taxes owed at the time of the foreclosure. The practical consequence of such a ruling, therefore, would likely shut down all tax foreclosure proceedings altogether because most tax foreclosed properties are

either not sold at a sheriff's auction, or are sold for far less than what an appraiser might later determine was the "fair market value" of the property. Thus, no county treasurer would ever run the risk of foreclosing upon a tax delinquent property and incurring the potential liability for an alleged taking if it ultimately is unable to sell the property for an amount that is greater than its alleged "fair market value."

Again, the reality is that most abandoned, tax delinquent properties have very little, if any, equity, and this is why these property owners abandoned the property in the first place and stopped paying their taxes. It defies common sense, therefore, to suggest that someone who abandons a property and loses their interest in a property as a result of the failure to pay taxes, should nevertheless be able to come into federal court after the state tax foreclosure process has been completed, and expect the law-abiding taxpayers to pay money to the delinquent taxpayer who did absolutely nothing during the tax foreclosure process to protect their alleged interests. Additionally, it is an affront to all tax-paying property owners to suggest that the State must serve as *de facto* real estate agent for these delinquent owners, by pursuing wasteful and ineffective sheriff sales on vacant, tax delinquent properties that the owners have consciously abandoned.

For all of these reasons, therefore, the Court should reject Petitioner's takings claim and conclude that each state legislature has the sovereign authority to create and define the statutory remedies that may be available for the failure to pay state taxes. Indeed, in arguing that the lawful enforcement of Minnesota's tax foreclosure laws effectuated a "taking" under the Fifth Amendment,

Tyler and her amici supporters are essentially asking this Court to act as state legislators in deciding the statutory remedies that may be imposed for the failure to pay taxes, which is a matter that falls within a State's sovereignty under our federalist system and should not be controlled or mandated by the federal courts. Accordingly, we respectfully urge the Court to defer to the sovereignty of each state legislature to devise its own statutory remedies for state tax foreclosure proceedings, rather than imposing a one-size-fit-all tax foreclosure remedy upon all 50 states by judicial fiat.

II. THE COURT SHOULD REJECT PETITIONER'S THEORY THAT A TAKINGS CLAIM CAN ARISE FROM THE LAWFUL ENFORCEMENT OF A STATE'S TAX FORECLOSURE LAWS.

Petitioner's legal theory in this case also should be rejected because it is contrary to existing Supreme Court precedent, which recognizes that a taking claim cannot arise as a matter of law where, as here, the property at issue was "lawfully acquired under the exercise of governmental authority other than the power of eminent domain." *Bennis*, 516 U.S. at 452. Here, it is undisputed that Tyler lost all of her right, title, and interest in the tax-foreclosed property as a result of the failure to pay taxes. Thus, no takings claim can arise as a matter of law because Hennepin County's lawful enforcement of Minnesota's tax foreclosure statutes involves the exercise of the State's *taxing power*, not the power of eminent domain. *See Leber*, 146 Fed. Cl. at 12 ("It is well settled that 'the lawful exercise of the Government's tax collection powers does not amount to a taking'") (citations omitted); *see also Speed v. Mills*, 919 F. Supp. 2d 122, 129 (D.D.C.

2013); *Epice Corp. v. Land Reutilization Authority of City of St. Louis*, No. 4:07Cv00206 HEA, 2010 WL 3270114, *2 (E.D. Mo. Aug. 17, 2012); *Golden v. Mercer Cty. Tax Claim Bureau (In re Golden)*, 190 B.R. 52, 57-58 (Bankr. W.D. Penn. 1995).

In her Brief, Tyler argues that her alleged takings claim is not challenging the forfeiture of her tax delinquent property, but only seeking the payment of just compensation for the alleged “taking” of the “surplus value” or “surplus equity” of the tax-foreclosed property. This argument, however, ignores the fact that the proximate cause of Tyler’s alleged injury is her failure to pay taxes, not the exercise of the State’s eminent domain authority. But for her failure to pay taxes, there would have been no forfeiture. Thus, Tyler has no valid takings claim because the cause of her alleged injury is her own failure to pay taxes and her own failure to take advantage of the statutory rights and remedies afforded by state law.

This is a critical point because “this Court has never required the State to compensate the owner for the consequences of his own neglect.” *Texaco*, 454 U.S. at 530. In *Texaco*, for example, this Court held that the State cannot be held liable to pay compensation for the loss of real property where, as here, it results from the owner’s failure to comply with certain statutory conditions imposed by state law. *Id.* at 529-530. Similarly, the State of Minnesota (or Hennepin County) also cannot be liable for an alleged taking that arises from a delinquent taxpayer’s neglect in failing to comply with the statutory requirements for the payment of real estate taxes. Accordingly, under the circumstances, the Court should conclude that the State should not be required to compensate a tax delinquent

property owner for the consequences of her own neglect in failing to pay her taxes and in failing to take advantage of the statutory rights and remedies provided by state law.

