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 THE ASSOCIATION OF MINNESOTA COUNTIES (AMC), MINNESOTA ASSOCIATION OF COUNTY LAND COMMISSIONERS (MACLC), MINNESOTA ASSOCIATION OF COUNTY OFFICERS (MACO), AND MINNESOTA ASSOCIATION OF ASSESSING OFFICERS (MAAO) AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS HENNEPIN COUNTY, MINNESOTA, ET AL.

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INTERESTS OF THE AMICUS

The Association of Minnesota Counties ("AMC") is a Minnesota-based, non-partisan, statewide organization comprised of officials from Minnesota's 87 counties. AMC's ultimate goal is to ensure that Minnesota counties provide efficient, effective, and high-quality governance to the people of Minnesota. AMC provides educational programs, training, research, and communications to county officials. It works closely with the Minnesota Legislature and the state's administrative branches to ensure the state adopts and, as appropriate, amends legislation and policies that allow Minnesota's 87 counties to serve their constituents well.

The Minnesota Association of County Land Commissioners ("MACLC") is an association of fifteen rural counties in northern Minnesota. MACLC's mission is to ensure that land—primarily tax-forfeited forest land—is well-managed for the benefit of Minnesota residents. Member counties manage lands held in trust by the State of Minnesota. Though not directly owned by the member county, these "worthless lands nobody wanted" are classified, managed, and controlled by the county land departments where the lands are located. MACLC members manage tax-forfeited land to ensure that it is suitable for tourism and recreation; that it provides a viable habitat for the state's wildlife and plant populations; and that commercially-viable and harvestable forest lands are sustainably preserved after a forfeiture.

The Minnesota Association of County Officers ("MACO") is comprised of Minnesota county auditors, treasurers, recorders, financial officers, and registrars of title. All 87 Minnesota counties are members. MACO is comprised of the Minnesota Association of County Auditors, Treasurers, and Finance Officers ("MACATFO") and the Minnesota County Recorders Association ("MCRA"). MACO promotes statewide uniformity in the practices and procedures of county officers, and works to ensure the state's property tax system is understandable and equitable to taxpayers and local taxing authorities.

The Minnesota Association of Assessing Officers ("MAAO") exists to support local assessors, deputy assessors, and appraisers across the State of Minnesota. MAAO promotes excellence in property appraisal and assessment administration across the state. It supports a property tax system that is understandable and transparent to taxpayers; treats all taxpayers in a consistent, fair, and equitable manner; and ensures a stable and reliable source of revenue for local taxing authorities.

AMC's, MACLC's, MACO's, and MAAO's interest in this case stems from the fact that the laws and issues in the case are not unique to Hennepin County, Minnesota. Minnesota's property tax laws in general, and the tax-forfeiture provisions at issue in this case in particular, affect all of Minnesota's 87 counties. Under Minnesota state law, counties are tasked with administering the state's tax-forfeiture process. The laws and issues in the case are particularly important to northern Minnesota counties, who are responsible for managing vast

swaths of unwanted, tax-forfeited forest lands. Because this case involves important questions related to the state's property-tax system, it has statewide implications. AMC, MACLC, MACO, and MAAO are filing this amicus brief on behalf of all of Minnesota's 87 counties to ensure that the Court considers the perspective of all of Minnesota's counties in deciding this case.

SUMMARY OF ARGUMENT

Petitioner asks the Court, in essence, to re-write Minnesota's tax-forfeiture system. Petitioner, however, fails to contemplate or address many of the numerous issues and practical consequences that would arise if the Court chooses to do so. Petitioner's overly-simplistic proposed solution creates many unanswered questions, which are overlooked entirely in Petitioner's brief. The Court should take note of those practical consequences in assessing the merits of Petitioner's claims.

Minnesota's property tax system is a large, complex, and finely-tuned system. The system balances a number of interests, both public and private. The system reflects the policy objectives of the Minnesota Legislature. Petitioner invites the Court to focus on just one small piece of the state's large, complex, and finely-tuned system, and to declare that piece invalid. Separation of powers principles and principles of comity—repeatedly affirmed by this Court—counsel against such involvement. The Minnesota Legislature has been delegated the power to tax, and to balance the equities and interests involved with a complex legislative system like the one at issue in this case.

If the system is inequitable, it is the job of the Minnesota Legislature—not the judiciary—to change it. As this Court just recently confirmed in *Dobbs v. Jackson Women's Health Org.*, "courts cannot substitute their social and economic beliefs for the judgment of legislative bodies[,]" and "respect for a legislature's judgment applies even when the laws at issue concern matters of great social significance." 142 S. Ct. 2228, 2284 (2022).

Petitioner would have the Court believe that Minnesota's tax-forfeiture system needs revision because it is inequitable. Petitioner infers that the objective of Minnesota's 87 counties is to pursue tax forfeiture "windfalls." That simply is not true. Contrary to Petitioner's claim, the primary goal of the tax-forfeiture process is to avoid forfeitures. This is reflected in the statutory tax-forfeiture system, which provides multiple opportunities for property owners to remain in and retain their properties. It is also evident from the fact that the State of Minnesota and local government entities (including Hennepin County) have programs in place to assist property owners facing tax forfeiture. Only when they fail to take advantage of the multitude of options available to them will one of Minnesota's 87 counties pursue final tax-forfeiture. In such cases, a county's goal is to bring finality to the tax-forfeiture process, and to return property to productive use, not to secure a "windfall."

