No. 22-166

In The
Supreme Court of the United States

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

v.

HENNEPIN COUNTY, and DANIEL P. ROGAN, Auditor-Treasurer, in his official capacity,
Respondents.

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

REPLY BRIEF

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INTRODUCTION

To collect a roughly $15,000 debt, the County confiscated absolute title to Geraldine Tyler's condominium, worth at least $40,000, taking a windfall at Ms. Tyler's expense. The County recasts this takings case as sounding in Due Process, justifying its taking of Tyler's property on the existence of pre-confiscation procedures. Respondent's Brief (RB).1–2, 6–8, 10, 17, 32, 40, 42, 45. The Takings Clause cannot be satisfied by any amount of notice or pre-confiscation procedures; only just compensation remedies a taking. U.S. Const. amend. V; *Arkansas Game and Fish Comm'n v. United States*, 568 U.S. 23, 33 (2012). The County does not dispute that equity is private property or that its forfeiture scheme takes from property owners more than they owe. RB.6–7 ("absolute title ... vests in the state"). Instead, contradicting both Anglo-American and Minnesota legal tradition, the County claims entitlement to Tyler's equity based on a state statute that extinguishes property by *ipse dixit* alone.

On takings, the County argues that states should be allowed to confiscate property from indebted taxpayers as wantonly as feudal lords of the 13th century treated their tenant-subjects, invoking rejected colonial examples and inapposite cases to make its policy appear less shocking than it is to a modern mind. On Excessive Fines, the County acknowledges the Clause limits the amount of property it can extract as punishment for crime but insists the Constitution presents no impediment to taking Tyler's entire property because she was "guilty" of the non-criminal offense of failing to timely pay a tax debt. The Fourteenth Amendment, however,

applies the Takings and Excessive Fines Clauses against state laws to prevent these unjust assertions of power.

The County claims, without support, that Tyler is a rare victim of its scheme. RB.14. Studies refute this, Pet.Br.36–37, and pending petitions in *Fair v. Continental Resources*, No. 22-160, *Nieveen v. TAX 106*, No. 22-237, and *Meisner v. Hall*, No. 22-874, demonstrate the devastation caused by this practice beyond Minnesota, particularly against the most vulnerable homeowners. Ending it will not impair tax administration as the County and some amici warn but will merely cabin Minnesota's debt collection practices within constitutional boundaries long respected by the federal government and most states.

This Court should hold that Minnesota's confiscation of the value of a home beyond a tax debtor's delinquent taxes, penalties, interest, and costs takes property for which just compensation is due. If the Court finds that there is no taking, it should hold that the confiscation is a fine subject to limitation under the Excessive Fines Clause.

ARGUMENT

I. Tyler has Standing

Despite never raising it in the district court, appellate court, or its Brief in Opposition, the County now argues that Tyler lacks standing. RB.11–14. The charge is without merit. This case arises in the context of a Rule 12(b)(6) motion to dismiss, in which plaintiffs have only a "relatively modest" burden to make "general factual allegations" because courts "presum[e] that general allegations embrace those specific facts that are necessary to support the claim."

Bennett v. Spear, 520 U.S. 154, 171 (1997); *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Courts also infer facts "consistent with the allegations." *Hishon v. King & Spalding*, 467 U.S. 69, 73 (1984); *Alliant Energy Corp. v. Bie*, 277 F.3d 916, 920 (7th Cir. 2002) ("[S]upplying details is not the function of a complaint. It is easy to imagine facts *consistent with* this complaint and affidavits that will show plaintiffs' standing, and no more is required."); *Tex. Cable & Telecomms. Ass'n v. Hudson*, 265 F.App'x. 210, 216 (5th Cir. 2008) ("[If] the facts necessary for ... harm [to] the petitioners reasonably [can] be inferred, ... the injury-in-fact standing requirement [is] satisfied.").

Tyler's complaint contains factual allegations that the County took absolute title to her property and left her with "no way to obtain any of the excess funds" generated by its sale and that the County "retained the excess equity" in her property. JA.4–6. Allegations that a property interest was transferred to the government without just compensation is a "prototypical" "pocketbook injury" to confer Article III standing. *Collins v. Yellen*, 141 S.Ct. 1761, 1779 (2021); *Chevron Corp. v. Donziger*, 833 F.3d 74, 120 (2d Cir. 2016) ("*Any* monetary loss suffered by the plaintiff satisfies the injury-in-fact element.") (emphasis added).