III. THE EIGHTH CIRCUIT PROPERLY APPLIED STATE LAW IN RULING THAT TYLER DID NOT HAVE A CONSTITUTIONALLY PROTECTED INTEREST IN THE ALLEGED “SURPLUS EQUITY” OF A TAX-FORECLOSED PROPERTY.

Petitioner’s takings claim also fails to state a claim because, as the Eighth Circuit properly held, it is based upon the flawed proposition that a tax delinquent property owner has a “constitutionally-protected” interest in the alleged “surplus value” or “surplus equity” of a tax-foreclosed property. As this Court has held, however, it is well-established that “property interests” are not created or defined by the U.S. Constitution, but are created and defined by state law. *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998). Thus, it was incumbent upon Tyler to establish that she had a constitutionally protected interest in the “surplus equity” of her property under Minnesota law, not based upon general constitutional principles or federal common law.

Indeed, given that this case involves the enforcement of Minnesota’s property tax laws, a taxpayer’s rights and interests should be defined exclusively by the relevant state tax statutes, which create and define the rights and obligations of taxpayers under Minnesota law. In this case, however, Petitioner’s Brief fails to cite a single section of Minnesota’s state statutes that grants a delinquent taxpayer with any alleged right to recover the “surplus value” or “surplus equity” of a property that becomes

subject to tax forfeiture as a result of the failure to pay taxes. While some states, such as Ohio, provide a property owner with the statutory right to recover the surplus proceeds of tax sale if they follow the relevant statutory procedures, Ohio's statute applies only if a tax sale actually results in surplus proceeds, and the taxpayer makes a timely demand within three (3) years of the sale. *See* Ohio Rev. Code 5721.20. Thus, this statute does not in any way provide a delinquent taxpayer with any alleged right to recover the difference between the alleged "fair market value" of a tax-foreclosed property and the taxes owed. *Id.*

In their Briefs, therefore, Tyler and her amici supporters are essentially asking this Court to re-write Minnesota's taxation laws by creating a new judicially created right under Minnesota's tax collection scheme that has never been adopted by the Minnesota state legislature. This Court should reject this invitation, however, because it would intrude upon a State's sovereignty over the adoption and enforcement of its own state taxation laws. Indeed, while Tyler suggests that Hennepin County should at least attempt to sell a tax-foreclosed property before it is forfeited to the State, this argument essentially is asking this Court to re-write Minnesota's taxation laws and to impose its own judicial remedy for tax foreclosure proceedings, rather than upholding the State legislature's sovereign authority over its own internal state taxation matters. Accordingly, the Court should reject Tyler's arguments as a matter of law.

In order to justify this effort to circumvent the Minnesota's sovereignty over its internal taxation laws, Tyler cites to two Supreme Court decisions from the 1880s – *United States v. Taylor*, 104 U.S. 216 (1881) and *United*

States v. Lawton, 110 U.S. 146 (1884) – to argue that state law is not controlling in defining Tyler’s property interests because a tax delinquent property owner allegedly has a “constitutional” right to recover the surplus proceeds of a tax foreclosure sale that is independent of the statutory rights granted by state law. A review of both cases, however, confirms that they involved the enforcement of statutory rights granted by federal tax laws, and that it was the legislature – *i.e.*, Congress – that granted the statutory right to recover the surplus proceeds of a tax sale, not the federal courts.

Similarly, the state law cases cited by Tyler and her amici supporters also involved rights granted by state tax statutes (not the U.S. Constitution or federal common law), which created a statutory right to the proceeds of a tax sale. *See McDuffee v. Collins*, 117 Ala. 487, 23 So. 45 (1898) (right to recover surplus proceeds of tax sale created by state statute); *City of Anchorage v. Thomas*, 624 P.2d 271 (Alaska 1981) (right to recover surplus proceeds created by state statute); *Lake County Auditor v. Burks*, 802 N.E.2d 896, 899-900 (Ind. 2004) (right to recover surplus proceeds under Indiana Tax Code); *Cone v. Forest*, 126 Mass. 97, 97-98 (1879) (holding that the failure to refund the surplus proceeds of a tax sale violated Massachusetts statute); *Farnham v. Jones*, 32 Minn. 7, 19 N.W. 83 (1884) (right to recover surplus proceeds created by Minnesota statutes and common law); *Shattuck v. Smith*, 6 N.D. 56, 69 N.W. 5 (1896) (upholding North Dakota statute that provided for the recovery of surplus proceeds from tax sale); *Syntax, Inc. v. Hall*, 899 S.W.2d 1809 (Tex. 1995) (interpreting Sections 34.06 and 34.02 of Texas Tax Code, which provided the disgorgement of the “excess proceeds” of a tax sale); *Bogie v. Town of Barnet*, 129 Vt. 46, 270 A.2d

