No. 20-3730

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

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

Appellant,

v.

HENNEPIN COUNTY, and

MARK V. CHAPIN, Auditor-Treasurer
in his official capacity

Appellees.

On Appeal from the United States District Court
for the District of Minnesota
Honorable Patrick J. Schiltz, District Judge
Case No. 20-CV-0889 (PJS/BRT)

APPELLANT'S BRIEF

ORAL ARGUMENT REQUESTED

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SUMMARY OF THE CASE

To collect $15,000 in property taxes, penalties, interest, and costs, Hennepin County took Appellant Geraldine Tyler's Minneapolis condo and sold it for $40,000. Rather than refund the surplus proceeds to Tyler, the County kept the profits as a windfall for the public. Tyler brought several constitutional claims challenging the County's power to take $25,000 worth of her property above and beyond the amount she owed. The district court dismissed her case for failure to state a claim.

Tyler appeals the dismissal of her claims and seeks vindication of her rights under the U.S. and Minnesota Constitutions. By taking and keeping the property's surplus value of $25,000, the County violated the federal and state takings clauses, excessive fines clauses, substantive due process, or in the alternative, is liable to return the surplus profits under the equitable theory of unjust enrichment.

Oral argument will assist the Court in resolving these novel legal questions not yet developed in the circuit courts, and that have divided state supreme courts and district courts. For this reason, Appellant respectfully requests 20 minutes to state her case, for a total of 40 minutes for the argument.

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JURISDICTIONAL STATEMENT

Geraldine Tyler filed her federal constitutional claims under 42 USC § 1983, along with state claims in the Second Judicial District, Ramsey County. The Appellees removed the case to federal district court pursuant to 28 U.S.C. § 1441 (removal statute) and 28 U.S. Code § 1331 (federal question jurisdiction).

The District Court issued its opinion and order granting the Appellees' motion to dismiss for failure to state a claim on December 4, 2020. On December 29, 2020, Appellant timely filed her Notice of Appeal. On February 8, 2021, the Court extended the filing deadline for Appellant Tyler's opening brief to March 22, 2021.

This Court has jurisdiction over the appeal under 28 U.S. Code § 1291 (jurisdiction over final decisions of district courts).

STATEMENT OF THE ISSUES

This case asks the Court to decide whether the U.S. Constitution and Minnesota Constitution or common law protect debtors when government confiscates property worth significantly more than the individual owes the government, taking a windfall for the public. In this case, Hennepin County and its auditor (collectively "County") confiscated

Tyler's home worth more than her tax debt, pocketing a $25,000 windfall. The common law traditionally prohibits government and private parties alike from taking more than they are owed. When governments have attempted to extinguish that right, some courts have held that it effects uncompensated takings, violates due process, or they otherwise rejected such punishment or unjust enrichment. The issues presented are:

1. Whether the district court erred in dismissing Tyler's federal and state takings and inverse condemnation claims for failure to state a claim, where she alleges the County took her condominium without just compensation to satisfy a $15,000 debt, sold the property for $40,000, and kept all the proceeds as a windfall.[1]
2. Whether the district court erred in dismissing Tyler's federal and state excessive fines claims for failure to state a claim, where she alleges

[1] *See* U.S. Const. amend V; Minn. Const. art. I, § 13; *Armstrong v. United States*, 364 U.S. 40 (1960); *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980); *Rafaeli, LLC v. Oakland Cty.*, 952 N.W.2d 434 (Mich. 2020); *Farnham v. Jones*, 19 N.W. 83, 85 (Minn. 1884).

the County took her property worth at least $40,000 as a punishment for her failure to pay $15,000 in taxes, penalties, interest, and costs.[2]

3. Whether the district court erred by dismissing substantive due process claims for failure to state a claim, where Tyler alleges the County took her condo to satisfy a $15,000 debt, sold the property for $40,000, and kept all the proceeds as a windfall.[3]

4. Whether the district court erred by dismissing Tyler's unjust enrichment claim for failure to state a claim, where Tyler alleges the County took her condo to satisfy a $15,000 debt, sold the property for $40,000, and kept all the proceeds as a windfall.[4]

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[2] U.S. Const. amend. VIII; Minn. Const. art. I, § 5; *United States v. Bajakajian*, 524 U.S. 321 (1998); *Wilson v. Comm'r of Revenue*, 656 N.W.2d 547 (Minn. 2003).

[3] *See* U.S. Const. amend IV; Minn. Const. art. I, § 7; *Martin v. Snowden*, 59 Va. 100, 137 (1868), *aff'd on other grounds sub nom. Bennett v. Hunter*, 76 U.S. 326 (1869).

[4] *Anderson v. DeLisle*, 352 N.W.2d 794 (Minn. App. 1984); *Dean v. Michigan Dep't of Nat. Res.*, 247 N.W.2d 876, 880 (Mich. 1976)

STATEMENT OF THE CASE

A. Factual Background

Ninety-two-year-old Appellant Geraldine Tyler purchased her home, a condominium at 3600 Penn Avenue North, in Minneapolis in 1999. App. 14–15, 137. For a decade she lived on the property and paid her property taxes. *Id.* In 2010, concerned about her health and safety in her neighborhood that had experienced a marked increase in crime, Tyler moved out and rented an apartment in a different neighborhood. The taxes on her home went unpaid until the County foreclosed. *Id.* at 14–15.

In 2015, the County seized her condo for her delinquent property taxes, later selling it for $40,000. *Id.* at 137, 141. Even though Tyler only owed $15,000 in taxes, interest, penalties, and costs,[5] the County kept all

[5] Because this case was dismissed prior to discovery, it is unclear just how much of this $15,000 was penalties, interest, and costs, but according to Hennepin County records gathered by Pacific Legal Foundation, it appears she owed $2,311 in property taxes. The rest of the debt was apparently penalties, interest, and costs. This sum is consistent with the annual tax data listed by the real estate website Zillow. *See* Zillow, Home Details, https://www.zillow.com/homedetails/3600-Penn-Ave-N-APT-105-Minneapolis-MN-55412/1720054_zpid/ (last visited Jan. 28, 2021). Hennepin County assessor's website only includes recent property tax information, but is consistent with the annual data listed by Zillow. *See* Parcel Data for Taxes Payable 2020, Hennepin County Assessor, http://www16.co.hennepin.mn.us/pins/printdetails.jsp?pid=0402924330244 (last visited March 14, 2021).

$40,000 from the sale—$25,000 more than Tyler owed the County. App. 141. Minnesota's property tax statute authorizes counties to keep these surplus proceeds, giving government a windfall at the expense of owners like Tyler. *See* Minn. Stat. §§ 280.41, 282.08.

Minnesota tax statutes impose penalties for delinquent tax payments that increase the debt by roughly 4–8% within a few weeks of delinquency, and then an additional 1% per month until the end of the calendar year. Minn. Stat. § 279.01 subd.1. The tax statute then imposes interest of 10–28% on the taxes and penalties. Minn. Stat. § 279.03 subd. 1a. Counties also assess a "service fee" that includes all costs associated with collecting the debt and the County is entitled to collect the fee with interest. Minn. Stat. § 279.092.

