No. 22-160

In the Supreme Court of the United States

KEVIN L. FAIR,

Petitioner,

v.

CONTINENTAL RESOURCES, et. al.,

Respondents.

On Petition for Writ of Certiorari to the Nebraska Supreme Court

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AND BRIEF OF AMICI CURIAE AARP AND AARP FOUNDATION SUPPORTING PETITION FOR WRIT OF CERTIORARI

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September 21, 2022

MOTION FOR LEAVE TO FILE BRIEF OF AMICI CURIAE AARP AND AARP FOUNDATION SUPPORTING PETITION FOR WRIT OF CERTIORARI

Pursuant to Supreme Court Rule 37(b), AARP and AARP Foundation move for leave to file the attached brief as amici curiae urging the Court to grant Kevin L. Fair's Petition for Writ of Certiorari (No. 22-160). As required by Rule 37.2(a), amici provided all counsel of record with timely notice of their intent to file this brief ten days or more before its due date. Respondent Continental Resources has refused to consent, necessitating this motion.

AARP and AARP Foundation seek leave because of their deep concern over the devastating impact that the Nebraska Supreme Court's ruling in *Continental Res. v. Fair*, 133 Neb. 184 (2022), and similar rulings, will have on the financial security of older homeowners of modest means. Here, Nebraska tax authorities, to collect a $5,300 property tax debt, conveyed a tax lien and the title to all of Mr. Fair's home equity to a private firm, Continental Resources. The firm foreclosed, paying the debt and keeping over $54,000 in Mr. Fair's "surplus equity" for itself. The court ruled that this astonishing result was permissible under the Fifth Amendment Takings Clause. U.S. Const. amend. V.

This is a threat to the financial security of homeowners that extends well beyond Nebraska. At least eleven states have statutes permitting this unjust result. Fair Petition at 29-32. In these states, older homeowners of modest means, especially, risk losing what is often their single largest asset.

AARP, with nearly 38 million members age fifty and older, and its charitable AARP Foundation, are intimately familiar with this issue.[1] Our proposed brief first urges the Court to consider the larger policy implications of the Nebraska court's key ruling – that homeowners have no property right in the surplus equity of their own home, unless state legislatures or courts affirmatively say so in this precise property-tax-collection context. *Continental Res.*, 311 Neb. at 200. The imposition of this excessive standard of proof leaves older homeowners defenseless against property-tax collection laws that, indeed, declare this self-evident property right to be nonexistent.

Second, AARP and the Foundation wish to share their deep knowledge regarding the special threat that such laws pose to older homeowners of modest means. Decades of study by AARP and others show that it is this group that, for a wide variety of reasons, is most at risk of property tax foreclosure in the first place. Reasons include their low fixed incomes; rising utility and medical costs; physical and cognitive ailments; the way they often pay property taxes (e.g., no escrow); the loss of spouses as financial advisors; and numerous other factors. Research also shows why members of this group are likely to suffer

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[1] AARP and AARP Foundation have filed amicus briefs on this "surplus equity" issue in support of the homeowner in numerous cases, *see* attached Brief of Amici Curiae AARP and AARP Foundation Supporting Petition for Writ of Certiorari, n. 5.

the most catastrophic consequences if tax collectors are permitted to seize all their home equity over modest tax debts. The equity in their home often is their only sizeable financial asset, and they are not in a position to make up the loss.

AARP and AARP Foundation respectfully request leave to file the attached amicus brief in support of Mr. Fair's Petition for Writ of Certiorari.

September 21, 2022

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STATEMENT OF INTEREST[1]

It is undisputed that Nebraska tax authorities, to collect a $5,300 property tax debt, seized from Kevin Fair his entire $60,000 in home equity and conveyed it via tax deed to a private buyer of the government's tax lien. The buyer, Continental Resources, ultimately foreclosed on Mr. Fair, keeping over $54,000 for itself. This shocking result was not some aberration, but rather a routine feature of present Nebraska property tax collection law. And Nebraska is not alone in permitting state seizure of home "surplus equity" in such proceedings. As many as a dozen states permit the seizure of all the homeowner's equity to pay modest property tax debts.[2] Some states, like Nebraska, accomplish this by conveying tax liens and deeds to private investors; others, like Minnesota,[3] directly confiscate the funds for their own

[1] Pursuant to the Court's Rule 37.6, amici state that this brief was not authored in whole or part by any party or its counsel and that no person other than amici, their members, or their counsel contributed any money that was intended to fund the preparation and submission of this brief. Pursuant to this Court's Rule 37.2(a), amici provided all counsel of record with timely notice of the intent to file this brief ten days or more before its due date. A letter by petitioner consenting to the filing of the amicus brief is on file with the Court. Respondent Scotts Bluff County has also consented, but Respondent Continental Resources has not consented.

