

No. 22-166

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In The  
**Supreme Court of the United States**

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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.*

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

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**JOINT APPENDIX**

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Petition for Writ of Certiorari filed August 19, 2022  
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## Relevant Docket Entries

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for the County of Ramsey  
*Geraldine Tyler v. State of Minnesota*  
Case No. 62-CV-19-6012

<b>Dkt.</b>	<b>Date</b>	<b>Description</b>
1	08/16/2019	Summons and Complaint
12	09/09/2019	State Defendants' Notice of Motion and Motion for Dismissal
14	09/11/2019	Notice of Case Reassignment to Hon. Thomas Gilligan, Jr.
15	09/17/2019	State Defendants' Amended Notice of Motion and Motion for Dismissal
17	11/25/2019	State Defendants' Amended Notice of Motion and Motion for Dismissal
18	01/23/2020	State Defendants' Memo in Support of Motion to Dismiss
24	03/09/2020	Amended Complaint and Petition for Writ of Mandamus
31	04/07/2020	Notice of Filing of Notice of Removal to U.S. District Court, District of Minnesota
32	04/07/2020	Notice of Removal to U.S. District Court, District of Minnesota

CASE 0:20-CV-00889-PJS-BRT Doc. 1-2  
Filed 04/07/20

Filed in District Court  
State of Minnesota  
3/9/2020 7:24 PM

**STATE OF MINNESOTA      DISTRICT COURT**  
**COUNTY OF RAMSEY      SECOND JUDICIAL**  
**DISTRICT**

**Case Type: Civil Other**

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Geraldine Tyler, on behalf of  
herself and all others  
similarly situated,

Plaintiff,

Case No.:62-CV-19-  
6012

The Honorable  
Thomas Gilligan, Jr.

v.

**JURY TRIAL  
DEMANDED**

STATE OF MINNESOTA,  
and CYNTHIA BAUERLY,  
in her capacity as  
Commissioner, Minnesota  
Department of Revenue,  
HENNEPIN COUNTY and  
MARK V. CHAPIN,  
Auditor-Treasurer, in his  
official capacity,

Defendants.

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**AMENDED CLASS ACTION COMPLAINT  
AND PETITION FOR WRIT OF MANDAMUS**

Plaintiff brings this action individually and on behalf of all others similarly situated against Defendants the STATE OF MINNESOTA, and CYNTHIA BAUERLY, in her capacity as Commissioner, Minnesota Department of Revenue, HENNEPIN COUNTY and MARK V. CHAPIN, Auditor-Treasurer, in his official capacity, (collectively, “Defendants”) and demands a trial by jury. Plaintiff makes the following allegations based upon personal knowledge as to her own acts, and upon information and belief, as well as upon the undersigned attorneys’ investigative efforts, as to Defendants’ actions, and alleges as follows:

**NATURE OF THE ACTION**

1. This case seeks to end and remedy an unfair and unnecessary practice by the State of Minnesota, Hennepin County and Mark V. Chapin, Auditor-Treasurer. It is the practice—sanctioned by statute<sup>1</sup>—of using small, sometimes miniscule, amounts of unpaid real estate property taxes to seize and take possession of people’s property and if necessary, evict

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<sup>1</sup> Minn. Stat. § 282.01 provides, in part:

(a) When acting on behalf of the state under laws allowing the county board to classify and manage tax-forfeited lands held by the State in trust for the local units as provided in section 281.25, the county board has the discretion to decide that some lands in public ownership should be retained and managed for public benefits while other lands should be returned to private ownership.

them from it. The Defendants then either keep the property for their own benefit or sell it for amounts that may exceed the amount of unpaid taxes, retaining not just the amount owed for unpaid taxes but the *entirety* of the sale proceeds, including all of the homeowner's equity in the property.

2. Plaintiff asserts that the Defendants' retention of value or proceeds in excess of the unpaid taxes and associated charges is *ultra vires* and violates the Minnesota and United States Constitutions' prohibitions on the taking of private property for public use without just compensation and excessive fines.

3. Plaintiff, on behalf of herself and all others similarly situated, seeks just compensation for the taking of her private property, an award of class counsel's fees, including attorneys' fees under Minn. Stat. § 15.472 and 42 U.S.C. § 1988, together with an injunction against further violations, reimbursement of expenses and costs of suit as allowed by law, and such other relief as the Court deems just and proper.

### **PARTIES**

4. Plaintiff Geraldine Tyler is a citizen and resident of Minnesota.

5. Plaintiff Tyler owned property located at 3600 Penn Avenue North, #105 in Minneapolis, Minnesota, which is located in Hennepin County. Ms. Tyler purchased her condominium in 1999. Because Plaintiff is elderly and was living alone, Plaintiff and her family were growing concerned about her health and safety. As a result, in or around 2010, Plaintiff

rented an apartment in a different neighborhood and the property taxes on her condominium went unpaid. Hennepin County obtained a judgment against the property in April 2012 and seized the property in July 2015. In November 2016, the property was sold for \$40,000, although the outstanding taxes and fees were only \$15,000. Plaintiff Tyler did not receive and has no way to obtain any of the excess funds generated by the sale of her home.

6. Defendant State of Minnesota is a political entity and includes its agents, including the Commissioner of the Minnesota Department of Revenue (“Revenue Commissioner”).

7. Defendant Cynthia Bauerly is the Commissioner of the Minnesota Department of Revenue and, in that position, supervises and administers the tax forfeitures at issue herein, as did her predecessors, and is responsible for and/or supervises actions complained of herein.

8. Defendant Hennepin County is a municipal legal entity authorized and formed under the laws of the State of Minnesota and is responsible for and/or supervises actions complained of herein.

9. Defendant Mark V. Chapin is Auditor-Treasurer of Hennepin County and is responsible for and/or supervises actions complained of herein.

10. Each Defendant is acting pursuant to Minnesota Statute § 282 for tax-forfeited land sales and procedures adopted by Hennepin County and the State of Minnesota and as outlined in the Delinquent Tax and Tax Forfeiture Manual “Red Book”.



11. Each Defendant seized the property of Plaintiff and Class Members with unpaid real property taxes and/or other charges, and as a result of proceedings required by Minnesota statutes, the legal title to the property is transferred to the State in trust for the counties or otherwise. Upon the sale or other disposition of the property, one or more Defendants retained the excess equity or value in the property even after taxes and associated charges had been fully satisfied.

### **JURISDICTION AND VENUE**

12. This Court has jurisdiction over this action pursuant to Article VI, Section 3 of the Minnesota Constitution and Minn. Stat. § 484.01 subd. 1(1).

13. Venue is proper in this judicial district pursuant to Minn. Stat § 542.18, because a substantial part of the events giving rise to the claims herein occurred within this district.

### **BACKGROUND**

14. The United States and Minnesota Constitutions limit the government's power by prohibiting a taking of property in the absence of a "public use" and requiring that if property is taken, "just compensation" must be paid.

15. Article I, Section 13 of the Minnesota Constitution provides: "Private property for public use: Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured." Where there is no

public purpose, the Minnesota Constitution prohibits takings altogether.

16. The Fifth Amendment to the United States Constitution similarly lists government actions that are prohibited, and states “nor shall private property be taken for public use, without just compensation.” The 14th Amendment to the United States Constitution makes the Fifth Amendment applicable to States. It provides, in pertinent part, “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

17. The Minnesota and United States Constitutions also prohibit the imposition of excessive fines. Both the Eighth Amendment to the United States Constitution and Article 1, Section 5 of the Minnesota Constitution, provide: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.”

18. Despite these constitutional protections, Defendants seize the property of homeowners with unpaid real property taxes and/or other charges, title is transferred to the State in trust for the counties or otherwise; and upon the sale or disposition of the property, Defendants retain the excess equity or value in the property even after taxes and associated charges have been fully satisfied. Moreover, Defendants do not provide any means or mechanism for the owner to reclaim the excess equity or value, sometimes referred to as the surplus.

19. By the acts described above, Defendants are taking the private property of Plaintiff and the Class without just compensation, and making or assessing an excessive fine that is in addition to any penalties already imposed and far greater than what is owed in back taxes. These actions are *ultra vires* with regard to both the Minnesota and United States Constitutions.

20. Courts have long recognized that “[i]t is against all reason and justice for a people to entrust a legislature” with the power to enact “a law that takes property from A and gives it to B.” *Calder v. Bull*, 3 U.S. 386, 388 (1798). This guiding principle has been recognized repeatedly as a core tenet of the law in the United States, including in the Minnesota Constitution, and as a shield against the abuse of government power.

21. Although case law on the subject of unconstitutional takings often deals with the related topics of eminent domain and inverse condemnation, the clear underlying legal message of these cases establishes broadly that the government can only take property for a public use and that when the government *does* take property, it must compensate the owner accordingly, lest the owner bear a disproportionate share of expenses that ought to be borne by the public for whose use it was taken.

22. A home or other type of real property is undeniably property protected by the U.S. and Minnesota Constitutions, as is the value or equity remaining after any valid taxes and associated charges are deducted. Indeed, in *Lombard v. Louisiana*, 373 U.S. 267, 275 (1963), Justice Douglas,

concurring, stated “The principle that a man’s home is his castle is basic to our system of jurisprudence.” Equity is an interest in real property and is subject to the same rules and entitled to the same protections as other forms of property.

23. The U.S. Supreme Court has recognized that a homeowner is entitled to any equity he or she may have realized since the purchase of the property:

[Fair market value] may be more or less than the owner’s investment. He may have acquired the property for less than its worth or he may have paid a speculative and exorbitant price. Its value may have changed substantially while held by him. The return yielded may have been greater or less than interest, taxes, and other carrying charges. **The public may not by any means confiscate the benefits**, or be required to bear the burden, **of the owner’s bargain.** *Vogelstein & Co. v. United States*, 262 U.S. 337, 340, 43 S.Ct. 564, 67 L.Ed. 1012. He is entitled to be put in as good a position pecuniarily as if his property had not been taken. He must be made whole but is not entitled to more. It is the property and not the cost of it that is safeguarded by state and Federal Constitutions. *The Minnesota Rate Cases*, 230 U.S. 352, 454, 33 S.Ct. 729, 57 L.Ed. 1511, 48 L.R.A.(N.S.) 1151, Ann. Cas. 1916A, 18.

*Olson v. United States*, 292 U.S. 246, 255, 54 S. Ct. 704, 708, 78 L. Ed. 1236 (1934) (emphasis added).