In most states, when government sells tax delinquent property, it uses the proceeds to pay the tax debt and costs associated with the sale and refunds any surplus proceeds to the former owner.[6] Minnesota

[6] Jenna Fools, Comment, *State Theft in Real Property Tax Foreclosure Procedures*, 54 Real. Prop. Tr & Est. L. J. 93, 99–103 & n.38 (2019) (majority of states "require the foreclosing government unit to return surplus funds from a property tax foreclosure sale to the previous property owner"). *See, e.g.*, Ark. Code § 26-37-209; Conn. Gen. Stat. § 12-157(h); Del. Code tit. 9 § 879; Fla. Stat §§ 197.522, 197.582; Ga. Code

previously followed that same procedure and still does in other debt collection contexts. *See infra* at 16–19. But when it comes to collecting real estate taxes, the County no longer just takes what it is owed; it takes absolute title and all the proceeds from a sale, no matter how valuable the property or how small the property tax debt.

B. Procedural Background

On August 16, 2019, Tyler filed a putative class action alleging that by taking her property without compensation for her equity, and not paying her the surplus proceeds from its sale, the County effected an uncompensated taking, imposed an excessive fine, and violated substantive process under both the federal and state constitutions, 42 U.S.C. 1983, and that she is entitled to further relief under Minn. Stat. § 586.01 et seq. App. 26–34. Tyler also alleged in the alternative that the County unjustly enriched itself by reaping the windfall at her expense.

Ann. § 48-4-5; Idaho Code § 31-608(2)(b); Kan. Stat. § 79-2803; Ky. Rev. Stat. § 426.500; Mo. Rev. Stat. § 140.340; Nev. Rev. Stat. § 361.610.5; Ohio Rev. Code § 5723.11; 72 Pa. Cons. Stat. Ann. § 1301.19; 72 Pa. Cons. Stat. Ann. § 1301.2; S.C. Code Ann. § 12-51-130; S.D. Code § 10-22-27; Tenn. Code Ann. § 67-5-2702; Va. Code Ann. § 58.1-3967; Wash. Rev. Code Ann. § 84.64.080; Wyo. Stat. § 39-13-108(d)(4).

App. 33. On April 7, 2020, the County removed the case to federal court. App. 9.

The County then moved to dismiss the case for failure to state a viable claim under Rule 12(b)(6). App. 141. On December 4, 2020, the United States District Court for the District of Minnesota dismissed all claims for failure to state a claim. *Id.* at 137. The court held that a "former owner has a property interest in the surplus [proceeds from a tax sale] only if a provision of a constitution, statute, or municipal code creates such an interest." *Id.* at 159. The court then held that nothing in Minnesota or federal law protects a tax-delinquent owner's equity in property that is "lawfully forfeited" for delinquent taxes, and therefore no taking occurred. *Id.* at 162–63.

The court dismissed the excessive fines claim, finding that although there was no evidence on the record on this point, "the purpose of the [foreclosure] scheme is to collect taxes, rather than to punish delinquent taxpayers." *Id.* at 166. Since it was not intended as a punishment, the court held that the federal and state excessive fines clauses do not apply. *Id.* at 169.

The court also dismissed the substantive due process claims, holding that no fundamental right was implicated by the confiscation of Tyler's property and that the County's action did not shock the conscience because it had been used "countless times" over the years and because Tyler could have prevented the taking by paying her debt. App. 172.

Lastly, the court dismissed Tyler's unjust enrichment claim holding that the doctrine did not apply because the County's actions were "specifically authorized by Minnesota law." App. 173.

Tyler appeals and seeks reversal.

SUMMARY OF ARGUMENT

Neither Minnesota's legislature nor the County may extinguish Tyler's constitutional rights. Since Magna Carta, the law has imposed limits on the government's power to collect tax debts. At common law in England and the United States, government could only take as much as it was owed in taxes, penalties, interest, and costs. When government took property and sold it for more than the debt, any surplus proceeds belonged to the former owner. By failing to honor this traditional property right and refund the $25,000 to Tyler or otherwise pay her for her equity interest, the County took her property without just

compensation. *See, e.g., Rafaeli, LLC v. Oakland Cty.*, 952 N.W.2d at 459 (Mich. 2020); *Griffin v. Mixon*, 38 Miss. 424, 436–37 (Miss. Err. & App. 1860); *Polonsky v. Town of Bedford*, 238 A.3d 1102 (N.H. 2020); *Martin*, 59 Va. at 137, *aff'd on other grounds sub nom. Bennett*, 76 U.S. 326; *Bogie v. Town of Barnet*, 270 A.2d 898, 899–900 (Vt. 1970). Consequently, accepting as true the allegations alleged in Tyler's complaint, the Court below erred by dismissing Tyler's state and federal takings and inverse condemnation claims.

The court also erred in dismissing Tyler's federal and state Excessive Fines claims. The Excessive Fines Clause of the Eighth Amendment and of the Minnesota Constitution prohibit government from imposing excessive fines. *Timbs v. Indiana*, 139 S. Ct. 682, 689 (2019); *Wilson v. Comm'r of Revenue*, 656 N.W.2d 547, 552 (Minn. 2003). That protection applies in civil cases, not just criminal cases. *Id.*; *Austin v. United States*, 509 U.S. 602, 609–10 (1993). Minnesota's statutes already require delinquent taxpayers to pay interest, penalties, and costs beyond the original tax debt. By taking $25,000 of home equity, the government imposed an additional punitive measure that is grossly

excessive compared the gravity of her non-criminal tax-delinquency. The district court's dismissal of counts V and VI should be reversed.

The court also erred in dismissing her substantive due process claims. While the government may have been permitted to foreclose on Tyler's property as a necessary means to collect taxes, it violated a fundamental right by gratuitously taking a $25,000 windfall at Tyler's expense.

In the event that Tyler's constitutional and statutory claims fail to provide relief, then her claim of unjust enrichment should ensure that the government is not unjustly enriched at her expense. The district court erred in dismissing her claim.

This Court should reverse and remand.

STANDARD OF REVIEW

On appeal, the Court reviews a district court's grant of a 12(b)(6) motion *de novo*. *Missouri Broad. Ass'n v. Lacy*, 846 F.3d 295, 300 (8th Cir. 2017). Under Rule 12(b)(6), a pleading fails to state a claim if it does not contain allegations that support recovery under any recognizable theory. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The Court "accept[s] as true all factual allegations in the complaint and draw[s] all reasonable inferences in favor of the nonmoving party." *McDonough v. Ankoa Cty.*, 799 F.3d 931, 945 (8th Cir. 2015).

ARGUMENT

I

THE COUNTY EFFECTED AN UNCONSTITUTIONAL TAKING WHEN IT TOOK A WINDFALL OF TYLER'S EQUITY INTEREST

By extinguishing Tyler's home equity, the County violated deeply rooted property rights and ignored principles established by the Supreme Court. The common law in Minnesota and the United States traditionally protect a debtor's property rights in her equity by requiring a sale of her property and a refund of surplus proceeds. When the County extinguished Tyler's rights and kept her equity as a windfall, it took

private property without just compensation. Thus, the district court erred in dismissing Tyler's federal and state takings claims arising under their respective constitutions and statutes. Tyler's takings claims seek just compensation for her home's value in excess of Tyler's tax debt. This Court should reverse the dismissal of her claims.

A. Tyler has a deeply rooted property right in home equity

1. American common law recognizes the property right

When government confiscates property worth more than an outstanding debt and fails to compensate the owner for the surplus value, it invades and unconstitutionally takes equity in that property. That is true, even where a statute, such as the Minnesota property tax statute at issue in this case, does not recognize the debtor's right in the surplus value of that property.

