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 *AMICI CURIAE* LOCAL GOVERNMENT LEGAL CENTER, NATIONAL ASSOCIATION OF COUNTIES, NATIONAL LEAGUE OF CITIES, INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, AND GOVERNMENT FINANCE OFFICERS ASSOCIATION IN SUPPORT OF RESPONDENTS

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STATEMENT OF INTERESTS OF *AMICI CURIAE*[1]

The Local Government Legal Center ("LGLC") is a coalition of national local government organizations formed in 2023 to provide education to local governments regarding the Supreme Court and its impact on local governments and local officials and to advocate for local government positions at the Supreme Court in appropriate cases. The National Association of Counties, the National League of Cities, and the International Municipal Lawyers Association are the founding members of the LGLC, and the Government Finance Officers Association is an associate member of the LGLC.

The National Association of Counties ("NACo") is the only national association that represents county governments in the United States. Founded in 1935, NACo provides essential services to the Nation's 3,069 counties through advocacy, education, and research.

The National League of Cities ("NLC") is the oldest and largest organization representing municipal governments throughout the United States. Working in partnership with forty-nine state municipal leagues, NLC is the voice of more than 19,000 American cities, towns, and villages, representing collectively more than 200 million people. NLC works

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[1] Pursuant to Supreme Court Rule 37.6, these Amici affirm that no counsel for a party authored this brief in whole or in part, and that no such counsel or party, other than Amici or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

to strengthen local leadership, influence federal policy, and drive innovative solutions.

The International Municipal Lawyers Association ("IMLA") is a non-profit, nonpartisan, professional organization consisting of more than 2,500 members. Membership is comprised of local government entities, including cities, counties, and subdivisions thereof, as represented by their chief legal officers, state municipal leagues, and individual attorneys. IMLA's mission is to advance the responsible development of municipal law through education and advocacy by providing the collective viewpoint of local governments around the country on legal issues before state and federal appellate courts.

The Government Finance Officers Association ("GFOA") is the professional association of state, provincial, and local finance officers in the United States and Canada. GFOA has served the public finance profession since 1906 and continues to provide leadership to government-finance professionals through research, education, and the identification and promotion of best practices. Its more than 21,000 members are dedicated to the sound management of government financial resources.

Amici are not-for-profit organizations whose missions are to advance the interests of cities, counties, and other local governments. They file this brief to recommend that the Court affirm the United States Court of Appeals for the Eighth Circuit. Although there are many property-tax systems across the United States, local governments nationwide rely

on property-tax revenue to provide essential services to their constituents. Tax forfeiture is sometimes necessary to address the problems of tax-delinquent properties, and Amici—in addition to agreeing with Respondents that Petitioner is not entitled to compensation under the Takings Clause—submit this brief to provide the Court with information about the importance to local governments of property taxes and property-tax enforcement.

SUMMARY OF ARGUMENT

Property owners who fail to pay their property taxes and who disregard statutory safeguards for preserving the equity in their property, do not have a right under the Takings Clause to be paid if the public body that acquires the property through forfeiture sells it for more than the owner owed in taxes. Principles of federalism dictate that Section 1983 cannot be used to interfere with the operations of a State's tax system unless the system leaves the plaintiff without an adequate remedy. Petitioner tries, and fails, to fashion a takings claim out of her wish that the government share its earnings from a sale after all of her interests in the property were extinguished and vested in the State of Minnesota, without regard to the numerous ways she could have protected her investment before things reached that stage. It was constitutional for absolute title to the property to transfer to the State as a consequence of Petitioner's unpaid property taxes, and it was constitutional for the State—as fee owner—to sell the property to a third party and distribute the proceeds beyond the tax debt, rather than to Petitioner.

Taxes are the lifeblood of local government in America. At the apex of these are property taxes; while some States do not impose income taxes, local governments in every State in the nation use property taxes to help fund the multitude of services on which their constituents rely.

Petitioner seeks to undermine a longstanding and central tenet of property taxation—that once a property owner fails to pay property taxes, ignores repeated notices over several years, and fails to take advantage of multiple programs specifically designed to preserve ownership, forfeiture will follow, vesting title in one government body or another. The new constitutional right Petitioner requests will reduce taxpayer compliance, reduce the government's enforcement ability, and discourage solutions currently in use that benefit delinquent (yet attentive) owners, their neighbors, and the general public. Petitioner's proposed new constitutional right is also far out of step with this Court's Section 1983 and Takings Clause jurisprudence.

The Court should reaffirm the well-established limitations on takings claims that Petitioner disregards and affirm the judgment below.

ARGUMENT

I. Principles of federalism and this Court's precedents dictate that "federal law generally will not interfere with administration of state taxes."

