

No. 22-166

---

In the  
**Morris Tyler Moot Court of  
Appeals at Dale**

---

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

*Petitioner,*

v.

HENNEPIN COUNTY, MINNESOTA and MARK V. CHAPIN,  
Auditor-Treasurer, in his official capacity,

*Respondents.*

---

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

---

**BRIEF FOR RESPONDENTS**

---

RUSSELL C. BOGUE  
PRAGYA MALIK  
*Counsel of Record*  
*127 Wall Street*  
*New Haven, CT 06511*

*Counsel for Respondents*

---

## **QUESTIONS PRESENTED<sup>1</sup>**

1. Whether selling a tax-forfeited property to satisfy a tax debt and keeping the surplus value violates the Fifth Amendment's Takings Clause in the absence of any state-created property right to that surplus value.

2. Whether a tax forfeiture of a property worth more than needed to satisfy its tax debt, plus interest, penalties, and costs, is a "fine" within the meaning of the Eighth Amendment.

---

<sup>1</sup> Petitioner, plaintiff-appellant below, is Geraldine Tyler. Respondents, defendants-appellees below, are Hennepin County and Mark V. Chapin, Auditor-Treasurer, in his official capacity.

**TABLE OF CONTENTS**

Questions Presented..... i  
Table of Contents.....ii  
Table of Authorities .....iv  
Opinions Below ..... 1  
Jurisdiction..... 1  
Constitutional and Statutory Provisions Involved.... 1  
Statement ..... 2  
    A. Statutory background.....2  
    B. Factual background and proceedings below .....6  
Summary of Argument..... 9  
Argument..... 13  
    I. Minnesota’s tax-forfeiture scheme is an exercise of the state’s taxing and forfeiture powers, not its takings power.....13  
    II. Tyler has no property interest in the surplus equity of her home and thus no viable takings claim. .18  
        A. Minnesota state law does not recognize a property interest in the surplus equity contingently generated by tax-forfeiture sales. .... 18  
            1. Minnesota’s common law does not recognize any property interest in the surplus proceeds from tax-forfeiture sales..... 19  
            2. Regardless of any common-law property right to surplus proceeds, Minnesota’s tax-forfeiture statutes long ago abrogated any such interest. .... 22  
        B. Long-settled precedent from this Court forecloses Tyler’s claim. .... 27

III. Minnesota’s tax-forfeiture scheme is not a “fine” subject to the Excessive Fines Clause.....	33
A. The tax-forfeiture scheme is not a “fine” because it does not serve as punishment. ....	34
1. The tax-forfeiture scheme is unconnected to any culpability of the property owner. ....	34
2. The tax-forfeiture scheme can be explained by the remedial purposes of collecting unpaid debt and returning property to a tax-generating status.....	37
3. Unlike the civil forfeitures that have been considered punishment, the forfeiture here is not tied to any criminal activity. ....	42
B. Historical practice and the original meaning of the Eighth Amendment confirm that the tax-forfeiture scheme is not a “fine.” ....	45
1. Since the Founding, forfeitures like Minnesota’s—traditional civil in rem forfeitures— have not been considered punishment.....	45
2. Even if such forfeitures seem punitive, their widespread use when the Eighth Amendment was ratified suggests they were not considered “fines” under the Excessive Fines Clause.....	48
Conclusion .....	51

