No. 22-894

In The
Supreme Court of the United States

ANDREW MEISNER, Oakland County Treasurer, and OAKLAND COUNTY, MICHIGAN,

Petitioners,

v.

MARION SINCLAIR,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION

SCOTT SMITH
SMITH LAW GROUP, PLLC
30833 Northwestern Hwy., Ste. 200
Farmington Hills, MI 48334
smithsf.law@gmail.com
Co-Counsel for Respondent

MARK L. MCALPINE*
DOUGLAS W. EYRE
MARK W. OSZUST
MCALPINE PC
3201 University Drive, Ste. 200
Auburn Hills, MI 48326
Phone: (248) 373-3700
mlmcalpine@mcalpinepc.com
dweyre@mcalpinepc.com
moszust@mcalpinepc.com
Co-Counsel for Respondent

**Counsel of Record*

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

QUESTION PRESENTED

Whether the foreclosing on a home for the nonpayment of taxes constitutes a violation of the federal Takings Clause whenever the home is worth more than the tax delinquency.

PARTIES TO THE PROCEEDING

Petitioners are Andrew Meisner, Oakland County Treasurer, and Oakland County, Michigan.

Respondent is Marion Sinclair.

Co-defendants below who are not Petitioners here are the City of Southfield, Kenson Siver, Frederick Zorn, Gerald Witkowski, Sue Ward-Witkowski, Irv Lowenberg, Michael Mandlebaum, Donald Fracassi, Daniel Brightwell, Myron Frasier, Lloyd Crews, Nancy Banks, Southfield Non Profit Housing Corporation, Mitchell Simon, Rita Fulgiam-Hillman, Lora Brantley-Gilbert, Earlene Trayler-Neal, Southfield Neighborhood Revitalization Initiative, Etoile Libbett, Habitat for Humanity, GTJ Consulting, LLC, and JBR Disposal, LLC.

LIST OF ALL PROCEEDINGS

U.S. Court of Appeals for the Sixth Circuit, No. 22-1264, *Sinclair v. Meisner, et al*., judgment entered December 29, 2022.

U.S. District Court for the Eastern District of Michigan, No. 2:18-cv-14042-TGB-MJH, judgment entered February 28, 2022.

BRIEF IN OPPOSITION BELOW

The district court's order denying Respondent's Motion to Amend and dismissing the complaint with prejudice is reported at 587 F. Supp. 3d 597 (E.D. Mich. Dec. 29, 2022).

The Sixth Circuit's opinion reversing the district court's order is not reported but is available at 2022 WL 18034473 (6th Cir. Dec. 29, 2022).

STATEMENT OF JURISDICTION

Respondent does not dispute this Court's jurisdiction over this case pursuant to 28 U.S.C. § 1254(1).

COUNTERSTATEMENT OF THE CASE

This matter involves the unconstitutional taking of Respondent's property by Petitioners without just compensation. Respondent Marion Sinclair ("Sinclair") is the former owner of real property situated in the City of Southfield, Michigan. Sinclair owed $22,047.46 in delinquent property taxes, interest, penalties and fees. Sinclair alleges her property's value exceeded the tax debt when it was foreclosed upon by Oakland County. Sinclair alleges the Defendants conspired using the City of Southfield's right of first refusal under Michigan's General Property Tax Act ("GPTA") to unlawfully strip Sinclair and putative class members of their equity/surplus value, by targeting properties

with value above the tax debt but paying Oakland County only the minimum bid and circumventing a tax auction. The private Defendants would identify properties it wished to purchase and advance the minimum bid amount to the City of Southfield to exercise its right of first refusal. R.App. a14-a15.

Here, it is unclear whether Southfield paid Oakland County the minimum bid of $22,047.46 for her property, or $28,424.84. *Id*. Regardless, that surplus is only a fraction of the remaining value of Sinclair's property.

Petitioners have not returned Sinclair's and putative class members' equity/surplus value. Petitioners' failure to do so amounts to an unconstitutional taking without just compensation, procedural due process violation, unjust enrichment, and conspiracy to violate 42 U.S.C. § 1983.

REASONS FOR DENYING THE WRIT

I. The Court has recently resolved the exact issue in this matter.

Petition should be denied because *Tyler v. Hennepin Cnty., Minnesota*, No. 22-166 (U.S. May 25, 2023) just recently resolved the exact issue in this matter when it found that a taking occurs when a county "use[s] the toehold of tax debt to confiscate more property than was due." *Tyler*, No. 22-166, 2023 WL 3632754, at *6.

Tyler involved a homeowner in Hennepin County, Minnesota, who owed a tax debt of $15,000.00. *Id*. at *1. The County sold the property for $40,000.00, keeping the excess amount for itself. *Id*.

