

No. 22-166

IN THE
Supreme Court of the United States

GERALDINE TYLER, ON BEHALF OF
HERSELF AND ALL OTHERS SIMILARLY SITUATED,
Petitioner,

v.

HENNEPIN COUNTY, AND MARK V. CHAPIN, AUDITOR-
TREASURER, IN HIS OFFICIAL CAPACITY,
Respondents.

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

**BRIEF FOR NEW DISABLED SOUTH AND
EMORY LAW SCHOOL DISABLED LAW
STUDENTS ASSOCIATION AS *AMICI CURIAE*
IN SUPPORT OF PETITIONERS**

PAUL KOSTER
Counsel of Record
EMORY LAW SCHOOL
SUPREME COURT
ADVOCACY PROGRAM
1301 Clifton Road
Atlanta, Georgia 30322
(404) 727-3957
Paul.Koster@emory.edu

TABLE OF CONTENTS

TABLE OF CONTENTSi
TABLE OF AUTHORITIESii
INTERESTS OF *AMICI CURIAE* 1
SUMMARY OF ARGUMENT 1
ARGUMENT..... 2
I. Disabled Homeowners Face a Disproportionate
Risk of Experiencing Severe Harm Due to
Tax Foreclosures 2
CONCLUSION 9

TABLE OF AUTHORITIES

Alex Montero, et al., <i>Americans’ Challenges with Health Care Costs</i> , KAISER FAM. FOUND. (Jul. 14, 2022), bit.ly/3JcfLkd	6
Carli Friedman, <i>Housing Insecurity of Medicaid Beneficiaries with Cognitive Disabilities During the COVID-19 Pandemic</i> , 16 DISABILITY & HEALTH J. 101375 (2023)	5
<i>COVID-19 Cost Tracker</i> , FAIR HEALTH, bit.ly/3KZnq6J (last visited Mar. 5, 2023)	6
Derek Silva, <i>The Best States for Living with a Disability in 2023</i> , POLICYGENIUS (Dec. 17, 2021), bit.ly/3ygUIqC	3
<i>Disability & Health U.S. State Profile Data: Alabama</i> , CTRS. FOR DISEASE CONTROL, bit.ly/3KYfmTG (last visited Mar. 5, 2023)	4, 6
<i>Disability & Health U.S. State Profile Data: Texas</i> , CTRS. FOR DISEASE CONTROL, bit.ly/3SQcL04 (last visited Mar. 5, 2023)	7
<i>End Home Equity Theft</i> , PAC. LEGAL FOUND., bit.ly/3Jcn9Mt (last visited Mar. 5, 2023)	1
GINA SCHAAK ET AL., TECH. ASSISTANCE COLLABORATIVE, <i>PRICED OUT: THE HOUSING CRISIS FOR PEOPLE WITH DISABILITIES</i> (2017)	8
Janelle Fritts, <i>How High Are Property Taxes in Your State?</i> , TAX FOUND. (Jul. 7, 2021), bit.ly/3EYJA5e	7

Jason N. Houlse, et al., <i>Getting Sick and Falling Behind: Health and the Risk of Mortgage Default and Home Foreclosure</i> , 69 J. OF EPIDEMIOLOGY & CMTY. HEALTH 382 (2015)	3, 5
Jessica Semega et al., <i>Income and Poverty in the United States: 2016</i> , U.S. CENSUS BUREAU P60-259 (2017)	5
Jim Akin, <i>How Does a Foreclosure Affect Credit?</i> , EXPERIAN (Dec. 29, 2019), bit.ly/3ZnXwxP	8
Mary O’Byrne and Stephen W. Dale, <i>Tough Choices: People with Disabilities Face Housing Crisis</i> , SPECIAL NEEDS ALLIANCE (Mar. 6, 2014), bit.ly/3IS3O1W	6
MEDICAL DEBT BURDEN IN THE UNITED STATES, CONSUMER FIN. PROT. BUREAU (2022)	3
NANETTE GOODMAN ET AL., NAT’L DISABILITY INST., FINANCIAL CAPABILITY OF ADULTS WITH DISABILITIES 4 (2017).	2–4, 7
<i>Nearly One in Five American Adults Who Have Had COVID-19 Still Have “Long COVID”</i> , CTRS. FOR DISEASE CONTROL, bit.ly/3JfA9kx (last visited Mar. 5, 2023)	6
<i>People with Disabilities, MEDICAID & CHIP PAYMENT & ACCESS COMM’N</i> , bit.ly/3ZF24zJ (last visited Mar. 5, 2023)	5
<i>Percentage of People with and without Disabilities Below the Poverty Level, Age 18 to 64, 2016: Community & Work Disparities</i> , ADA-PARC, bit.ly/3JdwFPA (last visited Mar. 5, 2023)	4–5