24. Defendants have strayed far from our state and federal Constitutions' guiding principles and the original goal of protecting homeowners from the harsh consequences of tax delinquency.

25. When Defendants take real property pursuant to a property tax forfeiture and retain the value or sale proceeds in excess of the amount owed, such retention is not purely remedial in nature but rather is retributive or meant to serve as a deterrent. Defendants' retention of value or equity belonging to Plaintiff or Class Members therefore implicates the Excessive Fines Clause of the Minnesota Constitution.

26. Similarly, under the United States Constitution, proportionality is the foundation of the constitutional inquiry under the Excessive Fines Clause. The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish.

27. Defendants' actions violate the Excessive Fines Clause of both the Minnesota and United States Constitutions.

28. Unfortunately, Defendants' unconstitutional takings of Plaintiff's and Class Members' home equity often targets and victimizes those most in need of protection: the elderly, disabled and/or other vulnerable groups of Minnesotans who lack the resources necessary to pay back taxes and avoid forfeiture.

29. Notably, some states, like Montana, have outlawed or abolished seizure practices like

Minnesota's. In other states, such as New Hampshire, Vermont and Mississippi, the Supreme Courts have held these practices to be unconstitutional. In yet other states, the surplus or "overage" from a tax forfeiture sale is, or can be, refunded to the owner.<sup>2</sup>

30. Federal law provides that excess proceeds from a tax sale belong to and must be returned to the former owner. *See, e.g., United States v. Rodgers*, 461 U.S. 677, 690-94 (1983) (in a forced sale to recover delinquent federal taxes under 26 U.S.C. § 7403, government may not ultimately collect, as satisfaction for the indebtedness owed to it, more than the amount actually due. If seizure of property extends beyond property necessary to satisfy tax debt, the excess must be repaid as compensation for the taking).

31. In Minnesota, as elsewhere, real estate taxes assessed are typically small in relation to the value of the property, averaging according to some sources, approximately 1.05% of the value. *See* <http://www.tax-rates.org/minnesota/property-tax>. (last visited February 28, 2020). Thus, the real estate taxes on a typical home worth \$200,000 are approximately \$2,100 per year.

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<sup>2</sup> *See, e.g.,* Ala. Code § 40-10-28; Fla. Stat., § 197.582; Ga. Code Ann. § 48-4-5; Me. Rev. Stat. tit. 36, § 949; 72 Pa. Stat. § 1301.19; 72 Pa. Cons. Stat. Ann. § 1301.2; S.C. Code Ann. § 12-51-130; Tenn. Code Ann. § 67-5-2702; Va. Code Ann. § 58.1-3967; and Wash. Rev. Code Ann. § 84.64.080. Under the Supreme Court's recent decision in *Knick v. Township of Scott, Pennsylvania*, 588 U.S. \_\_\_ (2019), the taxpayer's ability to obtain a surplus will not "save" an otherwise unconstitutional forfeiture law, but the existence of such palliative procedures in sister states highlights the harshness of the Minnesota forfeiture regime.

32. When a property owner in Minnesota fails to pay property taxes, the tax becomes delinquent, and, if the taxes remain unpaid, they become a lien against the property.

33. Ultimately, unpaid taxes can result in a judgment being entered on that lien by the district court, followed by a period of redemption. During the redemption period, the owner, or others having certain legal interests in the property, can pay or redeem the delinquent taxes.

34. If the property is not redeemed, however, the property forfeits in its entirety to the State, whereupon it can either be sold or retained and utilized for public benefit.

35. Minnesota law, however, provides no avenue for the owner to recover the equity or surplus value or sale proceeds lost as a result of the seizure and/or sale of his or her property.

36. Hennepin County states publicly that it is acting on behalf of, i.e., together with in the manner agent and principal interact, the State. “When land is forfeited, **the county administers this process for the state.**” *See, e.g.,* <https://www.hennepin.us/residents/property/tax-forfeited-land> (last visited February 28, 2020) (emphasis added).

37. Property that is forfeited is “classified” pursuant to Minn. Stat. Ann. § 282.01; that is, a determination is made whether the property will be kept and used by the State, or sold, with the government retaining all proceeds. *See, e.g.,*

<http://www.hennepin.us/residents/property/taxforfeited-land>. (last visited February 28, 2020).

38. Whether forfeited property is sold or held and used for public purposes, the end result is that a homeowner's failure or inability to pay property taxes—often miniscule fraction of the property's value—leads to Defendants physically seizing the property, evicting the owner and other occupants if they remain on the property, and retaining the property or all the money resulting from its sale, thereby appropriating the entirety of the homeowner's property and equity.

39. Unlike a mortgage foreclosure sale, where amounts realized in excess of the debt owed on the property may be held for the owner, in a tax forfeiture, the Defendants simply confiscate the homeowner's property. The Defendants neither return the property, nor any portion thereof, nor any sale proceeds, to the owner.

40. The Defendants are under no statutory obligation to reimburse the homeowner for the amount by which amounts realized on the sale (or value) of the property exceed the unpaid taxes and associated charges and, in fact, do not do so. And there is no statutory process by which the owner can seek to recover any of the money resulting from the sale of the property. The homeowner simply loses both the equity in and value of the property.

41. As an example, assume a homeowner fails to pay \$10,000 in taxes and associated charges on a property worth \$100,000. The property is seized and sold for \$100,000. The owner receives nothing, even



though the sale price far exceeds the total of unpaid taxes and associated costs and the Defendants end up with a windfall of \$90,000.

42. As Hennepin County's website notes, homeowners often forfeit their properties as the result of serious misfortunes beyond their control:

“Owners fall into financial trouble because of job loss, a sudden and expensive medical crisis, unexpected property expenses, and other reasons. Sometimes these two processes [mortgage foreclosure and tax forfeiture] are occurring at the same time.”

See <http://www.hennepin.us/residents/property/tax-forfeited-land>. (last visited February 28, 2020).

43. Furthermore, the forfeiture process can be confusing and complicated, especially for a struggling homeowner. Indeed, the State authored the Minnesota Delinquent Tax and Tax Forfeiture Manual or “Red Book”—a *242-page* manual—as a “guide for county auditors and county land commissioners to use in the administration of the law concerning property tax delinquency and tax forfeiture of real property.” See <https://www.revenue.state.mn.us/delinquentreal-property-tax-and-tax-forfeiture-manual-red-book> (last visited February 28, 2020). Distressed homeowners receive no such guide to help them navigate this process and protect their property.

44. Tax forfeitures have been referred to as a “foreclosure crisis,” [https://www.nclc.org/images/pdf/foreclosure mortgage/tax issues/tax-lien-sales-](https://www.nclc.org/images/pdf/foreclosure_mortgage/tax_issues/tax-lien-sales-)

report.pdf (last visited February 28, 2020) and have been described as resulting from outmoded state laws which are incredibly confusing and present problems to which the elderly are particularly vulnerable. *See generally*, Mahoney, Emily L., & Clark, Charles T., “Arizona owners can lose homes over as little as \$50 in back taxes”, *The Arizona Republic*, June 12, 2017, *available at* <https://www.azcentral.com/story/money/real-estate/2017/06/12/tax-lien-foreclosures-arizonamaricopa-county/366328001/> (describing Arizona’s version of the tax forfeiture process) (last visited February 28, 2020).

45. Here, Plaintiff owned property that was seized and sold for an amount exceeding the unpaid taxes and associated charges on the forfeited property. Nonetheless, Plaintiff did not receive any of the excess funds generated by the sale.

### **CLASS ALLEGATIONS**

46. Plaintiff brings this action on behalf of herself and all others similarly situated under Minnesota Rule of Civil Procedure 23 as representative of a Plaintiff Class (“Class”) defined as:

All persons or entities who owned or had an ownership interest in real property in Hennepin County which was seized pursuant to Minn. Stat., Ch. 282 to satisfy unpaid real estate taxes and associated charges and fines, and which had a value of or was sold for more than the amount necessary to satisfy such taxes and associated charges.

47. Members of the Class are so numerous that the individual joinder of all absent Class Members is impracticable. While the exact number of Class Members is unknown to Plaintiff at this time, based upon the widespread nature of the causes of failure to pay real estate taxes, and review of publicly available tax records from Hennepin County, the proposed Class likely includes at least hundreds of members.

48. Common questions of law and fact exist as to all Members of the Class. These questions predominate over any questions unique to any individual Member of the Class and include, without limitation:

a. Whether Defendants' sale and retention of Plaintiff's and the Class Members' forfeited properties without remitting to them the excess or surplus value or proceeds resulting from such sale or retention constitutes a taking of private property;

b. Whether Defendants' taking of Plaintiff's and the Class Members' forfeited properties was for a public use;

c. Whether Defendants' taking of Plaintiff's and the Class Members' forfeited properties for public use was without "just compensation therefor, first paid or secured" and therefore, in violation of Art. I, § 13 of the Minnesota Constitution;

d. Whether Defendants' taking of Plaintiff's and the Class Members' or Members' forfeited properties for public use was without "just compensation," and therefore, in violation of the

Fifth Amendment to the United States Constitution;

e. Whether Defendants' actions, including retention of the surplus proceeds or equity resulting from the sale of Plaintiff's and Class Members' property, constitute unconstitutional "excessive fines" in violation of Art. I, § 5 of the Minnesota Constitution;

f. Whether Defendants' actions, including retention of the surplus proceeds or equity resulting from the sale of Plaintiff's and Class Members' property, constitute unconstitutional "excessive fines" in violation of the Eighth Amendment to the United States Constitution;

g. Whether Defendants' actions, including retention of the surplus proceeds or equity resulting from the seizure and/or sale of Plaintiff's and Class Members' property, constitute unjust enrichment;

h. The appropriate measure of damages to be paid to Plaintiff and Class members; and

i. Whether injunctive relief is appropriate to halt Defendants' practices as complained of herein.

49. Plaintiff's claims are typical of the claims of the Class. Defendants' actions have affected Class Members equally because those actions were directed at Plaintiff and Class Members and affected each in the same manner. Accordingly, Plaintiff's claims against Defendants based on the conduct alleged in

this Complaint are identical to the claims of other Class Members.

50. Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests adverse to the interests of the Class. Plaintiff is committed to prosecuting this action to a final resolution and has retained competent counsel who have extensive experience in prosecuting complex class action litigation and questions of constitutional law and who will vigorously pursue this litigation on behalf of the Class. A class action is superior to other methods of adjudicating this controversy.

51. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

52. Defendants have acted or refused to act on grounds generally applicable to the Class.

53. Questions of law and fact common to members of the Class predominate over any individual questions that may be alleged to affect only individual Class Members.

54. The damages sustained by the individual Class Members will not be large enough to justify individual actions when considered in proportion to the significant costs and expenses necessary to prosecute a claim of this nature against Defendants. The expense and burden of individual litigation would make it impossible for members of the Class individually to address the wrongs done to them.

55. Even if every Class Member could afford individual litigation, the court system could not. Class treatment, on the other hand, will permit the adjudication of claims of Class Members who could not individually afford to litigate their claims against Defendants and will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the duplication of effort and expense that individual actions would entail.

56. No difficulties are likely to overcome the manageability of this class action, and no superior alternative exists for the fair and efficient adjudication of this controversy.

57. All counts below are against all Defendants, unless otherwise noted.

**COUNT I**  
**TAKING OF PRIVATE PROPERTY WITHOUT**  
**A VALID PUBLIC USE IN VIOLATION OF THE**  
**UNITED STATES CONSTITUTION**

58. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

59. By taking private property without a public use, Defendants violate the United States Constitution.

60. Defendants have no public use to support or justify taking or keeping the surplus or equity when that equity is larger in amount than the taxes and associated charges owed. The United States

Constitution precludes such arbitrary exercise of government power.

61. The Minnesota statutes pursuant to which, and to the extent they authorize or purport to authorize Defendants or any of them to take property for other than a public use, to wit Minn. Stat. §§ 280 and 282, are unconstitutional.

62. The Fifth Amendment to the United States Constitution provides, in pertinent part, “nor shall private property be taken for public use, without just compensation.” The Fourteenth Amendment prohibits states from violating these rights and protections.

63. The cause of action for a taking of private property without a valid public use is in violation of the United States Constitution is brought as a direct action under the Fifth and Fourteenth Amendments to the United States Constitution.

64. This cause of action is also brought, in addition and in the alternative, if applicable, pursuant to 42 U.S.C. § 1983 for an order directing Defendants to comply with the mandates of the Fifth and Fourteenth Amendments to the United States Constitution by paying just compensation to Plaintiff and Class Members for their property that was not taken for a public purpose and was taken without payment of just compensation.

65. Plaintiff and Class Members face a threat of great and irreparable harm if, after a trial on the merits, a permanent injunction is not granted, in that there is a threat their property rights will continue to be violated by Defendants.

66. Plaintiff and Class Members have no adequate legal remedy to protect their property interests from the ongoing unconstitutional and unlawful conduct herein described.

67. Plaintiff and the Class Members have been injured and damaged by the taking of the equity in their property for no public use and are entitled relief as a result.

**COUNT II**  
**TAKING OF PRIVATE PROPERTY WITHOUT**  
**JUST COMPENSATION IN VIOLATION OF**  
**THE UNITED STATES CONSTITUTION**

68. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

69. The Fifth Amendment to the United States Constitution provides, in pertinent part, “nor shall private property be taken for public use, without just compensation.” The Fourteenth Amendment prohibits states from violating these rights.

70. Minnesota’s forfeiture statute requires that any excess proceeds be retained by the State or by the taxing district. Minn. Stat. §§ 282.05, 282.08.

71. The tax forfeiture statutes permit and require the taking of Plaintiff’s private property without just compensation, which is a deprivation of the rights of Plaintiff and Class Members secured under the Fifth and Fourteenth Amendments to the United States Constitution.



72. The cause of action for a taking in violation of the United States Constitution is brought as a direct action under the Fifth and Fourteenth Amendments to the United States Constitution.

73. This cause of action is also brought, in addition and in the alternative, if applicable, pursuant to 42 U.S.C. § 1983 for an order directing Defendants to comply with the mandates of the Fifth and Fourteenth Amendments to the United States Constitution by paying just compensation to Plaintiff and Class Members for their property that was taken without payment of just compensation.

74. Plaintiff and Class Members face a threat of great and irreparable harm if, after a trial on the merits, a permanent injunction is not granted, in that there is a threat their property rights will continue to be violated by Defendants.

75. Plaintiff and Class Members have no adequate legal remedy to protect their property interests from the ongoing unconstitutional and unlawful conduct herein described.

76. Plaintiff and the Class have been injured and damaged by the failure to pay just compensation for the loss of their property and are entitled to other relief as a result.

**COUNT III**  
**TAKING OF PRIVATE PROPERTY WITHOUT**  
**A VALID PUBLIC USE IN VIOLATION OF**  
**THE MINNESOTA CONSTITUTION**

77. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

78. The Minnesota Constitution provides at Article I, § 13: “Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.” This clause requires the government to provide or secure just compensation before taking private property for a public use.

79. By taking private property without a public use, Defendants violate the Minnesota Constitution.

80. Defendants have no public use to support or justify taking or keeping the surplus or equity when that equity is larger in amount than the taxes and associated charges owed. The Constitution precludes such arbitrary exercise of government power.

81. The Minnesota statutes pursuant to which, and to the extent they authorize or purport to authorize, Defendants or any of them to take the property of Plaintiff or Members of the Class for other than a public use, to wit Minn. Stat. §§ 280 and 282, are unconstitutional.

82. The actions of Defendants in taking property for other than public use violate the Minnesota Constitution.

83. Plaintiff and Class Members have been injured and damaged by the taking of their property for no public use and are entitled to just compensation and other relief as a result.

**COUNT IV**  
**TAKING OF PRIVATE PROPERTY WITHOUT**  
**JUST COMPENSATION IN VIOLATION OF**  
**THE MINNESOTA CONSTITUTION**

84. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

85. The Minnesota Constitution provides at Article I, § 13: “Private property shall not be taken, destroyed or damaged for public use without just compensation therefor, first paid or secured.”

86. Minnesota’s tax forfeiture statute requires that any excess proceeds be retained by the State. Minn. Stat. § 280.29.

87. The tax forfeiture statutes permit and require the taking of private property without just compensation, which is a deprivation of rights of Plaintiff and Class Members secured under the Minnesota Constitution.

88. The cause of action for a taking in violation of the Minnesota Constitution is brought as a direct action.

89. Plaintiff and Class Members have been injured and damaged by the failure to pay just compensation

for the loss of their property and are entitled to compensation and other relief as a result.

**COUNT V**  
**VIOLATION OF THE EXCESSIVE FINES**  
**CLAUSE OF THE UNITED STATES**  
**CONSTITUTION**

90. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

91. The Eighth Amendment to the United States Constitution prohibits the imposition of excessive fines.

92. Confiscating the entire value of the property of Plaintiff and Members of the Class, including the excess or surplus equity in Plaintiff's and Class Members' properties because of nonpayment of small amounts of real estate taxes, is an excessive fine under Eighth Amendment to the United States Constitution.

93. Defendants are engaged in assessing and collecting prohibited excessive fines.

94. Plaintiff and Class Members face a threat of great and irreparable harm if, after a trial on the merits, a permanent injunction is not granted, in that there is a threat their property rights will continue to be violated by Defendants.

95. Plaintiff and Class Members have no adequate legal remedy to protect their property interests from

the ongoing unconstitutional and unlawful conduct herein described.

96. Plaintiff and the Class have been injured and damaged by the unlawful excessive fines under the United States Constitution and are entitled to relief as a result.

**COUNT VI**  
**VIOLATION OF THE EXCESSIVE FINES**  
**CLAUSE OF THE MINNESOTA**  
**CONSTITUTION**

97. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

98. Article I, Section 5 of the Minnesota Constitution prohibits the imposition of excessive fines.

99. Confiscating the entire value of property including the excess or surplus equity in Plaintiff's and Class Members' properties because of non-payment of small amounts of real estate taxes is an excessive fine under Article I, Section 5 of the Minnesota Constitution.

100. Defendants are engaged in assessing and collecting prohibited excessive fines.

101. Plaintiff and the Class have been injured and damaged by the unlawful excessive fines under the Minnesota Constitution, and are entitled to compensation and other relief as a result.

**COUNT VII**  
**MANDAMUS - STATE LAW - INVERSE**  
**CONDEMNATION**

102. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

103. Defendants have taken Plaintiff's and the Class Members' constitutionally protected property in the form of equity and/or monies beyond the amount of unpaid taxes and administrative expenses, costs and interest owed, and have appropriated said equity and/or monies for public use without the payment of just compensation.

104. Defendants have taken Plaintiff's and the Class Members' constitutionally protected property in the form of equity and/or monies beyond the amount of unpaid taxes and administrative expenses, costs and interest owed, and have appropriated said equity and/or monies for public use without using any direct condemnation processes.

105. This cause of action is brought pursuant to Minn. Stat. § 586.01 *et seq.* for a writ of mandamus directing Defendants to (a) commence condemnation proceedings for forfeited properties that are still owned by the State, and (b) compensate Plaintiff and the Class Members in such manner as to restore Defendants' gains to the Plaintiff and the Class Members.

106. Defendants have not provided and will not provide Plaintiff and the members of the Class any opportunity to claim the surplus equity from the

seizure and/or later sale of their respective property, nor do Defendants provide or have a process to claim compensation at the time the Defendants seized their property interests.

107. Defendants have not paid just compensation.

108. Defendants will not now pay just compensation.

109. Defendants do not intend to pay just compensation in the future.

110. An inverse condemnation with damages has occurred.

111. Plaintiff and the Class have suffered damages which this Court can remedy by a writ of mandamus ordering Defendants to (a) commence condemnation properties that are still owned by the State and/or Hennepin County, and (b) compensate Plaintiff and the Class Members in such manner as to restore Defendants' gains to the Plaintiff and the Class Members.

**COUNT VIII**  
**UNJUST ENRICHMENT AGAINST**  
**DEFENDANT HENNEPIN COUNTY AND**  
**DEFENDANT MARK V. CHAPIN**

112. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

113. Defendants have illegally seized equity from Plaintiff and the Class.

114. Defendants knew that the sale proceeds and/or the value of properties held for public use exceeded the Tax Delinquency for each such property.

115. This illegal seizure has unjustly enriched the Defendants at the expense of Plaintiff and the Class.

116. Under these circumstances, it is inequitable for the Defendants to retain the equity from each property where the sales price or value exceeded the Tax Delinquency.