Tyler held that the County effected a "classic taking" when it failed to return the excess value to the homeowner. *Id*. at *4. *Tyler* explained:

> The Takings Clause does not itself define property. For that, the Court draws on 'existing rules or understandings' about property rights. State law is one important source. But state law cannot be the only source. Otherwise, a State could 'sidestep the Takings Clause by disavowing traditional property interests' in assets it wishes to appropriate.

Id. (citations omitted). "[T]he Takings Clause would be a dead letter if a state could simply exclude from its definition of property any interest that the state wished to take." *Hall v. Meisner*, 51 F.4th 185, 190 (6th Cir. 2022), *reh'g denied*, No. 21-1700, 2023 WL 370649 (6th Cir. Jan. 4, 2023); *Tyler*, No. 22-166, 2023 WL 3632754, at *4.

Analogous to *Hall*, *Tyler* explained that "[t]he principle that a government may not take more from a taxpayer than she owes" dates back to the Magna Carta (1215). *Tyler*, No. 22-166, 2023 WL 3632754, at *4; *see also Hall*, 51 F.4th at 193. This doctrine became rooted in English and eventually became the consensus in American law through the passage of the

Fourteenth Amendment. *Tyler*, No. 22-166, 2023 WL 3632754, at *5-6.

Specifically, in *Tyler*, the Court reiterated that *United States v. Lawton*, 110 U.S. 146, 3 S.Ct. 545, 28 L.Ed. 100 (1884), confirmed that a taking occurs with respect to the excess value/equity when the government keeps property for its own use rather than selling it at auction. *Tyler*, No. 22-166, 2023 WL 3632754, at *6.

Consequently, the Petition should be denied because Petitioner is requesting the Court to review whether it also committed a taking when it refused to compensate Respondent for its excess value (equity) in a tax foreclosure. *Tyler* has just recently resolved this issue in the affirmative.

II. Petition should also be denied in light of *Tyler* because there is no longer a circuit split, and the Court implicitly affirmed *Hall*.

Petitioners argued this matter should be remanded once the Court issues its opinions in *Tyler* and *Hall*. *Tyler* held that a County unlawfully takes a homeowner's property when it fails to return the excess value of the real property following the foreclosure. *Hall* similarly held that homeowners have a constitutionally protected right to their equity (excess value) in their real properties following a tax foreclosure and that a County unlawfully takes a homeowner's property when it fails to compensate them for that right. *Hall*, 51 F.4th at 187-88. *Tyler* resolves the circuit split

and indirectly affirms *Hall* by quoting that opinion's main premise that a state cannot sidestep the takings clause by disavowing historical property rights that a state wishes to take without compensation. According to *Tyler* and *Hall*, such practices by state and local governments would cause the takings clause to be a "dead letter."

The Court should deny the Petition because *Tyler* and *Hall*[1] are based on the same set of operative facts as this matter. Similar to *Tyler* and *Hall*, this matter involves a county that foreclosed on more of a delinquent taxpayer's property than necessary to satisfy its tax debt without compensating Respondent (the homeowner) for her excess value. *Tyler* confirms that Petitioners' actions amount to a "classic taking" and therefore, the Petitioners must compensate Respondent for her excess value/equity.

As such, the Petition should be denied because there is no longer a circuit split and the Court implicitly affirmed *Hall*, which is based on the exact same set of facts. In this case, the Sixth Circuit, relying on *Hall* and consistent with *Tyler*, recognized that taking more property than owed for taxes is a taking. On June 5, 2023, the Court granted certiorari and remanded the case of *Fair v. Continental Resources* to the Nebraska Supreme Court for further consideration in light of *Tyler*, because that court's opinion failed to recognize the

[1] The facts and circumstances surrounding *Hall* and this matter are nearly identical, and both Respondents are represented by the same counsel.

taking. *See* No. 22-160, ___ S.Ct. ___ (2023), 2023 WL 3798629 (U.S. June 5, 2023). As the lower court in this case correctly recognized the taking, consistent with *Tyler*, the Court should deny the Petition and remand to the District Court for further proceedings consistent therewith.

CONCLUSION

The Sixth Circuit correctly held that Petitioners' actions amount to an unlawful taking in violation of the federal constitution. Review is unwarranted and the Petition should be denied because the Court recently resolved this precise issue in *Tyler*, which has effectively resolved the circuit split and indirectly affirmed *Hall*.

DATED: June 7, 2023

Respectfully submitted,

SCOTT SMITH
SMITH LAW GROUP, PLLC
30833 Northwestern Hwy., Ste. 200
Farmington Hills, MI 48334
smithsf.law@gmail.com
Co-Counsel for Respondent

MARK L. MCALPINE*
DOUGLAS W. EYRE
MARK W. OSZUST
MCALPINE PC
3201 University Drive, Ste. 200
Auburn Hills, MI 48326
(248) 373-3700
mlmcalpine@mcalpinepc.com
dweyre@mcalpinepc.com
moszust@mclapinepc.com
Co-Counsel for Respondent

**Counsel of Record*