Texas Financial Hardship among People with Disabilities, UNITED FOR ALICE, bit.ly/3JfXDpF (last visited Mar. 5, 2023) 2

U.S. DEP’T OF HEALTH & HUM. SERVICES AND U.S. DEP’T OF JUST., GUIDANCE ON “LONG COVID” AS A DISABILITY UNDER THE ADA, SECTION 504, AND SECTION 1557 (2021)..... 4

U.S. DEP’T. OF HOUS. AND URB. DEV. OFF. OF POL’Y DEV. AND RSCH., A PICTURE OF DISABILITY AND DESIGNATED HOUSING (2015) 3

U.S. Foreclosure Completions Increase Annually By 64 Percent in November 2022, ATTOM (Dec. 8, 2022), bit.ly/3F2PEK3..... 7

What Is a Tax Lien Foreclosure?, AM. FIN. AND INV. CO., INC., bit.ly/3EXgR0A (last visited Mar. 5, 2023) 7

INTEREST OF AMICI CURIAE¹

New Disabled South is a regional non-profit organization that is dedicated to improving the lives of disabled individuals and cultivating strong disability rights and disability justice frameworks in the South. The legal issues presented in this case are of interest to New Disabled South because of the harming effects tax foreclosure can have on disabled homeowners.

The Emory Law School Disabled Law Student Association (EDLSA) is a student organization dedicated to empowering disabled legal professionals throughout and beyond their legal education. EDLSA's members are students within the Emory Law School community, which has over 800 students. EDLSA seeks to confront ableism in the legal system and promote disability justice locally, regionally, and nationally. Protecting disabled homeowners from unfair tax foreclosures fits squarely within EDLSA's purpose to promote disability justice.

SUMMARY OF THE ARGUMENT

Two Southern states—Alabama and Texas—have statutory provisions like Minnesota's that affect their residents who are behind on paying property taxes.²

¹ Pursuant to Sup. Ct. R. 37.6, *amici curiae* affirm that no counsel for a party has written this brief in whole or in part, and that no person or entity, other than amici curiae, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief.

² *End Home Equity Theft*, PAC. LEGAL FOUND., bit.ly/3Jcn9Mt (last visited Mar. 5, 2023) (reviewing the statutory landscape of tax foreclosure sales and seizures in both Alabama and Texas).

Disabled homeowners face a disproportionate risk of experiencing severe harm due to tax foreclosure. Amici urges the Court to consider the effects that a decision upholding tax foreclosure practices would have on disabled individuals and to reverse the decision of the Eighth Circuit.

ARGUMENT

I. Disabled Homeowners Face a Disproportionate Risk of Experiencing Severe Harm Due to Tax Foreclosures

In 2019, more than half (51%) of the disabled population in the United States reported living in “households experiencing financial hardship”—meaning there was not enough money to afford “the essentials of housing, childcare, food, transportation, health care, a smartphone plan, and taxes.”³ Further, disabled individuals “were more likely than those without disabilities to report that their household had difficulty paying for usual household expenses, including food, rent or mortgage, car payments, or medical expenses (58% vs. 26%).”⁴ This financial hardship generally extends to an inability to pay property taxes on time, leaving disabled individuals vulnerable to tax foreclosures.

While disabled homeowners are marginally “less likely to have a mortgage or home equity loan” than non-disabled homeowners, disabled homeowners are

³ *Texas Financial Hardship among People with Disabilities*, UNITED FOR ALICE, bit.ly/3JfXDpF (last visited Mar. 5, 2023).

⁴ *Id.*; see also NANETTE GOODMAN ET AL., NAT’L DISABILITY INST., FINANCIAL CAPABILITY OF ADULTS WITH DISABILITIES 4 (2017).

“more than twice as likely to be ‘underwater,’ meaning that they owe more on their home than the home is worth.”⁵

Along with the battery of socioeconomic factors that negatively impact disabled individuals, particularly those who live in the South,⁶ tax foreclosure policies are an added burden. These foreclosures pose not just a financial threat to disabled individuals but may also pose a threat to their health. Specifically, disabled individuals are more likely to avoid urgent or emergency health care due to fear of high medical costs.⁷ Decreased health because of avoided medical costs creates an increased “risk of default and home foreclosure.”⁸

To make matters worse, national crises have a disproportionate impact on disabled individuals in the South compared to other regions.⁹ After the Great Recession, the economic recovery of disabled adults

⁵ GOODMAN ET AL., *supra*.