117. Plaintiff and Class Members do not have an adequate remedy at law except as asserted in this Complaint.

**COUNT IX**  
**VIOLATION OF SUBSTANTIVE DUE PROCESS**  
**UNDER THE UNITED STATES**  
**CONSTITUTION**

118. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

119. Defendants' actions are arbitrary and capricious and fail to comport with substantive due process under the United States Constitution as it and the relevant Minnesota statutes providing for seizure of the *surplus* are not necessary or even rationally related to the objective sought to be achieved – collection of delinquent taxes – and are not a reasonable means to a permissible objective.

120. The cause of action for violation of the United States Constitution is brought as a direct action under



the Fifth and Fourteenth Amendments to the United States Constitution.

121. This cause of action is also brought, in addition and in the alternative, if applicable, pursuant to 42 U.S.C. § 1983 for an order directing Defendants to comply with the mandates of the Fifth and Fourteenth Amendments to the United States Constitution by paying just compensation to Plaintiff and Class Members for their property that was taken without payment of just compensation.

122. Plaintiff and the Class have suffered damages which this Court can remedy by an order and/or judgment for an award of damages and attorneys' fees pursuant to 42 USC § 1988.

**COUNT X**  
**VIOLATION OF SUBSTANTIVE DUE PROCESS**  
**UNDER THE MINNESOTA CONSTITUTION**

123. Plaintiff and the Class have suffered damages which this Court can remedy by an order and/or judgment for an award of damages.

124. Defendants' actions are arbitrary and capricious and fail to comport with substantive due process under the Minnesota Constitution as it and the relevant Minnesota statutes providing for seizure of the *surplus* are not necessary or even rationally related to the objective sought to be achieved – collection of delinquent taxes – and are not a reasonable means to a permissible objective.

125. Plaintiff and the Class have suffered damages which this Court can remedy by an order and/or judgment for an award of damages.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that:

- a. The Court determine this action may be maintained as a plaintiff class action pursuant to Minnesota Rule of Civil Procedure 23, with Plaintiff being designated as representatives of such Class and Plaintiff's undersigned counsel as Class Counsel;
- b. The Court find and declare that Defendants' taking and sale of Plaintiff's and Class Members' property, including all equity therein, for no public use violates the United States and Minnesota Constitutions and is *ultra vires*;
- c. Or in the alternative, the Court find and declare that Defendants' taking and sale of Plaintiff's and Class Members' property, including all equity therein, was not attended by payment or securing just compensation and as such violates the United States and Minnesota Constitutions and is *ultra vires*;
- d. The Court find and declare that Defendants' appropriation of Plaintiff's and Class Members' real estate equity is an excessive fine in violation of the United States and Minnesota Constitutions and *ultra vires*;

- e. The Court find and declare relevant provisions of Minn. Stat. § 282 are unconstitutional under the United States and Minnesota Constitutions, causing such confiscations and sales to be null and void and in violation of the United States and Minnesota Constitutions and *ultra vires*;
- f. The Court order that a writ of mandamus issue, compelling Defendants to (a) commence condemnation proceedings for forfeited properties that are still owned by the State and/or Hennepin County, and (b) compensate Plaintiff and the Class Members in such manner as to restore Defendants' gains to the Plaintiff and the Class Members.
- g. The Court award Plaintiff and the Class damages and/or just compensation, including prejudgment interest, in an amount to be determined at trial;
- h. The Court award Plaintiff and the Class relief in the form of equitable restitution or restitutionary relief in such manner as to restore Defendants' gains to the Plaintiff and the Class, or to the extent that is not possible, to place Plaintiff and the Class in the financial position they would have been in had there been no taking or other unlawful conduct;
- i. That for any property still owned by the State and/or Hennepin County, the Court order that such property be returned to the prior owner, subject only to a lien in favor of the Defendant

County or other taxing authority in the amount of the unpaid taxes;

- j. The Court award Plaintiff and the Class their costs of this suit, including reasonable attorney's fees, as provided by 42 USC § 1988 or other applicable law;
- k. The Court enjoin Defendants from further seizing real estate equity from Plaintiff and the Class; and
- l. The Court grant the Plaintiff and the Class such other and further relief as the nature of the case may require or as may be deemed just and proper by this Court.

### **JURY DEMAND**

Plaintiff demands trial by jury of all issues triable of right by a jury.

Date: March 9, 2020

By: /s/Garrett D. Blanchfield  
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***Counsel for Plaintiff***

#### ACKNOWLEDGMENT

The undersigned hereby acknowledges that sanctions, including costs, disbursements, and reasonable attorney fees, may be awarded pursuant to Minn. Stat. § 549.211 to the party against whom the allegations in this pleading are asserted.

*s/Garrett D. Blanchfield* \_\_\_\_\_

CASE 0:20-cv-00889-PJS-BRT Doc. 1-3  
Filed 04/07/20

**STATE OF MINNESOTA      DISTRICT COURT**  
**COUNTY OF RAMSEY      SECOND JUDICIAL**  
**DISTRICT**

---

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

Plaintiff,

v.

STATE OF MINNESOTA,  
and CYNTHIA BAUERLY,  
in her capacity as  
Commissioner, Minnesota  
Department of Revenue,  
HENNEPIN COUNTY and  
MARK V. CHAPIN,  
Auditor-Treasurer, in his  
official capacity,

Defendants.

Court File No. 62-  
CV-19-6012  
Case Type: Eminent  
Domain  
Hon. Thomas A.  
Gilligan, Jr.

**NOTICE OF  
FILING OF  
NOTICE OF  
REMOVAL**

---

TO: CLERK OF THE DISTRICT COURT and  
Plaintiff, by her attorneys Garrett D.  
Blanchfield and Roberta A. Yard, Applebaum  
Law Firm, REINHARDT WENDORF &

BLANCHFIELD, 332 Minnesota Street, Suite  
W0150, St. Paul, MN 55101

PLEASE TAKE NOTICE that Defendants Hennepin County and Mark V. Chapin, have on this date filed a Notice of Removal, a copy of which is attached hereto, with the Clerk of the United States District Court for the District of Minnesota; and that the Defendants are filing with the District Court of Minnesota, Second Judicial District, Ramsey County, a copy of this Notice of Filing along with a copy of the Notice of Removal.

Dated this 7th day of April, 2020.

MICHAEL O. FREEMAN  
Hennepin County Attorney

*/s Rebecca L.S. Holschuh*

---

Rebecca L.S. Holschuh (MN Bar No.  
0392251)

Kelly K. Pierce (MN Bar No. 0340716)

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*Attorneys for Defendants Hennepin  
County and Mark V. Chapin*

**ACKNOWLEDGEMENT**

Defendants, by their attorneys, acknowledges that sanctions may be imposed under Minn. Stat. § 549.211.

/s Rebecca L.S. Holschuh  
Attorney



CASE 0:20-CV-00889-PJS-BRT Document 9 Filed  
04/10/20

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

---

Geraldine Tyler, on behalf of  
herself and all others  
similarly situated,

Plaintiff,

Case No.: 0:20-cv-  
00889-PJS-BRT

v.

**NOTICE OF  
VOLUNTARY  
DISMISSAL**

STATE OF MINNESOTA,  
and CYNTHIA BAUERLY,  
in her capacity as  
Commissioner, Minnesota  
Department of Revenue,  
HENNEPIN COUNTY and  
MARK V. CHAPIN,  
Auditor-Treasurer, in his  
official capacity,

Defendants.

---

PLEASE TAKE NOTICE THAT pursuant to Federal Rule of Civil Procedure 41a(1)(A)(i), plaintiff Geraldine Tyler, through the undersigned counsel, hereby voluntarily dismisses Defendants State of Minnesota and Cynthia Bauerly, from the above-

captioned action without prejudice. Each party shall pay its own costs and fees and thereby waive their rights, if any, to seek costs or expenses from the opposing party.

The dismissed defendants are listed in the attached Exhibit A, Tolling Agreement, which is incorporated herein in its entirety by reference.

Date: April 10, 2020

REINHARDT WENDORF &  
BLANCHFIELD

By: /s/Garrett D. Blanchfield

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***Counsel for Plaintiff***

CASE 0:20-CV-00889-PJS-BRT Document 13  
Filed 04/24/20 Page 1 of 32

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

---

Court File No. 0:20-cv-  
00889-PJS-BRT  
Judge Patrick J.  
Schiltz

Geraldine Tyler, on behalf of  
herself and all others  
similarly situated,

Plaintiff,

v.

HENNEPIN COUNTY and  
MARK V. CHAPIN, in his  
official capacity,

Defendants.

---

**MEMORANDUM  
OF DEFENDANTS  
HENNEPIN  
COUNTY AND  
MARK V. CHAPIN  
IN SUPPORT OF  
MOTION TO  
DISMISS**

**Page 23**

\* \* \*

Minnesota's tax forfeiture statutes bear all the Supreme Court-sanctioned hallmarks of a remedial statute. The purpose of the tax forfeiture provision is to encourage the collection of taxes to ensure that government can fund public services. The statute also contains provisions intended to maintain public health and safety, allowing the government's administration of forfeited properties to consider "nuisances and dangerous conditions" that may exist on the property. Minn. Stat. § 282.01 subd. 4(c). Forfeiture also deters non-payment of property taxes; this deterrence is not to prevent crime, but rather a civil deterrence that encourages the positive behavior of paying one's property taxes. *See Hudson*, 522 U.S. at 102.

\* \* \*

**Page 30**

\* \* \* *See State v. Scott*, 117 N.W. 417 (Minn. 1908) ("The purpose of these statutory provisions is to secure revenue from public lands as speedily and as inexpensively as may be."). The statute serves this purpose because the ultimate possibility of loss of property serves as a deterrent to those taxpayers considering tax delinquency. Like the motor vehicle statute, under § 282 property owners forfeit their properties and their right to any surplus only after ignoring dozens of notices, and failing to either pay their taxes, redeem the property, or repurchase the

property. The legislature's decision at issue here—to allow the government to retain the surplus—is constitutional, just like the legislature's decision to let the government keep the proceeds from the sale of a forfeited motor vehicle was held constitutional in *Lukkason*. Plaintiff's substantive due process claims should be dismissed.