ARGUMENT

I. PETITIONER ADVOCATES A RESULT THAT WOULD CREATE PRACTICAL PROBLEMS AND IMPOSE AN UNDUE BURDEN ON MINNESOTA COUNTIES.

Petitioner offers up what she asserts is a simple solution to the purported problem at issue in this case: Return the surplus proceeds from a tax-forfeiture sale to the property owner whose property has been forfeited. Petitioner's approach is overly simplistic. It overlooks the fact that most tax-forfeiture sales do not result in a surplus and, instead, result in a substantial loss. It fails to account for many of the practical issues that would arise if the Court were to accept Petitioner's proposed solution. It leaves many unanswered questions concerning how the system would work in practice. And it would create the opportunity for property owners to abuse the system. The Court should take note of these practical issues in considering the consequences and implications of Petitioner's arguments. The questions Petitioner leaves unanswered reinforce the fact that Minnesota's Legislature—and not this Court—is in the best position to modify Minnesota's tax-forfeiture system if it believes that doing so is necessary. *See infra*, Section II.

A. Petitioner conveniently overlooks the fact that most tax forfeitures result in a substantial loss.

The case presently before the Court involved a tax forfeiture that allegedly (but without supporting

evidence in the record) yielded excess proceeds.[1] Not every tax forfeiture, however, yields excess proceeds. In a limited number of cases, a county may decide not to sell a property. In that case there are no proceeds and, additionally, the county collects no property taxes. If a county does decide to sell the property following a tax forfeiture, the property may not sell. And, if it does sell, many sales result in a substantial net loss.

Petitioner, at pages 28–29 of her brief, offers a number of cherry-picked examples from other states of alleged extreme loss of equity resulting from tax-forfeiture sales. In evaluating the present case, the Court should look beyond Petitioner's out-of-state examples before the Court, which do not tell the full tax-forfeiture story, particularly in Minnesota. The Court should be cognizant of the fact that many tax forfeitures create a substantial burden to Minnesota's counties and, ultimately, result in a net loss. It does not take a leap of faith to conclude that—more often than not—tax-forfeited properties are poorly maintained and dilapidated, or have environmental or other problems.

The following recent examples of tax forfeiture situations—drawn directly from the experiences of Minnesota counties—tell the other side of the story. They demonstrate that tax forfeitures frequently create a substantial burden and result in a net loss

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[1] Petitioner conveniently overlooked the fact that her property was encumbered by substantial private debt that likely exceeded the amount of surplus proceeds recouped as a result of Hennepin County's tax-forfeiture sale. *See* Resp's Br. at 12.

for the counties who inherit the tax-forfeited property.[2]

The first example arose from the forfeiture of a residential property in Pengilly, Minnesota, which is in Itasca County, Minnesota. The property was subject to tax forfeiture in 2020. Taxes, penalties, and interest owed at the time of forfeiture amounted to $3,179.35. The following are photographs of the property taken by the county before the property was forfeited:

[2] The examples below are derived from publicly-available records provided by Itasca County and St. Louis County, Minnesota. They are available by making a data request of either county, *see* Minn. Stat. § 13.03, and/or by a conducting a title search of the properties. The property identification numbers ("PIDs") of the three properties referenced below are 18-420-0180; 315-0020-01740, 01750, and 01700; and 87-410-1310. These are just three of numerous examples provided to the undersigned counsel by the counties joining in this *amicus*.

After the property was forfeited to Itasca County, the county incurred $43,999.53 in management costs associated with the property, including the costs of demolition, remediation, and upkeep of the property (*e.g.*, mowing, etc.). The county eventually sold the property at a public auction in 2022 for $14,900.00. The county suffered a net loss of $32,278.88, factoring in the taxes owed and remedial costs associated with the property.

The second example arose from the forfeiture of a commercial property in Duluth Township, Minnesota, which is in St. Louis County, Minnesota. The property—a former elementary school building purchased by a private entity—was subject to tax-forfeiture in 2016. Taxes, penalties, and interest owed at the time of forfeiture amounted to $23,352.46. The following are photographs of the property taken by the county before the property was forfeited:

The property was subject to a significant amount of trespassing, looting, graffiti, and fire and water damage after it was abandoned prior to forfeiture; and the building's roof had failed and was open to the elements for many years. Large quantities of

abandoned personal property and illegal dumping (*e.g.*, appliances, tires, vehicle parts, mattresses, demo and construction debris, food waste, etc.) had accumulated on the site. The county incurred $95,310.33 in clean-up, remediation, and demolition costs. The property sold at a public auction for $62,433.00 in 2019. The county incurred a net loss of $56,229.79 on the property when accounting for the taxes owed and remedial costs.

Another example involves the forfeiture of commercial property (*i.e.*, a former gas station) in the City of Calumet, which is in Itasca County, Minnesota. The following is a photograph of the property taken by the county around the time of forfeiture in 2014:

$19,551.33 was owed in taxes, penalties, and interest at that time. Itasca County subsequently removed a storage tank on the property, incurring approximately $22,441.00 in property management

costs, which were partially offset by a grant from the Minnesota Department of Health. The following is a photograph showing removal of the tank:

After forfeiture in 2014 and an investigation by the Minnesota Pollution Control Agency ("MPCA") into pre-forfeiture petroleum release (which occurred while the tanks were still privately owned), it was determined that a complete excavation and cleanup of the property was necessary. The former property owner has since walked away from all liability for the site, leaving it to the government to clean up the mess. To date, approximately $1,007,373.71 has been spent to complete contaminated-soil investigation and clean-up work. Additional work remains before the property can be sold.

The above-referenced examples provide a counter-narrative to the circumstances at issue in the case before the Court. They highlight the other side of the tax-forfeiture coin, which Petitioner omits entirely from her brief. To be sure, it does not require a great leap of deduction to conclude that stories like these are far more prevalent and common than the extreme examples set forth in pages 28–29

of Petitioner's brief.[3] The examples show that, in many cases, counties shoulder a substantial burden as a result of administration of the tax-forfeiture process, incurring clean-up, remediation, demolition, and upkeep costs as a direct result of their statutorily-mandated tax-forfeiture duties. The examples highlight the fact that these costs can be substantial, well more than the value of the property itself, and that counties frequently suffer a net loss as a result of tax-forfeiture proceedings.

