TYLER V. HENNEPIN COUNTY

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INTRODUCTION

Geraldine Tyler was a 94 year-old woman who owned a modest condominium in Hennepin County, Minnesota. Ms. Tyler owed $15,000 in property taxes, interest, and fees on her condo. After Ms. Tyler failed to pay her property taxes for several years, the county sold Ms. Tyler's condominium for $40,000, using the proceeds to satisfy $15,000 of her tax debts. Pursuant to Minnesota law, the county did not remit the excess to Ms. Tyler; instead, Hennepin County kept the excess $25,000 for public use.[1]

At first glance, these facts seem like a textbook takings claim case; a government took a citizen's property to extinguish a debt, but kept the leftovers and did not compensate the citizen. There is an important caveat to the awful-looking facts of this case: Minnesota law allows the state to retain the excess proceeds from a tax foreclosure sale, and vests absolute title of the property in the state after three years of delinquency in taxes.[2] Ms. Tyler was not deterred by the statutory scheme.

Ms. Tyler sued Hennepin County, alleging that the County violated the United States and Minnesota Constitutions by effecting a taking without just compensation. The Federal District Court

1. *Tyler v. Hennepin Cnty.*, 143 S. Ct. 1369, 1374 (2023).
2. Minn. Stat. §§ 273–82.

dismissed Ms. Tyler's suit for failure to state a claim since Minnesota state law does not recognize a property right in the proceeds of a tax-foreclosure sale, and thus cannot have taken property from her.[3] The Eighth Circuit affirmed the District Court, stating that "[w]here state law recognizes no property interest in surplus proceeds from a tax-foreclosure sale conducted after adequate notice to the owner, there is no unconstitutional taking."[4]

The Supreme Court granted certiorari to consider if Hennepin County's actions constituted a taking under the Fifth Amendment and unanimously reversed the appellate court, finding that a taking had indeed occurred; Minnesota could not simply "legislate away" property rights.[5] Because of the ruling in this case, ten states now have laws on the books inconsistent with an explicit Supreme Court ruling,[6] and will move to reconsider and amend their tax-foreclosure statutes. Because of the concurrence in the ruling, these ten states might also re-examine potential excessive fines in their codes.

I. ISSUE: DOES KEEPING EXCESS PROFITS FROM A TAX-FORECLOSURE SALE OF A PROPERTY CONSTITUTE A TAKING?

The issue in this case is whether a government keeping excess proceeds from a tax foreclosure sale of a property is a taking under the Fifth Amendment. The Fifth Amendment Takings Clause says, "nor shall private property be taken for public use, without just compensation."[7] To state a claim for a taking, a citizen must show that the government took private property for public use without compensation. In this specific case, Ms. Tyler needed to show that she had property rights in the proceeds of a tax-foreclosure sale, and that the government took those proceeds (and thus the property rights) for public use.

3. *Tyler v. Hennepin Cnty.*, 505 F. Supp. 3d 879, 883 (Minn. 2020).

4. *Tyler v. Hennepin Cnty.*, 26 F. 4th 789, 793 (8th Cir. 2022).

5. *Tyler*, 143 S. Ct. at 1373.

6. Pacific Legal Found., *States with Loopholes That Allow Home Equity Theft* (2022) https://homeequitytheft.org/loophole-states (pointing out that Alaska, California, Nevada, Idaho, Montana, Texas, Arkansas, Wisconsin, Ohio, and Rhode Island "leave open exceptions or loopholes through which government or private entities can still seize equity" through the foreclosure process).

7. U.S. CONST. amend. V.

II. DEVELOPMENT OF TAKINGS IN TAX FORECLOSURE CONTEXTS

The principle of a government limiting itself from taking property from its citizens has an extensive common law history dating back to well before the founding of the United States.[8] As the United States adopted the English common law, the framers of the Constitution codified this principle into what is today known as the Takings Clause. The U.S. Supreme Court would subsequently apply the Takings Clause to decide physical takings cases,[9] economic takings cases,[10] regulatory takings cases,[11] and many other implied takings cases requiring the court to balance state and private interests in different contexts.