For decades, Section 1983 plaintiffs have been litigating under important limitations established through this Court's modern decisions. For example, in decisions such as *Fair Assessment in Real Estate Ass'n v. McNary*, 454 U.S. 100, 116 (1981), the Court barred the use of Section 1983 to seek declaratory, injunctive, or compensatory relief based on a claim that something in a State's tax system is unconstitutional. As Justice Thomas later wrote for a unanimous Court, "the background presumption that federal law generally will not interfere with administration of state taxes leads us to conclude that Congress did not authorize injunctive or declaratory relief under § 1983 in state tax cases when there is an adequate remedy at law." *Nat'l Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 588 (1995). The Court's reasoning in *National Private Truck Council, Inc.* that "principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration" applies with equal force here. *Id.* at 586. Compensatory relief in such cases has been barred at least since the *Fair Assessment* decision in 1981. *See* 454 U.S. at 115–16.

Respondents properly invoke this Court's decision in *National Private Truck Council, Inc.* Resp. Br. 15,

40. Because *Fair Assessment* "was a case about the scope of the § 1983 cause of action, not the abstention doctrines[,]" *Quackenbush v. Allstate Ins. Co.,* 517 U.S. 706, 719 (1995) (internal citation omitted), this limitation applies to Section 1983 cases pending in both federal and state courts. *See Nat'l Private Truck Council, Inc.*, 515 U.S. at 589 ("[T]he Oklahoma courts' denial of relief under § 1983 was consistent with the long line of precedent underscoring the federal reluctance to interfere with state taxation."). Because Petitioner would have been subject to that limitation even if Respondents had not removed her case to federal court, this limitation was not created by the removal, but was present from the case's inception in state court.

Petitioner's effort to bring a class-action suit under Section 1983 by challenging the Minnesota statutory tax framework's treatment of any "equity surplus" is on a collision course with the principles underlying *Fair Assessment* and its progeny.[2] As Justice Rehnquist wrote in *Fair Assessment,* "[t]his Court, even before the enactment of § 1983, recognized the important and sensitive nature of state tax systems and the need for federal-court restraint when deciding cases that affect such systems." 454 U.S. at 102. "'It is

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[2] Petitioner expressly invoked Section 1983 in Paragraph 64 of her Complaint, and implicitly did so in Paragraph 3 (by seeking attorney fees under 42 U.S.C. § 1988, in a suit where there was no other potential basis for liability giving rise to a claim for fees under Section 1988 other than Section 1983). Joint App'x 4, 20. Amici request that the Court limit its decision to the adequacy of the Complaint, without addressing or calling into question the availability of any defenses.

upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments, 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.'" *Id.* (quoting *Dows v. Chicago,* 78 U.S. (11 Wall.) 108, 110 (1871)). To protect "the vital and vulnerable nature of state tax systems," this Court reaffirmed that "'a proper reluctance to interfere by prevention with the fiscal operations of the state governments has caused it to refrain from so doing in all cases where the Federal rights of the persons could otherwise be preserved unimpaired.'" *Id.* at 103, 108 (quoting *Boise Artesian Water Co. v. Boise City*, 213 U.S. 276, 282 (1909)). To avoid the disruption to state and local governments' fiscal interests that would result if "a district court first determines that respondents' administration of the County tax system violated petitioners' constitutional rights," *Fair Assessment* barred compensatory relief and not simply injunctive or declaratory relief. *Id.* at 113–14.

Petitioner's suit does not challenge the adequacy of state-law protections, for good reason: Minnesota's statutory tax framework includes multiple layers of protections for tax-delinquent property owners. Petitioner simply ignored those protections while she had the opportunity to invoke them.[3]

This Court should adjudicate this case under the principles of federalism in Section 1983 challenges to

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[3] *See infra* Sections II, II.C.

States' tax frameworks as described in *Fair Assessment* and *National Private Truck Council, Inc.*

II. The Takings Clause does not require a public body that acquires absolute title to real property through tax forfeiture and later sells the property for more than the amount of the tax debt, to compensate the former owner.

Petitioner, seeking to represent a class of many others, does not dispute that she and the putative class members failed to pay their property taxes fully when due, or upon notice of the delinquency. Nor does Petitioner dispute that, in the face of forfeiture, Minnesota law provided her with numerous opportunities—none of which she took—to protect her financial interests in her investment as owner, including her interest in preserving any equity. Nor does Petitioner dispute that her entirely passive approach following her failure to pay the property taxes due, which led to forfeiture of the property and a statutory transfer of its ownership, relieved her of any exposure to liens on the property—including those protecting third parties—and spared her the cost of hiring an agent to sell the property. Nor does she dispute that if the government had sold her property for *less* than her tax obligation, she would not be responsible for the deficit.

Instead, Petitioner brought this federal suit because she wanted, on top of everything else, to receive a check from the government if the eventual sale price of the property for which she refused to fully

pay her taxes exceeded the amount owed (which we will call her "equity surplus"). Petitioner does not claim a statutory right to receive both the benefits of discharged liens and avoided sale costs, and a check for any equity surplus. Instead, she contends that she has an entitlement under the Takings Clause of the United States Constitution.[4] Petitioner asserts this so-called right regardless of the statutory opportunities to protect the amount of her investment that she bypassed.