Petitioner's proposed solution—returning surplus proceeds from a tax-forfeiture sale to the property owner whose property has been forfeited but leaving the other side of the forfeiture scheme untouched—would ensure that Minnesota counties and local taxing districts suffer a net loss as a result of tax-forfeiture proceedings. Any time a tax-forfeited property is sold and yields surplus proceeds, a county would be required to return those proceeds to a property owner, leaving nothing for the county and local taxing districts. Any time a tax-forfeited property is sold and results in a net loss, the county

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[3] In his *amicus curiae* brief, Professor Ralph D. Clifford asserts—based on purported data from Massachusetts—that Minnesota takes in a net surplus in tax-forfeiture proceeds each year. *See* Br. of *Amicus Curiae* Ralph D. Clifford, at 3–4. Professor Clifford's assertion is unreliable given his acknowledgment that "data from Minnesota [were] not available" to support his assertion. Moreover, the dependability of the data relied upon by Professor Clifford to make his assertion have been called into question in a Massachusetts case involving the same basic issue in the present case. *See* Response to Amicus brief filed for Town of Oxford by Attorney Peter Brown at 15–24, *Town of Oxford v. John A. Smith*, 101 Mass. App. Ct. 1104 (Dkt. No. 18 filed 3/10/2022).

and local taxing districts would be required to eat the loss, and the property owner who quit paying their taxes would walk away scot-free. Petitioner's proposed solution is in fact inequitable to Minnesota's counties, local taxing districts, and Minnesota residents, and would ensure that they suffer a perpetual loss on tax-forfeiture proceedings.

Stepping back and looking at the complete tax-forfeiture landscape, it is evident there may be occasional situations where one might assert that the equities lie with the property owner. In many other cases—like those described above—the equities lie with the municipality that gets stuck with a blighted property following a tax forfeiture. In situations that thus require the balancing of the equities between landowners, local taxing authorities, and residents of the state as a whole, the Minnesota Legislature—and not this Court—is in the best position to modify Minnesota's tax-forfeiture system if it believes doing so is necessary. *See Ziglar v. Abbasi*, 582 U.S. 120, 135–36 (2017) ("When an issue involves a host of considerations that must be weighed and appraised, [legislative questions] should be committed to those who write the laws rather than those who interpret them."); *Nelson v. City of New York*, 352 U.S. 103, 111 (1956) ("[R]elief from the hardship imposed by a state statute is the responsibility of the state legislature and not of the courts.").

B. Petitioner proposes a result in this case that could force Minnesota counties into the role of de facto realtor, agent, and title examiner for delinquent taxpayers; creates unanswered questions; and would have devastating financial ramifications for counties.

Another practical issue that would arise from Petitioner's proposed solution to the alleged infirmity of Minnesota's tax-forfeiture system is that it would force Minnesota's counties into the role of agent for previous owners of forfeited properties. Minnesota counties would, in essence, become a property owner's de facto realtor, acting for the benefit of the property owner. That would create a host of issues and questions for Minnesota counties. For example, would Minnesota counties have fiduciary obligations to property owners when selling tax-forfeited properties? Under Minnesota law, realtors owe a fiduciary duty to their clients. *See* Minn. Stat. § 82.67, subd. 3 (describing six fiduciary duties). Most importantly, they must "act only in [the] client(s)' best interest." *Id.*

Petitioner fails to specify whether and how that duty would apply in the tax-forfeiture context. Would Minnesota counties be required to pursue maximum value for forfeited properties? How would value be determined, given that tax-forfeited properties generally sell for far less than non-tax-forfeited properties because of their neglected state? What if the county sold the property for less than it was worth (or transferred it to another municipality)? *See* Minn. Stat. § 282.01, subd. 1a(d)-(e). Would the county be liable to make up the

difference? What if a county is unable to sell tax-forfeited property at all, and is thus forced to retain the property? Would property owners be entitled to anything under those circumstances? If so, how would the amount of compensation be determined?

And what if a county decided to retain a tax-forfeited property for a number of years, only to sell it later? When Minnesota's tax forfeiture laws were established in 1935, there were nearly eight million acres of tax-forfeited lands in the state. Much of the land tax-forfeited to the state nearly one-hundred years ago was retained by northern Minnesota's counties for public use. *See Brief History*, Minnesota Association of County Land Commissioners, https://www.mncountylands.org/brief-history (last visited March 23, 2023). What if a county decides to sell land that was forfeited to the state one-hundred years ago? Are the heirs of a long-deceased property owner entitled to all excess proceeds, even those resulting from one-hundred years of the county's land-stewardship efforts and property-value appreciation? What if the property owner has no descendants? What if it is unclear or there is a dispute as to who has good legal title to the property? Does a county have an obligation to go out of its way to identify who is entitled to excess proceeds under those circumstances?

If the Court adopts Petitioner's position and relief is afforded to Petitioner and others retroactively, the financial ramifications for Minnesota counties would be devastating. Counties across the State of Minnesota—and in other states that have adopted similar tax-forfeiture laws—undoubtedly will face a glut of lawsuits by property

owners whose properties were previously subject to tax forfeiture. The financial impact of litigating these claims and paying surplus proceeds—if there are any—would be substantial given the number of tax forfeitures that occur each year. Given that this Court already sustained a substantially similar tax-forfeiture scheme in *Nelson* (discussed below), affording Petitioner and others retroactive relief would be inequitable, and have devastating consequences for Minnesota counties. *Cf. Am. Trucking Associations, Inc. v. Smith*, 496 U.S. 167, 179–83 (1990) (noting opinion declaring tax unconstitutional would not apply retroactively because that would "severely burden[] the [government's] operations" and because it would be "unjust to impose this burden when the [government] relied on valid, existing precedent in enacting and implementing its tax"); *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982) (holding that officials are shielded from liability for civil damages insofar as their conduct does not violate clearly-established, known constitutional rights).