⁶ “[I]n the U.S. population at large, there are roughly 322 disabled persons per 1000 households.” U.S. DEP’T. OF HOUS. AND URB. DEV. OFF. OF POL’Y DEV. AND RSCH., A PICTURE OF DISABILITY AND DESIGNATED HOUSING 7 (2015). This ratio is regionally highest in the South. *Id.* Of note, Southern states are ranked as the least desirable to live in for disabled individuals considering income rates, health care options, and affordability of housing. See Derek Silva, *The Best States for Living with a Disability in 2023*, POLICYGENIUS (Dec. 17, 2021), bit.ly/3ygUIqC.

⁷ See MEDICAL DEBT BURDEN IN THE UNITED STATES, CONSUMER FIN. PROT. BUREAU 33 (2022).

⁸ Jason N. Houlse, et al., *Getting Sick and Falling Behind: Health and the Risk of Mortgage Default and Home Foreclosure*, 69 J. OF EPIDEMIOLOGY & CMTY. HEALTH 382, 385 (2015).

⁹ See GOODMAN ET AL., *supra*, at 40.

“lagged [behind] other populations.”¹⁰ In the past few years, the effects of the COVID-19 pandemic were felt most heavily by disabled individuals and has even led to the recognition of a new disability: long COVID.¹¹ These conditions only create more barriers for a disabled individual trying to remain in their home.

In the state of Alabama, over 1.2 million adults—or 31 percent of the population—live with some form of disability.¹² Most of these disabilities can be categorized into three main functional types—mobility, cognitive, or independent living—which directly impacts the ability for these individuals to live in their own homes comfortably.¹³

Disabled individuals in Alabama are nearly twice as likely to live below the poverty line than their non-disabled neighbors.¹⁴ In 2016, the median household income of disabled individuals aged 21 to 64 in

¹⁰ *Id.*

¹¹ See U.S. DEP’T OF HEALTH & HUM. SERVICES AND U.S. DEP’T OF JUST., GUIDANCE ON “LONG COVID” AS A DISABILITY UNDER THE ADA, SECTION 504, AND SECTION 1557 (2021) (explaining that long COVID has been recognized as a disability under the ADA, Sections 501 and 504 of the Rehabilitation Act, and Section 1557 of the Affordable Care Act when a patient’s physical or mental condition resulting from a COVID diagnosis substantially limits at least one major life activity).

¹² *Disability & Health U.S. State Profile Data: Alabama*, CTRS. FOR DISEASE CONTROL, bit.ly/3KYfmTG (last visited Mar. 5, 2023).

¹³ *Id.*

¹⁴ *Percentage of People with and without Disabilities Below the Poverty Level, Age 18 to 64, 2016: Community & Work Disparities*, ADA-PARC, bit.ly/3JdwFPA (last visited Mar. 5, 2023).

Alabama was \$25,300, compared to a median income of \$55,400 for non-disabled individuals.¹⁵

As a result of low incomes, many disabled individuals rely on state Medicaid plans.¹⁶ Despite the economic protections available to Medicaid beneficiaries, disabled homeowners are still at greater risk of foreclosure.¹⁷ From April 2021 to May 2022, approximately one in four Medicaid beneficiaries reported being behind on their housing payments, half of whom were somewhat or very likely to face eviction or foreclosure.¹⁸ This nexus between recognized disability and economic disadvantage leaves millions of Southerners vulnerable to exploitative tax foreclosure sales and impractical redemption policies.¹⁹

¹⁵ See *id.*; Jessica Semega et al., *Income and Poverty in the United States: 2016*, U.S. CENSUS BUREAU P60-259 1, 7 (2017) (“Median household income was \$59,039 in 2016”).

¹⁶ *People with Disabilities, MEDICAID & CHIP PAYMENT & ACCESS COMM’N*, bit.ly/3ZF24zJ (last visited Mar. 5, 2023) (“Over 10 million people qualify for Medicaid based on a disability.”).

¹⁷ See Carli Friedman, *Housing Insecurity of Medicaid Beneficiaries with Cognitive Disabilities During the COVID-19 Pandemic*, 16 *DISABILITY & HEALTH J.* 101375 (2023).

¹⁸ *Id.* at 2.

¹⁹ See Houlse, et al., *supra*.