The County's assertion that Tyler lacks standing because she lacked equity is founded solely on conjecture about the value of her home and alleged encumbrances at the time of the sale. RB.13, n.6 (effect of alleged mortgage is "unclear" but County speculates about what it "suggests" based on

assumptions).[1] This speculation is based on disputed facts, which are neither in the record nor appropriate for judicial notice.[2] In any event, they have no bearing on her standing at this stage of the case. *F.E.C. v. Cruz*, 142 S.Ct. 1638, 1647 (2022) (For standing purposes, courts "accept as valid the merits" of the legal claims.).

Moreover, the County and every judge in the lower courts (and even the County's Brief in Opposition) easily and correctly inferred from the allegations of Tyler's Complaint that she was deprived of some amount of the excess value in her property and suffered harm when the county took absolute title to it. The precise amount is a merits question that will be determined on remand, where the parties may present evidence concerning the value of the home and validity of alleged third-party encumbrances. *Abbott v. Lockheed Martin Corp.*, 725 F.3d 803, 808 (7th Cir. 2013) ("Injury-in-fact for standing purposes is not the same thing as the ultimate measure of recovery.").

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[1] Such speculation works both ways. For example, the value of Tyler's home at the time the county took absolute title may well have exceeded $40,000. *See* Zillow, *Home value history*, https://www.zillow.com/homedetails/3600-Penn-Ave-N-APT-105-Minneapolis-MN-55412/1720054_zpid/ (visited Mar. 30, 2023) ($54,500 value in July 2015). And mortgages involving the same originator and investor of the one alleged by the County to diminish the value of Tyler's equity have been challenged or held invalid due to fraud. *See In re New Century TRS Holdings, Inc.*, No. 07-10416 (BLS), 2014 WL 2511339, at *2 n.4 (Bankr. D. Del. May 30, 2014).

[2] The County's request for judicial notice does not include the documents sought to be admitted, violating Fed. R. Evid. 201(c)(2); *United States v. Husein*, 478 F.3d 318, 337 (6th Cir. 2007) (refusing judicial notice of documents allegedly available by searching a website).

Finally, even if other liens encumbered her property at the time the County confiscated it, that would not obviate Tyler's injury or deprive her of standing. Had Tyler been compensated for the value of her property beyond the taxes, interest, penalties, and costs due, she could have used that remainder to satisfy any debts owed. *See United States v. Nelson,* 101 F.3d 1284, 1286 (8th Cir. 1996) (mortgagee personally liable). The County's taking of her equity deprived her of this economic benefit, an injury-in-fact that independently supports Article III standing.

II. Confiscating Tyler's Equity Is a Taking

Equity is private property protected by the Fifth Amendment. In the contexts of mortgage foreclosures, executions on judgment, collections of other taxes, bankruptcy, repossessions of collateral and more, Minnesota (like other states) consistently protects a debtor's interest in the value of her property beyond the debts owed. Pet.Br.19–22. Yet the County argues that real property is uniquely unprotected when confiscated for tax debts, relying on feudal practices, two outlier state statutes, government's responsibility to manage abandoned and nuisance properties, and *Nelson*. This nation expressly rejected those feudal premises. And this Court's takings decisions and Minnesota law overwhelmingly support Tyler's claim that this is a constitutional violation: keeping the excess—the equity value in her property—takes private property for public use for which she is owed just compensation.

A. The County's reliance on feudal practice is unavailing

The County cites no examples of traditional English tax collection practices that justify its confiscation of Tyler's entire property. There are no examples because Magna Carta §§ 9, 26 (1215) prohibited the king from seizing more property than was necessary to satisfy debts. *See also Martin v. Snowden*, 59 Va. 100, 136 (1868); Chamber of Commerce Am. Br. 7–8. Instead, the County relies on the Statute of Gloucester (1278) and quit-rent. RB.17–19. Neither relates to collection of property taxes and both rely on the feudal assumption that the crown and its lords—not their tenants—were the ultimate titleholders to the land.