The property right in equity arises from other sources, including common law. *See Phillips v. Washington Legal Found.*, 524 U.S. 156, 164–65 (1998) (property rights arise from a variety sources and cannot be extinguished by state statute where common law established a property right). The law has long recognized equity in property as a discrete and valuable interest in other common debt-collection contexts,

requiring the return of surplus value in a foreclosed property to the former owner. *See, e.g.*, Restatement (Third) of Property (Mortgages) § 7.4 (1997) ("The surplus stands in the place of the foreclosed real estate, and the liens and interests that previously attached to the real estate now attach to the surplus."); 72 Am. Jur. 2d State and Local Taxation § 911 (1974) ("Any surplus remaining after the payment of taxes, interest, costs, and penalties must ordinarily be paid over to the landowner."); *Grand Teton Mountain Invs., LLC v. Beach Props.*, LLC, 385 S.W.3d 499, 502 (Mo. Ct. App. 2012) ("[A] foreclosure sale surplus 'retains the character of real estate for purposes of determining who is entitled to receive it . . . . Such surplus represents the owner's equity in the real estate.").[7]

Consistent with that principle, tax collectors traditionally have been, and in most states still are, required to refund any surplus proceeds after the sale of tax-delinquent property to the former owner. *Rafaeli*, 952

[7] This understanding of property equity in the context of mortgages arose to protect debtors from harsh contracts that would have otherwise forfeited valuable property pursuant to contractual terms over debts that were less than the value of the property. *Rafaeli*, 952 N.W.2d at 478–81 (Viviano, J., concurring) (discussing the history of mortgage foreclosures and the right to property equity).

N.W.2d at 454–59 (tracing the long and consistent history of this protection); *see, e.g., McDuffee v. Collins*, 23 So. 45, 46 (Ala. 1898) (tax collector must follow "well-known general rule of law" by paying surplus proceeds in order of priority). Sir William Blackstone wrote that when officials seized property for delinquent taxes, "they are bound, by an implied contract in law" to return it if the debt is paid before sale, or to sell it and "render back the overplus." 2 William Blackstone, Commentaries on The Laws of England *452 (internal citation omitted). Officials who took more property than necessary or who failed to sell and refund the surplus profits were liable in trespass or trover, or for a taking. *See, e.g., Griffin*, 38 Miss. at 436–37 (a taking); *Cone v. Forest*, 126 Mass. 97, 101 (1879) (liable in trover); *see also Knick v. Twp. of Scott*, 139 S. Ct. 2162, 2176 (2019) ("Until the 1870s," takings claims were typically brought as "common law trespass action[s] against the responsible corporation or government official."). The roots of this protection can be traced back to Magna Carta, which limited the king's right to seize

property to prevent him from taking more than necessary to satisfy a tax debt.[8]

For over 100 years after the founding of this nation, the states and courts were in apparent accord in protecting the equity interest of property-tax debtors. *See, e.g., Martin*, 59 Va. at 137, *aff'd sub nom. Bennett*, 76 U.S. 326 (discussing common law, English land tax statute, and early colonial laws); Thomas M. Cooley, A Treatise on the Law of Taxation 343 (1876) (noting that a tax debt only authorized the government to take as much property as the taxes owed and author was unaware of any jurisdiction that followed a contrary rule).[9] So secure was

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[8] For example, the 26th Clause required that the king could take only so much personal property as required to pay the debt of a deceased crown tenant. Prior to Magna Carta, when someone died owing any form of taxation to the king, the king's officials "were in the habit of seizing everything they could find on his manors, under excuse of securing the interests of their royal master. They attached and sold chattels out of all proportion to the sum actually due. A surplus would often remain in the sheriff's hands, which he refused to disgorge. Magna Carta sought to make such irregularities impossible . . ." William Sharp McKechnie, Magna Carta, A Commentary on the Great Charter of King John, 322–23 (2d ed. 1914); Vincent R. Johnson, *The Ancient Magna Carta and the Modern Rule of Law: 1215 to 2015*, 47 St. Mary's L.J. 1, 8 (2015).

[9] Cooley also explained that any law attempting to depart from that norm by taking more than owed would be void: "It is not for a moment to be supposed that any statute would be adopted without [payment of surplus equity] or some equivalent provision for the owner's benefit. And such a

that right, that when Congress passed a statute partly aimed at "suppressing rebellion" in Confederate states and that appeared to forfeit title and all equity in tax-delinquent property, the U.S. Supreme Court twice chose a strained statutory interpretation to avoid that outcome. *Bennett*, 76 U.S. at 335, 337 (avoiding the takings question by interpreting "forfeit" as meaning the owner was merely in danger of a tax sale and could still redeem the property until sale because it is "proper" to avoid such a "highly penal" provision where milder construction is possible); *United States v. Taylor*, 104 U.S. 216, 219, 221–22 (1881) (relying on *Bennett* and noting the purpose was tax collection, not "confiscation" in construing the same statute to hold former owner entitled to surplus proceeds from the sale of his tax delinquent property).

The principle that debtors' own the surplus value of their property was in force when the federal and state takings clauses were adopted, and is still protected in most states today. Most states sell tax delinquent property and refund surplus profits to the former owner. *See supra* n.6.

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provision must be strictly obeyed. A sale of the whole when less would pay the tax is void, and a sale of the remainder after the tax had been satisfied by the sale of a part would also be void, for the very plain reason that the power to sell would be exhausted the moment the tax was collected." Cooley, *supra*, at p. 344.

2. Minnesota recognizes a property right in home equity

The Minnesota Supreme Court previously recognized this traditional right, stating that a debtor's right to the surplus value of his property exists regardless of whether a state statute recognizes it. *Farnham*, 19 N.W. at 85. In *Farnham*, to collect delinquent property taxes, the state sold Jesse Jones's 320 acres to Frank Farnham. *Id.* at 84. After Jones harvested timber from the lands, Farnham sued Jones for trespass. But the Minnesota Supreme Court ruled for Jones, holding the tax sale invalid because it was conducted without respecting the debtor's rights to his surplus value in his property. The statute required tax-delinquent property to be sold one parcel at a time. *Id.* at 84–85. The Court explained the obvious reason for such a provision: "[Delinquent] owners had rights and interests remaining which it was intended to recognize and protect." *Id.* at 85. These rights were in the surplus value of the property, which also required that "[a]fter the lien of the state is satisfied, any surplus realized from the sale must revert to the owner." *Id.* That the statute "contain[ed] no provisions in respect to the disposition of the surplus proceeds of the sale" was "immaterial." *Id.* "[T]he right to the surplus exists independently of such statutory

provision." *Id.* A specific statutory provision addressing the disposition of surplus proceeds was deemed unnecessary in view of the clear right to the surplus. *Id.* (a statutory provision's purpose "would be merely to regulate the manner of enforcing th[at] right").