\* \* \*

**Excerpts from Transcript,  
No. 20-CV-889-PJS-BRT,  
United States District Court,  
District of Minnesota, Motion to Dismiss  
Hearing, July 8, 2020 @ 8:30 a.m.**

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

-----  
Geraldine Tyler, ) File No. 20-CV-889  
Plaintiff, ) (PJS/BRT)  
v. )  
Hennepin County, and )  
Mark V. Chapin, ) Minneapolis,  
Auditor-Treasurer, in ) Minnesota  
his official capacity, ) July 8, 2020  
 ) 8:30 a.m.  
Defendants. )

---

BEFORE THE HONORABLE  
PATRICK J. SCHILTZ  
UNITED STATES DISTRICT COURT JUDGE  
(VIDEO CONFERENCE OF  
MOTION HEARING)

**APPEARANCES**

**For the Plaintiff:**

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**TESKE, KATZ, KITZER &  
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**For the Defendants:**

**HENNEPIN COUNTY  
ATTORNEYS' OFFICE  
KELLY PIERCE, ESQ.  
REBECCA LEE STARK  
HOLSCHUH, ESQ.**  
300 S. 6th St., #A2000  
Minneapolis, Minnesota 55487

**Court Reporter:**

**DEBRA BEAUVAIS, RPR-CRR**  
300 S. 4th St., #1005  
Minneapolis, Minnesota 55415

Proceedings recorded by mechanical stenography;  
transcript produced by computer.



**[p. 3, line 4, to p. 4, line 16]:**

THE COURT: \* \* \* So, Ms. Holschuh, it's your motion today, so let me invite you to begin.

MS. HOLSCHUH: Thanks so much, Your Honor. If I may ask, may I reserve a few moments for rebuttal?

THE COURT: I don't time arguments. We just talk until we're done talking, and then I talk to the plaintiff until we're done talking, and I'll come back to you and talk to you until we're done talking. There is no need to reserve any time.

MS. HOLSCHUH: Wonderful. Thank you, Your Honor.

May it please the Court. This case is about whether Minnesota's property tax collection mechanism of last resort is constitutional. The Court should hold it is.

Forfeiture is not a taking because the owner's property interest is extinguished by operation of law after the property has been relinquished so there is nothing to take.

The excessive fines clause does not apply here because the law is wholly remedial and achieves the tax collection of an in rem liability.

And, finally, plaintiff's assertion that the county should act as her realtor after she has relinquished any interest in the property is unfair. The forfeiture is the result of the owner's own inaction after a prolonged period of time. The debt is in rem. There's

not always the surplus. It would shift the responsibility of preserving a private property interest from the owner to the government, and it could result in the manipulation of a tax forfeiture process to wipe out liens such that owners would get paid more than if they sold the property before it forfeited.

Plaintiff's argument here illustrates exactly why the legislature must craft any change to the law so that competing interests and policy considerations can be waived.

I'd like to briefly address each of the four legal issues that the plaintiff raises. The first is the takings issue, Your Honor. Minnesota's forfeiture law is not a taking because the owner's property interest is extinguished by state law after the owner's own inaction.

**[p. 10, lines 2–12]:**

THE COURT: So up until the time that the redemption period ends and absolute title is transferred the taxpayer has an absolute right to get her property back if she just pays the taxes, right?

MS. HOLSCHUH: Up until the moment of final forfeiture, that's correct. That's the expiration of the redemption period.

THE COURT: And after that she can ask to repurchase the property, but it's discretionary? She doesn't have an absolute right at that point?

MS. HOLSCHUH: It is.

**[p. 15, lines 13–20]:**

MS. HOLSCHUH: Your Honor, if I may, I think what the county does with the property following final forfeiture is irrelevant to the takings analysis.

So, as you know, under Minnesota law there are a variety of things that happen to forfeited properties. They can be used for parks, public purposes, et cetera. Or if there's no public use the government wants for that property, it can be sold at public auction.

**[p. 16, lines 1–24]:**

THE COURT: \* \* \* I'm not sure exactly when he thinks this was taken, whether it's when the state gets the kind of tentative title subject to the redemption period at the bid-in or later when the state gets the absolute title. But he's been very clear in his brief and he's pleading around or he's litigating around these cases that focus on do you have a statute that tells you you have a right to a cut of a sale. He's saying once they got absolute title, we're not litigating what happens after that point. What we're litigating is them taking the title from Ms. Tyler.

So I'm treating basically everything that happens after they take the title as irrelevant. So the question -- and, again, now in the second property in New York, I think it was the Powell Street property in the *Nelson* case, that's all they did. They just took the title. They hadn't sold it. So we do have a Supreme Court opinion on our challenge here.

MS. HOLSCHUH: That is correct, Your Honor.

And I would add that there are a few other opinions that are useful in the takings analysis and that is *Bennis* specifically and then *Lukkason* in Minnesota. Of course, those deal with civil forfeiture, but the concept is the same, that with --

THE COURT: Well, they're criminal forfeiture.  
\* \* \*

**[p. 22, lines 9–17]:**

THE COURT: \* \* \* what the state sort of does is when they take a \$100,000 condo because, I don't know, \$5,000 in taxes are owed, is they're basically like holding the condo hostage, saying pay us our 5,000 or we're taking your 100,000. And that kind of looks less -- I mean, even that is arguably remedial. It's basically trying to coerce people to pay their debts, which is in a way remedial. That has more of a feel of deterrence or of trying to coerce conduct, using property to coerce conduct.

**[p. 27, lines 3–8]:**

MS. HOLSCHUH: \* \* \* And I will say it would be a very rare occasion where the county would forfeit a \$500,000 parcel. There is simply -- as a practical matter that just would be very unusual.

THE COURT: I imagine the owner would scramble quickly to pay the taxes on that.

**[p. 30, line 9, to p. 31, line 22]:**

THE COURT: Ms. Holschuh, anything else you wanted to say at this point?

MS. HOLSCHUH: Only, Your Honor, that there are a number of complexities that would arise from application of the scheme that the plaintiff proposes, and this is simply why any change to the collection scheme has to go through the Minnesota Legislature's balance of competing interests.

THE COURT: I assume that the challenges are solvable, however, because there's other states that do return the surplus, right?

MS. HOLSCHUH: Well, it's complex. I'd point you to two states in particular, Connecticut and Nevada, that do have mechanisms, but they're limited. It's still part of a scheme like Minnesota's where there's the opportunity for the former owner to step in and protect interests and perhaps have a -- and those are two cases cited in plaintiffs -- actually in a footnote to their brief. It's not quite as simple as plaintiff suggests, in that there isn't a big check cut to the former owner upon forfeiture.

THE COURT: Do they net out of the other liens? What do they do?

MS. HOLSCHUH: Exactly. And that's one of the issues with the plaintiff's scheme, is that it doesn't protect others with an interest in the parcel.

So let's say there's a \$40,000 parcel and \$10,000 taxes are owed. At the time of forfeiture --

THE COURT: You just wash out your other liens?

MS. HOLSCHUH: That's exactly right. This could be misused to inflate one's equity beyond whatever

one actually had. And I would point the Court to the plaintiff's Complaint. It's clear from the relief requested that this is what the plaintiff proposes. The plaintiff only asks for compensation for former owners, not lien holders; and they ask for the return of forfeited property still in the county's inventory with only the property tax lien, none of the other liens. So this could very much be misused and is certainly in part why the legislature crafted the scheme that it did.

THE COURT: Okay. Thank you, Ms. Holschuh.

**[p. 42, line 11, to p. 43, line 13]:**

MR. WATKINS: Well, a lot of people can't pay the taxes for a whole variety of reasons. A lot of people don't have the money. You would think if they had a property that was worth something they could get a mortgage or get a reverse mortgage. Easier said than done is all I'll say on that, especially when you're dealing with people who typically are operating under some physical or mental impairment. The people that this tends to happen to are people -- they're not doctors and lawyers. They are people who are out of touch.

THE COURT: It's generally economically irrational to let this happen to your property.

MR. WATKINS: It is.

THE COURT: And the fact that you let it happen to your property will generally mean it's because you're infirm or you're elderly. You know, I see that all the time. I see this a lot.

This is just a personal hobby horse of mine. There's these -- I have a mentally-disabled son, and there's the IDEA statute that provides all these wonderful rights for people to get a free public education and all that. And the people who are always enforcing that are the rich people, the people who live in the rich suburbs who know they have those rights and have friends who have lawyers. And the poor inner city janitor, he has never heard of that statute before. Right. This wouldn't be the first statute that has a disproportionate impact on the poor, the elderly, the infirm.

**[p. 75, line 8, to p. 77, line 15]:**

MS. HOLSCHUH: \* \* \* Next, there was a suggestion that Hennepin's concern that the system could be gamed was in reference to the fact that the county often improves properties to make them safer and more habitable following forfeiture, but that is not our concern.

Our concern is the other interest holders whose interests get wiped out in final forfeiture; the homeowner's association, the mortgagee, the mechanic's lienholder, the judgment lienholder.

This, in fact -- I mentioned Nevada's law earlier -- is accounted for in Nevada's state law because when Nevada allows a claim to be made, the law specifically provides for a hierarchy of claims by these various interest holders. So this is another reason that this is a very complex determination that best lies with the legislature.

THE COURT: Could you remind me, so how does it work in Minnesota? Suppose Ms. Tyler had not only the tax lien, but let's say she had three mechanics' liens on her property. Do you use the proceeds from the sale to pay those liens?

MS. HOLSCHUH: No, Your Honor. All liens get wiped out by operation of law at final forfeiture.

THE COURT: Boy, there's the government looking out for itself. So everybody gets left holding the bag except the government?

MS. HOLSCHUH: That is the collection remedy our legislature has chosen.

THE COURT: That's a good way to answer the question. Okay. I would have thought that the legislature would have at least made the government pay off the preexisting liens before they put the money in the treasury, but apparently they don't.

MS. HOLSCHUH: I will say, Your Honor, that before the expiration -- before the redemption period expires, we do a complete title search and we identify everybody who has an interest of record and anybody in Minnesota can pay the taxes. We will accept a check from anybody. So it does happen that lien holders will pay delinquent taxes to preserve their own interests because they know it will be wiped out in forfeiture. That does happen. And then they can proceed to try to collect against the owner.

THE COURT: So if they do that, the owner -- it's still Ms. Tyler's property, but it gives the lienholder a



chance to get something rather than nothing for his lien?

MS. HOLSCHUH: Exactly. Exactly. All of these interested parties with the notice process we have have the opportunity to protect their interests.

The last point I'd like to make, Your Honor, is that there is a presumption of constitutionality with respect to these laws. And we discuss this on page 11 of our opening brief. And that's especially the case (inaudible).

I would be happy to discuss any issues the Court would like.

THE COURT: No. Thank you. I appreciate it. This has been a very helpful argument. All the attorneys did a really nice job. I appreciate it. We will take the motion under advisement.