The Statute of Gloucester granted lords the right to recover property from tenants who held land on the condition of providing rent or services to the titleholding lord. 4 *Blackstone's Commentaries* at 232, n.3 (1803) ("when a man who holds *lands of a lord* by rent or other services, neglects or *ceases* to perform his services for two years…the lord…shall have a writ of *cessavit* to recover the land itself") (emphasis added). This "extraordinary" remedy—only allowed when personal goods were insufficient to pay the debt—ensured that a lord could protect the productive use of *his own* land. *Id.* at 232.[3]

[3] Blackstone explained that forfeiture of land is appropriate for serious crimes such as treason, but did not name tax delinquency as a justification. *Id.* at 268. Even for forfeiture due to waste, only so much property as was necessary to remedy the waste could be taken. *Id.* at 284.

Quit-rents were payments made to a titleholding lord in lieu of other services or as a condition of use or occupancy of the lord's land. 3 *Blackstone's Commentaries* at 43, 89 n.24; Beverly W. Bond, Jr., *The Quit-Rent System in the American Colonies* 15–17 (1919) (the terms of tenure were fealty and rent, called "quit-rent"). Tyler was not a vassal owing fealty to her lord but a modern fee simple owner of real property. *Cf. Chisholm v. Georgia*, 2 U.S. 419, 472 (1793) ("From the differences existing between feudal sovereignties and Governments founded on compacts, it necessarily follows that their respective prerogatives must differ.").

The Founders unambiguously *rejected* quit-rent as inconsistent with a free people. Indeed, their opposition to the feudal premise underlying quit-rent was one of the "causes of that discontent" that produced the American Revolution. Bond, *supra,* at 458; *see also id.* at 33, 35, 40–41; Thomas Jefferson, *A Summary View of the Rights of British America* 35–38 (1774)[4] (American colonists "held their lands, as they did their personal property, in absolute dominion, disencumbered with any superior," unlike feudal tenants). Once the Revolution commenced, the colonies universally ended the practice. Bond, *supra*, at 458 ("[Q]uit-rent ... was deemed incompatible with the land tenure of an independent people."); *id.* at 53, 56, 81, 214, 354, 456.

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[4] https://www.google.com/books/edition/A_Summary_View_of_the_Rights_of_British/HEdHAQAAMAAJ?hl=en&gbpv=1&printsec=frontcover.

B. Historical practice in America supports Tyler's takings claim

The United States has recognized and respected debtors' rights in their equity since the Founding by selling tax-indebted property at a public sale and refunding the surplus over the debt to the former owner. *See* Pet.Br.15–17; United States Am. Br. 15–19; Chamber of Commerce Am. Br. 7–12. The County exaggerates temporary exceptions in two states around the founding, RB.20–22, and a handful in the nineteenth century, that prove the general rule.

1. Virginia's history supports Tyler's takings claim

The County relies on a 1790 Virginia statute to argue for a tradition of states taking more than they are owed without liability for a taking. RB.20. Prior to 1790, Virginia tax collectors seized and sold "so much" of the goods or lands "as would be sufficient to discharge the taxes," and the law included protections to ensure a fair sale of the property. *Kinney v. Beverley*, 12 Va. 318, 328–29 (1808); *Martin*, 59 Va. at 139–40.

The 1790 statute was a "new and exceptional mode of proceeding," *id.* at 138, that allowed forfeiture of the whole property after three years "when no effects could be found in the county, or in any other county, to satisfy the tax." *Id.* at 141. These forfeiture provisions were repealed after a relatively short time,[5] and the legislature repeatedly extended the deadline to redeem forfeited land until July 1, 1838. *McClure v.*

[5] Despite the severe consequences under the equity-forfeiture system, it "produced neither taxes nor the settlement of the country" desired by the legislature. *McClure*, 24 W.Va. at 566.

Maitland, 24 W.Va. 554, 565 (1884). After repeal, "forfeitures" were limited to title, because surplus proceeds were returned to the former owner. *See, e.g.*, *id.* at 568–69.

Ultimately, Virginia's highest court rejected forfeiture of equity as beyond government's power:

> The court [in *Martin v. Snowden*] held ... that congress had all the powers for enforcing the collection of its taxes that were in use by the crown in England, or were in use by the states at the time of the adoption of the constitution, *but forfeiture of the land assessed with the tax was not then in use*, either in England or the states, as a mode of collecting the taxes.

King v. Mullins, 171 U.S. 404, 415 (1898) (emphasis added). Even while the forfeiture statute was in place, Virginia's courts avoided the injustice of enforcing it. *See, e.g.*, *Yancey v. Hopkins*, 15 Va. 419, 436 (1810) (voiding tax sale for minor technical mistake because "the laws subjecting lands to be sold for the payment of taxes I consider as highly *penal*.").