For the above reasons, the practical implications of Petitioner's proposed solution are expansive. The financial and social ramifications would be devastating for Minnesota counties. Petitioner's proposed solution would also create a host of new questions that will go unanswered if the Court adopts Petitioner's simplistic solution. The fact that devastating financial and social consequences may occur, and that so many new questions are created by Petitioner's proposed solution, confirms that the legislature, and not this Court, is best-suited to consider competing interests,

and other social and political considerations, and to address and correct Minnesota's tax-forfeiture system if it believes that is necessary. *See infra*, Section II. The legislative process invites the opportunity to address the impacts of any significant change in the law. It invites discussion of the type of questions posed in this section—and would allow the legislature to address them as part of its deliberative process—before making a change to the law that would have serious implications for property owners and local taxing authorities alike.

C. Petitioner proposes a result that would permit property owners to walk away from financial liabilities and leave others holding the bag.

Another practical problem created by Petitioner's proposed solution is that it creates the potential for abuse by property owners who were subject to tax forfeiture. Suppose a property owner hired a contractor to make improvements to the property, and then fell into tax-forfeiture and did not pay the contractor. Or suppose that the property owner lived in a condominium, owed homeowners association ("HOA") dues, and stopped paying them. That is precisely what happened in this case.

Under Petitioner's proposed system, the contractor's lien against the property would be cancelled after the tax-forfeiture. *See* Minn. Stat. § 282.07. So would any debt owed to the HOA. Yet the property owner would then still be entitled to the proceeds of a tax-forfeiture sale, which would not be subject to the contractor's lien or any HOA dues. That system is inequitable to the contractor and to

the HOA, and would in fact provide a windfall to the property owner. It would leave the contractor or HOA holding the bag; it would allow manipulation of the system by the property owner.

Petitioner fails to acknowledge or address any of the potential practical issues identified above. She fails to acknowledge the potential consequences of her proposed solution. While Petitioner overlooks these potential practical consequences—instead focusing solely on the self-serving singular issue of whether she is entitled to proceeds after the county puts in the time and effort associated with conveying the property—this Court should not do so. This Court should be cognizant of the fact that, if it rules in Petitioner's favor, it would impose vast and far reaching undue burdens and new duties on Minnesota's counties, and create opportunities for property owners to abuse Minnesota's tax-forfeiture system.

The fact that Petitioner's proposed solution creates so many questions, and leaves so many issues unresolved, leads back to the conclusion that the statute and broader legislative system at issue in this case is not a system for the judiciary to address. Rather, it is a small part of a complex legislative system. Separation of powers principles dictate judicial restraint.

II. THIS COURT SHOULD NOT INTERFERE WITH THE CAREFULLY CRAFTED, COMPLEX LEGISLATIVE SYSTEM AT ISSUE IN THIS CASE.

Minnesota Statutes include fifteen chapters on property taxes. *See* Minn. Stat. Chs. 272–289. One entire chapter, with sixty-three sections, is devoted to the process for tax-forfeited land sales. *See* Minn. Stat. Ch. 282. The focus of this case is on just one of those sixty-three sections—Minnesota Statutes section 282.08. Petitioner asks the Court to put on blinders and analyze that one section in a vacuum. But such an analysis ignores the forest for the sake of the tree. Minnesota Statutes section 282.08 is part of a large and complex property-tax system. The Minnesota Legislature carefully crafted the system, and continues to fine-tune it to meet the needs of all Minnesotans.

This Court's prior rulings establish that the Court gives deference to state legislatures—particularly when it comes to issues of taxation—in order to preserve the separation of powers. This Court gives substantial deference to the legislative judgments involved in crafting complex legislative systems for the same reason. This case involves both issues of taxation and a complex legislative system. Separation of powers principles counsel against the Court's involvement in overturning the legislative judgments at issue in this case.

Separation of powers principles demand that the Court defer to legislative judgments because the legislative branch is vested with the power and "duty to make laws." *Patchak v. Zinke*, 138 S. Ct. 897, 904

(2018). The judicial branch, by contrast, is vested with the "duty of interpreting and applying them." *Id.* The two branches defer to one another when they are operating in their own spheres. As stated by this Court in the case of *King v. Burwell*, "[I]n every case [the judicial branch] must respect the role of the Legislature, and take care not to undo what it has done." 576 U.S. 473, 498 (2015); *see also Minnesota v. Clover Leaf Creamery Co.*, 449 U.S. 456, 469 (1981) ("[I]t is up to legislatures, not courts, to decide on the wisdom and utility of legislation."). The basis for judicial deference is well-stated in *Epic Sys. Corp. v. Lewis*: "Allowing judges to pick and choose between statutes risks transforming them from expounders of what the law is into policymakers choosing what the law should be. . . . [I]t's the job of Congress by legislation, not this Court by supposition, both to write the laws and to repeal them." 138 S. Ct. 1612, 1624 (2018).

Just recently, this Court confirmed its reluctance to wade into controversial, state-specific legislative determinations, even when they implicate the United States Constitution. *See Dobbs v. Jackson Women's Health Org.*, 142 S. Ct. 2228 (2022). As the Court noted in *Dobbs*, "[C]ourts cannot substitute their social and economic beliefs for the judgment of legislative bodies." *Id.* at 2284. The Court further noted, "[R]espect for a legislature's judgment applies even when the laws at issue concern matters of great social significance . . . ." *Id.* Taxation—which affects every American nearly every day in one form or another—is undoubtedly a "matter of great social significance." *See also Ysleta Del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1943 (2022)

("It is not our place to question whether Congress adopted the wisest or most workable policy."); *Pereida v. Wilkinson*, 141 S. Ct. 754, 766–67 (2021) ("It is hardly this Court's place to pick and choose among competing policy arguments like these along the way to selecting whatever outcome seems to us most congenial, efficient, or fair. Our license to interpret statutes does not include the power to engage in such freewheeling judicial policymaking.").