## TABLE OF AUTHORITIES

### Cases

<i>A. Magnano Co. v. Hamilton</i> , 292 U.S. 40 (1934) .....	16
<i>Alexander v. United States</i> , 509 U.S. 544 (1993).....	41
<i>Anderson v. Celebrezze</i> , 460 U.S. 780 (1983) .....	28
<i>Armstrong v. United States</i> , 364 U.S. 40 (1960).....	15
<i>Austin v. United States</i> , 509 U.S. 602 (1993) .....	passim
<i>Bailey v. Merritt</i> , 7 Minn. 159 (1862) .....	21
<i>Balthazar v. Mari Ltd.</i> , 301 F. Supp. 103 (N.D. Ill. 1969).....	28, 29
<i>Bennis v. Michigan</i> , 516 U.S. 442 (1996) .....	40
<i>Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.</i> , 492 U.S. 257 (1989).....	42, 46, 47
<i>Burt v. Rackner, Inc</i> , 902 N.W.2d 448 (Minn. 2017) .....	22
<i>Butner v. United States</i> , 440 U.S. 48 (1979) .....	9, 18
<i>C.J. Hendry Co. v. Moore</i> , 318 U.S. 133 (1943) .....	48
<i>Cass Farm Co. v. City of Detroit</i> , 181 U.S. 396 (1901).....	16
<i>Catoor v. Blair</i> , 358 F. Supp. 815 (N.D. Ill. 1973) .....	28, 29
<i>Cedar Point Nursery v. Hassid</i> , 141. S. Ct. 2063 (2021)..	15
<i>Chicago Burlington and Quincy R.R. v. City of Chicago</i> , 166 U.S. 226 (1897).....	10, 24
<i>Dep't of Revenue of Montana v. Kurth Ranch</i> , 511 U.S. 767 (1994).....	39
<i>District of Columbia v. Heller</i> , 554 U.S. 570 (2008) .....	46
<i>Dows v. Chicago</i> , 78 U.S. (11 Wall.) 108 (1870) .....	13, 32
<i>Farnham v. Jones</i> , 19 N.W. 83 (Minn. 1884).....	19, 20, 23
<i>French v. Barber Asphalt Paving Co.</i> , 181 U.S. 324 (1901).....	9, 16

<i>Helvering v. Mitchell</i> , 303 U.S. 391 (1938) .....	43
<i>Henderson Bridge Co. v. City of Henderson</i> , 173 U.S. 592 (1899).....	16
<i>Hudson v. United States</i> , 522 U.S. 93 (1997) .....	39, 40
<i>Hughes v. Washington</i> , 389 U.S. 290 (1967).....	18
<i>Ingraham v. Wright</i> , 430 U.S. 650 (1977).....	42
<i>Jones v. Flowers</i> , 547 U.S. 220 (2006).....	16
<i>Kennedy v. Mendoza-Martinez</i> , 372 U.S. 144 (1963) .....	40
<i>Lucas v. S.C. Coastal Council</i> , 505 U.S. 1003 (1992).....	24
<i>Mandel v. Bradley</i> , 432 U.S. 173 (1977) .....	28
<i>McCulloch v. Maryland</i> , 17 U.S. (4 Wheat.) 316 (1819) .....	9, 13, 14
<i>Mennonite Bd. of Missions v. Adams</i> , 462 U.S. 791 (1983).....	14
<i>Mulvey v. Tozer</i> , 42 N.W. 387 (Minn. 1889).....	20, 23
<i>Nelson v. City of New York</i> , 352 U.S. 103 (1956).....	passim
<i>Nollan v. Cal. Coastal Comm'n</i> , 483 U.S. 825 (1987) .....	18
<i>Omnia Comm. Co. v. United States</i> , 261 U.S. 502 (1923).....	17
<i>One Lot Emerald Cut Stones &amp; One Ring v. United States</i> , 409 U.S. 232 (1972).....	44
<i>Palazzolo v. Rhode Island</i> , 533 U.S. 606 (2001).....	18
<i>Perkins v. Stewart</i> , 77 N.W. 434 (Minn. 1898) .....	20, 35
<i>Phillips v. Wash. Legal Found.</i> , 524 U.S. 156 (1998).....	10, 29, 30, 31
<i>Stockwell v. United States</i> , 80 U.S. 531 (1871)....	12, 38, 40
<i>Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency</i> , 535 U.S. 302 (2002).....	27
<i>Taxes in Hennepin Cnty. v. Baldwin</i> ,	