898 (1970) (holding that Vermont statutes granted the right to recover the surplus proceeds of a tax sale). Thus, none of the cases in Petitioner’s Brief actually support the proposition that a delinquent taxpayer has a constitutional right to recover the difference between the alleged “fair market value” of a property and the taxes owed. Rather, under all of the foregoing cases, the alleged property interest at stake was based upon *statutory* rights that were created and defined by the State legislature.²

Given the lack of authority to support her legal theory, therefore, Petitioner’s Brief relies primarily upon general constitutional principles from other cases that do not involve the lawful enforcement of a State’s tax foreclosure laws. This Court’s decisions in *Armstrong v. United States*, 364 U.S. 40 (1980), and *Webb’s Fabulous Pharmacies v. Beckwith*, 449 U.S. 155 (1980), however, are readily distinguishable because they do not involve takings claims arising from the lawful enforcement of a State’s tax foreclosure laws at all. Thus, neither case discusses nor addresses whether a property owner has a constitutionally protected interest in recovering the

2. Petitioner’s Brief also cites several other cases that either do not involve tax foreclosure actions at all, or involved the statutory right of redemption. See *Stierle v. Rohmeyer*, 218 Wis. 149, 260 N.W. 647 (1935) (discussing the constitutionality of state statute relating to private mortgage foreclosures); *King v. Hatfield*, 130 F. 564 (D.W.Va. 1900) (holding that it violated due process under the West Virginia Constitution to provide for the forfeiture of real property, by legislation, without any judicial proceeding or the right of redemption); *Griffin v. Mixon*, 38 Miss. 424 (1860) (holding that forfeiture of property for the failure to pay taxes violated the Mississippi Constitution because the legislature failed to provide the delinquent taxpayer with the “opportunity to show that he has paid” the taxes owed).

“surplus equity” of a property that becomes subject to tax foreclosure under state law, which should be controlling, as the Eighth Circuit held, in determining whether Tyler has a vested “property interest” in recovering the “surplus value” of a tax-foreclosed property over one year after it was foreclosed upon and forfeited as a result of Tyler’s failure to pay taxes. *Tyler*, 26 F.4th at 792-793.

Finally, this Court should reject the reasoning that was adopted by the Sixth Circuit in *Hall v. Meisner*, 51 F.4th 185 (6th Cir. 2022). In *Hall*, the Sixth Circuit incorrectly held that the Michigan Supreme Court’s ruling about whether a property owner had a constitutionally protected property interest in the “surplus equity” of a tax-foreclosed property under Michigan law was not controlling, and instead adopted its own federally-imposed definition of a property interest based upon federal common law and English common law. In so doing, the Sixth Circuit improperly relied upon case law relating to private mortgage foreclosures that has no application to the enforcement of a State’s taxation laws. *Id.*

Contrary to the Sixth Circuit’s ruling, however, taxes are based upon a statutory obligation that is not the same as a contractual obligation to pay a private debt. Taxes are an exercise of the State’s sovereign authority, and thus Hennepin County’s collection of state property taxes involves the exercise of the State’s *taxing powers*, and should not be treated in the same manner as a private debtor-creditor relationship. Indeed, under virtually all state laws, the obligation of a property owner to pay state property taxes is a matter that is exclusively controlled by state statutes, not any equitable or common law principles. See *Gen. Motors Corp. v. Limbach*, 67 Ohio St.3d 90, 93,

616 N.E.2d 204 (1993) (“we have not applied equitable principles to tax matters”). Accordingly, in deciding whether Tyler has stated a valid takings claim, this Court should recognize that the Minnesota state legislature has the sovereign authority to determine the rights and obligations of state taxpayers under our federalist system, and the exercise of this state sovereignty should not be limited or controlled by federal common law or the policy preferences of the federal judiciary about how state tax laws should be adopted and enforced.

CONCLUSION

For all of these reasons, therefore, this Court should conclude that the takings and excessive fines claims alleged by Tyler in this case fail to state a claim upon which relief can be granted, and affirm the judgment that was entered in Hennepin County’s favor.

Respectfully submitted,

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