The district court properly dismissed Petitioner's takings claim, and the Eighth Circuit properly affirmed that dismissal. Petitioner's claim is about a non-compensable "leaving" of value by Petitioner rather than any compensable "taking" of property from her by Hennepin County or its Auditor-Treasurer. The government, by not sending Petitioner a check in the amount of the alleged equity surplus after final forfeiture to the State and a later sale to a third party, did not "take" Petitioner's "property" in the proper legal meaning of those terms. Equally important, Petitioner's failure to have timely taken advantage of avenues to protect her investment in ownership provides a separate basis for affirmance. *See Nelson v. City of New York*, 352 U.S. 103, 109–10 (1956) (holding that complete forfeiture of real property through tax foreclosure as a result of owner's neglect did not violate the Takings Clause).

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[4] This brief focuses solely on the Takings Clause claim, but these Amici agree with Respondents that all of Petitioner's claims lack merit.

Notwithstanding the Takings Clause, governments have a "well-established power to 'adjus[t] rights for the public good.'" *Murr v. Wisconsin*, 137 S. Ct. 1933, 1943 (2017) (quoting *Andrus v. Allard*, 444 U.S. 51, 65 (1979) (brackets in *Murr*)). "The Takings Clause has never been read to require the States or the courts to calculate whether a specific individual has suffered burdens under this generic rule in excess of the benefits received." *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 492 n.21 (1987).

A. The loss of any "equity surplus," standing alone, does not constitute a taking.

Petitioner's attempt to base a takings claim on the loss of a single twig (i.e., an alleged equity surplus) from the proverbial "bundle of sticks" of property ownership, disregards well-established decisions of this Court.

A takings plaintiff may not divide a parcel into discrete segments and then attempt to determine whether rights in a particular segment have been entirely denied. *See Tahoe-Sierra Pres. Council v. Tahoe Reg'l Planning Agency,* 535 U.S. 302, 327–30 (2002); s*ee also Keystone Bituminous Coal Ass'n*, 480 U.S. at 472, 498 (noting that many laws "place limits on the property owner's right to make profitable use of some segments of his property," and explaining that the owner may not divide property and define "a separate segment of property for takings law purposes"). "[O]ur takings jurisprudence forecloses

reliance on such legalistic distinctions within a bundle of property rights." *Keystone Bituminous Coal Ass'n,* 480 U.S. at 500. Instead, the takings plaintiff must prove a taking of his or her entire parcel. "[E]ven though multiple factors are relevant in the analysis of regulatory takings claims, in such cases [courts] must focus on the parcel as a whole[.]" *Tahoe-Sierra Pres. Council*, 535 U.S. at 327 (quotation omitted); *see also id.* at 331 ("[I]n regulatory takings cases [courts] must focus on the parcel as a whole." (quotation omitted)).

Indeed, this Court "has declined to limit the parcel in an artificial manner to the portion of property targeted by the challenged regulation." *Murr*, 137 S. Ct. at 1944. "That approach would overstate the effect of regulation on property[.]" *Id.* (citing *Tahoe-Sierra Pres. Council,* 535 U.S. at 331). "'To the extent that any portion of property is taken, that portion is always taken in its entirety; the relevant question, however, is whether the property taken is all, or only a portion of, the parcel in question.'" *Id.* (quoting *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Tr. for S. Cal.,* 508 U.S. 602, 644 (1993)). Even where an "owner possesses a full 'bundle' of property rights, the destruction of one 'strand' of the bundle is not a taking[.]" *Andrus*, 444 U.S. at 65–66.

B. Petitioner's takings theory disregards delinquent owners' loss of all property interests in tax-delinquent property earlier in the forfeiture process.

Petitioner claims to have an "equity interest" in the parcel that entitles her to some of the proceeds from the government's post-forfeiture sale of the parcel to a third party. But even assuming for the sake of argument that the "bundle of sticks" of property ownership includes such an interest, the *entire* bundle transferred from Petitioner to the State of Minnesota when the statutory redemption period expired without Petitioner's redeeming her property. *See* Minn. Stat. § 281.18 (providing that upon the expiration of the statutory redemption period for a parcel of land sold to the state at any tax judgment sale, "absolute title to such parcel, if not theretofore redeemed, shall vest in the state"). That is, when the redemption period expired, any and all interests Petitioner may have had in the property were completely extinguished—and became vested in the State. *See* Pet. Br. 2 (conceding that transfer of "absolute title" extinguished "all interests [Petitioner] had in her property, including her equity").[5]

[5] Petitioner's arguments assume that the Court will focus exclusively on the occasional opportunity for a former owner to share in a higher sales price that is lost after transfer of absolute title after redemption periods end. She ignores an accompanying benefit of the same statutory tax system: the extinguishment of all encumbrances held by the tax delinquent's private creditors.