65 N.W. 80 (Minn. 1885) .....	20
<i>Taylor v. United States</i> , 44 U.S. 197 (1845).....	43
<i>The Little Charles</i> , 26 F. Cas. 979 (C.C.D. Va. 1818) (No. 15,612).....	45
<i>The Palmyra</i> , 25 U.S. (12 Wheat.) 1 (1927) .....	45
<i>Tyler v. Hennepin Cnty.</i> , 26 F.4th 789 (8th Cir. 2022) .....	8, 27
<i>Tyler v. Hennepin Cnty.</i> , 505 F. Supp. 3d 879 (D. Minn. 2020) .....	passim
<i>United States v. Bajakajian</i> , 524 U.S. 321 (1998)....	passim
<i>United States v. Curtiss-Wright Export Corp.</i> , 200 U.S. 304 (1936).....	49
<i>United States v. Halper</i> , 490 U.S. 435 (1989) 12, 38, 39, 40	
<i>United States v. Lawton</i> , 110 U.S. 146 (1884) .....	10, 26
<i>United States v. Mann</i> , 26 F. Cas. 1153 (C.C.D.N.H. 1812) (No. 15,718) .....	42
<i>United States v. Taylor</i> , 104 U.S. 216 (1881).....	10, 26
<i>United States v. The Louisa Barbara</i> , 26 F. Cas. 1000 (E.D. Pa. 1833) (No. 15,632).....	49
<i>United States v. Ursery</i> , 518 U.S. 267 (1996) .....	38, 45
<i>United States v. Ward</i> , 448 U.S. 242 (1980) .....	38
<i>Webb’s Fabulous Pharmacies, Inc. v. Beckwith</i> , 449 U.S. 155 (1980).....	10, 29, 30, 31
<b>Statutes</b>	
Minn. Laws ch. 135, § 8 (1881) .....	19, 23
1905 Minn. Rev. Laws § 939 .....	24
1927 Mason’s Minn. Stat. § 2139-2 .....	24
44 R.I. Gen. Laws § 44-9-37 .....	6

Ala. Code § 40-10-28 .....	6
Ark. Code § 26-37-205(b) .....	6
Cal. Rev. & Tax Code § 4675(a) .....	6
Conn. Gen. Stat. § 12-157(i)(2) .....	6, 31
Ga. Code § 48-4-5 .....	6
H.F. No. 1929 (introduced Feb. 16, 2023) .....	32
Haw. Rev. Stat. § 231-70 .....	6
Ill. Comp. Stat. 200/21-225 .....	6
Ind. Code § 6-1.1-25-9(a) .....	6
Ky. Rev. Stat. § 134-549 .....	6
La. Stat. § 47:2154 .....	6
Mass. Gen. Laws ch. 60, § 64 .....	6
Me. Rev. Stat. tit. 36, ch. 105, § 949(a) .....	6
Mich. Comp. Laws § 311.78m(8) .....	6
Minn. Laws ch. 1, § 102 (1878) .....	10, 23
Minn. Laws ch. 122 (1885) .....	23
Minn. Laws ch. 2 (1902) .....	24
Minn. Laws ch. 386, § 8 (1935) .....	10, 22, 25
Minn. Special Laws ch. 18, § 4 (1864) .....	25
Minn. Stat. § 272.01 .....	2
Minn. Stat. § 272.31 .....	2
Minn. Stat. § 272.44 .....	3, 35
Minn. Stat. § 276.041 .....	11, 34
Minn. Stat. § 279.03 .....	2

Minn. Stat. § 279.05.....	2
Minn. Stat. § 279.09.....	2
Minn. Stat. § 279.091 .....	2
Minn. Stat. § 279.13.....	2
Minn. Stat. § 279.131 .....	2
Minn. Stat. § 279.14.....	46
Minn. Stat. § 279.16.....	2
Minn. Stat. § 279.37.....	4, 11, 35
Minn. Stat. § 280.01.....	2
Minn. Stat. § 280.41.....	2
Minn. Stat. § 281.01.....	3, 11, 35
Minn. Stat. § 281.02.....	3, 11
Minn. Stat. § 281.17.....	3, 11, 35
Minn. Stat. § 281.18.....	4, 21, 22
Minn. Stat. § 281.18.....	3
Minn. Stat. § 281.23.....	3
Minn. Stat. § 282.01.....	4, 5, 22
Minn. Stat. § 282.07.....	4, 11, 34
Minn. Stat. § 282.08.....	passim
Minn. Stat. § 282.241 .....	4, 35
Minn. Stat. § 282.251 .....	4, 35
Minn. Stat. § 559.17.....	21
Minn. Stat. § 581.06.....	21
Miss. Code § 27-41-77.....	6