Kinney v. Beverley does not support the County. It notes only that at "the period of the revolution, the crown was entitled to a quit-rent ... and, if this quit-rent was not paid" that property was forfeited, and that "quit-rents were abolished" in 1779. 12 Va. at 332–33. The court did not address whether Virginia retained a similar power of forfeiture, explaining only that the forfeiture in that case violated due process of law. *Id.* at 333–42.

2. Kentucky's history supports Tyler's claims

The County's reliance on 1801 Ky. Acts 77, 80 § 5, RB.20, also fails. One provision of the law authorized forfeiture of *unregistered* land when taxes were late. But for registered land, Kentucky law allowed the foreclosure and sale only of as much property "as shall be sufficient to pay the tax." *Id.* 77, 79 § 4. Kentucky's courts invalidated tax deeds issued under the forfeiture regime. *See Barbour v. Nelson*, 11 Ky. 59, 61–62 (1822). *See also Stover v. Boswell's Heirs*, 33 Ky. 232, 235 (1835) ("[S]ell[ing] more land than is sufficient to satisfy the execution. … is a sale without authority, and void."). In *Marshall v. McDaniel*, 75 Ky. 378, 385–86 (1876), the court held that taking the whole estate—rather than just what was owed—could only be understood as making it *criminal* to fail to pay property taxes, and therefore the owner must be given all the "constitutional rights" of a criminal defendant.

In sum, Virginia and Kentucky engaged in short-term experiments with land forfeiture for tax debts that were quickly repealed or invalidated by the courts. The overwhelming history of tax collection requires that the surplus be returned to the owner. *Cf. New York State Rifle & Pistol Ass'n, Inc. v. Bruen*, 142 S.Ct. 2111, 2154 (2022) ("the bare existence of these localized [rules] cannot overcome the overwhelming evidence of an otherwise enduring American tradition.").

3. States protected equity until and past adoption of the Fourteenth Amendment

The County argues that a few nineteenth century statutes treated delinquent property as forfeited without protection for the equity. RB.22–23. These statutes were far more limited in scope than Minnesota's current confiscatory scheme and were cabined, when not invalidated, by the courts.

For example, an 1822 Ohio statute provided that if no one purchased the property at auction, then it would belong to the state without payment to the owner. RB.23. That's not fairly called a forfeiture, since presumably there is no surplus value if the state can't sell the property. Moreover, courts protected debtors' interests in a fair sale price, by invalidating sales that lacked competitive bidding. *See, e.g.*, *Dudley v. Little*, 2 Ohio 504, 505 (1826). *See also Cocks v. Izard*, 74 U.S. 559, 562 (1868) (invalidating judicial sale in another state because courts "accord[ ] to every debtor the chance for a fair sale and full price; and if he fails to get these … equity will step in and afford redress"). Other states cited by the County similarly protected tax debtors. *Millett v. Mullen*, 49 A. 871, 873, 876 (Me. 1901) (under the 1848 property tax laws cited by County, RB.22, the debtor could redeem "forfeited" property until the state sold it, and then could "collect of the state his share of the surplus proceeds"); *Parish v. E. Coast Cedar Co.*, 45 S.E. 768, 770 (N.C. 1903) (tax forfeiture under 1889 statute, cited by County, RB.22, is a "legislative forfeiture," an "intolerable evil[]" that is unconstitutional as "subversive of natural and antecedent rights which the constitution itself was adopted to protect.").

The right to surplus proceeds in West Virginia was not a matter of legislative "grace." RB 23. In *King*, 171 U.S. at 418, this Court considered whether the West Virginia tax foreclosure law involving unregistered lands violated due process. What "ha[d] the most bearing" on the statute's constitutionality was the provision that allowed redemption of all or part of the land, and ensured the former owner could claim the surplus proceeds after the "forfeiture." *Id.* at 425–26; *see also id.* at 425 (owner had two years from sale to claim money). The Court also noted that the state constitution *required* property forfeited to the state to be sold with the excess proceeds returned to the former owner. *Id.* at 418.

