

IN THE SUPREME COURT OF THE UNITED STATES

No. 22-166

GERALDINE TYLER, PETITIONER

v.

HENNEPIN COUNTY, MINNESOTA, ET AL.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

MOTION OF THE UNITED STATES FOR LEAVE TO
PARTICIPATE IN ORAL ARGUMENT AS AMICUS CURIAE
AND FOR DIVIDED ARGUMENT

Pursuant to Rule 28 of the Rules of this Court, the Solicitor General, on behalf of the United States, respectfully moves that the United States be granted leave to participate in the oral argument in this case as amicus curiae supporting neither party and that the United States be allowed 10 minutes of argument time, with both parties allowed 25 minutes of argument time. The United States has filed a brief as amicus curiae in support of neither party, supporting petitioner on the first question presented and supporting respondents on the second. Petitioner has consented to this motion and agreed to cede 5 minutes of argument time to the

United States. Respondents do not oppose the motion for divided argument between petitioner and the United States, but respondents do not agree to cede 5 minutes of argument time to the United States. Respondents' position is that the additional 5 minutes for the United States should come from petitioner's time, or from an enlargement of the total time allotted for argument to 65 minutes.

This case concerns whether certain local government actions related to property-tax collection constitute a taking without just compensation, in violation of the Fifth Amendment to the United States Constitution, or a fine subject to analysis under the Excessive Fines Clause of the Eighth Amendment, as made applicable to the States. See Timbs v. Indiana, 139 S. Ct. 682, 689 (2019); Chicago, Burlington & Quincy R.R. v. Chicago, 166 U.S. 226, 239 (1897). Specifically, petitioner alleges that respondents engaged in a taking without just compensation and imposed an excessive fine when they obtained absolute title to real property worth significantly more than petitioner's tax debt (including interest, penalties, and costs); sold the property to a third party; and provided no mechanism for petitioner to recover the surplus proceeds from the sale.

The United States has filed a brief as amicus curiae in support of neither party. With respect to the first question presented, the United States contends that petitioner plausibly alleges that respondents engaged in a compensable taking by obtaining

absolute title to property of greater value than her tax debt. With respect to the second question presented, the United States contends that, although the Court need not reach the issue in this case, the retention of sale proceeds allegedly in excess of petitioner's tax debt does not constitute a "fine" subject to the Excessive Fines Clause.

The United States has a substantial interest in this case. Unlike the Minnesota statutory program at issue here, federal law does not authorize the taking of absolute title to real property for noncriminal nonpayment of taxes without a process for obtaining proceeds from a subsequent sale. See U.S. Br. 2. But the United States has a substantial interest in the standards that apply to governmental actions under the Just Compensation Clause and the Excessive Fines Clause.

The United States has previously presented oral argument in cases involving the Just Compensation Clause, see, e.g., Knick v. Township of Scott, 139 S. Ct. 2612 (2019); Horne v. Department of Agriculture, 576 U.S. 350 (2015); Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595 (2013), as well as in cases involving the Excessive Fines Clause, see, e.g., United States v. Bajakajian, 524 U.S. 321 (1998); Austin v. United States, 509 U.S. 602 (1993).

In light of the government's substantial interests in both questions presented, we believe that the United States' participation at oral argument could materially assist the Court in its consideration of this case.

Respectfully submitted.

Elizabeth B. Prelogar
Solicitor General
Counsel of Record

MARCH 2023