Mo. Rev. Stat. § 140.230.....	6
Mont. Code § 15-17-322.....	6, 31
N.C. Gen. Stat. § 105-374(q)(6).....	6
N.D. Cent. Code § 57-22-04.....	21
N.J. Stat. tit. 54, § 29A-60.....	6
Neb. Rev. Stat. § 77-1916.....	21
Nev. Rev. Stat. § 361.610.....	6
Ohio Rev. Code § 5721.20.....	6
Ohio Rev. Code § 323.78.....	6
Okla. Stat. tit. 68, § 68-3131(C).....	6
Ore. Rev. Stat. § 275.275.....	6
S.C. Code § 12-51-130.....	6
S.F. No. 1109 (introduced Feb. 2, 2023).....	32
Vt. Stat. tit. 32, § 5061(b).....	21
<b>Other Authorities</b>	
Abraham Bell & Gideon Parchomovsky, <i>Of Property and Federalism</i> , 115 Yale L.J. 72 (2005).....	31
Beth Colgan, <i>Reviving the Excessive Fines Clause</i> , 102 Calif. L. Rev. 277 (2014).....	48
Bradley C. Karkkainen, <i>The Police Power Revisited: Phantom Incorporation and the Roots of the Takings “Muddle,”</i> 90 Minn. L. Rev. 826 (2006).....	25
Caleb Nelson, <i>The Constitutionality of Civil Forfeiture</i> , 125 Yale L.J. 2446 (2016).....	12, 44, 47, 48
CRVRDO, <i>Decennial Census P.L. 94-171 Redistricting Data</i> , U.S. Census Bureau (Sept. 16, 2021), <a href="https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html">https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html</a> .....	5

John Rao, <i>The Other Foreclosure Crisis</i> , Nat'l Prop. Law Ctr. (July 2012), <a href="https://www.nclc.org/wp-content/uploads/2022/09/tax-lien-sales-report.pdf">https://www.nclc.org/wp-content/uploads/2022/09/tax-lien-sales-report.pdf</a> .....	14
Jurisdictional Statement, <i>Balthazar v. Mari Ltd.</i> , 396 U.S. 114 (1969), 1969 WL 136737 .....	28
Kevin Arlyck, <i>The Founders' Forfeiture</i> , 119 Colum. L. Rev. 1449 (2019).....	48
Minn. Dep't. of Rev., <i>Delinquent Tax and Tax Forfeiture Manual</i> (updated Apr. 2020).....	3, 4, 34, 43
Nicholas A. McLean, <i>Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause</i> , 40 Hastings Const. L.Q. 833 (2013).....	47
Ryan Allen, <i>What Explains the Resolution of Property Tax Delinquency Prior to Forfeiture? Evidence from Hennepin County, Minnesota</i> , 39 J. Urb. Affs. 528 (2017) .....	35, 37
Stefan B. Herpel, <i>Towards a Constitutional Kleptocracy: Civil Forfeiture in America</i> , 96 Mich. L. Rev. 1910 (1998) .....	49
U.S. Census Bureau, <i>Annual State and Local Government Finances Summary: 2020</i> (Sept. 22, 2022), <a href="https://www2.census.gov/programs-surveys/gov-finances/tables/2020/2020_alfin_summary_brief.pdf">https://www2.census.gov/programs-surveys/gov-finances/tables/2020/2020_alfin_summary_brief.pdf</a> ...	13
U.S. Census Bureau, <i>State and Local Government Finances by Level of Government and by State: 2020</i> (Sept. 20, 2022), <a href="https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html">https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html</a> .....	14
W. Elliot Brownlee, <i>Federal Taxation in America: A Short History</i> (2d ed. 2004) .....	48

**Treatises**

Blackstone’s Commentaries (St. George Tucker ed.,  
Philadelphia, William Young Birch & Abraham Small  
1803) .....15, 16

2 J. Story, Commentaries on the Constitution of the  
United States (T. Cooley ed., 4th ed. 1873) .....47

2 Thomas Cooley, A Treatise on the Law of Taxation,  
Including the Law of Local Assessments (Albert Poole  
Jacobs ed., Chicago, Callaghan & Co. 1903) (1886) .....17

George E. Osborne, Mortgages (2d ed. 1970).....21, 30

**Constitutional Provisions**

U.S. Const. amend. VIII. ....42

## **OPINIONS BELOW**

The opinion of the court of appeals is reported at 26 F.4th 789. The district court opinion is reported at 505 F. Supp. 3d 879.