The County claims such forfeitures were common historically but cites not one example where the property and all of its value (rather than mere title) was actually forfeited. *Cf.* Robert S. Blackwell, *Blackwell on Tax Titles* 295 (1855) ("As things now stand, a tax title is no title at all" given the "ingenuity of the bench and bar in discovering defects in tax sales"). *See also, e.g.*, M*cHardy v. State*, 215 Minn. 132, 137 (1943) (noting Minnesota often invalidated tax deeds).

At the time, Minnesota law aligned with the majority view and protected equity. The County disregards *Baker v. Kelley*, 11 Minn. 480 (1866), *Farnham v. Jones*, 32 Minn. 7 (1884), and *Burnquist v. Flach*, 213 Minn. 353 (1942), because they did not address the constitutional question presented here. Yet all three cases refused to countenance the confiscation of excess property to satisfy a debt linked to real property, Pet.Br.17–18, unimpeachably demonstrating that Minnesota historically treated

equity as a property interest. *Burnquist* awarded the surplus proceeds from the sale of that property to the original landowner. 213 Minn. at 359 (noting that "the landowner is the intended beneficiary" and affirming payment to her). *Farnham* likewise invalidated the tax deed because the government sold more land than necessary, 32 Minn. at 13,[6] noting that the indebted owner was entitled to surplus proceeds from any future sale, a right that "exists independently of such statutory provision." *Id.* at 11–12. The only case discounting the theory and holdings of those decisions is now before this Court.

Finally, the County discounts cases involving seizure of personal property, arguing that land warrants *less* protection. RB.26–27. This and other courts disagree. *See, e.g.*, *Horne v. Department of Agriculture*, 576 U.S. 350, 360 (2015) (Takings Clause equally protects against uncompensated confiscation of real and personal property); *Tiernan v. Wilson*, 6 Johns.Ch. 411, 414 (N.Y. 1822) ("obvious policy and universal justice" requires equal treatment).

C. *Nelson* and *Bennis* do not answer Tyler's claim

Rather than grapple with the rich history of protecting debtors from confiscatory foreclosures, or this Court's takings jurisprudence that prevents such confiscation by *ipse dixit*, *see* Pet.Br.11–14, the County essentially rests its case on the idea that

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[6] *Accord City of Washington v. Pratt*, 21 U.S. 681, 686–87 (1823) (tax collector's duty to sell no more land than reasonably necessary to pay taxes and related costs); *Margraff v. Cunningham's Heirs*, 57 Md. 585, 587–89 (1882); *O'Brien v. Coulter*, 2 Blackf. 421, 425 (Ind. 1831). *See also* Pet.Br. 16–17.

Nelson v. City of New York, 352 U.S. 103, 110 (1956), creates an exception to the Takings Clause when government is owed money. The County ignores the posture of *Nelson*, in which the owner failed to preserve a takings claim.[7] Regardless, *Nelson* does not apply here because Minnesota, unlike New York at the time *Nelson* was decided, offers *no* opportunity for an owner whose property is sold to collect her debt to claim surplus proceeds. *See, e.g.*, *Rafaeli, LLC v. Oakland County*, 505 Mich. 429, 460 (2020) (distinguishing Michigan's forfeiture statute from *Nelson* on that ground); *Hall*, 51 F.4th at 196. The only way Tyler could preserve her interest in the home equity was by fully paying her debt, Pet.App.2a, or by selling the home before forfeiture occurred. *See* AARP Am. Br. 17–21; National Legal Aid Am. Br. 10–14; New Disabled South Am. Br. 3–5 (noting extreme difficulty for many seniors, disabled persons, and other vulnerable homeowners to understand and navigate these procedures). This distinguishes *Nelson* from this case, even if *Nelson*'s dicta about the Takings Clause were binding.

The County further suggests that *Nelson* stands for the proposition that the Takings Clause does not apply if a debtor owes property taxes. RB.32.[8] To be

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[7] This County's argument that the Court decides claims not raised below rests on two inapposite examples. *Polar Tankers, Inc. v. City of Valdez, Alaska*, 557 U.S. 1, 13 (2009), allowed an alternative legal *defense*. *United States v. Locke*, 471 U.S. 84, 93 (1985), considered an argument pressed below but not decided. By contrast, the takings *claim* in *Nelson* was not raised below.