Petitioner faults Respondents for not paying her "for the excess value" of the property either (1) "when it took absolute title" or (2) "when it sold the property" after taking absolute title.[6] But the Court should not conflate the statutory vesting of absolute title to the parcel with the later sale of the property to a third party. As this Court has recognized, these are two separate transfers—and the first transfer (vesting of absolute title in the State after a redemption period) leaves the prior owner with no property interests upon which a constitutional challenge to the second transfer (the government's later sale of the property) can be based. In *Pearson v. Dodd*, the Court held that because appellant's interest was transferred by statute to the State of West Virginia after she failed to pay real-estate taxes and did not redeem during the statutory redemption period, and because she was not

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This is more than a question of standing; it reflects how an overall statutory property-tax system is made up of counterbalancing potential burdens and potential opportunities for delinquent taxpayers. If the Court transforms a former owner's opportunity to benefit (if a bidding war were to break out at a tax-foreclosure sale) into a constitutional entitlement, it will disrupt a legislative counterbalance. In the short run, it would reduce compliance and tax collections—but in the longer run, it could motivate state legislatures to restore balance by reducing existing statutory benefits (like discharge of all other encumbrances) that currently result in greater compliance and tax-collection successes, more redemptions, and fewer delinquencies that ultimately bring about loss of a home.

[6] Pet. Br. 3. As Respondents point out, there are significant practical problems with Petitioner's argument that the transfer of title is the triggering event for purposes of determining when compensation is owed. *See* Resp. Br. 42–43.

challenging that transfer, her constitutional claims based on the State's later sale of the property failed:

> [U]nder state law absolute title had vested in the State at the expiration of the 18-month period after the 1962 sale during which appellant might have exercised but did not exercise her right to redeem . . . . Appellant thus has no constitutionally protected property or entitlement interest upon which she may base a challenge of constitutional deficiency in the notice provisions attending the 1966 sale to appellee Dodd.

Pearson v. Dodd, 429 U.S. 396, 397–98 (1977) (per curiam); *see also Chapman v. Zobelein*, 237 U.S. 135, 136, 138–39 (1915) (rejecting claim that State of California, which received "absolute title" to tax-forfeited land after expiration of redemption period, had deprived former landowner of property without due process under the Fourteenth Amendment by selling the land to the highest bidder and receiving more than the tax debt for the parcel).

Notwithstanding these well-established principles, Petitioner repeatedly cites rhetoric from *Beckwith v. Webb's Fabulous Pharmacies, Inc.*, 449 U.S. 155 (1980), incorrectly implying that the present case fits within the narrow exception recognized there. *Webb's* arose from a Florida statute providing that interest generated on sums deposited in state courts "'shall be deemed income of the office of the clerk of the circuit court.'" 449 U.S. at 160 (quoting Fla Stat. § 28.33

(1977)). The State construed the Florida statute as applying not just to interest on funds owned by the government, but also to "private funds deposited under the direction of another statute." *Id.* In *Webb's*, the particular deposited fund "was the amount received as the purchase price for Webb's assets," which was "property held only for the ultimate benefit of Webb's creditors, not for the benefit of the court and not for the benefit of the county." *Id.* at 160–61. But in *Webb's* this Court "was careful, however, to limit its holding to the precise facts before it." *Rogers v. Bucks Cty. Domestic Relations Section,* 959 F.2d 1268, 1276 (3d Cir. 1992). This Court explained its narrow holding this way:

> We hold that under the narrow circumstances of this case—where there is a separate and distinct state statute authorizing a clerk's fee "for services rendered" based upon the amount of principal deposited; where the deposited fund itself concededly is private; and where the deposit in the court's registry is required by state statute in order for the depositor to avail itself of statutory protection from claims of creditors and others—Seminole County's taking unto itself, under § 28.33 and 1973 Fla. Laws, ch. 73-282, the interest earned on the interpleader fund while it was in the registry of the court was a taking violative of the Fifth and Fourteenth Amendments.

Webb's, 449 U.S. at 164–65.

Because the equity surplus sought here is unlike the "interpleaded and deposited fund" in *Webb's*, "it therefore falls outside the 'narrow circumstances' of that holding." *Hall v. State*, 908 N.W.2d 345, 355 (Minn. 2018); *see also Rogers,* 959 F.2d at 1276. First, in this case (but not in *Webb's* and its progeny) the party claiming a property interest in the earnings on the property lost title to that property earlier in the process. In *Webb's*, this Court emphasized that "[t]he usual and general rule is that any interest on an interpleaded and deposited fund follows the principal and is to be allocated to those who are ultimately to be the owners of that principal." *Webb's*, 449 U.S. at 162.