[2] Fair Petition for Writ of Certiorari (No. 22-160) (hereinafter "Fair Pet.") at 29-32.

[3] Amici also will be filing a motion for leave to file an amicus brief supporting Geraldine Tyler's Petition for Writ of Certiorari in

coffers. Foos, Jenna Christine, *State Theft in Real Property Tax Foreclosure Procedures*, 54 Real. Prop. Tr. & Est. L.J. 93, 133 n.32 & 56 (2019). Either way, homeowners lose thousands of dollars of home equity that they, not the government or private investors, earned through years of financial sacrifice. Nevertheless, the Nebraska Supreme Court upheld the constitutionality of this statute. *Continental Res. v. Fair*, 311 Neb. 184 (2022).

Amici strongly support Fair's petition asking that the Court accept review of the case and condemn the Nebraska statute as violating the Constitution's Fifth Amendment Takings Clause ("Nor shall private property be taken for public use, without just compensation."[4]) Such laws are of extreme concern to amici AARP and AARP Foundation, given their devastating and disproportionate impact on the financial security of older adults. AARP is the nation's largest nonprofit, nonpartisan organization dedicated to empowering Americans 50 and older to choose how they live as they age. With nearly 38 million members and offices in every state, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands, AARP works to strengthen communities and advocate for what matters most to families, with a focus on financial stability, health security, and personal fulfillment. AARP's charitable affiliate, AARP Foundation, works to end senior poverty by helping vulnerable older

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Tyler v. Hennepin Cnty, No. 22-166, addressing the constitutionality of that Minnesota direct-confiscation law.

[4] U.S. Const. amend. V.

adults build economic opportunity and social connectedness.

Amici's efforts have included filing amicus briefs in state and federal court on this precise issue.[5] Amici agree with Petitioner Fair that review by the Supreme Court is needed to settle the deep and growing split among the lower courts about whether the Fifth Amendment's Takings Clause prevents government from seizing property tax debtors' home equity in excess of the taxes, penalties, interest, and costs that are owed. Fair Pet. at 17-21 (conflicts with Supreme Court precedent); 21-24 (conflicts on this issue in the federal and state courts).[6]

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[5] Cases in which AARP and AARP Foundation filed amicus briefs in support of the homeowner include *Knick v. Township of Scott*, 139 S.Ct. 2162 (2019); *Tyler v. Hennepin Cnty.*, 26 F.4th 789 (8th Cir. 2022); *Wayside Church v. Van Buren Cnty.,* 847 F.3d 812 (6th Cir. 2017)*, cert. denied*, 138 S. Ct. 380 (2017); *Coleman v. District of Columbia*, 70 F. Supp.3d 58 (D.D.C. 2009); *Rafaeli, LLC v. Oakland Cnty.*, 952 NW.2d 434 (2020).

[6] Amici address herein only the Takings Clause claims raised by Plaintiffs-Appellants.

SUMMARY OF ARGUMENT

First, we urge the Court to consider the larger policy implications of the Nebraska court's remarkable finding that Mr. Fair never owned a property interest in the equity in his own home. To establish this obvious property right, Mr. Fair had pointed to English and American common law, Supreme Court decisions, and Nebraska statutes – and common sense – but this was not enough for the court. Instead, the court opined, no such right existed unless Nebraska statutes or court decisions expressly confirmed it in this precise property-tax-collection context, i.e., "after a tax certificate has been sold, the redemption period has expired, and a tax deed is requested and issued." *Continental Res.*, 311 Neb. at 200.. This harsh, counterintuitive standard makes a mockery of the Fifth Amendment's protection against government seizure of property without "just compensation." U.S. Const. amend. V.

Second, amici further seek to assist the Court by illuminating in detail the human cost of such laws for the nation's older citizens in particular. In those states with these confiscatory laws, the most-injured victims, in disproportionate numbers, will be older homeowners of modest means. First, they are the group most at risk of property tax foreclosure in the first place, often for reasons beyond their control. Many live on low fixed incomes and face dramatically rising utility and medical costs, physical ailments, and the need to navigate complex financial waters without the help of a spouse or financial advisor. Second, it is often older homeowners who suffer the most catastrophic consequences when tax collectors unjustly seize all their home equity over modest tax debts. For these people, the equity in their home often is their only sizeable financial asset. Out of the workforce and living on modest income, these individuals can never recoup the loss.

