

No. 22-166

IN THE
Supreme Court of the United States

GERALDINE TYLER,
Petitioner,

v.

HENNEPIN COUNTY, MINNESOTA and MARC V. CHAPIN,
AUDITOR-TREASURER, in his official capacity,
Respondents.

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

**BRIEF OF NATIONAL TAXPAYERS UNION
FOUNDATION AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

JOSEPH D. HENCHMAN
Counsel of Record
TYLER MARTINEZ
NATIONAL TAXPAYERS
UNION FOUNDATION
122 C Street N.W. #650
Washington, DC 20001
jbh@ntu.org
(703) 683-5700

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INTEREST OF *AMICUS CURIAE*¹

Founded in 1973, the National Taxpayers Union Foundation (NTUF) is a non-partisan research and educational organization dedicated to showing Americans how taxes, government spending, and regulations affect everyday life. NTUF advances principles of limited government, simple taxation, and transparency on both the state and federal levels. NTUF's Taxpayer Defense Center advocates for taxpayers in the courts, producing scholarly analyses and engaging in direct litigation and *amicus curiae* briefs upholding taxpayers' rights, challenging administrative overreach by tax authorities, and guarding against unconstitutional burdens on interstate commerce.

Because *Amicus* has written extensively on the issues involved in this case, because this Court's decision may be looked to as authority, and because any decision will significantly impact taxpayers and tax administration, *Amicus* has an institutional interest in this Court's ruling.

¹ Pursuant to Supreme Court Rule 37, all parties were timely notified and consented to the filing of this brief. Counsel for *Amici* represents that none of the parties or their counsel, nor any other person or entity other than *Amici* or their counsel, made a monetary contribution intended to fund the preparation or submission of this brief.

SUMMARY OF THE ARGUMENT

A fundamental right that all citizens possess is the liberty to be free from excessive, punitive government penalties. *See, e.g.*, U.S. Const. amend. VIII; *Timbs v. Indiana*, 586 U.S. ___, 139 S. Ct. 682 (2019). Hennepin County Minnesota kept a \$25,000 windfall from the sale of Ms. Tyler’s home—67 percent greater than the \$15,000 that Tyler owed in property taxes.

Under this Court’s precedents, an excessive fine cannot be “grossly disproportional” to the offense and the government action must be “purely remedial.” *See, e.g., United States v. Bajakajian*, 524 U.S. 321, 334 (1998); *Austin v. United States*, 509 U.S. 602, 610 (1993). This is a straight forward test that needs to be applied to tax sales where the government keeps all the home’s equity.

Hennepin County’s confiscation of the equity in Ms. Tyler’s house is a grossly disproportional punishment that is not remedial since the county is keeping significantly more money than Ms. Tyler owed in taxes. This case presents a crucial opportunity for the Court to protect citizens from predatory government actions that by their very nature especially harm low-income taxpayers by reaffirming this Court’s Excessive Fines jurisprudence that has now been incorporated.

The Excessive Fines Clause of the Eighth Amendment protects this foundational right. But a minority of states are violating this critical constitutional right through their property tax statutes that confiscate residents’ property without returning any excess proceeds to the (former)

homeowners. As a newly incorporated constitutional protection, it is essential that the Court hear this case to ensure that states protect this critical right. By granting certiorari, the Court can ensure that this is a right that is actually protected and is not simply just a right citizens have on paper only.

This case also presents this Court with an opportunity to revisit its decision in *Nelson v. City of New York*, where New York City confiscated and sold a property for \$7,000 to satisfy \$65 in unpaid water bills, and kept all the proceeds. *See Nelson v. City of New York*, 352 U.S. 103 (1956). *Nelson* was decided prior to the Excessive Fines Clause's incorporation and is the reason lower courts are reluctant to rule that state and local governments seizing and selling property for unpaid taxes and returning no money to the distressed taxpayer violates the Constitution. The Court can now revisit *Nelson* in the Excessive Fines context and clarify to lower courts that these predatory tax statutes violate the Constitution.

Otherwise, lower courts will continue to struggle to apply Excessive Fines tests in cases involving state and local governments, with circuit courts using and prioritizing factors that have never been articulated by this Court.