Second, in *Phillips v. Washington Legal Foundation*, the Court emphasized that "'earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property.'" 524 U.S. 156, 167 (1998) (quoting *Webb's*, 449 U.S. at 164). But "[t]he holding in *Phillips*, as well as that in *Webb's Fabulous Pharmacies*, *assumes* that the claimants had a traditional private property right in the principal and concludes only that, as an incident to that ownership, the claimants also had a property right in the interest." *Washlefske v. Winston*, 234 F.3d 179, 185 (4th Cir. 2000). Where that assumption is incorrect, the opposite result follows. For example, the Federal Circuit has refused to apply the "interest follows principal" logic of *Webb's* and *Phillips* to a claim for a share of the Federal Reserve's earnings on the plaintiff's reserves, because the defendant, not the plaintiff, held title to those reserves:

> As the Supreme Court put it almost a century ago, when a bank receives deposits, the funds "belong to the bank, become part of its general funds, and can be loaned by it as other moneys. . . . The general doctrine that upon a deposit made by a customer, . . . the title to the money . . . is immediately vested in, and becomes the property of, the bank, is not open to question."

Texas State Bank v. United States, 423 F.3d 1370, 1379 (Fed. Cir. 2005) (quoting *Burton v. United States*, 196 U.S. 283, 301–02 (1905)). "Under such circumstances, even if the funds received by the Federal Reserve were used to earn interest, Texas State did not acquire a property interest in the earnings." *Id.* at 1380.

Here, as explained in the previous section (II.A), the earnings on the eventual sale of Petitioner's condominium arose from property *no longer owned* by the person bringing the takings claim. *See* Minn. Stat. § 281.18. Under the "interest follows principal" rule in *Webb's* and *Phillips*, it is a public body—as owner of the property through final forfeiture—that holds the right to receive the proceeds of a later sale. *Cf. Simon v. Weissmann*, 301 F. App'x 107, 112 (3d Cir. 2008) ("None of the state cases cited in *Phillips* involves a situation where a property owner claims he is owed the fruit after abandoning the tree.").

In any event, *Webb's* and *Phillips* are "readily distinguishable" because both "involved an invasion of

specific identifiable property." *Swisher Int'l, Inc. v. Schafer*, 550 F.3d 1046, 1055 n.6 (11th Cir. 2008). *Webb's*, *Phillips*, and *Brown v. Legal Foundation of Washington*, 538 U.S. 216 (2002), do not apply where "no deposit was made with a third party, such as a private bank, that resulted in earned interest." *Texas State Bank*, 423 F.3d at 1380.

Petitioner's lack of a property interest in the condominium after title passed to the State but before any equity surplus arose, dooms her takings claim.

C. Petitioner's rights under the Takings Clause are limited or barred by her failure to exercise the statutory scheme's safeguards to prevent the alleged taking.

This Court "'has never required [Congress] to compensate the owner for the consequences of his own neglect.'" *United States v. Locke*, 471 U.S. 84, 107 (1985) (quoting *Texaco, Inc. v. Short*, 454 U.S. 516, 530 (1982) (brackets in *Locke*)).[7] "Regulation of property rights does not 'take' private property when an individual's reasonable, investment-backed expectations can continue to be realized as long as

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[7] In *Short*, this Court affirmed the dismissal of a Takings Clause claim arising from a statute that reclassified mineral interests as "lapsed" if they were not used for twenty years. It explained, "[i]n ruling that private property may be deemed to be abandoned and to lapse upon the failure of its owner to take reasonable actions imposed by law, this Court has never required the State to compensate the owner for the consequences of his own neglect." 454 U.S. at 530.

[she] complies with reasonable regulatory restrictions the legislature has imposed." *Id.*

Here, there was a sequence of statutory safeguards, spanning more than five years, available to Petitioner that would have enabled her to protect her investment before the alleged taking (whether the taking occurred when absolute title transferred, or when the property was later sold to a third party). Understandably, Petitioner has made no effort to show that those statutory procedures are unreasonable. Instead, she focuses exclusively on the relatively more extreme consequences of doing little or nothing, trying to turn the added severity of those consequences, when viewed in isolation, into a valid constitutional claim.

The financial impact of a statutory scheme cannot be viewed in isolation from the opportunities that statutory scheme provided the property owner to protect the property's value, but which the property owner ignored. A takings plaintiff cannot sit on his or her hands and refuse to invoke formal procedures for obtaining an exemption or variance from the potential confiscatory effect of a statutory prohibition, and then use that alleged confiscatory effect as the basis for a takings claim. *See Palazzolo v. Rhode Island*, 533 U.S. 606, 620–21 (2001); *Suitum v. Tahoe Reg'l Planning Agency*, 520 U.S. 725, 736–37 (1997); *Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 297 (1981).