ARGUMENT

I. The Nebraska Supreme Court Has Imposed a Harsh Test of Property Rights in Surplus Equity at Odds with Supreme Court Jurisprudence, State Law, and Common Sense.

Mr. Fair's plight amply illustrates AARP's and AARP Foundation's extreme concern. Mr. Fair, in his late fifties, was forced to quit his job in 2014 when his wife developed multiple sclerosis and required a caretaker. Facing rising medical costs and living only on Social Security, Mr. Fair could not pay the $588 owed in property tax in 2014. To collect the debt, the government sold its tax lien to Continental. Four years later, the debt had ballooned to an unpayable $5,300 via interest and costs. Scotts Bluff County thereupon issued a tax deed to Continental extinguishing Mr. Fair's ownership of all his home's equity, valued at $59,759. Continental foreclosed, paying the $5,300 debt and seizing over $54,000 surplus equity for itself, leaving Fair with nothing.

Fair challenged the County's issuance of the tax deed on several grounds, including the Takings Clause of the Fifth Amendment ("Nor shall private property be taken for public use, without just compensation.") U.S. Const. amend. V. Fair, to prove the obvious – that he owned the equity in his own home[7] – pointed to numerous authorities, including, among others, Supreme Court decisions embracing the property right in surplus equity;[8] an abundance of English and American common law; definitions of property in Nebraska's Uniform Property Act, revenue and taxation statutes, and homestead exemption provisions;[9] and Nebraska court decisions interpreting those statutes.

Given the intuitive existence of this property right, that should have been more than enough. Instead, the Nebraska Supreme Court imposed a hyper technical, harsh standard assuming no such property right existed unless the legislature happened to articulate one in this precise circumstance:

> These [other] general provisions, however, do not recognize a property interest in the surplus equity value of

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[7] See *Phillips v. Washington Legal Found.*, 524 U.S. 156, 164 (1998) ("Because the [Takings Clause] protects rather than creates property interests, the existence of a property interest is determined by reference to existing rules or understandings that stem from an independent source such as state law.").

[8] These included *United States v. Taylor*, 104 U.S. 216 (1881); *United States v. Lawton*, 110 U.S. 146 (1884), and *Nelson v. City of New York*, 352 U.S. 103 (1956).

[9] Neb. Rev. Stat. § 76-101 (Reissue 2018) (Uniform Property Act); *id.* § 77-102 (Reissue 2018) (revenue and taxation statutes); *id.* § 40-101 (Reissue 2016) (homestead exemption).

> property after a tax certificate has been sold, the redemption period has expired, and a tax deed is requested and issued.

Continental Res., 311 Neb. at 200.

This approach places on Mr. Fair's shoulders a burden of persuasion that offends common sense and Takings Clause jurisprudence. If this were a traditional mortgage foreclosure, no American homeowner would believe the lender is entitled to seize home equity worth ten times the size of a debt. Yet that is what occurred here by government fiat. The Nebraska Supreme Court's harsh standard for proving ownership of surplus equity eviscerates the Constitution's promise that "the government's power to redefine [property rights is] necessarily constrained by constitutional limits." *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1014 (1992); *see also First Eng. Evangelical Lutheran Church of Glendale v. Los Angeles Cnty., Cal.*, 482 U.S. 304, 314 (1987) (The Takings Clause "places a condition on the [government's] exercise of" the power to take private property in the first instance).

The government has no more leeway than a private mortgage lender to wave a legal wand and extinguish a homeowner's equity exceeding the debt. *See, e.g., Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) (the State of Florida cannot "transform private property into public property without compensation" by simply recharacterizing interest in funds held by the court as "public money"); *Armstrong v. United States*, 364 U.S.