CASE 0:20-CV-00889-PJS-BRT Doc. 36-1  
Filed 07/29/20

**NEW YORK CITY CHARTER  
and  
ADMINISTRATIVE CODE**

**CUMULATIVE SUPPLEMENT  
With amendments to July 15, 1952**

**ANNOTATED  
to May 1, 1952, including additional  
annotations of unreported decisions published  
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**EXHIBIT A**

## ADMINISTRATIVE CODE OF CITY OF NEW YORK

\* \* \*

TITLE D  
FORECLOSURE BY ACTION IN REM

§ D17-1.0 **Definitions.**—Whenever used in this title, the following terms shall mean:

1. “Tax lien.” Any unpaid tax, assessment, sewer rent or water rent and interest or penalty thereon, which is a lien on real property whether or not the same be evidenced by a transfer of tax lien or any other written instrument. (Subd. 1, as added by L. 1948, ch. 411, July 1; as amended by L. L. 1950, No. 67, July 1.)

2. “Court.” The supreme court. (As added by L. 1948, ch. 411, July 1.)

§ D17-2.0 **Applicability of procedure of foreclosure in rem.**—

a. The provisions of this title shall be applicable only to tax liens owned by the city.

b. The provisions of this title shall not affect any existing remedy or procedure for the enforcement or foreclosure of tax liens provided for in this code or any other law, but the remedy provided herein for foreclosure by action in rem shall be in addition to any other remedies or procedures provided by any general, special or local law.

c. The provisions of this title shall not affect pending actions or proceedings, provided, however, that any pending action or proceeding for the enforcement or foreclosure of tax liens may be discontinued, and a new action may be instituted

pursuant to the provisions of this title, in respect to any such tax lien. (As added by L. 1948, ch. 411, July 1.)

§ D17-3.0 **Jurisdiction.**—The supreme court shall have jurisdiction of actions authorized by this title. (As added by L. 1948, ch. 411, July 1.)

§ D17-4.0 **Foreclosure by action in rem.**—Whenever it shall appear that a tax lien which has been due and unpaid for a period of at least four years from the date on which the tax, assessment or other legal charge represented thereby became a lien, such tax lien, except as otherwise provided by this title, may be summarily foreclosed in the manner provided in this title, notwithstanding the provisions of any general, special or local law and notwithstanding any omission to hold a tax sale prior to such foreclosure. Ownership of a transfer of tax lien or of a tax sale certificate or of any other instrument evidencing such tax lien by the city shall be evidence of the fact that the tax, assessment or other legal charge represented thereby have not been paid to the city or assigned by it. (As added by L. 1948, ch. 411, July 1.)

§ D17-5.0 **Filing of list of delinquent taxes.**—The city treasurer shall file in the office of the clerk of the county in which the property subject to such tax liens is situated, a list of parcels of property in such county affected by unpaid tax liens held and owned by the city which on the date of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien and the city treasurer shall from time to time thereafter continue

to file additional lists of parcels of property affected by unpaid tax liens held and owned by the city which on the respective dates of filing shall have been unpaid for a period of at least four years or more after the date when the tax, assessment or other legal charge represented thereby became a lien. Each such list shall comprise all such parcels within a particular section or ward designated on the tax maps of the city, except those parcels excluded from such lists as hereinafter provided. Before filing any list of parcels of property, the city treasurer with the approval of the board of estimate, may exclude particular parcels therefrom. The city treasurer when requesting approval of the exclusion of any particular parcel shall state the reasons therefor in writing. No parcel shall be excluded from any such list for any reason other than the following: (1) that a meritorious question has been raised by a person having an interest in such parcel as to the validity the tax lien affecting such parcel, or (2) that the city treasurer before the effective date hereof had agreed to accept payment of delinquent taxes, assessments or other legal charges in instalments [sic] of at least two years of such arrears with each year of current taxes, assessments or other legal charges and that there has been no default in such agreement, or (3) that an agreement has been duly made and executed and filed with the city treasurer for the payment of such delinquent taxes, assessments or other legal charges in instalments. the first of which shall be in an amount equal to at least twenty-five per centum of such arrears payable upon the date of making and filing with the city treasurer of the instalment agreement, and the balance of which shall be in amounts equal to at least two years of such arrears

and payable with each year of current taxes, assessments or other legal charges and that there has been no default in such agreement, or (4) that within two years last past the city treasurer had sold or the city had assigned a tax lien owned and held by the city to a person who had not completed all of the proceedings necessary to enforce such tax lien. The city treasurer shall transmit a list of all parcels within the particular section or ward selected which are affected by tax liens which shall have been unpaid for a period of at least four years and an additional list which shall designate the parcels on the first list which should be excluded. The board of estimate upon receipt of such lists shall cause them to be published in the City Record. The list covering the parcels to be excluded shall set forth as to each such parcel, the reason for exclusion. Such publication shall also contain a general description of the boundaries of the section or ward affected, but need not contain measurements or directions. Such list of all parcels and such additional list designating the parcels to be excluded from the first list shall not be approved at the meeting of the board of estimate at which they appear on the calendar for the first time, nor shall such board approve the exclusion of any parcel at any succeeding meeting unless one week has elapsed after the meeting when such exclusion was first submitted for approval. The approval of such exclusion by the board of estimate shall be by resolution recorded in its minutes, stating the reason therefor. All parcels included in any list shall be numbered serially. The city treasurer shall file a copy of each such list, certified by the county clerk, in his main office and in each branch office and in the office of the corporation counsel. Such lists shall be known and designated as

the “List of Delinquent Taxes” and shall bear the following caption: “Supreme Court, .....County. In the matter of foreclosure of tax liens pursuant to title D of chapter seventeen of the administrative code of the city of New York. List of delinquent taxes.” Where the list comprises parcels in a particular section or ward the caption shall also refer to such section or ward.

The inadvertent failure of the city treasurer to include all parcels in such list, or where more than one list is filed, all such parcels, in the list for the designated section or ward shall not affect the validity of any proceeding brought hereunder. Each such list shall also contain as to each parcel, the following:

(a) A brief description sufficient to identify each parcel affected by such tax lien. A description by stating the lot, block and section or ward number, street and street number, if there be such, or other-identification numbers of any parcel upon a tax map, or a lot number or other identification number of any tract, the map of which is filed in the county clerk’s or register’s office, shall be a sufficient description. An omission or error in the designation of a street or street number shall not affect the validity of any proceeding brought hereunder, either as to such parcel or any other parcels.

(b) The name of the last known owner of such parcel as the same appears on the assessment roll for the year preceding the calendar year in which such list is filed.

(c) A statement of the amount of each tax lien upon such parcel including those which shall have been due and unpaid for less than four years together with the date or dates from which and the rate and rates at which interest and penalties shall be computed.

Such list of delinquent taxes shall be verified by the affidavit of the city treasurer. The filing of such list of delinquent taxes in the office of the clerk of the county in which the property subject to such tax liens is situated shall constitute and have the same force and effect as the filing and recording in such office of an individual and separate notice of pendency of action and as the filing in the supreme court in such county of an individual and separate complaint by the city against the real property therein described, to enforce the payment of the delinquent taxes, assessments or other lawful charges which have accumulated and become liens against such property.

Each county clerk with whom such list of delinquent taxes is filed shall index it in a separate book kept for that purpose which shall constitute due filing, recording and indexing of such notice in lieu of any other requirement under section one hundred twenty-two of the civil practice act or otherwise. (As added by L. 1948 ch. 411, July 1.)

§ D17-6.0 **Public notice of foreclosure.**—Upon the filing of such list in the office of the county clerk, the city treasurer forthwith shall cause a notice of foreclosure to be published at least once a week for six successive weeks in the City Record and in two newspapers designated by the city treasurer and published within the county in which the property affected by such list is located, except that in the county of Richmond one of the newspapers designated may be published in the county of New York or in the county of Kings. In New York and Bronx counties the newspapers to be designated for the publication of such notice or any other public notice required pursuant to this article shall be the daily law journal



designated by the justices of the appellate division of the first judicial department and another newspaper designated by said justices pursuant to the provisions of subdivisions one and two of section ninety-seven of the judiciary law. Such notice shall be in substantially the following form: Supreme Court, .....County

NOTICE OF FORECLOSURE OF TAX LIENS BY THE CITY OF NEW YORK IN THE BOROUGH OF..... (here insert name of Borough, and section or ward number and general description giving boundaries of section or ward. Such description need not contain measurements or directions.)

BY ACTION IN REM

Please take notice that on the.....day of.....the Treasurer of the City of New York, pursuant to law, filed with the Clerk of .....County, a list of parcels of property affected by unpaid tax liens, held and owned by said City of New York which on the.....day of ....., had been unpaid for a period of at least four years after the date when the tax assessment, or other legal charge became a lien. Said list contains as to each such parcel, (a) a brief description of the property affected by such tax lien, (b) the name of the last known owner of such property as the same appears on the assessment roll for the last calendar year or a statement that the owner is unknown if such be the case, (c) a statement of the amount of such tax lien upon such parcel, including those which shall have been due and unpaid for less than four years together with the date or dates from which, and the rate or rates at which interest and penalties thereon shall be computed.

All persons having or claiming to have an interest in the real property described in such list of delinquent taxes are hereby notified that the filing of such list of delinquent taxes constitutes the commencement by the city of New York of an action in the Supreme Court, .....County to foreclose the tax liens therein described by a foreclosure proceeding in rem and that such list constitutes a notice of pendency of action and a complaint by the City of New York against each piece or parcel of land therein described to enforce the payment of such tax liens. Such action is brought against the real property only and is to foreclose the tax liens described in such list.

No personal judgment shall be entered herein for such taxes, assessments or other legal charges or any part thereof.

This notice is directed to all persons having or claiming to have an interest in the real property described in such list of delinquent taxes and such persons are hereby notified further that a certified copy of such list of delinquent taxes has been filed in the main office of the city treasurer in the Borough of Manhattan and in the office of the city treasurer at ....., in the Borough of....., and will remain open for public inspection up to and including the.....day of.....(here insert a date of least seven weeks from the date of the first publication of this notice,) which date is hereby fixed as the last date for redemption.

And take further notice that any person having or claiming to have an interest in any such parcel and the legal right thereto may on or before said date redeem the same by paying to the city treasurer the amount of all such unpaid tax liens thereon and in addition thereto all interest and penalties which are a

lien against such real property computed to and including the date of redemption. In the event that such taxes are paid by a person other than the record owner of such property, the person so paying shall be entitled to have the tax liens affected thereby satisfied of record or to receive an assignment of such tax liens evidenced by a proper written instrument.

