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 MARK 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

AMICUS CURIAE BRIEF OF HOWARD JARVIS TAXPAYERS ASSOCIATION IN SUPPORT OF PETITIONER

JONATHAN M. COUPAL
TIMOTHY A. BITTLE
LAURA E. DOUGHERTY
Counsel of Record
HOWARD JARVIS TAXPAYERS FOUNDATION
921 Eleventh Street, Suite 1201
Sacramento, CA 95814
Telephone: (916) 444-9950
Email: laura@hjta.org

Counsel for Amicus Curiae Howard Jarvis Taxpayers Association

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

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INTEREST OF AMICUS CURIAE

Howard Jarvis Taxpayers Association (HJTA) is a California nonprofit public benefit corporation with over 200,000 members. The late Howard Jarvis, founder of HJTA, utilized the People of California's reserved power of initiative to sponsor California's well-known Proposition 13 in 1978. Proposition 13 was overwhelmingly approved by California voters and added Article XIII A to the California Constitution. Proposition 13 has kept thousands of fixed income Californians secure in their ability to stay in their own homes by limiting the ad valorem property tax rate and annual escalation of property taxes.[1]

HJTA has a central and ongoing interest in protecting homeowners' rights to retain their homes. In the unfortunate circumstance of financial distress leading to unpaid property taxes and government foreclosure, HJTA continues to advocate for homeowners being able to receive the remaining equity that rightfully belongs to them and, in all likelihood, will be their sole economic resource for their next stage of life. HJTA has recently supported legislation to that effect in California and written on this vital current topic known as home equity theft. (Jon Coupal & Joshua

[1] Per Rule 37, the parties were notified and consented to the filing of this brief more than ten days before its filing. *See* Sup. Ct. R. 37.2(a). Blanket consent from Petitioner was also filed September 9, 2022. No party's counsel authored any of this brief; amicus alone funded its preparation and submission. *See* Sup. Ct. R. 37.6.

Polk, *Stop home equity theft by the state of California*, The Orange County Register (Mar. 27, 2022).[2])

SUMMARY OF ARGUMENT

The Minnesota statutes at issue violate the Fifth Amendment Takings Clause and the Eighth Amendment Excessive Fines Clause. They do so by expressly taking home equity for public use without just compensation. They also take the owner's equity as excessive punishment for non-payment of taxes, even though interest and penalties have already been charged. There is no reason for Ms. Tyler to pay her government a premium of $25,000 on top of the $15,000 she owed, which already included interest and penalties.

"Public use" is clear. The Minnesota statute that distributed Ms. Tyler's $25,000 in home equity is titled "APPORTIONMENT OF PROCEEDS TO TAXING DISTRICTS." (Minn. Stat., § 282.08.) The more subtle variety of home equity theft in California also admits "public use" in statute. (Cal. Rev. & Tax Code, § 3695.4.)

Amicus writes separately to highlight the subtle forms of home equity theft that will likely expand without a grant of certiorari in this case. California, mentioned just briefly in the Petition for Certiorari, is plagued by home equity theft as well, and in dangerous

[2] https://www.ocregister.com/2022/03/27/stop-home-equity-theft-by-the-state-of-california/.

ways that will fly under the radar without enforcement of the Constitution for Ms. Tyler.

ARGUMENT

I. Certiorari should be granted because government, under the Fifth and Eighth Amendments, must respect, not exploit, vulnerable homeowners.

A. No one, including government, may exploit a tax windfall.

Governments do not allow taxpayers to take tax windfalls. (See *Handlery Hotels, Inc. v. Franchise Tax Bd.* (1995) 39 Cal.App.4th 1360; *Franck v. Polaris E-Z Go Div. of Textron* (1984) 157 Cal.App.3d 1107.) Governments must likewise not be allowed to take tax windfalls. As Justice Holmes famously wrote, "[m]en must turn square corners when they deal with the Government." (*Rock Island, A. & L. R. Co. v. United States* (1920) 254 U.S. 141, 143.) Likewise, particularly when so much is at stake, "[i]t is no less good morals and good law that the Government should turn square corners in dealing with the people than that the people should turn square corners in dealing with their Government." (*St. Regis Paper Co. v. United States* (1961) 368 U.S. 208, 229.) Accordingly, governments should not be trespassers, but trustees, particularly to tragedy-befallen persons, such as Ms. Tyler, who happen to own a home or other real property that can be levied to satisfy a tax debt.