Minnesota's courts have never revisited or abrogated *Farnham*. In fact, the court confirmed similar principles since then, in a statutory interpretation case that required payment of the surplus proceeds of tax-foreclosed property to a former owner. *Burnquist v. Flach*, 6 N.W.2d 805, 809 (Minn. 1942). In *Burnquist*, the State of Minnesota took title to Mary Cary's property as a result of eight years of delinquent property taxes. *Id.* at 807. Several months later, the state highway commission brought condemnation proceedings against the property for a road. *Id.* at 806. Cary then tried to redeem the property and claim the condemnation proceeds. *Id.* at 807. The county treasurer denied her attempt because the right to redeem ended upon a "sale" of the property and Minnesota courts treated condemnation "in a legal sense . . . as a purchase and sale." *Id.* at 807–808. The Minnesota Supreme Court disagreed, construing the state's tax statute to preserve the tax-delinquent owner's right to the surplus, noting "[i]t is not the policy of the state, nor should it be, to

deprive owners of real estate of their interest therein on account of tax delinquency." *Id.* at 807 (internal quote omitted). Even though the agency that had taken the property no longer had title to return to Cary, the court understood that she still had a property interest in the value of her property: "True, the title to the property is gone, but in its place is its *value*, the *price* that the state highway department paid for it; i.e., the money stands in the place of the property itself." *Id.* at 809 (emphasis in original). Thus, the court upheld the trial court's decision which required the surplus value—above and beyond the tax debt—to be returned to Cary, commenting that any "unprejudiced mind" would recognize "justice" demanded that result. *Id.*

Today, outside the context of property tax foreclosures, Minnesota law still honors these principles, treating equity as private property, and requiring debt collectors to sell the property and refund extra profits. *See, e.g.*, Minn. Stat. Ann. § 580.10 (surplus proceeds from mortgage foreclosure after paying debts returned to former owner); Minn. Stat. Ann. § 550.20 ("No more shall be sold than is sufficient to satisfy the execution"); Minn. Stat. Ann. § 336.9-608. And in other contexts, equity in property is also regularly treated as a discrete valuable property

interest. *See, e.g., Batsell v. Batsell*, 410 N.W.2d 14, 15 (Minn. Ct. App. 1987) (recognizing equity as proper subject of marital property division).

Here, the County sold Tyler's former home without honoring this traditional right, paying her nothing and giving her no opportunity to claim the surplus proceeds from the sale—$25,000.

B. The County violated the federal and state takings clauses by taking and keeping Tyler's home equity

Because owners have a discrete property interest in equity, the County cannot take it without triggering the constitutional requirement that it pay just compensation. *Cf. Horne v. Dep't of Agric.*, 135 S. Ct. 2419, 2426–27 (2015) (Takings Clause protects property interests recognized by Magna Carta and Founders); *State v. Soto*, 378 N.W.2d 625, 628 (Minn. 1985) ("Blackstone had tremendous impact on the development of the common law in the original American colonies and in the early states of this new country."). The Takings Clause of the Fifth Amendment to the United States Constitution[10] and Article I, Section 13, of the Minnesota Constitution prohibit the government from taking private property for a

[10] The federal Takings Clause is incorporated against the states by the Fourteenth Amendment. *First English Evangelical Lutheran Church of Glendale v. Los Angeles Cty.*, 482 U.S. 304, 310 (1987).

public use without payment of "just compensation." When government seizes protected property, it effects a classic, *per se* taking under both the state and federal takings clauses. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992) ("direct appropriation" of property or the "functional equivalent" is a classical taking); *Nolan & Nolan v. City of Eagan*, 673 N.W.2d 487, 492 (Minn. Ct. App. 2003).

The high courts of Michigan, New Hampshire, Vermont, Mississippi, and Virginia, and several federal district courts recognize that a property owner's equity is a discrete and legally cognizable property interest and hold that government effects a taking without just compensation when it takes more than it is owed. *Griffin*, 38 Miss. at 436–37; *Martin*, 59 Va. at 142–43 (violates due process of law by taking more than owed) *aff'd on other grounds sub nom. Bennett*, 76 U.S. 326; *Rafaeli*, 952 N.W.2d at 459 (taking the historically rooted right to surplus proceeds from tax sale violates state Takings Clause); *Bogie*, 270 A.2d at 900, 903 (citing *United States v. Lawton*, 110 U.S. 146 (1884), and holding retention of excess funds from sale of foreclosed land "amounts to an unlawful taking for public use without compensation"); *Thomas Tool*

Services, Inc. v. Town of Croydon, 761 A.2d 439, 441 (N.H. 2000) (statute granting government surplus proceeds from tax sales violates state constitution's Takings Clause); *King v. Hatfield*, 130 F. 564, 579 (C.C.D.W. Va. 1900); *Pung v. Kopke*, No. 1:18-cv-01334-RJJ-PJG, Opinion and Order (W.D. Mich. Sept. 29, 2020) (ECF No. 119, Page ID.1357–58); *Fox v. Cty. of Saginaw*, No. 19-CV-11887, 2021 WL 120855, at *12 (E.D. Mich. Jan. 13, 2021) ("*Rafaeli* is persuasive, and there is little reason to believe that the Fifth Amendment would demand a different result."); *see also Coleman through Bunn v. District of Columbia (Coleman I)*, 70 F. Supp. 3d 58, 80 (2014) (holding takings claim appropriate if D.C. law elsewhere recognizes property right in equity); *Coleman through Bunn v. District of Columbia (Coleman II)*, No. 13-1456, 2016 WL 10721865 *2–3 (D.D.C. June 11, 2016) (recognizing District of Columbia law treats equity as a form of property in other contexts and thus Constitution protects equity as compensable property interest).

The state supreme courts of Indiana, North Dakota, Texas, and Alaska have also criticized the idea that government could legitimately extinguish equity or liens on tax-delinquent properties and have interpreted tax sale statutes to avoid that result. *Lake Cty. Auditor v.*

Burks, 802 N.E.2d 896, 899–900 (Ind. 2004) (noting it would "produce severe unfairness" and likely violate the Takings Clause); *Syntax, Inc. v. Hall*, 899 S.W.2d 189, 191–92 (Tex. 1995), *as amended* (June 22, 1995) ("Taxing authorities are not (nor should they be) in the business of buying and selling real estate for profit."); *City of Anchorage v. Thomas*, 624 P.2d 271, 274 (Alaska 1981) (refusing to interpret the law as confiscating the surplus); *Shattuck v. Smith*, 69 N.W. 5, 12 (Dakota 1896) (noting statute would likely be unconstitutional "if [it] contained no provision that the surplus should go to the landowner").

Outside the context of tax foreclosures, the Supreme Court has recognized the Takings Clause protects a wide range of property interests that are similar to the property interest at stake here. An owner's equity is no less important than those interests. For example, the Court has found a taking when government takes without payment financial interests including money, interest on money, land, liens, and mortgages. *See, e.g.*, *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 590, 601–02 (1935) (Takings Clause protects "substantive rights in specific property," including the right to collect on a debt in a timely manner by seizing and selling that property); *Koontz v. St. Johns River Water Mgmt.*

Dist., 570 U.S. 595, 613 (2013) (Takings Clause protects money and "a right to receive money that is secured by a particular piece of property"); *Webb's Fabulous Pharmacies*, 449 U.S. at 158–59 (accrued interest); *Armstrong*, 364 U.S. at 48 (liens). Similarly, the Court has held that where a statute requires property to be sold to pay debts and the surplus proceeds returned, the Takings Clause protects the former owner's rights to those proceeds. *Lawton*, 110 U.S. at 150 ("To withhold the surplus from the owner would be to violate the fifth amendment to the constitution, and . . . take his property for public use without just compensation.").

The Minnesota Takings Clause provides even broader protection than the federal Takings Clause. *DeCook v. Rochester Intern. Airport Joint Zoning Bd.*, 796 N.W.2d 299 (Minn. 2011) (Minnesota Takings Clause more protective than federal); *Hall v. State*, 908 N.W.2d 345, 352 n.5 (Minn. 2018) (same); *Wensmann Realty, Inc. v. City of Eagan*, 734 N.W.2d 623, 632 n5 (Minn. 2007) ("[T]he language of the Takings Clause of the Minnesota Constitution can be construed to provide broader protections than the Takings Clause of the U.S. Constitution."). Under Minnesota law, "a 'taking' includes 'every interference, under the power of eminent domain, with the possession, enjoyment, or value of private

property.'" *State by Humphrey v. Strom*, 493 N.W.2d 554, 558 (Minn. 1992) (quoting Minn. Stat. § 117.025, subd. 2 (2016)). *See also State by Humphrey*, 493 N.W.2d at 558 ("[T]he clear intent of Minnesota law is to fully compensate its citizens for losses related to property rights incurred because of state actions.").