Every person having any right, title or interest in or lien upon any parcel described in such list of delinquent taxes may serve a duly verified answer upon the corporation counsel setting forth in detail the nature and amount of his interest or lien and any defense or objection to the foreclosure. Such answer must be filed in the office of the county clerk in the county in which such real property is located and served upon the corporation counsel at any time after the first date of publication but not later than twenty days after the date above mentioned as the last day for redemption. In the event of failure to redeem or answer by any person having the right to redeem or answer, such person shall be forever barred and foreclosed of all his right, title and interest and equity of redemption in and to the parcel described in such list of delinquent taxes and a judgment in foreclosure may be taken by default.

.....

Treasurer

.....

Corporation Counsel Office  
and Post Office Address

.....

Borough of Manhattan  
City of New York”

On or before the date of the first publication of the notice above set forth, the treasurer shall cause a copy of such notice to be mailed to the last known address of each owner of property affected thereby, as the same appears upon the records in the office of the city treasurer, and in the event that the name or address of such owner does not appear in such records the city treasurer shall so state in an affidavit which shall be filed in the office of the county clerk and the treasurer shall cause a copy of such notice to be posted in the office of the treasurer, in the county court house of the county in which the property subject to such tax lien is situated and three other conspicuous places in the borough in which the affected properties are located. The treasurer shall cause to be inserted with or attached to such notice a statement substantially as follows: "To the party to whom the enclosed notice is addressed: You are the presumptive owner or lienor of one or more of the parcels mentioned and described in the list referred to in the enclosed notice.

Unless the taxes and assessments and all other legal charges are paid, or an answer interposed, as provided by statute, the ownership of said property will in due course pass to the city of New York as provided by the Administrative Code of the city of New York.

Dated .....

-----  
Treasurer"

(As added by L. 1948, ch. 411, July 1.)

**Constitutionality.**

(1) Administrative Code § D17-6.0, is constitutional.—In re City of N. Y. (Foreclose Tax Liens), 129 (59) N.Y. L. J. (3-27-51) 1092, Col. 6F.

(2) Title D of Chapter 17 of the Administrative Code, *held* constitutional, as against contentions that it did not provide for a judicial sale and that it deprived owners of their property without due process of law.—City of N. Y. v. Feit, 200 Misc. 998, 110 N. Y. S. 2d 425 [1952].

**Tender of Payment.**

(3) Payment might not be accepted by the City after the last date for redemption set in the public notice of foreclosure, although court stated it was not in sympathy with the strict interpretation given to the provision for in rem foreclosure of tax liens.—*Id.*

**Owner whose name does not appear in Treasurer's records.**

(4) The City Treasurer's affidavit, which must be filed in the County Clerk's office, designating the parcels for which the records of his office do not show the owners' names or addresses, is not required by § D17-6.0 to be filed on or before the date of the first publication of the notice of foreclosure. In any event, if the requirement should be read that the affidavit is to be filed prior to that time, such requirement would be directory and not mandatory, and the omission to comply therewith is not a jurisdictional defect and the proceeding is not thereby rendered invalid.—In re Foreclosure of Tax Liens, 278 App. Div. 1008, 105 N. Y. S. 2d 829 [1951].

**Counterclaims and offsets.**

(5) In action by City in the City in storing  
 rem to foreclose unpaid thereon their vehicles  
 tax liens pursuant to and other equipment, as  
 Chapter 17 of Title D of taxes are not subject to  
 the Administrative Code, counterclaim or set off on  
 a counterclaim might not part of the taxpayer.—In  
 be interposed to recover re City of N. Y. v. Feit,  
 for the reasonable use 200 Misc. 998, 110 N. Y.  
 and occupancy of S. 2d 425 [1952].  
 defendant's property by

§ D17-7.0 **Notice to mortgagee or lienor.**—Any owner of real property, any mortgagee thereof, or any person having a lien or claim thereon, or interest therein may file with the city treasurer a notice stating his name, residence and post office address and a description of the parcel in which such person has an interest, which notice shall continue in effect for the purposes of this section for a period of ten years, unless earlier cancelled by such person. The city treasurer shall mail to each such person forthwith after the completion and filing of the list of delinquent taxes as herein provided, a copy of each notice required under this title and affecting such parcel. The failure of the city treasurer to mail such notice as herein provided shall not affect the validity of any proceeding brought pursuant to this title. (As added by L. 1948, ch. 411, July 1.)

§ D17-8.0 **Filing of affidavits.**—All affidavits of filing, publication, posting, mailing or other acts required by this title shall be made by the person or persons performing such acts and shall be filed in the office of the county clerk of the county in which the property subject to such tax lien is situated and shall

together with all other documents required by this title to be filed in the office of such county clerk, constitute and become a part of the judgment roll in such foreclosure action. (As added by L. 1948, ch. 411, July 1.)

§ D.17-9.0 **Trial of issues.**—If a duly verified answer is served upon the corporation counsel within the period mentioned in the notice published pursuant to section D17-6.0 the court shall summarily hear and determine the issues raised by the complaint and answer in the same manner and under the same rules as it hears and determines other actions, except as in this title otherwise provided. Upon such trial, proof that such tax was paid, together with any interest or penalty which may have been due, or that the property was not subject to tax shall constitute a complete defense. Whenever an answer is interposed as herein provided, the defendant shall have an absolute right to the severance of the action as to any parcel or parcels of land in which he has an interest, upon written demand therefor filed with or made a part of his answer. (As added by L. 1948, ch. 411, July 1.)

§ D17-10.0 **Preference over other actions.**—Any action brought pursuant to this title shall be given preference over all other causes and actions, and no such action shall be referred except to an official referee and the supreme court is hereby given jurisdiction to make such reference. (As added by L. 1948, ch. 411, July 1.)

§ D17-11.0 **Presumption of validity.**—It shall not be necessary for the city to plead or prove the various

steps, procedures and notices for the assessment and levy of the taxes, assessments or other lawful charges against the lands set forth in the list of delinquent taxes and all such taxes, assessments or other lawful charges and the lien thereof shall be presumed to be valid. A defendant alleging any jurisdictional defect or invalidity in the tax or in the sale thereof must particularly specify in his answer such jurisdictional defect or invalidity and must affirmatively establish such defense. The provisions of this title shall apply to and be valid and effective with respect to all defendants even though one or more of them be infants, incompetents, absentees or non-residents of the state of New York. (As added by L. 1948, ch. 411, July 1.).

**General denials.**

(1) In action by City in rem to foreclose unpaid tax liens pursuant to Chapter 17 of Title D of the Administrative Code, mere general denials were ineffective to raise a triable issue but

defendant was required affirmatively to allege that the taxes had been paid or that the property was not subject to tax.—In re City of N. Y. v. Feit, 200 Misc. 998, 110 N. Y. S. 2d 425 [1952].

§ D17-12.0 **Final judgment.**—a. The court shall have full power to determine and enforce in all respects the priorities, rights, claims and demands of the several parties to said action, as the same shall exist according to law, including the priorities, rights, claims and demands of the defendants as between themselves, and in a proper case to direct a sale of such lands and the distribution or other disposition of the proceeds of the sale. The court shall further



determine upon proof and shall make finding upon such proof whether there has been due compliance by the city with the provisions of this title.

b. Any sale directed by the court shall be at public auction by the city treasurer. Public notice thereof shall be given by publication in the manner provided in section nine hundred eighty-six of the civil practice act. The city treasurer shall receive no fee or compensation for such service. The description of the parcel offered for sale in such notice shall be that contained in the list of delinquent taxes with such other description, if any, as the court may direct.

c. In directing any conveyance pursuant to this title, the judgment shall direct the city treasurer to prepare and execute a deed conveying title to the parcel or parcels concerned. Said title shall be full and complete. Upon the execution of such deed the grantee shall be seized of an estate in fee simple absolute in such parcel unless expressly made subject to tax liens accrued or accruing subsequent to those contained in the list of delinquent taxes, and all persons, including the state of New York, infants, incompetents, absentees and non-residents, except the city, who may have had any right, title, interest, claim, lien or equity of redemption in or upon such parcel, shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption.

d. The court shall make a final judgment awarding to the city the possession of any parcel described in the list of delinquent taxes not redeemed as provided in this title and as to which no answer is interposed as provided herein. In addition thereto such judgment shall contain a direction to the city treasurer to prepare, execute and cause to be recorded a deed conveying to the city full and complete title to

such lands subject only to tax liens accrued or accruing subsequent to those contained in the list of delinquent taxes. Upon execution of such deed, the city shall be seized of an estate in fee simple absolute in such land and all persons, including the state of New York, infants, incompetents, absentees and non-residents who may have had any right, title, interest, claim, lien or equity of redemption in or upon such lands shall be barred and forever foreclosed of all such right, title, interest, claim, lien or equity of redemption. (As added by L. 1948, ch. 411, July 1.)

**Proper case to direct a sale.**

(1) In enacting Title D, ch. 17, of the Administrative Code, it was clearly the intent of the Legislature to provide the City with a method of foreclosing tax liens which is simple in form and expeditious in operation, inexpensive in cost and summary in nature, and only in limited circumstances could “a

proper case to direct a sale” be made out. Such a proper case was not made out by respondent’s answer which raised no issue as to validity of the City’s liens, but which merely sought to create a surplus sufficient to liquidate respondent’s junior lien (273 A. D. 777; Admin. Code § D17-12.0 (a)).—In re City of N. Y. 108 N. Y. S. 2d 202 [1951].

§ D17-13.0 **Withdrawal of parcels from foreclosure.**—The city treasurer may at any time prior to final judgment withdraw any parcel from a proceeding under this title with the approval by resolution of the board of estimate stating the reason therefor. No parcel shall be withdrawn from such

proceeding except for one of the reasons set forth in section D17-5.0 of this title as a reason for exclusion of a parcel from a list of delinquent taxes to be filed. Upon such withdrawal the tax liens on any parcel so withdrawn shall be and remain the same as if no action had been instituted and the city treasurer shall issue a certificate of withdrawal which shall be filed with the county clerk who shall note the word "withdrawn" and the date of such filing opposite the description of such parcel on the list. Such certificate may include one or more parcels appearing on any list. Such notice shall operate to cancel the notice of pendency of action with respect to any such parcel. (As added by L. 1948, ch. 411; July 1.)