ARGUMENT

I. MINNESOTA'S PROPERTY TAX SYSTEM IMPLICATES THIS COURT'S EXCESSIVE FINE CLAUSE JURISPRUDENCE.

This Court should grant certiorari in this case because the lower courts misapplied this Court's Excessive Fines jurisprudence. This Court has a simple two-part test for deciding when the Clause is violated: the fine is "grossly disproportional" to the offense and the government action cannot be "purely remedial." *See United States v. Bajakajian*, 524 U.S. 321, 334 (1998); *Austin v. United States*, 509 U.S. 602, 610 (1993).

In this case, the fine is grossly disproportional to the offense because the offense was \$15,000 in unpaid property taxes, fines, and interest, and the county responded by selling the property for \$40,000 and keeping the \$25,000 windfall. The \$25,000 windfall "bears no articulable correlation to any injury suffered by the Government" because the only harm the government suffered was unpaid tax revenue. *Bajakajian* at 340. Yet, Hennepin County imposed a fine 1.67 times greater than the unpaid taxes (plus fines the County imposed). For taxpayers struggling to get by, a punishment like the one Hennepin County imposed is grossly unfair and unjust that confiscates all value they had in their property.

A government punishment 67 percent greater than the value of the unpaid taxes, interest, and fines also determines that the County's action was not "purely remedial" because a solely remedial action for the County would only be to keep what it was owed in unpaid tax. This government action "can only be

explained as serving in part to punish,” violating this Court’s test for a remedial action in *Austin*. *Austin*, 509 U.S. at 610. Therefore, Hennepin County’s action violates the Excessive Fines Clause.

States like Minnesota that confiscate and sell property for unpaid taxes and refuse to return excess proceeds to the former homeowner engage in unjust, excessive confiscation that disproportionately harms lower income earners. These schemes contribute to cycles of poverty since entire home equity can be wiped away due to a few thousand dollars in unpaid property taxes. With these state and local government actions harming taxpayers, it is essential that the Court grant certiorari to strike down these predatory schemes.

II. CIRCUIT COURTS APPLYING THIS COURT’S JURISPRUDENCE ARE SPLIT.

A. Lower Courts Are Struggling to Apply the Grossly Disproportional Standard, Resulting in a Circuit Split.

To date, this Court has not clarified what makes a fine “grossly disproportionate” to the offense.² This has led to state and lower courts balancing a multitude of factors to decide when a government forfeiture is grossly disproportional to the illegal action and an excessive fine. For example, on remand in *Timbs*, the Indiana Supreme Court examined *ten* factors:

² Legal academics have taken note that this is one of the areas that needs clarifying after this Court’s decision in *Timbs*. See, e.g., Wesley Hottet, *What is an Excessive Fine? Seven Questions to Ask After Timbs*, 72 ALA. L. REV. 581 (2021).

- the extent to which the forfeiture would remedy the harm caused;
- the property's role in the underlying offenses;
- the property's use in other activities, criminal or lawful;
- the property's market value;
- other sanctions imposed on the claimant; and
- effects the forfeiture will have on the claimant.
- the seriousness of the statutory offense, considering statutory penalties;
- the seriousness of the specific crime committed compared to other variants of the offense, considering any sentences imposed;
- the harm caused by the crime committed; and
- the relationship of the offense to other criminal activity.

See State v. Timbs, 134 N.E.3d 12, 36-37 (Ind. 2019). The court ultimately ruled that the confiscation of Mr. Timbs' car for selling a few hundred dollars' worth of drugs was grossly disproportionate to his offense and a violation of the Excessive Fines Clause. *See State v. Timbs*, 169 N.E.3d 361, 376 (Ind. 2021). But this ten-part test is difficult to work with and it is unclear how it would be applied on slightly different facts.