The need for deference in this case is important because the case involves the Minnesota Legislature's power to tax. The power to tax has been expressly delegated to the federal and state legislatures—under both the United States Constitution and the Minnesota Constitution. *See* U.S. Const., Art. I § 8, cl. 1 ("The Congress shall have Power To lay and collect Taxes"); *State ex rel. S. Bank v. Pilsbury*, 105 U.S. 278, 299 (1881) (noting "the power of taxation belongs exclusively to the legislative department of the government"); Minn. Const. Art. 10 § 1. Courts give special deference to the legislature on matters of taxation. The special deference that the judiciary affords to the legislative branch on matters of taxation was well-stated by the Minnesota Supreme Court in the case of *Minnesota Automatic Merch. Council v. Salomone*, where the court noted, "[C]ourts are very deferential in their review of tax legislation" because "taxation policy is peculiarly a legislative function, involving political give-and-take." 682 N.W.2d 557, 561–62 (Minn. 2004).

This Court reached the same basic conclusion as the Minnesota Supreme Court in *City of Pittsburgh v. Alco Parking Corp.* 417 U.S. 369, 376

(1974). *Alco Parking* involved a legal challenge that is very similar to the legal challenge at issue in this case. A property owner, like Petitioner in this case, argued that a tax imposed by a city ordinance amounted to an unconstitutional taking because it was inequitable (*i.e.*, "excessive" and "burdensome"). *Id.* The Court declined to get involved in the matter noting, "[The] judiciary should not infer a legislative attempt to exercise a forbidden power in the form of a seeming tax from the fact, alone, that the tax appears excessive." *Id.* The principle established in *Salomone* and *Alco Parking* is clear. Courts—at the highest level and under both the federal and state constitutions—give great deference to legislative judgments on issues of taxation in order to preserve the separation of powers. In this case, as in *Salomone* and *Alco Parking*, this Court must give deference to legislative decisions concerning the Minnesota Legislature's power to tax, and Minnesota's tax-forfeiture scheme in particular.

Deference to the legislature is also particularly important in this case because it involves a complex legislative scheme. As this Court noted in *Ziglar*, "When an issue involves a host of considerations that must be weighed and appraised, [legislative questions] should be committed to those who write the laws rather than those who interpret them." 582 U.S. at 135–36. The case of *King v. Burwell* is instructive in understanding the need for deference in matters involving a complex legislative scheme like those at issue in this case. 576 U.S. 473 (2015). The *King* case involved a challenge to the Affordable Care Act ("ACA"), undoubtedly a complex legislative scheme. *See* 576 U.S. at 478. This Court was asked

to hone in on just one portion of the ACA, to consider it in isolation, and to declare that portion invalid. *See id.* at 497. The Court refused to do so. *See id.* Instead of looking at the section in isolation, the Court looked to "the broader structure of the Act" (*i.e.*, the legislative scheme), and how all of the ACA's moving parts fit together. *Id.* at 492. The Court determined that, while the meaning of the section "may seem plain when viewed in isolation, such a reading turns out to be untenable in light of [the statute] as a whole." *Id.* at 497.

The *King* case stands for the proposition that courts—including this Court—do not look at small portions of a complex legislative scheme in isolation. Rather, they look at the broader structure of the legislation to determine the legislature's overarching purpose. The Court then gives deference to the legislative scheme to ensure the legislature's overarching purpose can be achieved. That is the only way for the Court to honor the intentions of the legislature, and to preserve the separation of powers inherent in our system of government and governance.

In this case, as in the *King* case, Petitioner invites the Court to hone in on just one section of Minnesota's large and complex property tax-forfeiture system, and to declare it invalid. In this case, as in *King*, the Court should decline Petitioner's invitation. Minnesota Statutes section 282.08 is part of the Minnesota Legislature's broader scheme governing property taxes in Minnesota. The ultimate goal of the scheme is to bring finality after a property owner fails to pay his or her property taxes. The system ensures that property is returned to

productive use following a tax-forfeiture. Funds from a tax forfeiture sale may also be used to make improvements to the forfeited property; to pay off special assessments; to develop and improve forest lands; and/or to acquire and maintain county parks or recreational areas. *See* Minn. Stat. § 282.08. Funds also go towards the administrative costs associated with administering the tax-forfeiture system as a whole.

In short, the Minnesota Legislature has developed a legislative scheme that, in its judgment, is in the best interests of the citizens of the State of Minnesota. The Court must not contravene the will and determination of the Minnesota Legislature through judicial action. Instead, the Court should "commit[] to those who write the laws" the complex legislative scheme at issue in this case, given the "host of considerations that [were] weighed and appraised" by the legislature in crafting the system. *See Ziglar*, 520 U.S. at 135–36.

If the Court sides with Petitioner it would, in essence, re-write and throw an isolated wrench into the legislature's carefully crafted tax-forfeiture scheme. Reversal would affect taxing districts' ability to bring finality to tax-forfeiture processes by drawing out the process. It would affect their ability to make tax-forfeited land productive again. It would deprive them of funding for property improvements, forests, public parks, and for the administrative costs associated with administering the state's tax-forfeiture system. It would create a host of practical problems that would increase administrative burdens on government employees. Decisions of that nature—concerning taxation and the allocation of

funding—are best left to the legislature, not the judiciary.