Relevant to *Tyler* are the tax-foreclosure takings cases, of which there are comparatively few.[12] The question of the taking in *Tyler* splits into two sections: First, whether the government can keep more than it was owed, and second, whether the taxpayer has rights in the proceeds of a forced sale of property.[13]

A. *Can a Government Retain More Than it is Owed?*

In the year 1215, King John declared in the Magna Carta that if a deceased owed debt to the crown, "until the debt which is evident shall be fully paid to us; and the residue shall be left to the executors to fulfill the will of the deceased."[14] Subsequently, Blackstone, in his Commentaries on the Law of England, wrote that if a tax collector

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8. *See Tyler*, 143 S. Ct. at 1376 ("The principle that a government may not take more from a taxpayer than she owes can trace its origins at least as far back as Runnymeade in 1215, where King John swore in the Magna Carta . . .").

9. *See Loretto v. Teleprompter Manhattan Catv Corp.*, 102 S.Ct. 3164 (1982) ("We conclude that a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve. Our constitutional history confirms the rule, recent cases do not question it, and the purposes of the Takings Clause compel its retention.").

10. *See Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1014–19 (1992) (noting that previously there was a time that the Takings Clause only reached a direct appropriation of property, but the Court later on went to expand the Taskings Clause application to economic takings).

11. *See generally Hadacheck v. Sebastian*, 239 U.S. 394 (1915) (showing that the U.S. Supreme Court takes the Taking Clause into consideration when dealing in regulatory matters) .

12. *Tyler*, 143 S. Ct. at 1378 (citing only 3 cases (from 1881, 1884, and 1956) that deal with tax-foreclosures).

13. *See generally id.* (organizing opinion to approach this issue on appeal in two distinct questions).

14. *Id.* at 1376 (quoting WILLIAM MCKECHNIE, MAGNA CARTA, A COMMENTARY ON THE GREAT CHARTER OF KING JOHN, 322 (rev. 2d ed. 1914)).

took property, he was "bound by an implied contract in law to . . . render back the overplus" of the payment to the taxpayer.[15]

These two English common law sources laid the groundwork for the principle that a government may not retain from a citizen more than it is owed in a debt collection context.

This principle traversed the Atlantic Ocean with the pilgrims into the nascent law of what would become the United States: the commonwealth of Virginia implemented a law that allowed the government to seize only "so much . . . as is sufficient to discharge . . . the said taxes" that a delinquent taxpayer owed.[16] Today, a large majority of states do not allow the government to keep the excess value of confiscated property, but require the government to return the excess to the taxpayer.[17]

B. *Does a Taxpayer Have a Property Right in the Proceeds of a Forced Sale?*

The U.S. Supreme Court and the state of Minnesota have different rules regarding this question. Two U.S. Supreme Court cases are instructive regarding property rights in proceeds of tax foreclosed property: *U.S. v. Taylor*[18] and *U.S. v. Lawton*.[19] In *U.S. v. Taylor*, the Court held that when the government takes a property and sells it to satisfy a tax debt, the government must remit the excess to the former landowner.[20] Nothing in any tax penalty laws "took 'from the owner the right accorded him by the act of 1861, of applying for and receiving from the treasury surplus from his sold lands.'"[21]

The U.S. Supreme Court expanded this rule in *US v. Lawton* to include returning the value of the property owner's equity in the property, even if the government that seized it did not sell it.[22] In *Lawton*, the government seized a taxpayer's property and kept the property. Where the property's value was not certain and not liquidated, the taxpayer still received the excess of the value of his

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15. *Tyler*, 143 S. Ct. at 1376 (quoting 2 Commentaries on the Laws of England 453 (1771)).

16. *Id.* at 1377 (quoting 1781 Va. Acts p. 153, §4).

17. *See id.* at 1378 (noting that "[t]hirty-six States and the Federal Government require that the excess value be returned to the taxpayer").

18. 104 U.S. 216 (1881).

19. 110 U.S. 146 (1886).

20. *Taylor*, 104 U.S. at 219–20.

21. *Tyler*, 143 S. Ct. at 1378 (citing *Taylor*, 104 U.S. at 218–19).