## **JURISDICTION**

The judgment of the court of appeals was entered on February 16, 2022. The Court granted a timely petition for certiorari on January 13, 2023 and has jurisdiction under 28 U.S.C. § 1254(1).

## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

1. The relevant statutory provisions are Minn. Stat. chs. 272-282.

2. The Fifth Amendment provides, in relevant part:

“[N]or shall private property be taken for public use, without just compensation.”

3. The Eighth Amendment provides:

“Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.”

## STATEMENT

### A. Statutory background

1. With few exceptions, all real and personal property in Minnesota is taxable. See Minn. Stat. § 272.01. Property taxes in Minnesota become a perpetual lien on the property at the moment they are assessed. *Id.* § 272.31. If not paid within the year they are due, they become delinquent on January 1 of the following year and begin accumulating interest. *Id.* § 279.03 subd. 1.

By February 15, if the taxes remain unpaid, the property is included on the county's delinquent tax list, which includes a description of all delinquent properties, the names of the taxpayers or owners, and the total amount of taxes and penalties owed. See Minn. Stat. § 279.05. Inclusion on the tax delinquency list commences a lawsuit against each property on the list. *Ibid.* The list is published twice in local newspapers, not less than two weeks apart, and mailed to the delinquent taxpayers or those designated to receive notice. See *id.* §§ 279.09-279.091. Both the newspaper and the county auditor then file affidavits in state court attesting to the publication and mailing of notice. See *id.* §§ 279.13-279.131. If no answer is given within twenty days of filing the affidavits, the court administrator enters a judgment against the delinquent properties. *Id.* § 279.16.

2. On the second Monday in May, the county, acting on behalf of the state, purchases all properties with unsatisfied judgments against them for the sum of their delinquent taxes, penalties, costs, and interest to date. Minn. Stat. § 280.01. Title to the property then vests in the state, subject to the taxpayer's

statutory right of redemption. *Id.* § 280.41. At this point, absolute title does not yet vest in the state. Cf. *id.* § 281.18 (vesting absolute title in the state only after final forfeiture). Rather, prior to the close of the redemption period, the property owner retains legal title to the property, while the state holds a vested future interest in the property. See Minn. Dep’t. of Rev., Delinquent Tax and Tax Forfeiture Manual 68 (updated Apr. 2020) [hereinafter Delinquent Tax Manual],

<https://www.revenue.state.mn.us/delinquent-real-property-tax-and-tax-forfeiture-manual>.

3. Minnesota taxpayers are given three options to remove the property-tax lien against their property before it is forfeited to the state.

First, any person who holds a separate lien against the property—such as a mortgagee—may pay the delinquent taxes plus the interest, penalties, and costs at any point before the end of the redemption period. See Minn. Stat. § 272.44; Delinquent Tax Manual at 69. The amount paid may then be added to the unpaid balance of the mortgage and paid by the property owner according to the terms of the mortgage agreement, *e.g.*, through increased monthly payments. See Minn. Stat. § 272.44.

Second, for up to three years after the tax-judgment sale, the property owner and anyone else claiming an interest in the property may “redeem” the property for the amount it sold to the state. See Minn. Stat. §§ 281.01-281.02, 281.17. If the property is not redeemed by 120 days before the end of the period of redemption, the county auditor must notify the delinquent taxpayer and any interested parties by posting a notice of expiration in the county auditor’s office, publishing a notice for two successive weeks in

the official newspaper of the county, mailing a notice to the property, and personally serving notice to any occupants of the property. See *id.* § 281.23 subds. 1-6.