Petitioner suggests in essence that the Court should reverse the Eighth Circuit's unanimous ruling, and invalidate the Minnesota Legislature's chosen tax-forfeiture scheme, because the result in this case is inequitable. In doing so, Petitioner overlooks the many avenues she had to avoid tax-forfeiture. Petitioner had many opportunities over several years to avoid tax-forfeiture, and did not take advantage of them. Petitioner also overlooks the fact that virtually all tax-forfeiture sales do not result in a surplus and, instead, result in a substantial loss. But even setting those considerations aside, the bottom line is that if there is any inequity in Minnesota's tax-forfeiture process, it is the job of the Minnesota Legislature, and not the Court, to correct the inequity. *Nelson v. City of New York*, the most apposite authority in this case, plainly establishes that the Court defers to a state legislature on questions regarding the equity of a tax-forfeiture system. 352 U.S. 103 (1956).

The *Nelson* case, like this case, involved a property owner whose property was subject to tax forfeiture. *Id.* at 105. The *Nelson* case, like this one, involved a state law that allowed municipalities to collect the surplus proceeds from a forfeiture sale. *Id.* In this case, as in *Nelson*, the municipal government collected surplus proceeds several years after the initial delinquency, and then only "in the absence of timely action to redeem or to recovery any surplus." *Id.* at 110. The property owner in *Nelson* argued that the law was "harsh," and that that "extreme hardships [would] result[] from application

of the [law]." *Id.* at 110–11. The property owner asked the Court to declare the state law unconstitutional. *See id.* This Court declined, specifically on the basis of the separation of powers. *Id.* This Court "h[e]ld that nothing in the Federal Constitution prevent[ed]" the municipality from retaining surplus proceeds under the circumstances. *Id.* at 110. This Court further noted, "[R]elief from the hardship imposed by a state statute is the responsibility of the state legislature and not of the courts." *Id.* at 111.

Nelson plainly establishes—in nearly the exact same tax-forfeiture context at issue in this case—that this Court defers to the legislature on issues of tax-forfeiture policy. This is true even when the policy yields a result that an affected property owner may perceive as unfair. Deference on such matters is the only way to preserve the separation of powers. *Nelson* indicates that this Court must give deference to the Minnesota Legislature with respect to the statute at issue in this case, regardless of the perceived equity of the statute at issue.

Notably, following *Nelson*'s lead, courts in many jurisdictions have determined that perceived unfairness is not a valid basis for overturning state laws governing tax-forfeiture proceedings. *See, e.g.*, *Wasiluk v. City of Oneida, New York*, 2022 WL 3716279, at *13 (N.D.N.Y. 2022) (concluding "Plaintiff has no constitutional claim for the surplus equity in his former property"); *Automatic Art, L.L.C. v. Maricopa Cty.*, 2010 WL 11515708, at *6 (D. Ariz. Mar. 18, 2010) ("Generally, federal courts have been unwilling to disturb state taxation schemes and find constitutional violations."); *Reinmiller v. Marion*

Cty., Oregon, 2006 WL 2987707, at *3 (D. Or. Oct. 16, 2006) ("This court declines [the] invitation to overturn settled Oregon tax law. As courts have stated in response to similar challenges to disbursement of excess proceeds based on state law after forfeiture sales, the appropriate forum to raise these concerns is the state legislature."); *Balthazar v. Mari Ltd.*, 301 F. Supp. 103, 106 (N.D. Ill. 1969) ("[O]ppressive [tax-forfeiture] statutes must be tempered by the legislature, not the courts."); *City of Auburn v. Mandarelli*, 320 A.2d 22, 33 (Me. 1974) ("Amelioration of the oppressiveness of [a tax-forfeiture] statute must be made, if at all, by the Legislature, not the courts."); *see also Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121, 134 (2015) (noting "unwillingness to soften the import of Congress' chosen words even if we believe the words lead to a harsh outcome is longstanding").

There is good reason for this Court to defer to the Minnesota Legislature in this case. Multiple bills were introduced in both chambers of the Minnesota Legislature during the 2021 legislative session that addressed Minnesota Statutes section 282.08. *See, e.g.*, H.F. 1552 § 2, 92nd Leg. (2021); H.F. 2162 § 1, 92nd Leg. (2021); S.F. 908 § 1, 92nd Leg. (2021). One of the bills would have achieved the precise legislative fix Petitioner is seeking in this case. *See* H.F. 1552. The bill, if it had been enacted, would have required that "any balance" available after a tax-forfeiture sale be "returned to the person or entity that owned the property prior to its forfeiture." *Id.*

Additional legislation addressing Minnesota Statutes section 282.08 has been proposed in the

Minnesota Legislature this year, and is currently pending. *See* H.F. 2812 § 2, 93rd Leg. (2023); H.F. 1929 § 1, 92nd Leg. (2023). Under either of the pending legislative proposals, "any balance [after a tax-forfeiture sale] must be returned to the person or entity that owned the property prior to its forfeiture." *Id.* Given the circumstances, there is no need for this Court to re-write Minnesota Statutes section 282.08 through judicial action. The legislature has the means to do so at its finger tips if it so chooses. *See Epic Sys. Corp.*, 138 S. Ct. at 1626 ("Telling, too, is the fact that when Congress wants to mandate particular dispute resolution procedures it knows exactly how to do so.").

If the Minnesota Legislature believes a legislative fix is necessary, it will make the fix. Minnesota's legislative representatives certainly know how to make the fix, given the multiple proposals advanced in the past two legislative sessions. If the Minnesota Legislature does not believe a fix is necessary, then it will not make a fix. The legislature can debate the merits of the legislative proposals, and their effect on the legislature's broader property-tax and tax-forfeiture schemes. It can discern the will of the people through a deliberate process, based on feedback from various stakeholders. It can tweak and modify the legislation in order to balance the interests of the citizens of Minnesota. The people can hold its Minnesota legislators accountable for their final decision. In light of the fact that the legislature is in a position to address and "fix" its tax-forfeiture scheme if its wishes to do so, the Court need not get

involved and "fix" the alleged "inequity" in this case through judicial action.