22. *Id.* (holding in *Lawton* that even "where the Government kept the property for its own use instead of selling it" that "the taxpayer was still entitled to the surplus under the statute, just as if the Government had sold the property").

property over the debt.[23] Minnesota law, however, is at odds with the U.S. Supreme Court precedent.

In Minnesota, after three years of failure to pay property taxes due, absolute title in the property (and thus its subsequent potential proceeds) "vest in the state."[24] Minnesota law explicitly eliminates the property right of the individual in a tax-foreclosure situation, and thus the state wholly owns any proceeds from the sale of the property. The treatment of proceeds in this context is inconsistent with Minnesota's treatment of excess proceeds in all its other laws; banks, private creditors, and even the state itself in personal property contexts must remit excess proceeds to the former owner of the property.[25] This discrepancy between state law and precedent at the U.S. Supreme Court level needed to be resolved.

IV. ANALYSIS OF TYLER V. HENNEPIN COUNTY

In *Tyler*, the U.S. Supreme Court considered whether the government may take more than it is owed in a tax foreclosure sale, and whether the taxpayer had property rights in the excess proceeds of the forced sale. Writing for the Court, Chief Justice John Roberts analyzed the problem primarily through a combination of traditional property law principles and U.S. Supreme Court history and precedent.[26] The Chief Justice noted that state law can help provide a definition, but importantly, it is not the *only* definition of property, since it could just "sidestep" the taxpayer's property right by legislating it away.[27]

After laying the foundation of the history of the issue in English and United States common law, the Chief Justice recited the rules in *Taylor* and *Lawton*, which in tandem recognize a taxpayer's rights to

23. *Lawton*, 110 U.S. at 149–150 (providing hypothetical showing how even where a higher price could have theoretically been earned that this higher price would have been set aside for owner, meaning that the price ultimately is not the operative issue but the practice of retaining the price received for the owner).

24. Minn. Stat. § 281.18 (2022).

25. Minn. Stat. §§ 580.10 (2023) (providing payment of surplus to mortgagor after a "sale of any real estate"), 550.20 (2023) (providing that "[n]o more shall be sold than is sufficient to satisfy" the debt when a private credit enforces a judgement against a debtor by selling debtor's real property), 270C.7101 (2022) (providing that owner receive "payment in full" for sale of personal property).

26. *See Tyler*, 143 S. Ct. at 1375 (noting that the Taking Clause, existing rules and understandings about property rights, and State law do not provide the full picture on the issue of whether the remaining value of the transaction constitutes property under the Takings Clause).

27. *Id.*

excess proceeds if sold, and rights to the value of the equity in the property if not sold.[28]

At this stage, *Taylor* and *Lawton*, combined with the preceding common law principles, seem to indicate a ruling in favor of the taxpayer. However, Hennepin County argued that *Nelson v. City of New York* superseded the other two cases.[29] In *Nelson*,[30] the City of New York took and sold a property owner's home for failure to pay utility bills. The City kept the proceeds far in excess of the amount of the utility owed, and the U.S. Supreme Court denied relief to the taxpayer.[31] Hennepin County argued that these facts are nearly identical, and that the Court should rule in the same way by denying the taxpayer relief.

Justice Roberts distinguished *Nelson v. City of New York*. He observed that in *Nelson*, the taxpayer had an opportunity to recover the excess of the sale, which he did not pursue.[32] In contrast, the Minnesota statutory regime provides the taxpayer "no opportunity to recover" the excess proceeds from the sale of the property.[33] After showing how prior history and precedent treat government retention of proceeds and their attendant property rights in favor of Ms. Tyler, the Court turned its attention to Minnesota law to consider the validity of its definition of property rights.

Minnesota statutes authorize the government to sell the delinquent taxpayer's property and retain 100% of the proceeds for public use.[34] When the state assesses property taxes, a taxpayer has one year to pay them before he becomes delinquent.[35] Once the taxpayer becomes delinquent, the county can obtain a judgment against the property. This judgment transfers limited title to the state, though the taxpayer still has complete beneficial use of the property.[36] The taxpayer still has three years to pay all taxes and late fees, but if at the end of the three years the taxpayer has not paid,

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28. *See generally id.* at 1378 (establishing *Taylor* and *Lawton* as two principal precedents on the Takings Clause).