Meanwhile, the Ninth Circuit considers four factors: "(1) the nature and extent of the underlying offense; (2) whether the underlying offense related to other illegal activities; (3) whether other penalties may be imposed for the offense; and (4) the extent of the harm caused by the offense." *Pimentel v. City of Los Angeles*, 974 F.3d 917, 921 (9th Cir. 2020). The First Circuit considers three, vastly different, factors: "(1) whether the defendant falls into the class of

persons at whom the criminal statute was principally directed; (2) other penalties authorized by the legislature (or the Sentencing Commission); and (3) the harm caused by the defendant.” *United States v. Jose*, 499 F.3d 105, 111 (1st Cir. 2007).

This Court has yet to weigh in on any of these tests. This leaves lower courts to grapple with critical questions like what factors to use and whether some factors should have greater weight than others. These multifactor balancing tests lead to an absurd result of someone’s constitutional rights changing at each state’s border. Clarification from this Court on what makes a fine “excessive” can and should be created. Lower courts are in desperate need of this guidance and the very shelter of American homeowners depend on getting the answer right.

B. There is A Circuit Split on Whether Civil Penalties Can Violate the Excessive Fines Clause.

This Court in *Austin* was clear that the Excessive Fines Clause applies to both civil and criminal law: “[t]he notion of punishment, as we commonly understand it, cuts across the division between the civil and the criminal law.” *Austin*, 509 U.S. at 610 (quoting *United States v. Halper*, 490 U.S. 435 (1989)). There should therefore be no doubt that a civil action like a tax sale can be a “fine” for the purposes of the Excessive Fines Clause.

Yet, despite this clear language by this Court, the Eighth and First Circuits have limited the Excessive Fines Clause to solely apply to cases connected to criminal activity. The case at bar is such an example. The District Court refused to find a valid Excessive

Fines claim because “Minnesota’s tax-forfeiture scheme does not condition the loss of surplus equity on a criminal conviction—or, for that matter, even on criminal *behavior*.” *Tyler v. Hennepin County*, 505 F. Supp. 3d 879, 897 (D. Minn. 2020) (emphasis in original). The Eighth Circuit agreed in a brief paragraph with little analysis. *See Tyler v. Hennepin County*, 26 F.4th 789, 794 (8th Cir. 2022). Similarly, the First Circuit recently ruled that civil tax penalties cannot be found unconstitutional under the clause because they are “not tied to any criminal sanction.” *United States v. Toth*, 33 F.4th 1, 28 (1st Cir. 2022).

Meanwhile, other circuits have held that civil penalties are subject to the Excessive Fines Clause, applying this Court’s holding in *Austin*. *See, e.g., Yates v. Pinellas Hematology & Oncology P.A.*, 21 F.4th 1288, 1308 (11th Cir. 2021) (holding that civil penalties under the False Claims Act were fines under the Excessive Fines Clause); *United States v. Mackby*, 261 F.3d 821, 830 (9th Cir. 2001) (finding that “the civil sanctions provided by the False Claims Act are subject to analysis under the Excessive Fines Clause because the sanctions represent a payment to the government, at least in part, as punishment.”).

With language so clear in *Austin* that civil forfeitures are subject to Excessive Fines Clause review, it is improper for lower courts to require criminality as an element for a successful Excessive Fines challenge. Because this Court has never articulated clear factors, some lower courts are importing criminality as a factor into the grossly disproportionate test. This Court should grant certiorari and reaffirm that civil penalties are subject to the Excessive Fines Clause and clearly lay out

factors lower courts should use in determining whether a fine is grossly disproportionate to the offense.

C. The Court Should Reaffirm the Historical Importance of the Excessive Fines Clause.

This case presents this Court with an opportunity to determine whether a government capturing the windfall profits of home equity is a “fine” under the now-incorporated Eighth Amendment.

Protection from excessive governmental fines is a fundamental right all people have and is one of our oldest rights, copied almost verbatim to the Eighth Amendment from the Magna Carta and the English Bill of Rights. *See Timbs*, 139 S. Ct. at 687-88. As the Alabama and Michigan Supreme Courts recently recognized, a property right in the excess funds (*i.e.*, the home equity) after a tax sale was protected in American common law at the founding. *See Douglas v. Roper*, ___ So.3d ___, No. 1200503, 2022 WL 2286417 at *10 (Ala. Jun. 24, 2022); *Rafaeli, LLC v. Oakland Cnty.*, 952 N.W.2d 434, 454-55 (Mich. 2020) (discussing English common law at the founding of the United States). The Northwest Ordinance also provided that “[a]ll fines shall be moderate; and no cruel or unusual punishments inflicted.” Ordinance of 1787, § 14, art. 2 (1787).