In this case, as in certain related instances in California, a vulnerable member of society was exploited by her government following a tax sale of her property to cover a delinquency. The Eighth Circuit seems to sanction this as punishment for a distressed homeowner's normal human weaknesses when it writes: "Only after [Ms. Tyler] declined to avail herself of these opportunities did 'absolute title' pass to the State." (*Tyler v. Hennepin Cty.* (8th Cir. 2022) 26 F.4th 789, 793.) Thus, while the primary issue seems to be whether the retention of Ms. Tyler's $25,000 home equity is a taking under the Fifth Amendment because it was her property, the Eighth Amendment's Excessive Fines Clause is at issue as well. (U.S. Const. amend. V; amend. XIV, amend. VIII.) The taking of home equity is clearly intended as a punishment for nonpayment of taxes and inability to redeem the debt. As aging and mental health issues are only increasing in America, it is a vital question for all whether seizing the value of the whole property for the repayment of a lesser debt is an excessive and abusive use of government power.

Homeownership is a precious goal that many Americans work hard to achieve. Faulting homeowners for not heeding warnings to redeem their debts through payment plans or re-purchase disrespectfully ignores many distressed homeowners' reality. Such homeowners often come to this position due to age, medical condition, loss of eyesight or other physical disability, mental impairment, the negligence of a caregiver, dishonesty of a relative, or simple lack of functional support. (Brief of Amicus Curiae AARP and

AARP Foundation, March 30, 2021, Case No. 20-3730, at pp. 7-8; *Johnson v. City of East Orange, N.J. Sup. Court for Essex County*, No. ESX-L-009175-21 [illness of responsible family member]; *Hetelekides v. County of Ontario* (2021) 147 N.Y.S.3d 811 [death of taxpayer]; *Foss v. City of New Bedford, Mass. Sup. Court for Bristol County*, No. 2273CV00243 [disabled retiree suffering medical and financial problems].) There are also cases of small, innocently miscalculated underpayments that turn into nightmares for homeowners and taxpayers alike. (*Perez v. County of Wayne, Mich. Cir. Court for County of Wayne*, No. 19-009286-CZ [$144 tax debt; county kept all $108,000 sales proceeds, 750 times the original debt]; *Rafaeli, LLC v. Oakland County* (2020) 505 Mich. 429 [$8.41 tax debt; county kept all $24,500 sales proceeds, approximately 2,913 times the original debt].) Homeowners suffering from distress or mistake should not be disproportionally punished by a total loss of home equity—perhaps the only economic resource they have accrued—but should be provided a check for the remainder of what they once rightfully owned. It is a simple calculation and function of government to process such an incredible overpayment.

Minnesota's tax windfall here is approximately $25,000 in "net proceeds" from the sale of Ms. Tyler's condominium to satisfy her delinquent property tax bill. (*Tyler v. Hennepin Cty.*, 26 F.4th at pp. 790-791.) The extensive current and historical legal support for these proceeds belonging to Ms. Tyler is well set out in the Petition for Certiorari and will not be repeated

here, except to concur that relevant takings jurisprudence directly applies. (*Koontz v. St. Johns River Water Management Dist*. (2013) 570 U.S. 595; *Webb's Fabulous Pharmacies, Inc. v. Beckwith* (1980) 449 U.S. 155.)