29. *Id.*

30. 352 U.S. 103, 105 (1956).

31. *Id.* (noting that utility charges for water totaled $814.50 while the property was assessed at $46,000).

32. *See Tyler*, 143 S. Ct. at 1379 (pointing out that in *Nelson*, the owners of the property "did not take advantage" of procedural steps in place that permitted an owner of the property to "recover the surplus," critically, Justice Roberts notes that "Minnesota's scheme provides no opportunity for the taxpayer to recover the excess value").

33. *Id.* at 1373.

34. Minn. Stat. § 282.08 (2023).

35. Minn. Stat. § 279.02 (2022).

36. Minn. Stat. § 280.01 (2022).

absolute title vests in the state and the debts of the taxpayer are extinguished.[37] The state may keep or sell the property. In Minnesota, if the state sells the property, "[t]he former owner has no opportunity to recover" the surplus and the proceeds flow to the county, town, and school district.[38] According to Minnesota state law, there is no property interest in the excess proceeds of a tax-foreclosure sale where adequate notice has been provided to the taxpayer.[39]

Based on the historical limitations on the governmental tax powers from common law and the precedents in *Taylor* and *Lawson*, the Court strongly condemns Minnesota law. Chief Justice Roberts writes, "the State now makes an exception only for itself, and only for taxes on real property. But 'property rights cannot be so easily manipulated.'"[40] He continues, "Minnesota may not extinguish a property interest that it recognizes everywhere else to avoid paying just compensation when it is the one doing the taking."[41] The Court seemingly believes that the state of Minnesota "'sidestep[s] the Takings Clause by disavowing traditional property interests' in assets it wishes to appropriate."[42] Thus, the Supreme Court reversed both lower courts, holding that Ms. Tyler was indeed entitled to the excess proceeds of her property.

V. POLICY IMPLICATIONS

A. *Private Property Owning Taxpayers*

Tyler is a win for taxpayers litigating against the state.[43] For decades, takings law had seemed to develop such that as long as the state had a justifiable public benefit for the taking and did not completely diminish its value, the state would not have to provide a

37. Minn. Stat. §§ 281.18, 282.07 (2022).

38. *Tyler v. Hennepin Cnty.*, 143 S. Ct. 1369, 1373 (2023).

39. *Tyler v. Hennepin Cnty*, 26 F.4th at 793 ("Where state law recognizes no property interest in surplus proceeds from a tax-foreclosure sale conducted after adequate notice to the owner, there is no unconstitutional taking.").

40. *Tyler*, 143 S. Ct. at 1379 (quoting *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063, 2076 (2021)).

41. *Id.*

42. *Id.* at 1375 (quoting *Phillips v. Washington Legal Found.*, 524 U. S. 156, 167 (1998)).

43. CENTER FOR CMTY. PROGRESS, POLICY BRIEF: TYLER V. HENNEPIN COUNTY 1 (2023). https://communityprogress.org/publications/tyler-hennepin-policy-brief/ (highlighting that Tyler has "renewed attention to longstanding inequities in the property tax system").

taxpayer any form of compensation.[44] However, in recent years, the Court seems to have started to swing the pendulum back in the direction of favoring private property owners' rights, as in *Cedar Point Nursery* and *Tyler*.[45]

As a ruling favoring private property-owning taxpayers, *Tyler* will cause other states to reconsider their tax-foreclosure procedures and laws and adjust them to align with this U.S. Supreme Court holding, lest they too face litigation from private citizens. Alaska, California, Idaho, Nevada, Rhode Island, Ohio, and Texas all have tax foreclosure laws similar to those of Minnesota.[46] These states will have to amend their laws to allow delinquent taxpayers the opportunity to recover the excess from proceeds of the sale of their foreclosed property.

Other states, like Wisconsin and Montana, have severe procedural defects that, if litigated, would likely allow a takings claim to succeed under *Tyler*'s holding.[47] Wisconsin does not align with *Lawton*; if the state of Wisconsin decides not to sell a property taken in partial satisfaction of a debt, its laws do not expressly require a return of excess equity over the property value.[48] Montana, on the other hand, does allow for compensation of equity to residential homeowners, but not for any other type of property; thus, if a small business owner could not pay property taxes on the business real estate, they would not be entitled to compensation over the debt owed the government of

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44. *See Fifth Amendment Takings Clause Tyler v. Hennepin Cnty.,* 137 HARV. L. REV. 310, 310 (2023) ("And so articulated was a tension between countervailing forces: a state's regulatory power and the Fifth Amendment's Takings Clause. In the century since, permitting regulation of property appeared to be the rule, not the exception.").