III. PROPERTY OWNERS FACING TAX FORFEITURE IN MINNESOTA HAVE MANY OPPORTUNITIES TO RETAIN THEIR PROPERTY.

Petitioner's brief offers little discussion of the tax forfeiture process in Minnesota. In fact, the road to final tax-forfeiture in Minnesota involves multiple steps, and spans multiple years. Property owners receive ample notice of the steps in the process. The road to tax-forfeiture includes numerous statutory off-ramps designed to help property owners avoid tax-forfeiture and retain their property and any equity they may have in it. After final forfeiture occurs, the Minnesota Statutes offer a repurchase option to property owners that allows them to get their properties back in some cases.

The Minnesota Statutes make it abundantly clear that the objective of Minnesota's tax-forfeiture scheme is not to achieve forfeiture and collect an alleged windfall profit in the process. Rather, the goal is to keep property owners in their properties whenever possible. On top of the statutory off-ramps and repurchase option available to property owners, programs exist at the state and local level that are designed to assist property owners facing tax-forfeiture, and to help them retain their properties. The process is fair, balancing municipalities' need for finality and property-tax revenue against property owners' interests in retaining their properties.

Petitioner zooms past the numerous statutory off-ramps, repurchase options, and support programs available to property owners. Petitioner proceeds directly to the very end of the road, where a property owner's property is sold, and the local taxing districts receive an alleged tax-forfeiture "windfall." Petitioner infers that a "windfall" is the ultimate goal from the outset. That simply is not true. The goal is never to deprive a property owner of his or her property in order to obtain a property-tax windfall. Rather, as former Hennepin County Auditor-Treasurer Mark Chapin (previously a named defendant in this case) stated, "The goal is keeping the resident in the house, which also benefits their relatives, spouses, and neighbors." David Chanen, *Hennepin County's Navigator Program helps delinquent taxpayers keep their homes*, Minneapolis Star Tribune, April 2, 2019 (attributing statement to Auditor-Treasurer Chapin). The legislative scheme, as well as the various programs available to property owners, demonstrate that the goal is to help property owners remain in their property.

A. Minnesota Statutes provide property owners with several opportunities to avoid forfeiture and maintain their equity.

The goal of helping property owners retain their properties is evidenced by the fact that the Minnesota Statutes establish numerous opportunities for property owners to avoid forfeiture.

The first opportunity for property owners to exit the road to forfeiture of course is to simply pay their taxes. Property owners have a full year to come

up with the funds to pay their property taxes and avoid the tax-forfeiture process altogether.

The second opportunity for property owners to exit the road to forfeiture occurs after a property owner falls into delinquency, which occurs on January 1 of the year after their taxes are due. *See* Minn. Stat. § 279.02, subd. 1. Delinquent taxpayers receive notice that if they fail to pay their taxes their property will be "bid-in" by the state, meaning it is "sold" to the state. *See* Minn. Stat. § 279.06–.091. That doesn't occur, however, until mid-May in the year a property owners' taxes become delinquent. *See* Minn. Stat. § 280.01. Property owners thus have an additional four-and-a-half months to pay their property taxes and avoid forfeiture.

The third opportunity for property owners to exit the road to tax-forfeiture is via their right of redemption. *See* Minn. Stat. Ch. 281. Minnesota Statutes section 281.01 guarantees property owners the right of redemption stating, "Any person claiming an interest in any parcel of land bid in by the state at a tax sale may redeem the same." The right arises after tax-forfeited property has been "bid in" by the state, meaning the state has acquired an interest in the property after a property owner fails to pay property taxes. *See* Minn. Stat. § 280.41. Property owners redeem their property by paying off delinquent taxes, along with penalties, interests, and costs. Minn. Stat. § 281.02. In most cases, the redemption period lasts for three years. *See* Minn. Stat. § 281.17. Property owners receive ample notices of their right of redemption. *See* Minn. Stat. § 281.23.

The fourth opportunity for property owners to exit the road to forfeiture is through a confession of judgment. *See* Minn. Stat. § 279.37. As part of that process, a property owner agrees that the state may enter a judgment against the property owner's property in the amount of the property owner's delinquent taxes, penalties, costs, and interests. *Id.*, subd. 1. In exchange, the property owner gets up to ten years to pay off his or her tax debt through installment payments. *Id.*, subd. 2. The confession of judgment process is available to property owners "at any time prior to the forfeiture of the parcel of land to the state." *Id.*, subd. 1. Property owners are allowed to make a confession of judgment not once, but twice. *Id.*, subd. 10. The confession of judgment process functions, in essence, as a payment plan for individuals facing financial challenges. It gives struggling property owners time to get their financial house in order, and to help them maintain their properties.

The fifth opportunity for property owners to avoid the consequences of forfeiture—available in some but not all cases—occurs after final forfeiture. Even then, years after a property owner first failed to pay his or her property taxes, the Minnesota Statutes give a property owner yet another opportunity to retain his or her property through a repurchasing process. *See* Minn. Stat. § 282.241. The Minnesota Statutes provide a process that allows property owners to apply to their county board for permission to repurchase the property for the sum of delinquent taxes and assessments, together with penalties, interest, and costs. *See id.* The county board has discretion to grant or deny the

application. Counties almost uniformly grant permission if doing so will correct an "undue hardship" or "injustice," or if it serves the "public interest." *See id.* When a county board grants permission to repurchase, it generally allows a property owner to repay the delinquent sums in installment payments, giving the property owner even more time to redeem their property. *Id.*; *see* Minn. Stat. § 282.01, subd. 4(a) (authorizing ten annual installments). The statutory right to repurchase is available up and until tax-forfeited property is disposed of, which is often many years or even decades after forfeiture. *See id.*

In addition to the above-described ways to avoid forfeiture, a property owner may also decide to sell his or her property before final forfeiture occurs. Absolute title to the property does not vest in the state until the end of the redemption period prescribed by law—ordinarily three years after a property owner is delinquent. Minn. Stat. § 281.18. Rather than attempting to retain property, a property owner could decide to sell the property, pay off delinquent property taxes and other debts, and then retain the surplus equity for himself or herself.