40, 44-45 (1960) (ship contractor property rights do not "vanish into thin air" just because Government seeks to collect its own debt). When the government "physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner. . . ." *Tahoe-Sierra Pres. Council v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 322 (2002) (citation omitted).[10]

Referring to Michigan's similar property tax foreclosure law, one federal judge bluntly observed, "[i]n some legal precincts that sort of behavior is called theft."[11] The Michigan Supreme Court subsequently struck down that law as violating the Takings Clause of the state constitution, *Rafaeli, LLC v. Oakland Cnty.*, 952 N.W.2d 434 (Mich. 2020). Call it what you will, Nebraska's law, too, fails to honor the fundamental principles of the Takings Clause. Petitioner observes that the high courts of Michigan, Minnesota, Mississippi, New Hampshire, Vermont,

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[10] Here, unlike some cases, there is no genuine disagreement that there was an act of "taking." "When the government commands the relinquishment of funds linked to a specific, identifiable property interest such as a . . . parcel of real property, a '*per se* [takings] approach' is the proper mode of analysis . . ." *Koontz v. St. Johns River Water Mgmt. Dist.,* 570 U.S. 595, 614 (2013) (quoting *Brown v. Legal Found. of Wash.*, 538 U. S. 216, 235 (2003); *see also Loretto v. Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 430, 436 (1982) (holding that the government's taking physical control over a property interest for public use is a taking *per se*).

[11] *Wayside Church v. Van Buren Cnty.*, 847 F.3d 812, 823 (6th Cir. 2017) (Kethledge, J., dissenting), *reopened under Rule 60*, No. 14-CV-01274, ECF No. 64.

and Virginia – plus federal district courts in Michigan, Ohio, and West Virginia – have recognized that the government acts unconstitutionally when it forecloses on property to collect delinquent taxes or related debts and keeps more than it is owed. Fair Pet. at 21-22.[12] Amici respectfully recommend that the Court accept this case for review and resolve the split in the lower courts.

II. Older Homeowners Face a Disproportionate Risk of Experiencing Severe Harm Due to Tax Foreclosures.

Homeownership is the lynchpin of well-being for older Americans. As of the fourth quarter of 2020, approximately 28 million (80.2 percent) of 34.93 million householders over age 65 owned their homes. Indeed, "[o]lder Americans often use[ ] their home equity in retirement to finance health care, home maintenance, and other large expenses and as a safety net that could be used to meet unexpected needs." Lori A. Trawinski, Nightmare on Main Street: Older Americans and the Mortgage Market Crisis, AARP Pub. Pol'y Inst. 3 (July 2016), https://bit.ly/3lU9mwJ. "For most older people, the home is . . . their most valuable asset." *Id.*

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[12] In two further New York and District of Columbia federal court cases, plaintiffs' allegations that government's seizure of surplus equity was unconstitutional survived motions to dismiss. *Dorce v. City of New York*, No. 19-cv-2216, _ F.Supp.3d _, 2022 WL 2286381, at *12 (S.D.N.Y. June 24, 2022); *Coleman through Bunn v. D.C.*, No. 13-1456, 2016 WL 10721865 *2-3 (D.D.C. June 11, 2016).

Yet, for many reasons, older people face disproportionate risk of losing their homes to tax foreclosures. These include fixed incomes, rising costs, higher incidence of disability, and having no escrow account to cover property taxes (because owners have no mortgage payment or have a subprime or reverse mortgage). John Rao, *The Other Foreclosure Crisis*: *Property Tax Lien Sales*, Nat'l Consumer Law Ctr. at 5, 8-10 (Jul. 2012), http://bit.ly/1MLTZMc (hereafter "*The Other Foreclosure Crisis*"); Odette Williamson & Jillian McLaughlin, *Tax Lien Sales Put Low-Income, Seniors, and the Disabled at Risk of Foreclosure*, 34 Bifocal 1 (Oct. 2012), https://bit.ly/2VgQhtJ (hereafter "Williamson & McLaughlin, *Tax Lien Sales*").

Thus, it is Nebraska's older, most vulnerable citizens who are most likely to be victimized by Nebraska's tax foreclosure law and feel the effects most strongly. Home equity is a fundamental source of family stability and financial security for this population. William M. Rohe & Mark Lindblad, *Reexamining the Social Benefits of Homeownership after the Housing Crisis*, Harv. Univ. Joint Ctr. for Hous. Studs. (Aug. 2013), https://bit.ly/3sscWAD.

A. Older homeowners face extraordinary economic pressures that make them disproportionately vulnerable to tax foreclosures.