Where the regulatory regime offers the possibility of a variance from its facial requirements, "a

landowner must go beyond submitting a plan for development *and actually seek such a variance* to ripen his [takings] claim." *Suitum*, 520 U.S. at 736–37 (emphasis added) (citing *Hodel*, 452 U.S. at 297). "[A] takings claim based on a law or regulation which is alleged to go too far in burdening property depends upon the landowner's first having followed reasonable and necessary steps to allow regulatory agencies to exercise their full discretion in considering development plans for the property, *including the opportunity to grant any variances or waivers allowed by law*." *Palazzolo*, 533 U.S. at 620–21 (emphasis added).

III. Petitioner's takings theory is impractical and unmanageable.

Petitioner contends, in essence, that *she* is the one who is constitutionally entitled to reap the rewards if the property that she forfeited by failing to pay her property taxes ultimately sells for more than her extinguished tax debt. But the transfer of ownership from her to the government, and the government's need to spend money while it owns the property and before its sale in an effort to get a better price for it, make it speculative at best to believe that *the delinquent prior owner* caused the actual higher sale price. The county, not the delinquent prior owner, would have hired the real estate agent in exchange for a percentage of the sale. The county, not the delinquent property owner, would have borne the costs associated with home inspections and any repairs, landscaping, staging, or other marketing expenses leading up to the sale. The county, not the

delinquent property owner, would have paid the utility bills needed to keep the empty condominium from losing value while unoccupied.

Counties are not passive participants in the process that occurs between the forfeiture of tax-delinquent property and its eventual sale. By statute, Minnesota counties are encouraged to sell and utilize tax-forfeited land "in order to eliminate nuisances and dangerous conditions and to increase compliance with land use ordinances." Minn. Stat. § 282.01, subd. 4(c). Consistent with that policy, the statute authorizing counties to list and sell such properties "shall be liberally construed to encourage the sale and utilization of tax-forfeited land." *Id.* Spending to maintain and improve tax-forfeited properties so that they are more likely to sell is an obvious way that counties can achieve that mission. For example, neighboring Ramsey County, Minnesota—which includes St. Paul (the state capital) and several smaller cities—has a Productive Properties division that administers the process of making state-owned, tax-forfeited property into productive and taxable land.[8] But under Petitioner's constitutional theory,

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[8] *See* Ramsey Cty., Minn., *Productive Properties*, https://tinyurl.com/c9mf7brz. For an example of an historic-registered, tax-forfeited home that construction students restored through Ramsey County's partnership with a non-profit organization, see Goodwill-Easter Seals, Minn., *Ramsey County/Goodwill-Easter Seals Minnesota Partnership Restores Historic Neighborhood Home & Changes Lives* (Mar. 1, 2022), https://tinyurl.com/4apwkw2h.

the financial benefits of that sale must then go to her as the delinquent prior owner.

Amici scrutinized Petitioner's merits brief for any acknowledgment that tax delinquents' claimed "equity surpluses" may be constitutionally offset to avoid a perverse incentive for tax delinquents to, in effect, make a public body their unpaid realtor. That common-sense concession is nowhere to be found in Petitioner's brief.

If the Court were to dignify Petitioner's constitutional theory, it would not merely be ignoring the expenses of dollars, personnel, and other taxpayer-funded resources, incurred by a county leading up to the post-forfeiture sale. It would also give cash-starved property owners a perverse incentive to let their tax-delinquent properties go to forfeiture so that the county (or other taxing district) will bear both the burden of selling *and* the legal duty to "compensate" the tax-delinquent prior owner for getting a decent price. That would then give public bodies a perverse incentive to market tax-forfeited properties without improvements or meaningful marketing expenses. Even if the properties were marketable in those circumstances, this would simply reward potential *purchasers* by keeping prices down, but do nothing to further the interests of either the delinquent prior owner or the taxing authority. It might also encourage another bizarre species of claims by the delinquent property owner—that the government "took" the delinquent owner's equity interest by not obtaining a better price, and is somehow liable for that lapse.

Even if Petitioner were to propose an alternative that would attempt to allocate the "equity surplus" among the taxing authority, the former property owner, and potentially multiple lienholders,[9] and to somehow reduce the perverse incentives, appellate courts would be burdened with creating and developing the constitutional principles needed to guide that allocation, and district courts would be burdened with applying those principles to the myriad of former owners of tax-forfeited parcels who would become potentially eligible for the payoffs under Petitioner's theory.

Rather than disregarding or overturning the precedent of this Court (including *Texaco*, *Pearson*, *Nelson*, and *Chapman*) and making new constitutional law in the fashion Petitioner requests, this Court should reject her arguments for the reasons set forth above. That would leave it to legislative bodies to craft the complex web of legal principles and procedures that would be needed to fairly address all the competing interests—just as the Constitution's framers envisioned.

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[9] For example, Petitioner's property was encumbered by a mortgage that exceeded the sale price, as well as a homeowner's association lien. Resp. Br. 2, 13.