Petitioner and many of the *amicus curiae* supporting Petitioner would have the Court believe that Minnesota's tax-forfeiture system is one-sided and inequitable. They would have the Court believe the system was created for the purpose of giving Minnesota's local taxing districts tax-forfeiture windfalls. A fair look at the system, however, demonstrates that is not the case. The above-described statutory system is one of grace and second chances. Property owners have many opportunities

to retain their property, and to maintain the equity in their property. They have many years to take advantage of the state's offerings. Contrary to the position of Petitioner and many of the *amicus curiae* supporting her, the statutes at issue in this case reveal that the state's tax-forfeiture system was designed to protect property owners.

Ultimately, the desire to provide property owners with grace and second chances must be balanced against taxing jurisdictions' need for finality with respect to property where taxes are not being paid. Minnesota's local taxing districts rely on property tax revenue to operate their government programs. When property owners fail to pay their property taxes, especially for multiple consecutive years, Minnesota's local taxing districts cannot operate effectively. That harms the community as a whole. At some point, the desire to provide grace and second chances must be balanced against local taxing districts' rights to collect taxes, and a municipality's right to finality when a delinquent property owner fails to contribute his or her fair share to the cost of government. The Minnesota Legislature has crafted a system that balances those two interests. The Legislature's chosen system is reflected in Minnesota Statutes section 282.08, and in the broader tax-forfeiture scheme. As noted above, this Court defers to the Legislature's judgment and its balancing of the equities in this matter.

B. Programs also exist at the state and local level that are designed to help property owners retain their properties.

The ultimate goal of helping property owners retain their properties and keep them on the tax rolls is also evidenced by the fact that state and local government entities have established various programs to help property owners avoid tax-forfeiture and keep their properties.

At the state level, the Minnesota Department of Revenue has established a property tax deferral program for senior citizens that is designed to help them stay in their properties. Minn. Stat. Ch. 290B (establishing Senior Tax Deferral Program); *see generally* Minnesota Department of Revenue, *Property Tax Deferral for Senior Citizens*, https://www.revenue.state.mn.us/property-tax-deferral-senior-citizens (last updated Dec. 18, 2020). The program is designed to help fill in the gap for seniors who lack the income to pay their property taxes. Property owners pay three percent (3%) of their total household income towards their property taxes. Minn. Stat. § 290B.05, subd. 1. The state pays the remainder of the property owner's property taxes as a loan. Minn. Stat. § 290B.07(a). When a property owner sells his or her property, or voluntarily cancels the tax deferral, the property owner then repays the loan, with interest in an amount not to exceed five percent (5%). Minn. Stat. § 290B.08. The program makes property taxes more affordable by tying payment amounts to income rather than the value of the property.

Hennepin County in particular has established a program at the local government level—referred to as the Navigator Program—that is designed to assist property owners facing tax-forfeiture. *See* David Chanen, *Hennepin County's Navigator Program helps delinquent taxpayers keep their homes*, Minneapolis Star Tribune, April 2, 2019. The program is available to property owners who are delinquent in paying their property taxes, and are awaiting tax-forfeiture. *Id.* "Navigators" provide holistic support to property owners, connecting them with social services and other resources (*e.g.*, medical, legal, clothing, veteran support, mental health counseling, etc.). *Id.* The ultimate goal is to help property owners maintain the stability associated with property ownership by avoiding forfeiture. *See id.* The program has been successful, helping many people in Hennepin County avoid tax-forfeiture. *Id.*

Hennepin County received an Achievement Award from the National Association of Counties in 2018 for its Navigator Program. *Resident and Real Estate Services/Human Services Navigator*, National Association of Counties (May 1, 2018), https://www.naco.org/resources/award-programs/resident-and-real-estate-serviceshuman-services-navigator. The National Association of Counties provided the following information about the Navigator Program, and rationale as to why Hennepin County received the award:

> The goals of the program are to provide resources and assistance to support taxpayers staying in their

> homes, housing relocation assistance if needed, and to help stabilize individuals and families during the delinquency and forfeiture process. The program has been overwhelmingly successful in its first year serving 53 taxpayers with only 6 losing their homes to tax-forfeiture. Of the 53 tax-payers, 31 were able to pay their property taxes resulting in an amount of $331,995.29.

Id.

As noted above, Petitioner would have the Court believe that the goal of Minnesota's tax-forfeiture system is to obtain tax-forfeiture windfalls. If that were in fact true, it defies logic to believe that the State of Minnesota, as well as Hennepin County (*i.e.*, the named-Respondent in this case), would establish programs explicitly designed to *avoid* tax forfeitures.

The programs available to property owners at the state and local levels—like the statutory scheme outlined in the Minnesota Statues—demonstrate that the ultimate goal is not tax forfeiture. Rather, the goal is to help property owners stay in their properties and benefit from the security that property ownership provides. Only property owners who choose not to take advantage of the numerous state and local offerings suffer the ultimate

consequence—tax-forfeiture. The Minnesota Legislature has determined that forfeiture is an appropriate result when property owners choose not to take advantage of statutory relief or state or local support options. This Court must not disrupt the legislature's judgment.

CONCLUSION

The Association of Minnesota Counties (AMC), Minnesota Association of County Land Commissioners (MACLC), Minnesota Association of County Officers (MACO), and Minnesota Association of Assessing Officers (MAAO) respectfully request that the Court affirm the decision of the Eighth Circuit Court of Appeals, and affirm the constitutionality of Minnesota's carefully-crafted tax-forfeiture system.

Respectfully submitted,

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