Third, property owners who cannot afford the lump-sum payment to redeem the property may make a “confession of judgment” at any point after the entry of judgment. See Minn. Stat. § 279.37. This procedure consolidates all outstanding taxes, costs, penalties, and interest into a single obligation, which can be paid out over up to ten years. *Id.* § 279.37 subd. 1. Taxpayers may take advantage of this payment plan twice for each tax judgment. See *id.* § 279.37 subd. 10.

4. If the property owner declines to exercise their right of redemption or to make a confession of judgment, the property is forfeited to the state. All taxes, penalties, costs, and special assessments on the property are cancelled, and the state receives absolute title. See Minn. Stat. §§ 281.18, 282.07. Final forfeiture may also cancel other liens on the property, such as federal income tax liens and mortgage liens. See *id.* § 282.07; Delinquent Tax Manual at 139-140.

After final forfeiture, the property owner may still apply to repurchase the property and regain legal title for the sum of all delinquent taxes, assessments, penalties, interest, and costs that accrued or would have accrued in the absence of forfeiture. See Minn. Stat. §§ 282.241-282.251. The county board may permit the repurchase sum to be paid in installments. See *id.* § 282.241.

If the property owner declines to exercise their right to apply to repurchase the property, the state then determines whether the forfeited property shall

be “retained and managed for public benefits” or sold to a private party. Minn. Stat. § 282.01. If the former, the property may be conveyed to another governmental subdivision for an “authorized public use”—such as for a road, park, or water tower—for less than market value or at no cost whatsoever. *Id.* § 282.01 subd. 1a(d)-(e).

If the property is sold to a private party, it is sold at its appraised value. Minn. Stat. § 282.01 subd. 3. Because all taxes, penalties, costs, and interest on the property are cancelled at final forfeiture, the private sale of forfeited properties may generate net proceeds. Section 282.08 provides the following distribution for such proceeds: First, expenses for any improvements or environmental cleanup that increased the appraised value of the property must be paid. See *id.* § 282.08(1)-(2). Second, any special assessments are to be reimbursed. See *id.* § 282.08(3). Third, the county board may apportion up to 30 percent of the remaining balance for forest development and up to 20 percent for the acquisition and maintenance of county parks. See *id.* § 282.08(4)(i)-(ii). Finally, “[a]ny remaining balance must be apportioned as follows: county, 40 percent; town or city, 20 percent; and school district, 40 percent.” *Id.* § 282.08(4)(iii).

5. Minnesota’s statute is comparable to property-tax delinquency regimes in peer states. In over half of all states, representing approximately 60% of the nation’s population,<sup>2</sup> property owners subject to forfeiture proceedings are at risk of losing some or all

---

<sup>2</sup> See CRVRDO, *Decennial Census P.L. 94-171 Redistricting Data*, U.S. Census Bureau (Sept. 16, 2021), <https://www.census.gov/programs-surveys/decennial-census/about/rdo/summary-files.html>.

of the surplus equity in their homes. Several states follow Minnesota's model closely, in which surplus value is either completely eliminated at final forfeiture or is paid into various state or county funds.<sup>3</sup> Other states take some but not all of the surplus or pay back the surplus only if the property is sold privately.<sup>4</sup> Still more will return the surplus only if the former property owner takes affirmative steps to claim that surplus within a certain time period.<sup>5</sup> Finally, for some states, the availability of the surplus is left to court discretion or municipal ordinance.<sup>6</sup>

#### **B. Factual background and proceedings below**

1. In 2010, petitioner Geraldine Tyler stopped paying the property taxes owed on her Minneapolis condominium. *Tyler v. Hennepin Cnty.*, 505 F. Supp. 3d 879, 883 (D. Minn. 2020). As a result, she accumulated a debt of \$15,000. *Ibid.*

To collect the debt, Hennepin County followed Minnesota's statutorily prescribed process to collect delinquent taxes. *Tyler*, 505 F. Supp. 3d at 885. First, in April 2012, the County gave petitioner notice that

---

<sup>3</sup> See, e.g., Ill. Comp. Stat. 200/21-225; Ind. Code § 6-1.1-25-9(a); La. Stat. § 47:2154; Mass. Gen. Laws ch. 60, § 64; Mich. Comp. Laws § 311.78m(8); Mont. Code § 15-17-322; N.Y. Real Prop. Tax Law § 1136(3); Ore. Rev. Stat. § 275.275.