[8] *Balthazar v. Mari Ltd.*, 396 U.S. 114 (1969), summarily affirmed a due process decision that mentioned the takings claim only in a footnote. 301 F.Supp. 103, 105 n.6 (N.D. Ill. 1969).

very clear: Tyler is not challenging her *tax debt* as a taking; she is challenging the County's taking of her property *above and beyond the tax debt*; this challenge distinguishes her case from the settled law that taxes are not takings. *Dorce v. City of New York*, 2 F.4th 82, 99 (2d Cir. 2021) ("Such excess value ... 'cannot, by definition, be a tax'"); *Freed v. Thomas*, 976 F.3d 729, 732, 735 (6th Cir. 2020) (same).

The forfeiture of a $600 automobile in *Bennis v. Michigan*, 516 U.S. 442, 443–44 (1996), was not a taking because it was remedial and targeted an instrumentality of crime. *See id*. at 453–55 (Thomas, J., concurring) (decision's narrow grounds rested on car's role as "an 'instrumentality' of crime"); *id*. at 457–58 (Ginsburg, J., concurring) (remedial because proceeds did not measurably exceed the costs of enforcement against Bennis). The taking of Tyler's equity far exceeded her $15,000 debt that included penalties, interest, and costs[9] added to the $2,311 tax delinquency. S*ee also United States v. U.S. Coin & Currency*, 401 U.S. 715, 720 (1971) (suggesting a forfeiture statute that goes too far would violate the Takings Clause). And critically, Tyler's property was involved in no criminal act. "[T]he land of a delinquent tax-payer cannot be brought within the principle of this class of cases; it is neither the instrument nor the fruit of any offence." *Martin*, 59 Va. at 142–43; *Farrell v. City of St. Paul*, 62 Minn. 271, 277 (1895) (noting

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Summary affirmance is "a 'rather slender reed' on which to rest future decisions." *Morse v. Republican Party of Virginia*, 517 U.S. 186, 203 n.21 (1996); *Mandel v. Bradley*, 432 U.S. 173, 176 (1977).

[9] *See* Minn. Stat. § 282.09 (administrative costs); Minn. Stat. § 279.092 (service fees); Minn. Stat. § 281.23 (other costs).

"wide distinction" between tax judgment against "things indebted" and actions against "a thing guilty or hostile") (relying on Rufus Waples, *A Treatise on Procedures In Rem*, § 3, subd. 10, § 455).

D. Law concerning orderly transfer of title, adverse possession, and abandoned property has no bearing on takings analysis

The County likens its forfeiture to rules surrounding orderly transfer of property, adverse possession, and abandonment. RB.29–30. All are distinguishable.

This nation has always had laws facilitating orderly transfer of title, such as recording statutes. Those statutes prevent conflicting claims and give stability to title, preventing and settling disputes between private parties. *United States v. Kimbell Foods*, 440 U.S. 715, 739 (1979). They are not confiscatory statutes transferring private property to government.

Adverse possession rules are based on statutes of limitation, *Hawkins v. Barney's Lessee*, 30 U.S. 457, 466–67 (1831), and the theory that the original owner consented for a long duration to an obvious and unambiguous adverse claim of another. *Krueger v. Market*, 124 Minn. 393, 397 (1914). Adverse possession allows one private party who uses the property to supplant another private party as the owner of real property. Here, the *government* took title to Tyler's property without prior possession, and it is this *state action* that implicates the Takings Clause.

Abandonment at common law occurs when the owner *intends* to relinquish all claims to it. *See, e.g.*,

Melco Inv. Co. v. Gapp, 259 Minn. 82, 85 (1960). Tyler failed to pay taxes on her property; she did not abandon it. In Minnesota, "legal title to real property *cannot be lost by abandonment*." *Denman v. Gans*, 607 N.W.2d 788, 795 (Minn. App.), *review denied* (Minn. 2000) (emphasis added), even when the owner has not paid taxes for 30 years. *Krueger*, 124 Minn. at 397–98.[10] Accordingly, Minnesota statutes authorize the government to take possession of abandoned *personal* property, Minn. Stat. §§ 345.31–.60, but not real property. The government retains the ability, under separate statutory schemes, to invoke eminent domain powers to acquire legitimately abandoned and derelict properties that contribute to blight. *See* Minn. Stat. § 469.001 et seq.; *see generally Housing and Redev. Auth. in and for the City of Richfield v. Walser Auto Sales, Inc.*, 630 N.W.2d 662 (Minn. App. 2001) (describing use of eminent domain, not confiscation, to manage derelict real property); Minn. Stat. § 117.027 (authorizing eminent domain taking of "structurally substandard" buildings and when "there is no feasible alternative" to "remediate the blight.").[11] That is not what happened here, and the County's and amici's

[10] Minnesota even provides for recovery of escheated real property. Minn. Stat. § 525.84.