At the founding, several state Constitutions also protected this right. *See, e.g.*, DEL. CONST., art. I, § 11 (1792); MD. CONST., Decl. of Rights, Art. XXII (1776); MASS. CONST., pt. 1, art. XXVI (1780); N.H. CONST., pt. 1, art. 1, § XXXIII (1784); N.C. CONST., Decl. of Rights, art. X (1776); PA. CONST., art. IX, § 13 (1790); S.C.

CONST., art. IX, § 4 (1790); VA. CONST., Bill of Rights, § 9 (1776). Vermont specified that “all fines shall be proportionate to the offences.” VT. CONST., ch. II, § XXIX (1786). Georgia’s 1777 Constitution had an excessive fines clause, GA. CONST., art. LIX (1777), but its 1789 Constitution did not.

There is no history suggesting that the right against excessive fines should only apply in the criminal context, and the word “fine” by its original meaning denotes a civil context and not a merely a criminal one. The right was also incorporated in a civil dispute and this Court has been clear it applies to civil fines. *See Timbs* 139 S. Ct. at 686; *see also Hudson v. United States*, 522 U.S. 93, 103 (1997) (determining that “the Eighth Amendment protects against excessive civil fines, including forfeitures”).

The lower courts’ struggle to apply the Excessive Fines Clause in the property tax context is why the Court should grant the writ of *certiorari* in this case and make clear that the right against excessive fines applies to government penalties.

III. THIS CASE IS AN OPPORTUNITY TO CLARIFY THE SCOPE OF *NELSON V. CITY OF NEW YORK*.

This case also implicates this Court’s decision in *Nelson v. City of New York*, 352 U.S. 103 (1956), where the City foreclosed on two properties over unpaid water bills, sold one property for thousands of dollars, and retained the entire windfall. There, this Court ruled that New York’s actions did not violate the Fifth Amendment’s Takings Clause. *See id.* at 109-110. The one major factual difference between the plaintiff in

Nelson and Ms. Tyler's case is that the New York statute gave the citizen an opportunity to receive the excess proceeds, while the Minnesota statute does not. Compare *id.* with MINN. STAT. § 280.29. This major factual difference alone is reason for this Court to grant *certiorari* on Takings Clause grounds for the reason Appellant lays out in its brief. See Pet. Br. 15-21.

The Excessive Fines Clause provides this Court with a new constitutional framework for this issue, as *Nelson* was decided prior to incorporation of the Excessive Fines Clause in *Timbs*. New York's scheme in *Nelson* of seizing and selling a property worth thousands of dollars and keeping all the proceeds for a few hundred dollars in unpaid water bills would likely be decided differently today if the Excessive Fines Clause would have been available to the parties for a constitutional challenge.

Furthermore, allowing parties to bring an Excessive Fines challenge can simplify future cases. For the Excessive Fines Clause, courts would only need to answer whether the government's action was grossly disproportionate to the unpaid tax and whether the action was purely remedial in purpose. A viable Takings Clause challenge would require the courts to rule on whether the statute creates a property right interest in the surplus equity and if state common law also grants this right. In the Excessive Fines context, courts would not need to answer these questions of state law.

The limits and bounds of the Excessive Fines Clause, and whether punitive government actions like Minnesota's are grossly disproportionate to the

offense of unpaid property taxes, are critical to answer for taxpayers and for constitutional interpretation. The Court should hear this case under the Excessive Fines Clause.

CONCLUSION

For the foregoing reasons, *Amicus* respectfully requests that this Court grant the petition for a writ of *certiorari*.

Respectfully submitted,

JOSEPH D. HENCHMAN

Counsel of Record

TYLER MARTINEZ

NATIONAL TAXPAYERS

UNION FOUNDATION

122 C Street N.W. #650

Washington, DC 20001

jbh@ntu.org

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