While roughly 40% of adults in the United States report having difficulty affording healthcare costs, disabled individuals are proportionally more likely to feel the harsh effects of high medical debt.²⁰

In Alabama, the average medical debt balance for disabled individuals is \$12,603 as compared to \$2,561 for all residents within the state.²¹ Given the realities of COVID, the harsh effects of high medical debt have only gotten worse.²² Alabama is ranked second in the country for adults suffering from long COVID symptoms, which impact ability to work, access to health insurance, and ultimately medical debts.²³ Since medical debt is a strong indicator for future foreclosure, disabled individuals will remain in danger from predatory state provisions that do not protect the homeowner.²⁴

²⁰ Alex Montero, et al., *Americans' Challenges with Health Care Costs*, KAISER FAM. FOUND. (Jul. 14, 2022), bit.ly/3JcfLkd (“Even those with health insurance report difficulties affording healthcare costs with almost half of insured adults between 18 and 64 reporting it somewhat or very difficult to afford costs.”).

²¹ *Disability & Health U.S. State Profile Data: Alabama*, *supra*; MEDICAL DEBT BURDEN IN THE UNITED STATES, *supra*.

²² *COVID-19 Cost Tracker*, FAIR HEALTH, bit.ly/3KZnq6J (last visited Mar. 5, 2023).

²³ *Nearly One in Five American Adults Who Have Had COVID-19 Still Have “Long COVID”*, CTRS. FOR DISEASE CONTROL, bit.ly/3JfA9kx (last visited Mar. 5, 2023).

²⁴ Since much of the COVID relief legislation that was designed to protect vulnerable individuals is set to expire soon, it is very likely that there will be a high number of disabled individuals who will experience an increase in their financial burden. The result of this is two-fold: disabled individuals will become more reliant on the state for social services and may lose their

In Texas, approximately one quarter of all adults have a recognized disability under the ADA, equating to approximately 5.4 million citizens.²⁵ Texas also has some of the highest property tax rates in the country, as well as the second highest number of foreclosure starts nationally (meaning the initiation of foreclosure processes).²⁶ These high household expenses, coupled with rising property taxes, leave disabled Texans in danger of becoming a victim of a tax foreclosure process.

Disability healthcare costs in Texas are about \$56.7 billion per year (about \$17,189 per person with a disability).²⁷ In addition, “adults with disabilities are more likely to have unpaid medical bills than those with no disability even when they have health insurance.”²⁸

disability benefits that they were able to maintain with the assistance of COVID relief programs. See Mary O’Byrne and Stephen W. Dale, *Tough Choices: People with Disabilities Face Housing Crisis*, SPECIAL NEEDS ALLIANCE (Mar. 6, 2014), bit.ly/3IS3O1W.

²⁵ *Disability & Health U.S. State Profile Data: Texas*, CTRS. FOR DISEASE CONTROL, bit.ly/3SQcL04 (last visited Mar. 5, 2023).

²⁶ See *What Is a Tax Lien Foreclosure?*, AM. FIN. AND INV. CO., INC., bit.ly/3EXgR0A (last visited Mar. 5, 2023) (“Property tax collections have risen more than 20% since 2017.”); Janelle Fritts, *How High Are Property Taxes in Your State?*, TAX FOUND. (Jul. 7, 2021), bit.ly/3EYJA5e; *U.S. Foreclosure Completions Increase Annually By 64 Percent in November 2022*, ATTOM (Dec. 8, 2022), bit.ly/3F2PEK3.

²⁷ *Disability & Health U.S. State Profile Data: Texas*, *supra*.

²⁸ GOODMAN ET AL., *supra*, at 14 (“People with disabilities have a higher use of medical care and often need a range of services and supports that may not be fully covered by insurance (such as

Much like the state of Alabama, high medical costs—combined with decreased wages and increasing homeowner costs—endanger disabled individuals in Texas who are more susceptible to fall victim to an unfair tax foreclosure sale by state or local governments. Disabled homeowners that lose their homes to tax foreclosure are likely to face disproportionate challenges when looking for affordable housing²⁹ and will feel the financial ramifications for years to come.³⁰

Affirming the decision of the Eighth Circuit would have a disproportionate effect on disabled homeowners. Amici urges the Court to consider the effects that a decision upholding tax foreclosure sale practices would have on disabled homeowners and to reverse the decision of the Eighth Circuit.

personal assistance services or durable medical equipment), leaving them with higher health care expenditures and higher out-of-pocket costs.”).

²⁹ GINA SCHAAK ET AL., TECH. ASSISTANCE COLLABORATIVE, PRICED OUT: THE HOUSING CRISIS FOR PEOPLE WITH DISABILITIES (2017).

³⁰ Jim Akin, *How Does a Foreclosure Affect Credit?*, EXPERIAN (Dec. 29, 2019), bit.ly/3ZnXwxP.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

PAUL KOSTER
Counsel of Record
EMORY LAW SCHOOL
SUPREME COURT
ADVOCACY PROGRAM
1301 Clifton Road
Atlanta, Georgia 30322
(404) 727-3957
Paul.Koster@emory.edu