[11] Minnesota law also distinguishes between taxes imposed for repairs to damaged or dangerous infrastructure and fees charged to individual private property owners to abate nuisances and dangers created by their own property. *First Baptist Church of St. Paul v. City of St. Paul*, 884 N.W.2d 355, 363–65 (Minn. 2016). Under limited circumstances, when a nuisance presents a present danger to the public, the state may invoke its police power to remove the danger without being liable for a taking. *State Fire Marshal v. Sherman*, 201 Minn. 594, 599 (1938).

discussion of abandonment and derelict property is a distraction.

Relatedly, the County relies heavily on *Texaco v. Short*, 454 U.S. 516 (1982), which held that an Indiana statute did not effect a taking when it extinguished a property owner's mineral interest after 20 years of non-use where the owner failed to file a free claim with a local recorder during a two-year grace period. *Id.* at 518–19, 521, 530. The *Texaco* statute was merely a "self-executing statute of limitations," providing "repose for potential defendant[landowner]s and ... avoiding stale claims. The State ha[d] no role to play beyond enactment of the limitations period." *Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 486 (1988). By contrast, the County affirmatively pursued and took Tyler's property. *Cf. id.* at 487. Moreover, this Court has limited *Texaco* to situations that involve only "minimal paperwork burdens" on owners. *Sveen v. Melin*, 138 S.Ct. 1815, 1818, 1824, 1826 (2018). *See also Locke*, 471 U.S. at 86–88 (requiring holders of statutorily-created unpatented mining interests to file a form, for free, to maintain their contingent property interests).[12] A closer equivalent to *Texaco* might exist if Minnesota required property owners to file a claim for their surplus proceeds after foreclosure and then, if no claim is filed after 20 years, retained the surplus. But in fact, the County has no mechanism whatsoever for property owners to recover their equity and the requirements to avoid foreclosure—far from

[12] Owners could pay a nominal sum and fulfill certain statutory requirements to obtain full title. *Id.* at 86.

minimal—present an impossibility for many tax debtors.

Finally, neither federalism nor states' ability to collect taxes will be undermined by holding that the County took Tyler's equity. An owner's inability to pay property taxes does not eliminate the County's responsibility to refrain from taking more than it is owed. *See Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 799 (1983) ("[A] party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation."). States will still be able to seize and sell property to collect taxes without paying for the difference up front, provided that they take it subject to the traditional "implied contract in law" to sell it and return the surplus. Pet.Br.14–16. Minnesota already does this when collecting other types of debt. Pet.Br.22. Allowing plaintiffs to "[i]nvok[e] [] federal protection in the face of state action violating the Fifth Amendment cannot properly be regarded as a betrayal of federalism." *Knick v. Twp. of Scott*, 139 S.Ct. 2162, 2177 n.8 (2019). And "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922).

III. The Excessive Fines Clause Protects Tyler

If Tyler is not compensated for her equity under the Takings Clause, then the County's forfeiture of property of greater value than her debt operated as punishment for the public offense of failing to pay her property taxes on time. That is because the County's confiscation went beyond compensation for the government's loss and cannot be explained solely as a

remedial measure. A forfeiture that is punitive *even in part* is subject to scrutiny under the Excessive Fines Clause. *Austin v. United States*, 509 U.S. 602, 610 (1993). For this reason, contrary to the County's and United States' arguments,[13] Tyler properly stated an excessive fines claim even if the tax forfeiture statutes serve some remedial purposes, are not tied to criminal culpability, and may, as applied to *other* homeowners, sometimes confiscate property worth less than the debt owed.

A. Non-compensatory economic sanctions are "punitive"

"Sanctions frequently serve more than one purpose" and this Court has not "exclude[d] the possibility that a forfeiture [which] serves remedial goals" is subject to the Excessive Fines Clause. *Austin*, 509 U.S. at 610. Rather, this Court "must determine that [the sanction] can only be explained as serving in part to punish." *Id.* A sanction that goes beyond "compensating the Government for a loss" cannot be classified as merely remedial. *United States v. Bajakajian*, 524 U.S. 321, 329 (1998). Tyler's Complaint ably alleged that the value of her home exceeded compensation for her past-due tax, penalties, and costs. JA.5–6.

