No. 22-237

In The
Supreme Court of the United States

SANDRA K. NIEVEEN

Petitioner,

v.

TAX 106, a Nebraska general partnership, VINTAGE MANAGEMENT, LLC, a Nebraska limited liability company, RACHEL GARVER, Lancaster County Treasurer, in her official capacity, LANCASTER COUNTY, a political subdivision in the State of Nebraska, and DOUGLAS J. PETERSON, Attorney General of the State of Nebraska, in his official capacity,

Respondents.

On Petition for Writ of Certiorari to the Supreme Court of Nebraska

PETITIONER'S SUPPLEMENTAL BRIEF

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PETITIONER'S SUPPLEMENTAL BRIEF

Petitioner Sandra K. Nieveen submits this supplemental brief pursuant to S. Ct. R. 15.8 to call the Court's attention to a new case, *Hall v. Meisner*, __ F.4th __, 2022 WL 7366694 (6th Cir. Oct. 13, 2022), which deepens the lower court split as to whether a state law depriving tax debtors of the entirety of their property constitutes a taking without just compensation under the Fifth Amendment. *See* Pet. for Writ of Cert. at 16–23. *See also Fair v. Continental Resources*, Petition for Writ of Certiorari, docket no. 22-160 (pending); *Tyler v. Hennepin County*, Petition for Writ of Certiorari, docket no. 22-166 (pending).

ARGUMENT

The *Hall* case involves a Michigan law that allows the state and counties "alone among all creditors" to "take a landowner's equitable title without paying for it, when it collects a tax debt." *Hall*, 2022 WL 7366694, at *1. The Sixth Circuit unanimously held that the law was "an aberration from some 300 years of decisions by English and American courts" and "[t]he government may not decline to recognize long-established interests in property as a device to take them." *Id.* The law took the landowners' private property without just compensation in violation of the Takings Clause of the U.S. Constitution. *Id.*

Critically, the Sixth Circuit reviewed centuries of property law to determine that the landowners had "a vested property right in what is ordinarily called the equity in one's home—meaning the property's value beyond any liens or other encumbrances upon it." *Id.* at *2–*3. It refuted the "assumption" that property is defined "solely by reference to [state] law." *Id.* at *3

("the Takings Clause would be a dead letter if a state could simply exclude from its definition of property any interest that the state wished to take") (citing *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 164, 167 (1998)). The court traced the unwillingness of English and American courts to permit "strict foreclosure"—by which a mortgagee could transform a security interest into fee simple ownership—and courts' adoption of equitable remedies to ensure that surplus equity was returned to the owner. *Id.* at *4–*6 (citing *Stead's Ex'rs v. Course*, 8 U.S. 403, 414 (1808) (tax collector "unquestionably exceeded his authority" when he had sold more land than "necessary to pay the tax in arrear"); *Margraff v. Cunningham's Heirs*, 57 Md. 585, 588 (1882) (tax collector's "duty is to sell no more than is reasonably sufficient to pay the taxes and charges thereon, when a division is practicable without injury"); *Loomis v. Pingree*, 43 Me. 299, 311 (1857) (applying the same rule); *Martin v. Snowden*, 59 Va. 100, 118–19, 139 (1868) (same)).[1] Michigan law allowed precisely this "unconscionable" and "draconian" strict foreclosure, "disavowing traditional property interests long recognized under state law." *Hall*, 2022 WL 7366694, at *6 (noting state's protection against strict foreclosure in every context other than collection of tax debts) (citation omitted).

Finally, the Sixth Circuit explicitly defined the nature of a landowner's interest in her surplus equity: "The owner's right to a surplus after a foreclosure sale

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[1] *See also* New England Legal Found., Amicus Brief in Support of Petitioners at 7–8, 11–12 (filed Oct. 13, 2022) (describing development of the law curbing government's ability to seize real property in excess of tax debts).

[] follows directly from her possession of equitable title before the sale. The surplus is merely the embodiment in money of the value of that equitable title." *Id.* at *7. *See also* Pet. at 10–16.

CONCLUSION

The Sixth Circuit's holding therefore presents an explicit conflict with the Nebraska Supreme Court's conclusion that home equity is *not* an established property interest, App. 19a, relying on *Continental Resources v. Fair*, 311 Neb. 184, 201 (2022), as well as the Eighth Circuit Court of Appeals' decision in *Tyler v. Hennepin County*, 26 F.4th 789, 793 (8th Cir. 2022). *See also* Pet. at 16–19 (citing cases on both sides of the deep and growing split over the nature of the property interest implicated by a government's taking of property above and beyond delinquent taxes, penalties, fees, and costs). This irreconcilable conflict requires resolution by this Court.

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