45. *See id.* ("But in recent decades, courts have increasingly used the Takings Clause to strike down legislation, in part due to a fear of states manipulating existing property interests to avoid paying compensation for their appropriations of private property.").

46. Pacific Legal Found., *supra* note 6 (showing map that highlights the similarities in tax-foreclosure laws between these states).

47. *Id.* (pointing out that in Montana "by allowing the equity built into these properties to be seized by the government or private lienholders, Montana law runs afoul of the Fifth Amendment. Montana is the only state to fully protect residential property equity while leaving other types of property equity unprotected" and that in Wisconsin "former owners are entitled to the surplus proceeds following a sale of tax-deeded property at auction. However, the law contains a potential loophole because it does not expressly require the government to sell tax-deeded property. Rather, surplus proceeds are due to the former owner only if it decides to sell the property. Otherwise, the government can use the property for any purpose without providing just compensation to the former owner.… Property owners should not have to rely on bureaucratic goodwill or municipal decision making before they are entitled to receive the compensation to which they are constitutionally entitled.")

48. Wis. Stat. Ann. § 75.36 (2m) (allowing the state to hold the property for public purposes, rather than sell to obtain a monetary value).

Montana if the property were confiscated.[49] With the right facts, any of these states would need to award the taxpayer a win in court under U.S. Supreme Court precedent, or should change their laws in anticipation of litigation.

B. *Excessive Fines?*

Justices Gorsuch and Jackson concurred together and addressed a question that the majority left unaddressed.[50] Ms. Tyler had asserted that if the Court did not find a taking, the excess proceeds still constituted an excessive fine under the 8th Amendment.[51] The two Justices penned a succinct, three-prong warning to any state actor with an excessive fine, no matter its form.

First, as long as *any* part of a fine serves to punish, it may be punitive, and if it is punitive, the Excessive Fines clause analysis may apply.[52] Second, even though a property forfeited may be of lower value than property taxes owed and thus bestow upon a taxpayer a windfall, such an observation is "factually true, but legally irrelevant . . . nor has this Court ever held that a scheme producing fines that punish some individuals can escape constitutional scrutiny merely because it does not punish others."[53] This is a clear warning for states to cease such behavior and almost an invitation for taxpayers to litigate a case that exhibits such behavior. Finally, the Justices write that though the economic penalty does not explicitly turn on culpability, its deterrent effects make it a "fine by any other name. And the Constitution has something to say about [fines]: They cannot be excessive."[54]

While not part of the majority holding and therefore not mandatory or precedential, the concurrence may invite future excessive fine litigation from property taxpayers or other similarly situated individuals and cause states to re-evaluate their fines and penalties on property and other taxes as excessive.

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49. Mont. Code Ann. § 15-18-220 (failing to protect commercial property from equity theft).

50. *See Tyler v. Hennepin Cnty.*, 143 S. Ct. 1369, 1381 (2023) (noting that the Court declined to discuss "whether the Eighth Circuit committed a further error when it dismissed Ms. Taylor's claim under the Eighth Amendment's Excessive Fines Clause").

51. *Id.*

52. *See id.*("Because 'sanctions frequently serve more than one purpose,' this Court has said that the Excessive Fines Clause applies to *any* statutory scheme that 'serv[es] *in part* to punish.'") (italics original).

53. *Id.*

54. *Id.* at 1382.

CONCLUSION

As a unanimous decision with strong unity even among traditionally right-wing and left-wing justices, states should take note that retaining excess from sales of property without compensation is a taking under the Fifth Amendment. Taxpayers can rest a little easier knowing that *Tyler* struck down a Minnesota statute allowing for a "sidestep" of traditional property rights, and they should expect other similar statutes to fall in upcoming legislative sessions and litigation around the country.[55]

55. *Id.* at 1375.