Rising costs, coupled with low income, play a significant role in making many older people extremely vulnerable to losing their homes through tax foreclosures. *Aging in Place: Facilitating Choice and Independence*, U.S. Dep't of Hous. and Urb. Dev. (Fall 2013), https://bit.ly/3rloGDH. One problem is that a growing share of older households are carrying housing and other debt into their retirement years. Whitney Airgood-Obrycki et al., *Housing America's Older Adults 2019*, Joint Ctr. for Hous. Stud. of Harv. Univ. 7 (Marcia Fernald ed., 2019), https://bit.ly/31mEETO. In 2016, 46 percent of homeowners aged 65-79, and 26 percent of homeowners over 80, had mortgage debt. *Id.*

Older adults who own their homes also have other significant housing related costs, including taxes, utilities, insurance, and repairs and maintenance; yet, *s*uch costs are often difficult to afford for older adults who no longer work and have limited retirement income. *Id*. at 6-7. More than one in four homeowners 65 and older is cost-burdened (paying more than 30 percent of income for housing). *Id*. at 8. That percentage is even greater among homeowners still paying off mortgage debt, with 43 percent of homeowners 65 and older having cost burdens. *Id*. Older adults with housing cost burdens may cut back on other necessary budget items – in 2018 burdened households in the bottom quartile of expenditures spent only $195 a month on food, while those without burdens spent an average of $368. *Id.* at 9. Similarly, they spend 50% less on average for out-of-pocket healthcare than those without burdens. *Id.*

Older persons also are more likely to take on debt to aid or pay the debts of a family member, thereby making them more vulnerable in adverse economic conditions. *Id.* at 8. As basic expenses such as housing, utilities, prescription drugs, and health care continue to rise, many people now enter their retirement years incurring costs for basic needs that exceed their modest or limited incomes.[13] Increasingly, this includes their own, or family members', school debt. The share of households aged 50-64 with student loan debt doubled from 7 percent of households in 2001 to 16 percent in 2016. *Id.* at 7-8.

Older Nebraska homeowners also may be suffering lingering financial effects from losses during the COVID-19 pandemic. In 2020 aggregate retirement deficits had been projected to increase by 11.2% or $412.77 billion.[14] Many older adults have lost income because of the pandemic, with 21 percent of homeowners over age 65 reporting loss of employment income in 2020. Jennifer Molinsky, *Ten Insights About Older Households from the 2020 State of the Nation's Housing Report*, Joint Ctr. for Hous. Studs. of Harvard Univ. (Dec. 17, 2020), https://bit.ly/3w2iMew. Five percent of older homeowners reported having fallen behind on housing payments. *Id.* Initial job losses from the pandemic hit older

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[13] Jack VanDerhei, *Retirement Savings Shortfalls: Evidence from EBRI's 2019 Retirement Security Projection Model®*, Emp. Benefit Rsch. Inst. (Mar. 7, 2019), https://bit.ly/2NUlnps.

[14] Jack VanderHei, *Impact of the COVID-19 Pandemic on Retirement Income Adequacy: Evidence from EBRI's Retirement Security Projection Model®*, Emp. Benefits Rsch. Inst. (Apr. 23, 2020), https://bit.ly/ 3cpihTN.

adults harder than similarly situated younger workers. Kenneth Terrell, AARP, *Unemployment's Toll on Older Workers Is Worst in Half a Century* (Oct. 21, 2020), https://bit.ly/ 3c3hDLK. During the first six months of the COVID-19 pandemic, workers aged 55 and older were 17 percent more likely to lose their jobs than employees a few years younger. *Id.*

Finally, economic security is particularly tenuous for older people in the lowest income brackets, who suffer hunger or food insecurity due to income shortfalls. An estimated 5.3 million seniors, or 7.3% of the U.S. senior population, were food insecure in 2018. James P. Ziliak & Craig Gundersen, *The State of Senior Hunger in America in 2018*, Feeding America 4 (May 21, 2020), https://bit.ly/3d5SZte. "[F]or those with incomes below the poverty line, 29.5% were food insecure." *Id.*

In sum, it is older Nebraska citizens of modest means, struggling with chronic income shortfalls, who are most likely to struggle paying their property taxes. That means they also are the group most likely to lose all the equity surplus in their homes as a result of Nebraska's confiscatory property tax foreclosure law.