The County describes its forfeiture scheme as purely remedial, despite its confiscation of more than Tyler owed, because it: (1) subsidizes the rehabilitation of (other) confiscated, derelict properties, (2) returns delinquent properties to

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[13] RB.48–49; U.S. Am. Br. 26–30 (arguing that the forfeiture scheme "appears to be designed ... to ensure that the State receives the money it is due" and lacks a tie to crime).

productive use and the tax rolls, (3) mitigates future government losses from the property at issue, (4) secures finality for public revenue streams, and (5) gives the State "clean, marketable title" to ensure "localities can count on the revenue they receive." RB.46. The first purpose singles out Tyler to bear public costs that should in fairness be borne by the whole public, exposing the County's action as a taking. *Armstrong v. United States*, 364 U.S. 40, 49 (1960). Every other purpose is achieved by foreclosing and selling tax-delinquent property without confiscating the owner's equity. *See* Utah et al. Am. Br. 3–7. Keeping *additional* property that exceeds the government's loss is a non-compensatory sanction best described as punitive.

The County also argues that its tax forfeitures are not punitive because some property owners may benefit by forfeiture when their properties are worth less than the tax debt and related costs. RB.47. Those unidentified property owners, however, assuming they exist, are not before the Court; only Tyler and the facts of her forfeiture are. *See also* JA.15–16 (seeking to represent class of other individuals whose property was extinguished by tax statute). The County leans on a footnote in Justice Scalia's *Austin* solo concurrence that a statutory scheme must impose punishment in all applications to constitute a fine. 509 U.S. at 625 n.*. That opinion was not endorsed by the full Court and, in fact, is in tension with the nature of the excessiveness inquiry, which inherently involves an individualized determination of whether a penalty is grossly disproportionate to the gravity of the offense that gives rise to it. *Bajakajian*, 524 U.S. at 334.

B. A sanction can be punitive even if it does not turn on crime or culpability

The County claims that forfeitures are punitive only when "tied to a culpable mental state" and connected to crimes. RB.46; United States Am. Br. 28 (Minnesota's forfeiture scheme not "intended to be, [n]or is [it] in fact, a penalty for a criminal offense."). But this Court has not so held, nor has it yet addressed a punitive economic sanction in the context of a non-criminal public offense such as tax indebtedness. Some protections of the Bill of Rights "are expressly limited to criminal cases," but the "text of the Eighth Amendment includes no similar limitation. Nor does the history of the Eighth Amendment require such a limitation." *Austin*, 509 U.S. 602, 607–08. The Founding-era understanding of punitive sanctions did not hinge on whether the sanction arose from a civil or criminal proceeding but whether the sanction redressed a wrong to the public or to an individual. Colgan Am. Br. 15–19; Constitutional Accountability Ctr. Am. Br. 10–18 (demonstrating that, historically, sanctions for non-criminal wrongdoing with remedial features were imposed as punishment). That is consistent with this Court's decision not to apply the clause to punitive damages awards among private parties in *Browning-Ferris Indus. of Vermont v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989).

Moreover, the term "remedial" was imported into Excessive Fines cases from a line of Double Jeopardy cases where it more clearly refers to non-criminal penalties. *See* Monica Toth Am. Br. 15–17. Yet, this Court has "never … understood [the Clauses] as parallel to" one another. *United States v. Ursery*, 518

U.S. 267, 286 (1996). This makes inapposite the County's and United States' citations to cases like *Halper*, *Hudson*, and *Helvering* to support their view that the Clause applies only to forfeitures connected to crime. No precedent precludes the application of the Excessive Fines Clause in this case.

Finally, on culpability, *Austin* said that the statute at issue included a defense that "serve[d] to focus the provisions on the culpability of the owner in a way that makes them look more like punishment, not less," 509 U.S. at 619, a statement that hardly announces a categorial rule that *only* punishments tied to a culpable mental state count, particularly since the Court reserved the question as to innocent owners. *Id.* at 617 n.10. Indeed, culpability does not go to whether an economic sanction is a fine but whether it is excessive. *See, e.g.*, *United States v. Ferro*, 681 F.3d 1105, 1115–16 (9th Cir. 2012) ("individual culpability ... must be considered in the excessiveness analysis").

CONCLUSION

This Court should reverse the judgment below and remand the case for further proceedings.

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