Minnesota's tax windfall at Ms. Tyler's expense must be reviewed. Amicus HJTA submits that the "various purposes" of Minnesota Statute section 282.08 (*Tyler v. Hennepin Cty*., 26 F.4th at p. 791) are clearly the same purposes for which taxes are imposed and collected. Accordingly, Minnesota has created a tax loophole for its own benefit at a vulnerable homeowner's expense, a behavior that is repeated in many states as the Petition for Certiorari explains. Minnesota's claim to Ms. Tyler's $25,000 in home equity is either a taking or an excessive punishment and anything else is fiction. Certiorari should be granted to resolve the widespread problem afflicting American homeowners and the future of homeownership.

Even in states where the law recognizes a potential return of excess home equity, there is opportunity for government to under-prioritize the noticing procedures and thereby increase the likelihood of taxing authorities quietly, passively retaining the funds that rightfully belong to the taxpayer. For example, in California, proceeds are not automatically delivered, but must be claimed within one year. (Cal. Rev. & Tax Code, § 4675(a).) Government bureaucracy can be slow or inefficient enough for notices to be misplaced or sent to the wrong address in that short time. Even when notices timely arrive at the right address, distressed former homeowners may—conveniently for California

governments—not be in sufficient physical or mental condition to file a claim nor have the aid of someone who can. After one year with no claim filed, the property belongs to the State of California, as it is in Minnesota. Clarity in this case would help California and other states to clean up their tax collection laws to comport with the U.S. Constitution as it regards what is typically an American's most vital asset and symbol of financial stability and prosperity: a home.

B. Minnesota's tax windfall for county-supervised forest management, parks, and general government services is definitively for "public use" and punishes Ms. Tyler for a lack of funds by taking significantly more than was owed.

Minnesota Statute section 282.08 would apportion the $25,000 "net proceeds" of the Tyler tax sale to forest development, county parks and recreation, and unrestricted general government services. In fact, section 282.08 is titled "**APPORTIONMENT OF PROCEEDS TO TAXING DISTRICTS**." It is indisputable that money transferred to a taxing district is for "public use" under the Fifth Amendment. That is the only purpose of such districts.

Ms. Tyler's private property has been taken for $25,000 worth of such public use, and similar incidents regularly occur across the country. Without review, governments will continue to take tax windfalls outright, as Minnesota does by statute, or make room in

statutes for clever designs or carelessness similarly capable of producing unjustified windfalls at the expense of the vulnerable.

Ms. Tyler did not have the money or the financial savvy to redeem the property, so the foreclosure proceedings ensued. HJTA does not debate this. HJTA asserts that Ms. Tyler's property has been taken and she has been excessively punished for having no money or ability to redeem the property, a state of being that is not even a disobedient act, much less a crime. Nevertheless she has been fined, and the amount of her fine is undoubtedly extreme. With the $40,000 sale of her home, Ms. Tyler paid her $15,000 debt (inclusive of existing penalties and interest) nearly 3 times. Given the everyday prevalence of homeownership, hardship, and government use of tax sales on real property to satisfy debt, the Court should grant certiorari to make clear in all states what is the minimum standard under the Takings Clause and/or whether this is an impermissible, excessive punishment for unpaid taxes.

II. The California Legislature maintains a variant of the problem, also taking property for "public use," and demonstrates no inclination to correct it.

Although California is not part of the extensive split of authority among states on the parallel issue to Ms. Tyler's, which immediately speaks volumes as to the need for certiorari, California's tax sales statutes demonstrate a more subtle abuse of homeowners. As

the Petition for Certiorari briefly explained, "[California] law permits confiscation of the entire value when municipalities claim the indebted property for a public use or economic revitalization." (Pet. at 31.) Without clarification on certiorari, California's laws taking home equity from vulnerable citizens will continue to wreak havoc unchecked.

In California, a tax-defaulting homeowner generally has one year to claim remaining home equity from a tax sale like the one Ms. Tyler's property underwent. (Cal. Rev. & Tax Code, § 4675(a).) When property is sold at a tax auction, and a claim is filed, disbursement of the excess funds proceeds as follows:

> (A) First, to lienholders of record prior to the recordation of the tax deed to the purchaser in the order of their priority.
>
> (B) Second, to any person with title of record to all or any portion of the property prior to the recordation of the tax deed to the purchaser.