B. Many older people are at risk of tax foreclosures because they no longer pay their taxes into an escrow account.

For many people with a mortgage, a portion of their property taxes is collected with their monthly payment and held in an escrow account until the taxes are due. At that time, the mortgage servicer pays taxes directly to the taxing authority. Ironically, paying off one's mortgage – a potential sign of greater economic security – often plays a significant role in greater vulnerability to tax delinquency and tax foreclosure. Williamson & McLaughlin, *Tax Lien Sales, supra.* Upon paying off a mortgage, homeowners assume responsibility for setting aside sufficient funds to pay taxes when they come due and for making payment themselves. This adjustment can create significant problems for older homeowners, particularly for those who have difficulty with financial decision making or have diminished capacity or disabilities. They may not understand the process, inadvertently miss payment dates, or be unable to set aside sufficient funds to pay tax bills when required. *Id.*

Similarly, homeowners who have reverse or subprime mortgage loans face challenges paying their taxes. Reverse mortgages, a product largely serving older homeowners, generally do not feature escrow accounts for taxes. Hence, as with older homeowners who no longer make mortgage payments, those with reverse mortgages must manage tax (and insurance) payments on their own.[15] "[A] lack of understanding

[15] Reverse mortgages insured through the Home Equity Conversion Mortgage (HECM) Program permit borrowers 62 years or older to obtain a lump sum or line of credit based on the value of their home. They are not required to make payments on the reverse mortgage while they continue to live in the home, but they must carry hazard insurance and make tax payments. Reverse mortgage servicers are required to protect the security for the mortgage by paying property tax on the borrower's behalf if taxes become delinquent. This shifts to the borrower the risk

that they were required to pay these charges" was "the most significant factor" for the recent surge in (mostly older) reverse mortgage borrowers "losing their homes to foreclosure." Sarah B. Mancini & Odette Williamson, *Reversing Course: Stemming the Tide of Reverse Mortgage Foreclosures Through Effective Servicing and Loss Mitigation*, 26 Elder L.J. 85, 102 (2018) (citing 2012 Report to Congress by the Consumer Financial Protection Bureau).[16] In addition, "the vast majority of subprime mortgage loans made prior to 2008 did not include an escrow account"; indeed, "[s]ome lenders used the lower monthly loan payment to induce consumers into believing the loans were affordable." *The Other Foreclosure Crisis*, *supra* at 5.

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of foreclosure, as HUD requires the servicer to declare the mortgage due and payable if the borrower does not repay property taxes advanced. *See* U.S. Dep't of Hous. and Urb. Dev., *Home Equity Conversion Mortgage (HECM) Financial Assessment and Property Charge Requirements*, Mortgagee Letter 2014-22 (Nov. 10, 2014), http://1.usa.gov/1MYKrnm.

[16] In November 2016, HUD reported nearly 90,000 reverse mortgages in default on property charges, mostly consisting of tax or insurance shortfalls. *Id.; see also Policy Brief: Protecting Senior Homeowners from Reverse Mortgage Foreclosure*, Ctr. for NYC Neighborhoods (Aug. 2017), https://bit.ly/3w7wFIo (reporting that "[n]ationwide, reverse mortgage defaults from taxes and insurance doubled from 2015 to 2016").

C. Older homeowners are at increased risk of losing their home to a tax foreclosure because they have a significantly higher incidence of disability and associated incapacity.

"Homeowners most at risk [of losing their homes to tax foreclosure] are those who have fallen into default because they are incapable of handling their financial affairs, such as individuals suffering from Alzheimer's, dementia, or other cognitive disorders." *The Other Foreclosure Crisis*, supra at 5. The risk of having such disorders increases exponentially with advancing age. Stacey Wood & Peter A. Lichtenberg, *Financial Capacity and Financial Exploitation of Older Adults: Research Findings, Policy Recommendations and Clinical Implications*, 40 Clinical Gerontologist 3-13 (2017); Peter Boersma, Lindsey I. Black & Brian W. Ward, *Prevalence of Multiple Chronic Conditions Among US Adults, 2018*, 17 Preventing Chronic Disease 1-4 (2020).

The factors that make many older people particularly vulnerable to becoming delinquent on their taxes also make them least able to save their homes and avoid the devastating loss of their equity. Some will be forced into nursing homes prematurely, and others may be forced to rely on government benefits. The Fifth Amendment Takings Clause was designed to prevent such effects of the "arbitrary use of governmental power." *Webb's Fabulous Pharms.*, 449 U.S. at 164.

CONCLUSION

For the reasons set forth above, amici curiae AARP and AARP Foundation urge the Court to grant Kevin Fair's Petition for Writ of Certiorari.

September 21, 2022

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