When the County took Tyler's home without payment for her equity and without refunding the $25,000 in surplus proceeds pursuant to the traditional common law requirement, it effected a classic physical taking under both the state and federal takings clauses. *See, e.g., Webb's Fabulous Pharmacies*, 449 U.S. at 164 (Government cannot "by ipse dixit . . . transform private property into public property without compensation."); *Brown v. Legal Found. of Washington*, 538 U.S. 216, 235 (2003) (holding that the confiscation of a privately owned interest is a taking); *Lawton*, 110 U.S. at 150 (where a statute required property to be sold to pay debts and the surplus proceeds returned, the Takings Clause protects the former owner's rights to those proceeds).

The taking of Tyler's equity interest in her property bears analogy to the injustice the Supreme Court condemned in *Armstrong*, 364 U.S. 40. In that case, a shipbuilder contracted by the United States defaulted

on its obligation to build ships, and the United States took title to the unfinished boats and materials, pursuant to contractual and common law rights. *Id.* Material suppliers claimed the United States had extinguished their liens on the unfinished boats and supplies and unconstitutionally refused to compensate the suppliers. *Id.* The Supreme Court agreed, holding that property rights in liens do not simply disappear when the government takes title to the subject property. *Id.* at 48. Before the government took the property, the plaintiffs had a cognizable financial interest in the boats; afterwards, they had none. *Id.* The government could take the underlying property, but the taking was subject to the "constitutional obligation to pay just compensation for the value of the liens." *Id.* at 49.

In this case, "the government for its own advantage destroy[ed] the value" of the owner's equity, which like the liens in *Armstrong* requires payment of just compensation. *See id.* at 48. Even though the government has only a limited interest in the taxed property, it takes everything. This transformation of private property for public use is a taking. The government thus has the "constitutional obligation to pay just compensation." *See id.* at 49.

C. The government may not regulate away traditional property rights

The County may not hide behind Minnesota's tax legislation to take an established property right without compensation. In *Webb's Fabulous Pharmacies*, 449 U.S. at 158–59, for instance, the Supreme Court held that government violated the Takings Clause by keeping the interest earned on private funds deposited with a court, even though a Florida statute so provided, and the Florida Supreme Court had agreed it was legal. The Court explained, "Neither the Florida Legislature by statute, nor the Florida courts by judicial decree, may [take the interest] by recharacterizing the principal as 'public money' because it is held temporarily by the court." *Id.* at 164. The plaintiff had a traditionally protected property right, which the Florida legislature and Florida Supreme Court could not take away.

Likewise, in *Phillips*, 524 U.S. at 167, the Supreme Court rejected Texas's attempt to extinguish property by statute, explaining "at least as to confiscatory regulations . . . a State may not sidestep the Takings Clause by disavowing traditional property interests." Although the government defendants asserted that the common law in Texas regarding interest was different than Florida's and therefore immune

from the holding in *Webb's*, the Supreme Court rejected that proposition, noting the deep common law tradition in the United States as a whole. *Id.* at 165–67.

State statutes that purport to convert surplus equity in tax-indebted properties into public property similarly violate a deep common law tradition and hence violate the Takings Clause in the same way. Neither Minnesota's legislature nor the County may extinguish traditional property interests without compensation. Government cannot "by *ipse dixit* . . . transform private property into public property without compensation." *Webb's Fabulous Pharmacies*, 449 U.S. at 164. *See also Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, 560 U.S. 702, 713 (2010) (states effect a taking when they re-characterize traditionally private property as public property).

The district court suggested that the fact that the provision at issue here was 85 years old meant that if there was at some point a property right in Minnesota, the right to challenge violations of the right expired. App 162, 163 n.14. That is wrong. A delay in courts hearing a challenge like this one does not invalidate the property right any more than comparable delays in other constitutional cases. For example, in *Horne*,

farmers challenged a 1937 law requiring raisin growers to sometimes give a portion of their raisin crops to a government program without compensation. *Horne v. Department of Agric.*, 576 U.S. 350, 355 (2015). Despite the age of the law, and despite the growers' ability to avoid the taking by growing other crops, the Court held that the government effected a taking without just compensation. *Id.* at 364–65. Likewise here, the statute at issue did not become constitutional by mere passage of time. *See also Palazzolo v. Rhode Island*, 533 U.S. 606, 627 (2001) (some legislative "enactments are unreasonable and do not become less so through passage of time or title" and may effect a taking); *Ramos v. Louisiana*, 140 S. Ct. 1390, 1394 (2020) (Louisiana Constitution's provision allowing nine jurors to convict, which was adopted in 1898, was unconstitutional); *District of Columbia v. Heller*, 554 U.S. 570, 625–26 (2008) (it was not until 2008 that the Supreme Court held that the Fourteenth Amendment incorporated the Second Amendment, and noting it took almost 150 years after ratification before the Supreme Court "first held a law to violate the First Amendment's guarantee of freedom of speech").

There are likely many reasons why Minnesota's courts have not yet heard a takings claim like this one. Individuals who cannot pay their property taxes are most often among society's weakest members, often elderly, sick, or impoverished. App. 19 at ¶28, 21 at ¶42; App. 99–100 (Judge Schiltz even noted at the hearing on the motion to dismiss that cases like this often occur "because you're infirm or you're elderly. . . . I see that all the time." He also noted that these same groups often lack access to legal help.). Elderly property owners are especially susceptible to losing their property in this way because they move into senior living or medical facilities, their children's homes, or are otherwise displaced and consequently often miss notices. *See* Jennifer C.H. Francis, Comment, *Redeeming What is Lost: The Need to Improve Notice for Elderly Homeowners Before and After Tax Sales*, 25 Geo. Mason U. Civ. Rts. L.J. 85 (2014). And owners often do not understand the consequences of allowing a property to be foreclosed for delinquent taxes, which in Minnesota are dramatically worse than other types of liens. *Tallage Lincoln, LLC v. Williams*, 151 N.E.3d 344, 350 (Mass. 2020) (delinquent property owners typically cannot afford counsel and the law is difficult even for "experienced attorneys" to understand, leading to "catastrophic"

results for property owners). These obstacles mean that few positioned to bring a claim learn about the tragedy until it is too late to do anything about it.

Moreover, the need to press constitutional claims has been limited by Minnesota courts' willingness to construe the statute against the government and return title to former owners with a renewed redemption period. *See, e.g., McHardy v. State*, 9 N.W.2d 427, 430 (Minn. 1943) (noting court's willingness to return title to former owner and "statutes relative to tax title proceedings which result in the owner's forfeiture of his property should require a stricter construction than those relating to mortgage foreclosure proceedings, which involve merely a creditor's proceeding to recover a debt due him.").