(*Id*. at 4675(e).)

Though far from perfect, this provision comports more with the Constitution than does the Minnesota law in this case.

But there is another California law which causes home equity theft like Minnesota's. Working with a nonprofit organization, the state or a local government may file an "objection" with the county tax collector to stop the open-market sale under section 4675 and

redirect the sale to exclusive no-bid proceedings under another statutory scheme. (Cal. Rev. & Tax Code, § 3695.4.) The state or local government may do this for "any property that is or may be needed for public use." (*Ibid*.) A nonprofit organization may also file an "objection" on its own to trigger such special proceedings by providing a written promise to sell or rent to low-income persons. (Cal. Rev. & Tax Code, § 3695.5.) In these cases, not only are no proceeds returned to the homeowner, but the homeowner will not be able to claim their remaining home equity as they could have within one year under section 4675 because it will be taken by design. Their remaining home equity is taken for "public use" by government, developers or nonprofits. (Cal. Rev. & Tax Code, § 3695.4.)

This special procedure is known as a Chapter 8 sale. (See Cal Rev. & Tax Code, §§ 3771-3841.) The nonprofit organization or government-partnered developer gains an exclusive agreement to purchase the property for just the total amount due to the government. (*Id.* at §§ 3791.4; 3793.1.) This absorbs the home equity because it is not an open-market sale. And home equity interests, similar to Ms. Tyler's, are taken for "public use" thereby. (Cal. Rev. & Tax Code, § 3695.4.) This clearly demands Fifth Amendment review.

California legislators, however, are unmotivated to bring these statutes into compliance with the Takings Clause or Excessive Fines Clause. On February 7, 2022, Assembly Bill 1839 was introduced. AB1839 would have required that an open public auction occur before any Chapter 8 sale, thus at minimum affording every

defaulted homeowner one chance to recover their remaining home equity. The California Association of County Treasurers and Tax Collectors supported the bill, and no one opposed. (Assem. Com. On Rev. and Tax., Analysis of Assem. Bill. No. 1839 (2021-2022 Reg. Sess.) as amended Mar. 22, 2022, at p. 3, Hearing Date April 25, 2022.)

Unfortunately, AB1839 died in committee on April 26, 2022. What is worse, other legislation had been simultaneously proposed to *expand* the definition of an eligible nonprofit under the Chapter 8 sales proceedings, thus intending to make home equity theft more likely. (Assem. Com. on Rev. and Tax., Analysis of Assem. Bill No. 2021 (2021-2022 Reg. Sess.) as amended April 7, 2022, at p. 1, Hearing Date April 25, 2022 ["Expands eligible uses for which a nonprofit organization may object to a sale of tax-defaulted property by public auction or sealed bid"].) California, along with Minnesota and the many other states discussed in the Petition for Certiorari, sorely need application of the Takings Clause and Excessive Fines Clause to return home equity proceeds to distressed homeowners following the sales of their homes to repay tax debts.

CONCLUSION

In all its forms, home equity theft violates the Takings and Excessive Fines Clauses as a fictitious windfall to government or exclusive government-appointed bidders. Without certiorari in Ms. Tyler's case against

Minnesota's outright retention of her $25,000, states like California will slip further into patterns and practices violating the Fifth and Eighth Amendments as to their most vulnerable citizens. Certiorari should be granted.

DATED: September 21, 2022

Respectfully submitted,

JONATHAN M. COUPAL
TIMOTHY A. BITTLE
LAURA E. DOUGHERTY
Counsel of Record
HOWARD JARVIS TAXPAYERS FOUNDATION
921 Eleventh Street, Suite 1201
Sacramento, CA 95814
Telephone: (916) 444-9950
Email: laura@hjta.org

Counsel for Amicus Curiae
Howard Jarvis Taxpayers Association