IV. The payment of property taxes and the use of forfeiture as a tool in cases of delinquency is tremendously important to local governments.

Petitioner professes not to understand why a State might treat surplus equity differently in the context of tax forfeiture than in other contexts, such as private mortgage transactions, where the mortgagee must return surplus equity to the owner. *See* Pet. Br. 22 ("There is nothing about property taxes . . . that justifies this unusual treatment."). But unlike a purely private contractual arrangement, the obligation to pay property taxes is a commitment to fund the common good. Delinquent taxpayers not only increase the burden on people who *do* pay their taxes, but they also harm the government's ability to provide essential services to all constituents (whether they own real property or not). And property taxes are a crucial source of revenue for local governments across the nation. The importance of property taxes is underscored by the "super priority" status of property-tax liens—most States give tax liens priority over virtually all other liens, including mortgages[10]—undercutting Petitioner's contention that the payment of property taxes is no different than a private obligation. It is vital that property taxes be paid, and

[10] Frank S. Alexander, *Tax Liens, Tax Sales, and Due Process*, 75 IND. L.J. 747, 770–71 (2000); *see also* Kim Graziani, Ctr. for Cmty. Progress, *Reimagine Delinquent Property Tax Enforcement* 6 (2022), https://tinyurl.com/42cf8s98 ("[I]n most states, [a property-tax] lien is given first priority status, meaning it needs to be paid back before almost any other debts, such as a mortgage.").

forfeiture is an important tool for governments if those taxes are not paid.

A. Property taxes are a cornerstone of local governments' provision of essential services.

One of the most famous statements in American jurisprudence is Justice Oliver Wendell Holmes Jr.'s statement that "[t]axes are what we pay for civilized society[.]" *Compania General de Tabacos de Filipinas v. Collector of Internal Revenue*, 275 U.S. 87, 100 (1927) (Holmes, J., dissenting) (adopted by the Court in *New York ex rel. Cohn v. Graves*, 300 U.S. 308, 313 (1937)). This is especially true for property taxes, which are "the primary source of revenues controlled by our local governments"[11] and fund many essential services provided by local government.

By way of example, local taxing districts in Hennepin County, Minnesota (where Petitioner's condominium is located) provide the following public services, among others: building safety, community education, corrections, environmental services, K–12 education, libraries, museums, parks and recreation, police and fire, public health, public housing, public

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[11] Alexander, *supra* note 10, at 748; *see also id.* at 755; Joan Youngman, Lincoln Inst. of Land Policy, *A Good Tax: Legal and Policy Issues for the Property Tax in the United States* ix (2016), https://tinyurl.com/4wp68psr ("The property tax is a mainstay of independent local government revenue in this country. It is the largest single local tax and supplies nearly half of all general revenue from local sources. It accounts for most school district independent revenue and almost all school district tax revenue.").

transportation, regional parks, regional railroads, regional sewer, roads, sheriff, social services, and watershed management.[12] For 2023, Hennepin County has budgeted $2.7 billion for its major programs, including Health, Human Services, Public Works, and Law, Safety and Justice.[13] 34% of the revenue for those expenditures, or approximately $927 million, will come from property taxes (the largest source of Hennepin County's revenue).[14]

Nationwide in 2020, most (64%) of local governments' general revenues from their own sources come from taxes, with $581 billion in property taxes accounting for 72% of local governments' tax revenue and accounting for 46% of general revenues from local governments' own sources.[15] Local government expenditures were $2.1 trillion, with the largest share ($781 billion, or 36%) devoted to education, the second-largest share ($222 billion, or 10%) devoted to utilities (water, gas, electric, and transit), and the third-largest

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[12] Hennepin Cty., Minn., *Property Taxes*, https://tinyurl.com/5dbbzpy5 (under expandable heading "What property taxes pay for").

[13] Hennepin Cty, Minn., *2023 Budget*, at II-8 (Expenditures and FTE Summary), *available at* https://tinyurl.com/56uxyd4t.

[14] *Id.* at II-6 (Sources of Revenue); *see also id.* at II-7.

[15] U.S. Census Bureau, *2020 State & Local Government Finance Historical Datasets and Tables,* Table 1 (State and Local Government Finances by Level of Government and by State: 2020), *available at* https://tinyurl.com/3m6zsx3u.

share ($122 billion, or 6%) devoted to hospitals.[16] Property taxes are a necessary component of the provision of these vital services.

B. Forfeiture is a crucial tool for governments if property taxes are not paid.

Forfeiture can play an important role in addressing problems associated with tax-delinquent properties.[17] Perhaps the most obvious problem is the loss of revenue attributable to delinquent parcels—which can be substantial. For example, according to a 2017 analysis, approximately 5,800 long-term tax-delinquent vacant parcels in Pittsburgh, Pennsylvania cost taxpayers more than $2.3 million per year in lost property-tax revenue.[18] Tax-delinquent parcels can also have negative "spillover"

[16] *Id.*

[17] Although forfeiture is constitutional, the taxing authority's goal is to see that its taxes are paid; divesting taxpayers of ownership is a remedy of last resort. As such, States and local governments take pains to avoid tax forfeitures. Indeed, many programs exist to assist vulnerable taxpayers. *See* Amicus Br. of Nat'l Tax Lien Ass'n et al. § I.B; *see also* Resp. Br. 6.