D. ***Nelson*** **does not address the need for just compensation here**

The district court also rejected the takings claim by misreading the Supreme Court's opinion in *Nelson v. City of New York*, 352 U.S. 103, 110 (1956). App. 159; *see also id.* at 71–72 (Judge Schiltz in hearing called *Nelson* "cryptic" and suggested it could be interpreted two different ways). In *Nelson*, the City of New York foreclosed on two properties to satisfy delinquent debts, taking property that was worth far more than

the debt. *Id.* at 106. The former owners argued that the city was not entitled to the windfall and sought just compensation for the surplus equity in their properties. The Court rejected their claims, however, because the owners failed to use a procedure available under New York law to receive the surplus proceeds from a judicial sale of the property. *Id.* (rejecting takings claim "in the absence of timely action to . . . recover[ ] any surplus"). Minnesota, however, has no such procedure. *See* App. 159; Minn. Stat. § 282.08. The *Nelson* Court explicitly declined to answer the question presented here: whether government's retention of the windfall would be a taking where state law "precludes an owner from obtaining the surplus proceeds of a judicial sale." *Id.* But as explained above, many other courts have answered that question affirmatively and the Eighth Circuit should do so as well.

Tyler's failure to pay her debt does not entitle the government to take more than what she owed without paying just compensation. Delinquent taxes are an old problem with old solutions that protect equity. By ignoring that traditional right to surplus proceeds from a tax sale and failing otherwise to compensate Tyler, the County effected a taking. Therefore, Tyler stated viable claims seeking just compensation

under the federal Takings Clause via 42 U.S.C. 1983 and the state Takings Clause as well as a state inverse condemnation claim under Minnesota's statutes. The Court should reverse the district court's dismissal of counts I, II, III, IV, and VII.

II

THE COUNTY VIOLATED THE EXCESSIVE FINES CLAUSES BY TAKING TYLER'S EQUITY

The Excessive Fines Clause in the Eighth Amendment to the United States Constitution and Article I, Section 5 of the Minnesota Constitution are worded the same, stating that "excessive fines" shall not be "imposed." U.S. Const. amend. VIII; Minn. Const. art. I, § 5. The excessive fines clauses "limit[ ] the government's power to extract payments, whether in cash or in kind, 'as punishment for some offense.'" *See United States v. Bajakajian*, 524 U. S. 321, 327–28 (1998); *Wilson v. Commissioner of Revenue*, 656 N.W.2d 547, 553 (Minn. 2003). The clauses prohibit fines that are "grossly disproportionate" to the offense that they are designed to prevent. *Bajakajian*, 524 U. S. at 334; *Wilson*, 656 N.W.2d at 557 (Minn. 2003); *State v. Rewitzer*, 617 N.W.2d 407, 413 (Minn. 2000). Because the clauses are so similar, Minnesota courts regularly look to

federal decisions as persuasive, but the Minnesota Excessive Fines Clause may be more protective. *Wilson*, 656 N.W.2d at 552; *State v. Fuller*, 374 N.W.2d 722, 727 (Minn.1985).

Like the prohibitions on government taking more than what is owed, the prohibitions on excessive fines trace back to at least the Magna Carta, *Timbs*, 139 S. Ct. at 687, which guaranteed that '[a] Free-man shall not be amerced for a small fault, but after the manner of the fault; and for a great fault after the greatness thereof, saving to him his contenement . . . .'' [11] *Browning-Ferris Indus. of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 287–88 (1989) (O'Conner, J., concurring). An "amercement" was a fine for civil violations or criminal conduct. *Id.* at 288–91. This protection was later reaffirmed in more modern language in the English Bill of Rights of 1689, which had been drafted to protect against the abuses of the King's judges, and which was later adopted in the Eighth Amendment, because prohibiting excessive fines is essential to "the security of liberty." *Id.* at 266–67 (majority opinion); *id.* at 335

[11] "Contenement" meant essentially a person's means of livelihood. Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 Hastings Const. L.Q. 833, 855 (2013)

(Thomas, J., concurring) (quoting Brutus II (Nov. 1, 1787), in The Complete Bill of Rights 621 (N. Cogan ed. 1997)). Minnesota's own Excessive Fines Clause, adopted in 1857, follows the same form as the federal provision.

Consistent with their history, the U.S. and Minnesota Excessive Fines clauses prohibit excessive fines in both civil and criminal cases, *Austin*, 509 U.S. at 609–10, including assessments of liability for failure to pay taxes. *Wilson*, 656 N.W.2d at 553. A fine is excessive when it is punitive and grossly disproportionate to the offense. *Bajakajian*, 524 U.S. at 333–34. Here, the taking of Tyler's equity was both punitive and excessive.

1. Taking more than a party owes in taxes, penalties, interest, and costs is punitive.

A forfeiture or fine is punitive when it goes well beyond the reasonable costs of enforcing the law against the offender. *United States v. Alt*, 83 F.3d 779, 782 (6th Cir. 1996). *Cf. Bailey*, 259 U.S. at 41 ("tax" was not remedial and was really a punishment). "The demand for money or property is a punishment whenever it "cannot fairly be said solely to serve a remedial purpose, but rather can only be explained as also serving either retributive or deterrent purposes." *United States v. Halper*, 490

U.S. 435, 448 (1989) *overturned on other grounds Hudson v. United States*, 522 U.S. 93, 101 (1997); *Wilson*, 656 N.W.2d 547, 554 (Minn. 2003) (if not solely remedial, then it constitutes a "punishment" subject to the Excessive Fines Clauses of the United States and Minnesota Constitutions").

Minnesota's statutes already impose interest, penalties, and costs on delinquent tax debts. Minn. Stat. §§ 279.01 subd.1, 279.03 subd. 1a, 279.092 (penalties of 4–8% within a few weeks, and 1% per month, interest of 10–28%, and broad "service fee."). Some of the interest and costs are remedial, specifically designed to fully compensate the government for the cost of delayed payment and the cost of enforcement against the debtor. *See id.* Because all supplemental costs imposed by the debtor are already included in the tax debt anything more is punitive. While it is a question of fact how much of Tyler's $15,000 debt included punitive interest and penalties, it is clear that anything taken beyond that amount is not remedial and therefore can be explained only as a punishment. *See Wilson*, 656 N.W.2d at 554.

The district court disagreed because (1) the failure to pay property taxes is not a crime; (2) the purpose of the tax statute is to collect taxes,

not reap a windfall; (3) the scheme could theoretically result in forgiveness of tax debts where property ultimately sells for less than the former owner owes in taxes, penalties, interest, and costs; and (4) former owners like Tyler have opportunities to save their property prior to the County's taking. App. 166–68. But each of these reasons fail.

First, it is irrelevant whether the taking of Tyler's equity falls within criminal or civil law. The Excessive Fines Clause applies to all types of fines that are not merely remedial. *See* supra at 34–35.

Second, the tax statute's presumed intent of collecting taxes is irrelevant to whether it is imposing a punishment. In *Bajakajian*, 524 U.S. at 344, the Supreme Court gave no weight to the purpose of the law at issue, which was to prevent smuggling. Likewise, here, the presumed good intentions of Minnesota's heavy-handed law are irrelevant. Even if the *intent* of Minnesota's property tax statutes is to collect taxes, the *effect* of taking equity is a punishment. "[T]here comes a time in the extension of the penalizing features [as a revenue raising provision] of the so-called tax when it loses its character as such and becomes a mere penalty with the characteristics of regulation and punishment." *Dep't of Revenue of Montana v. Kurth Ranch*, 511 U.S. 767, 779 (1994) (internal

citations omitted). Indeed, "fines, penalties, and forfeitures are readily characterized as sanctions." *Id.* at 779–80. *Wilson*, 656 N.W.2d at 553 ("[A] civil sanction, such as the Commissioner's assessment of liability in this case, is a 'punishment' that implicates the Excessive Fines Clauses of the United States and Minnesota Constitutions when the sanction cannot fairly be said to serve a solely remedial purpose but rather can only be explained as serving either retribution or deterrent purposes as well.").

