

# Home Equity Theft Is Unconstitutional

In all states, municipalities may take property and sell it to collect payment for property tax debts. Most states allow the government to keep only as much as it is owed; any surplus proceeds after collecting the debt belong to the former owner. However, in a minority of states, local governments take absolute title—extinguishing the owner’s equity, in addition to canceling the smaller tax debt. Such laws violate the Constitution, as the Supreme Court recently recognized. <sup>1</sup>

In *Tyler v. Hennepin County*, the Supreme Court held that the government cannot take a windfall at the expense of indebted property owners. In that case, the government confiscated Geraldine Tyler’s former home as payment for approximately \$15,000 in back taxes, costs, interests, and penalties. Even though the property was worth much more than what she owed, the government took the entire home, including all the equity in it. The county auctioned the property for \$40,000, which was \$25,000 more than what Ms. Tyler owed. Rather than return the excess, the county used it all for various public purposes. The Supreme Court held that by taking more than what was owed, the county violated the Constitution.

The Fifth Amendment to the United States Constitution, which applies to the states via the Fourteenth Amendment, provides that property shall not be taken for public use without just compensation. <sup>2</sup> Because homes and real estate are private property, the government cannot take them without triggering the constitutional mandate that it pay the former owner “just compensation.” From the days of Magna Carta to the present, in nearly every other type of debt collection, the law protects a debtor’s interest in the excess value of property seized to pay a debt. <sup>3</sup> Consistent with that principle, tax collectors have traditionally been—and in most states still are—required to hold a public sale of a property and refund any surplus proceeds from the sale of a tax-delinquent property to the former owner. By instead taking a windfall at Ms. Tyler’s expense, the government violated the Constitution.

The Constitution’s just compensation requirement was intended to prevent the government “from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” <sup>4</sup> Tax-and-take laws violate this maxim by forcing delinquent taxpayers—often among society’s most vulnerable—to bear more than their fair share of the public tax burden. “The taxpayer must render unto Caesar what is Caesar’s, but no more.”

[Today, most states continue to refund](#) surplus proceeds to the former owner after selling tax-delinquent property. <sup>5</sup> While some states keep the excess or give it away to private investors, it is now obvious that this violates the Constitution. States must fix their laws to comply with the Fifth Amendment.