[18] Dan Immergluck, et al., Ctr. for Cmty. Progress, *The Cost of Vacant and Blighted Properties in Pittsburgh: A Conservative Analysis of Service, Tax Delinquency, and Spillover Costs* 7–8 (2017), https://tinyurl.com/emmdutm9 [hereinafter PITTSBURGH REPORT].

impacts, such as lower prices for nearby properties.[19] Because property taxes are based on value, this results in further loss of revenue.

In addition, tax delinquency is correlated with vacancy or abandonment.[20] Vacancy merely means that a property is unoccupied; abandonment "is a far stronger concept" that "suggests that the owner has ceased to invest any resources in the property, is for[going] all routine maintenance, and is making no further payments on related financial obligations such as mortgages or property taxes."[21] The record here indicates that Petitioner's condominium, before title passed to the State, was both vacant and abandoned. If, as here, tax-delinquent parcels are also vacant or abandoned, not only is revenue not being generated, but local governments incur costs because of the vacant properties (which also have negative spillover

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[19] *See* James Alm et al., *Property Tax Delinquency and Its Spillover Effects on Nearby Properties*, 58 REG'L SCI. & URBAN ECON. 71, 77 (2016); *see also* D.A. Carroll & C.B. Goodman, *Assessing the Influence of Property Tax Delinquency and Foreclosures on Residential Property Sales*, 53 URBAN AFFAIRS REV. 898, 917–20 (2017); Stephan Whitaker & Thomas J. Fitzpatrick IV, *Deconstructing Distressed-Property Spillovers: The Effects of Vacant, Tax-Delinquent, and Foreclosed Property in Housing Submarkets*, 22 J. Hous. Econ. 79, 91 (2013).

[20] Frank S. Alexander & Leslie A. Powell, *Neighborhood Stabilization: Legal Strategies for Vacant and Abandoned Properties* 3 (2011) (paper for IMLA Mid-Year Conference), https://tinyurl.com/5adyd5ea ("[P]roperty tax delinquency is the most significant common denominator among vacant and abandoned properties.").

[21] *Id.* at 2.

impacts on nearby properties). To return to the example of Pittsburgh, in 2015 and 2016, the city spent nearly $2 million annually to provide code enforcement, police, and fire services to vacant properties.[22] And the cumulative, city-wide loss of property value for residential properties located within 500 feet of a vacant residential property in distressed physical condition was $266 million—representing an annual loss of $4.8 million in property-tax revenue.[23]

The failure to pay property taxes is "destructive to the social and financial health of our cities."[24] And tax-forfeiture laws "serve an important purpose in ensuring that local governments recover tax revenue needed to provide essential government services."[25] Forfeiture also allows for delinquent parcels to be transferred to new private owners who will fulfill their societal and legal obligations, to be retained by the government for public use, or to be transferred to a

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[22] PITTSBURGH REPORT, *supra* note 18, at 7–8.

[23] *Id.* Sadly, Pittsburgh is but one of many American communities suffering from tax-delinquent, vacant, and abandoned properties. *See, e.g.*, Michael DeStefano, *Baltimore's Targeted Blight Elimination Program and How It Can Be Improved*, 52 U. BALT. L.F. 179, 184–87 (2022) (discussing the impact that tax-delinquent, vacant, and abandoned properties have on Baltimore City, Maryland).

[24] Alexander, *supra* note 10, at 755.

[25] John Rao, Nat'l Consumer Law Ctr., *The Other Foreclosure Crisis: Property Tax Lien Sales* 4 (2012), https://tinyurl.com/2s477u2t.

land bank or community development corporation for management and disposition.[26]

CONCLUSION

For the reasons set forth above, Amici Curiae Local Government Legal Center, National Association of Counties, National League of Cities, International Municipal Lawyers Association, and Government Finance Officers Association respectfully request that the Court affirm the Court of Appeals' decision.

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[26] *See* Abt Assocs. & NUY Furman Ctr., Local Housing Solutions Lab, *Foreclosure and Disposition of Tax-Delinquent Properties*, https://tinyurl.com/4ncxhrx6 (discussing examples of local governments' use of tax-foreclosure systems to achieve community goals, including Multnomah County, Oregon, which facilitates the sale of tax-foreclosed properties, including properties in the City of Portland, and deposits into an affordable-housing program 100% of any revenue from the difference in sale price between the minimum bid for taxes owed and the winning bid).

Respectfully submitted,

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