§ D17-14.0 **Right of redemption not diminished.**—The period of time in which any owner of, or other person having an interest in a parcel of property may redeem from a sale of a transfer of tax lien is not hereby diminished nor shall such period of time be diminished by the commencement of any action brought pursuant to this title. (As added by L. 1948, ch. 411, July 1.)

§ D17-15.0 **Priority of liens.**—Tax liens shall rank in priority as may now, or as may hereafter, be provided by law. (As added by L. 1948, ch. 411, July 1.)

§ D17-16.0 **Mailing tax bills.**—It shall be the duty of the city treasurer, upon receipt of the assessment roll and warrant to prepare, complete, mail or otherwise deliver tax bills to the owners of property assessed so far as such owners and their addresses are known. But the failure of the city treasurer to mail

such tax bills shall not invalidate or otherwise affect such tax nor prevent the accruing of any interest or penalty imposed for the non-payment thereof, nor prevent or stay proceedings under this title, nor effect the title of the plaintiff or purchaser under such proceedings. (As added by L. 1948, ch. 411, July 1.)

§ D17-17.0 **Registering owner, mortgagee, et cetera.**—The owner of property liable to assessment, or mortgagee thereof, or a person having a lien or claim thereon, may file with the city treasurer a notice stating his name and post-office address, a description of the premises by reference to section or ward, block and lot numbers on the tax map, which notice shall continue in effect for the purposes of this section for the period of ten years, unless earlier cancelled by such person. Service of notice or process shall be made upon such persons who have filed a notice in respect to such premises. Such service may be made personally or by mail to the address designated in said notice. The failure to receive such notice as herein provided shall not effect the validity of any action or proceeding brought pursuant to this title. (As added by L. 1948, ch. 411, July 1.)

§ D17-18.0 **Writ of assistance.**—The city, after acquiring title to premises under and pursuant to the terms and provisions of this title, shall be entitled to a writ of assistance, with the same force and effect as if the city had acquired the property by virtue of a mortgage foreclosure. (As added by L. 1948, ch. 411, July 1.)

§ D17-19.0 **Consolidation of actions.**—Actions or proceedings pending in the courts, or otherwise, to

cancel a sale of a tax lien on lands a lien upon which is being foreclosed by action under this title, shall be terminated upon the institution of a foreclosure action pursuant to this title, and the rights and remedies of the parties in interest to such pending actions or proceedings shall be determined by the court in such foreclosure action. (As added by L. 1948, ch. 411, July 1.)

**§ D17-20.0 Lands held for public use; right of sale.**—Whenever the city shall become vested with the title to lands by virtue of a foreclosure proceeding brought pursuant to the provisions of this title, such lands shall, unless actually used for other than municipal purposes, be deemed to be held by the city for a public use but for a period of not more than three years from the date of the final judgment. The city is hereby authorized to sell and convey such lands in the manner provided by law for the sale and conveyance of other real property held and owned by the city and not otherwise. (As added by L. 1948, ch. 411, July 1.)

**§ D17-21.0 Certificate of sale as evidence.**—The transfer of tax lien or any other written instrument representing a tax lien shall be presumptive evidence in all courts in all proceedings under this title by and against the purchaser and his representatives, heirs and assigns, of the truth of the statements therein, of the title of the purchaser to the property therein described, and of the regularity and validity of all proceedings had in reference to the taxes, assessments or other legal charges for the non-payment of which the tax lien was sold and the sale thereof. After two years from the issuance of such certificate or other written instrument, no evidence shall be admissible in

any court in a proceeding under this title to rebut such presumption unless the holder thereof shall have procured such transfer of tax lien or such other written instrument by fraud or had previous knowledge that it was fraudulently made or procured. (As added by L. 1948, ch. 411, July 1.)

§ D17-22.0 **Deed in lieu of foreclosure.**—The city may when authorize[sic] by resolution of the board of estimate and in lieu of prosecuting an action to foreclosure[sic] a tax lien on any parcel pursuant to this title accept a conveyance of the interest of any person having any right, title, interest, claim, lien or equity, of redemption in or to such parcel. (As added by L. 1948, ch. 411, July 1.)

§ D17-23.0 **Severability of provisions.**—The powers granted and the duties imposed by this title and the applicability thereof to any persons, the city or circumstances shall be construed to be independent and severable and if any one or more sections, clauses, sentences or parts of this title or the applicability thereof to any persons, the city or circumstances shall be adjudged unconstitutional or invalid, such judgment shall not affect, impair or invalidate the remaining provisions thereof or the applicability thereof to other persons or circumstances, but shall be confined in its operation to the specific provisions so held unconstitutional and invalid and to the persons and circumstances affected thereby. (As added by L. 1948, ch: 411, July 1.)

§ D17-24.0 **Sales and foreclosures of tax liens.**—Notwithstanding any any [sic] of the provisions of this title the city may continue to sell tax liens, transfer

the same to purchasers and become the purchaser at such sales of tax liens in the manner provided by this chapter. (As added by L. 1948, ch. 411, July 1.)

**PACIFIC LEGAL FOUNDATION**

November 4, 2021

Michael E. Gans  
Clerk of the Court  
Eighth Circuit Court of Appeals  
Thomas F. Eagleton Courthouse  
111 South 10th Street  
Room 24.329  
St. Louis, MO 63102

**VIA CM/ECF**

RE: *Geraldine Tyler v. Hennepin County*, No. 20-3730  
Supplemental letter answering two questions  
raised during oral argument

Dear Mr. Gans:

Appellant Geraldine Tyler offers this short supplemental letter brief to clarify the record and provide citations to the Court in response to two questions raised during oral argument: (1) why the State of Minnesota is no longer party to the lawsuit; and (2) why plaintiff-appellant's primary and alternative takings arguments are preserved and properly before this Court.

1. The County and its Treasurer are properly sued for the taking and other constitutional violations because the County through its treasurer engaged in the actions that effected the alleged constitutional violations. The State does not need to be a party.

The County does not dispute it took the actions in question. It claims authority under state law for its



actions, but 42 U.S.C. § 1983, *inter alia*, makes counties and public officials independently liable for constitutional violations committed by them “under the color of state law.” *West v. Atkins*, 487 U.S. 42, 49 (1988) (“The traditional definition of acting under color of state law requires that the defendant in a § 1983 action have exercised power ‘possessed by virtue of state law.’”).

Ms. Tyler originally filed this lawsuit in state court against the State of Minnesota and the state Commissioner of Revenue, before later adding the County and its auditor-treasurer. *See* App. 1, 13. The State of Minnesota filed a motion to dismiss asserting that “Plaintiff does not have standing to bring this lawsuit against the State Defendants because it is county officials, not state officials, that administer the challenged statutes and receive proceeds from the sale of tax-forfeited property.” Supp. App. 001-02 (State Defendants’ Memorandum in Support of Motion to Dismiss). The State stated that not “a single action” related to the alleged constitutional violations “is attributable to the Commissioner,” Supp. App. 007, or to the State. Supp. App. 008. Citing Minnesota Statutes, chapters 279–82, the State explained that the state “Commissioner has no authority to initiate an action to obtain a judgment against a delinquent property, to seize the property, or to sell the property. That authority rests solely with the counties.” Supp. App. 007. The State further explained that a decision against the Commissioner “would not redress the alleged injuries” “because the Commissioner does not seize forfeited properties or collect the proceeds from their sale.” Supp. App. 008. Likewise, “the state can provide no relief other than that provided by the

commissioner of revenue,' who cannot provide the relief requested." *Id.* (quoting *Meriwether Minn. Land & Timber, LLC v. State*, 818 N.W.2d 557, 573 (Minn. Ct. App. 2012)).

Defendant-Appellant Hennepin County did not oppose the State's motion to dismiss or dispute its characterization of the County's role. Similarly, the County has not argued that it is not a proper party to this case. And it has not sought to join the State as party nor has it yet suggested the State is a necessary or indispensable party without which the case cannot proceed.

Ms. Tyler was persuaded for good reasons that the County is ultimately responsible for the constitutional violations, and so she voluntarily dismissed the case against the State (without prejudice) and its Commissioner a few days after the case was removed by the County to Federal court. *See* App. 039 (Doc. 9, Notice of Voluntary Dismissal).

2. All of Ms. Tyler's takings arguments were pleaded, preserved below and properly before this Court. Ms. Tyler's takings claims were pleaded broadly and in the alternative as arising from either the taking of private property by seizing Tyler's property and its value or by failing to refund extra profits from the sale of her property, or both: "Plaintiff asserts that the Defendants' retention of value *or* proceeds in excess of the unpaid taxes and associated charges is *ultra vires* and violates the Minnesota and United States Constitutions' prohibitions on the taking of private property for public use without just compensation and excessive fines." App. 014

(emphasis added); *see also* App. 027–32 (broadly alleging the taking of private property without just compensation in violation of the federal Constitution and Minnesota Constitution).

In her opposition to the motion to dismiss, she explained that “[w]hen the Defendants took Ms. Tyler’s home, they deprived her of constitutionally-protected property interest without compensating her, since her home was worth more than the taxes she owed.” Supp. App. 007. She also provided the other theory that the taking occurred because the “surplus” proceeds from a tax sale is a “protected property interest” and therefore “the property owner *continues to own* whatever portion of the property is not necessary to pay the past due taxes and associated costs.” Supp. App. at 018; *see also id.* at 011 (defining “surplus” and “value” and noting their difference). Although not necessary to preserve her claim, Ms. Tyler continued to make both arguments during oral argument. *See* App. 92, 96.

But even assuming *arguendo* Tyler had failed to note these alternative theories for her takings claim, both arguments would still be preserved. “Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.” *Yee v. City of Escondido*, 503 U.S. 519, 534 (1992). So long as a takings claim is raised below, a plaintiff may assert “separate arguments in support of a single claim” on appeal. *Id.* at 535. In *Yee*, the Supreme Court held that it did not matter whether the plaintiff had argued below that the ordinance at issue caused a regulatory taking and a physical taking. *Id.* at 534–

35. Both arguments supported the claim that the government effected a taking without just compensation. *Id.* “Having raised a taking claim in the state courts, therefore, petitioners could have formulated any argument they liked in support of that claim here [on appeal].” *Id.* at 535.

Throughout the litigation, Tyler has argued that by taking her condo which was worth more than her debt to the County, the County and its treasurer took property without just compensation. Her takings arguments are fully preserved.

Respectfully submitted,

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