Third, speculation that the scheme could theoretically result in tax debt forgiveness in some other case is not relevant to whether the County inflicted a punishment on Tyler and others like her by taking more than she owed. Certainly, the government's policy could theoretically inflict a lesser punishment on some people and a heavier punishment on others like Tyler. But that possibility only highlights the arbitrariness of the law. No matter how small a debt, the government treats you as if the debt is as large and valuable as your real estate. When government treats all offenses identically, even where the underlying damage caused by the offense is small compared to what is taken, the fine may be "arbitrary and oppressive." *See, e.g., Missouri Pac. R. Co. v. Tucker*, 230 U.S. 340,

350–51 (1913) (imposing "$500 as liquidated damages" in all cases, even when harm in that case was very small, was "grossly out of proportion to the possible actual damages" and "so arbitrary and oppressive that its enforcement would be nothing short of the taking of property without due process of law, and therefore in contravention of the 14th Amendment").

Moreover, the possibility of debt forgiveness in cases where the property is legitimately worth less than the debt is exceedingly small. If the government cannot collect what it is owed after a few years of delinquency by selling the property, then that would ordinarily suggest that either the property was assessed too high or that the sale is not operated in a fair and legitimate manner. According to a recent study of public records of hundreds of properties, delinquent homeowners on average lost 92% of the value of their home, or $207,000, above the property tax debt that was owed, which averaged $17,000. Pacific Legal Foundation, *The Size and Scope of Home Equity Theft in Minnesota*, https://pacificlegal.org/wp-content/uploads/2021/03/PLF_Home-Equity-Theft-Minnesota.pdf (last accessed March 14, 2021). This data is not in the complaint, but the opportunity to conduct discovery could reveal something similar. Moreover, Tyler should not be asked to account for all

theoretical possibilities in all cases. The question is whether she has stated a valid claim for an excessive fine. She has.

The district court's suggestion that the taking of the equity is not a punishment because a debtor has opportunities to redeem the property also misses the mark. One could say the same thing about every type of punishment: if you would only obey the law, you could avoid the fine.[12] The purpose of the state and federal prohibition on excessive fines is to limit the government's power to punish when one fails to follow the requirements of the law.

2. Taking Tyler's equity is excessive

Because taking $25,000 more than Tyler owed was punitive, the next question is whether the punishment is excessive. "The touchstone of the constitutional inquiry under the Excessive Fines Clause is the principle of proportionality: The amount of the forfeiture must bear some relationship to the gravity of the offense that it is designed to punish." *Bajakajian*, 524 U.S. at 334. Thus, to determine whether fines are excessive, courts consider the gravity of the offense and the harshness of

[12] In *Bajakajian*, for instance, the government could have argued that the confiscation of his money was not a punishment because he could have avoided it by telling the truth.

the penalty. *Rewitzer*, 617 N.W.2d at 413 (citing *Solem*, 463 U.S. at 290–92). Courts also consider the culpability of the punished individual. *United States v. Bieri*, 68 F.3d 232, 236 (8th Cir. 1995). Courts grant some deference to the legislature to determine what constitutes a proportional fine. *Bajakajian*, 524 U.S. at 336. But "[i]f the amount of the forfeiture is grossly disproportional to the gravity of the defendant's offense, it is unconstitutional." *Id.* at 337.

In *Bajakajian*, the government seized and sought forfeiture of $357,144 when Hosep Bajakajian lied to government officials about how much money he was taking abroad. 524 U.S. at 324. The Supreme Court held that the forfeiture was excessive in violation of the Eighth Amendment because it was "grossly disproportional to the gravity of [the] offense." *Id.* at 339–40. Bajakajian's "[f]ailure to report his currency affected only one party, the Government, and in a relatively minor way." *Id.* at 339. Moreover, the fine "b[ore] no articulable correlation to any injury suffered by the Government." *Id.* at 340.

Like the forfeiture in *Bajakajian*, the confiscation of Tyler's home equity here is unconstitutionally excessive. Tyler's offense is less grave than that at issue in *Bajakajian* because it is not criminal to fail to pay

property taxes. Nor is it immoral for people to struggle to pay their property taxes. *See Thiede v. Town of Scandia Valley*, 14 N.W.2d 400, 407 (Minn. 1944) (poverty is not a moral failure and courts should give "[m]ore respect for the common rights of man and less regard for the condition of the public exchequer" in administering laws).

The only harm caused by Tyler's offense is that the County was delayed in getting paid what it was owed. The Minnesota legislature allows such delays and imposes on Tyler and other debtors all costs and remedial interest as well as penalties and higher-than-market interest to discourage tax delinquency. *See* Minn. Stat. §§ 279.01 subd.1, 279.03 subd. 1a (penalties of 4–8% within a few weeks, and 1% per month, interest of 10–28%, and broad "service fee.").Tyler's complaint does not challenge the constitutionality of these other amounts included in Tyler's $15,000 debt.

But taking more is excessive. The County sold Tyler's property for $40,000—$25,000 more than she owed—and kept it all. The harshness of this punishment, piled on top of the calculated penalties and interest, far exceeds the severity of the offense. Assuming all facts in favor of Tyler, as is required on a 12(b)(6) motion to dismiss, taking the full value of

Tyler's property is grossly disproportionate to the noncriminal failure to timely pay her property taxes.

The excessiveness of the County's alleged violation is particularly stark when compared to the penalty in other states and for other types of debt-related failings in Minnesota. *See Rewitzer*, 617 N.W.2d at 413 (Minnesota courts analyze the harshness of the penalty partly by comparing the contested fine with fines imposed for similar offenses in the same jurisdiction and in other jurisdictions.). A majority of other states impose similar interest and penalty rates, but do not take the full value of the property. Instead, they sell the property and refund surplus proceeds, *see supra* n.6, just as Minnesota does in other debt collection contexts. *See, e.g.*, Minn. Stat. Ann. §§ 336.9-608, 550.20, 580.10. The punishment therefore is excessive. Tyler stated valid claims under the Minnesota and federal constitutions. The Court should reverse dismissal of counts V and VI.

III

ALTERNATIVELY, THE COUNTY VIOLATED SUBSTANTIVE DUE PROCESS OR IS LIABLE FOR UNJUST ENRICHMENT

A. Substantive due process

If the takings and excessive fines claims do not provide full relief, then the County violated Tyler's rights to substantive due process under the federal and state constitutions or it is liable for restitution under the doctrine of unjust enrichment. *See Cty. of Sacramento v. Lewis*, 523 U.S. 833, 842 (1998) ("[W]here a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims."); *Southtown Plumbing, Inc. v. Har-Ned Lumber Co., Inc.*, 493 N.W.2d 137, 140 (Minn. Ct. App. 1992) (doctrine of unjust enrichment only provides relief where no remedy at law).

The Due Process Clause guarantees that "[n]o person shall be deprived of life, liberty, or property without due process of law." Const. Amend. XIV. Substantive due process, which arises from the original understanding of "due process of law," requires at minimum that all government actions affecting a property or liberty interest relate to a

legitimate end of government. *See Nectow v. City of Cambridge*, 277 U.S. 183, 188 (1928); *Lawton v. Steele*, 152 U.S. 133, 136–37 (1894); *Euclid v. Amber Realty Co.*, 272 U.S. 365, 395 (1926) (prohibits government regulations that are "clearly arbitrary and unreasonable, having no substantial relations to the public health, safety, morals, or general welfare"). Minnesota's Constitution provides similar but greater substantive due process protection. *See State v. Russell*, 477 N.W.2d 886, 888–89 (Minn. 1991). The County's actions violate substantive due process. *See, e.g., King*, 130 F. at 579 (state property tax collection practice that confiscated equity was an unconstitutional, arbitrary exercise of power, and also a taking); *U.S. v. Lawton*, 110 U.S. at 150 ("To withhold the surplus from the owner would be to violate the fifth amendment to the constitution, and deprive him of his property *without due process of law* or take his property for public use without just compensation.") (emphasis added).

Under both constitutions, when government infringes on a "fundamental" right, courts apply strict scrutiny requiring the infringement to be "narrowly tailored to serve a compelling state interest." *Washington v. Glucksberg*, 521 U.S. 702, 721, (1997).

"[F]undamental rights . . . are, objectively, deeply rooted in this Nation's history and tradition, and implicit in the concept of ordered liberty, such that neither liberty nor justice would exist if they were sacrificed." *Washington*, 521 U.S. at 720–21 (internal quotes and citations omitted).

Given the deep roots of the protections for debtors from government taking more than the debt, strict scrutiny applies. *Cf. Thomas Tool Servs., Inc. v. Town of Croydon*, 145 N.H. 218, 220 (2000), as amended (Feb. 1, 2001) ("Because the right to property is a fundamental right in our State, all subsequent grants of power, including the taxing power, are limited as to how they adversely affect it."). As explained above, the limitations on government's debt collection power trace back to Magna Carta and persisted through the founding of this country and beyond the adoption of the Fourteenth Amendment. *See, supra*, Section I.A.

Certainly, government has always had "a summary method for the recovery of [tax] debts" that included the power to seize property to pay the debt. *Murray's Lessee v. Hoboken Land & Imp. Co.*, 59 U.S. 272, 277–78 (1855). But the law traditionally imposed meaningful restraints on that power that include limitations on what and how much government could keep as payment. *See e.g.*, *Stead's Ex'rs v. Course*, 8 U.S. 403, 414

(1808) ("[I]f a whole tract of land was sold when a small part of it would have been sufficient for the taxes, which at present appears to be the case, the collector unquestionably exceeded his authority"); *McAndrews v. Belknap*, 141 F.2d 111, 115 (6th Cir. 1944) (former owner's property rights were "prejudiced" when government sold property for $1,994.28 to collect taxes where that property included "two separate tracts" with an official estimated value of $7,000 that could have been sold separately); *Appeal of White*, 134 A. 409, 412 (Pa. 1926) ("All grants of power are to be interpreted in the light of the maxims of Magna Charta and the common law as transmuted into the Bill of Rights; and those things which these maxims forbid cannot be regarded as within any grant of authority made by the people to their agents.") (citing Thomas Cooley, A Treatise on Constitutional Limitations 209 (1868)); *Wilkinson v. Leland*, 27 U.S. 627, 657 (Pet.) (1829) ("[I]n a government professing to regard the great rights of personal liberty and of private property, and which like this was required to legislate in subordination to the general laws of England, it would not be presumed, slightly, that the general principles of Magna Charta were to be disregarded"). Tyler invokes those

traditional restraints as the foundation of her fundamental right at issue here.

By allowing the County to take more than Tyler owed in taxes, penalties, interest, and costs, the law is not narrowly tailored to serve the government interest of collecting a tax. *See, e.g., Griffin*, 38 Miss. at 436–37 (1860) (holding tax foreclosure law unconstitutional partly because government violated "due course of law," when it took property from the former owner "for a nominal consideration."). A narrowly tailored law would require the government to refund extra profits from a tax sale.

The County's action here also offends "judicial notions of fairness," which the Eighth Circuit considers in substantive due process cases. *Weiler v. Purkett*, 137 F.3d 1047, 1051 (8th Cir. 1998). It is grossly unjust for government to take more than it is owed, particularly when an individual cannot afford to pay their bills in the first place. *See Rafaeli, LLC v. Wayne Cty.*, 2015 WL 3522546 at *3 (E.D. Mich June 4, 2015) (noting "the gross injustice…caused by the kind of governmental action on display here"); *Bogie*, 270 A.2d at 900 (Vt 1970) (taking more than what it is owed is "unconscionable"); *Wayside Church v. Van Buren Cty.*, 847 F.3d 812, 823–24 (6th Cir. 2017) (Kethledge, J, in dissent) (In tax

forfeiture of equity case dismissed for lack of subject matter jurisdiction, Judge Kethledge noted "[i]n some legal precincts [Defendants'] sort of behavior is called theft").

Even under less exacting scrutiny, the law fails because there is no reasonable connection between collecting a $15,000 tax and taking $40,000 and keeping the change. *Russell*, 477 N.W.2d at 889 (to survive the lowest level of scrutiny under Minnesota's substantive due process test, there must be "a reasonable connection between the actual, and not just the theoretical, effect of the challenged classification and the statutory goals."). "Taxing authorities are not (nor should they be) in the business of buying and selling real estate for profit." *Syntax, Inc. v. Hall*, 899 S.W.2d 189, 191 (Tex. 1995), *as amended* (June 22, 1995)). That is not a legitimate purpose of government. And yet that is exactly what Hennepin County is doing at the expense of Tyler and other struggling property owners. Consequently, under any standard of review, the County's confiscation of equity violates due process protections. *See, e.g.*, *Bogie*, 270 A.2d at 900.

Tyler stated valid substantive due process claims under the Minnesota and federal constitutions. The Court should reverse dismissal of counts IX and X.

B. Unjust enrichment

In the alternative,[13] Tyler properly pleads unjust enrichment, an equitable claim arising under common law that is available when there is not an adequate remedy at law. *See Southtown Plumbing, Inc.*, 493 N.W.2d at 140. "To establish an unjust enrichment claim it must be shown that a party has knowingly received something of value, not being entitled to the benefit, and under circumstances that would make it unjust to permit its retention." *Id.* Here Tyler alleges that the defendants knowingly received something valuable—$25,000 more than they were owed—and it is unequitable for the County to retain that windfall. App. 13–15 at ¶¶ 1, 5, 11; *id.* at 33.

Anderson v. DeLisle, 352 N.W.2d 794 (Minn. App. 1984) supports Tyler's unjust enrichment claim. In *Anderson*, Richard Anderson entered a contract to purchase property from the seller. *Id.* at 795. The seller

[13] Unjust enrichment can be pleaded in the alternative. *Mono Advert., LLC v. Vera Bradley Designs, Inc.*, 285 F. Supp. 3d 1087, 1091 (D. Minn. 2018).

knew Anderson would not likely be able to pay what he owed under the contract. But the seller then watched as Anderson spent $25,000 of his own money improving the property, which increased the property's value by $47,000. When Anderson defaulted, the seller foreclosed and received a windfall from the improved value. The court ultimately held that the defendant had acted immorally, and it required him to provide restitution to Anderson for his lost investment under the doctrine of unjust enrichment. *Id.* at 796.

Similarly, here, even though the County follows the tax statute, by taking a windfall at Tyler's expense, it took a benefit that in fairness and justice belongs to Tyler. Outside of Minnesota, at least one state high court has held that the doctrine of unjust enrichment could require government to return the windfall to a former owner. *See Dean*, 247 N.W.2d at 880. If this injustice is not fully remedied by Tyler's constitutional and statutory claims, then unjust enrichment should provide relief. Consequently, this Court should reverse the dismissal of her unjust enrichment claim, count VII.

CONCLUSION

The Court should reverse and remand.

DATED: March 22, 2021

Respectfully submitted,

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/s/ Christina M. Martin
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I hereby certify that on March 22, 2021, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the appellate CM/ECF system.

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