<sup>4</sup> See, e.g., Ky. Rev. Stat. § 134-549; Nev. Rev. Stat. § 361.610; Ohio Rev. Code §§ 5721.20, 323.78.

<sup>5</sup> See, e.g., Ala. Code § 40-10-28; Ark. Code § 26-37-205(b); Cal. Rev. & Tax Code § 4675(a); Conn. Gen. Stat. § 12-157(i)(2); Ga. Code § 48-4-5; Haw. Rev. Stat. § 231-70; Miss. Code § 27-41-77; Mo. Rev. Stat. § 140.230; Okla. Stat. tit. 68, § 68-3131(C); S.C. Code § 12-51-130.

<sup>6</sup> See, e.g., Me. Rev. Stat. tit. 36, ch. 105, § 949(a); N.J. Stat. tit. 54, § 29A-60; N.C. Gen. Stat. § 105-374(q)(6); 44 R.I. Gen. Laws § 44-9-37.

her condominium was on their delinquent tax list. *Ibid.* Petitioner did not answer. Then, the County gave petitioner notice of her right to “redeem” the property during a three-year redemption period. *Ibid.* During this period, petitioner did not attempt to redeem the property by paying her debt. *Ibid.* She also did not seek a confession of judgment. *Ibid.* Because the debt remained unpaid at the end of the three-year redemption period, in July 2015 the County took absolute title to Tyler’s condominium and cancelled her tax debt (including taxes, penalties, costs, and interest). *Ibid.* When petitioner did not apply to repurchase the property by paying the debt, the County sold the property to a private party for \$40,000. *Ibid.*

Petitioner filed this action alleging that Hennepin County violated her constitutional rights when it retained the value of the condominium in excess of her \$15,000 tax debt after final forfeiture. *Tyler*, 505 F. Supp. 3d at 883. She alleged a violation of the Fifth Amendment’s Takings Clause and the Eighth Amendment’s Excessive Fines Clause. *Ibid.*

2. The district court dismissed petitioner’s case for failure to state a claim. *Tyler*, 505 F. Supp. 3d at 883. First, the court held that petitioner had no right to any surplus from property that has been lawfully forfeited to the state and sold to pay delinquent taxes. *Id.* at 894. Without such right, petitioner had no viable takings claim. *Id.* at 895. Second, the court held that Minnesota’s tax-collection scheme “bears none of the hallmarks of punishment.” *Id.* at 897. Instead, it is designed to “assist[] the government in collecting past-due property taxes and compensate[] the government for the losses caused by the non-payment of property taxes.” *Ibid.* Thus, the court

found that the statute does not impose a “fine” within the meaning of the Excessive Fines Clause. *Ibid.*

3. On appeal, the U.S. Court of Appeals for the Eight Circuit affirmed the district court’s dismissal of both of petitioner’s claims. See *Tyler v. Hennepin Cnty.*, 26 F.4th 789, 794 (8th Cir. 2022). The Eighth Circuit agreed that petitioner lacked a property interest in the surplus equity after Hennepin County lawfully foreclosed on her condominium to satisfy her tax debt. *Id.* at 792. The Eight Circuit also agreed that the county’s retention of surplus equity is not a fine for the same reasons offered by the lower court. *Id.* at 794.

## SUMMARY OF ARGUMENT

Unsatisfied with her state's generations-old, generally applicable tax laws, petitioner now asks for permission to use the Takings Clause and Excessive Fines Clause as escape hatches. Just as it has several times in the past, this Court should again reject that invitation.

**I.** It has long been established that states may tax their residents “to the utmost extent,” subject only to correction through the political process. *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 428 (1819). And forfeiture of property as a consequence of violating tax and revenue laws is equally well established. Consequently, this Court has instructed that the Takings Clause may be invoked to invalidate state taxes only where the tax is “apparently aimed at a single person” in order to force that individual to bear “the entire cost” of some local benefit. *French v. Barber Asphalt Paving Co.*, 181 U.S. 324, 344 (1901). But that is not the case here, where petitioner seeks to invalidate a law that applies equally to all Minnesotan property owners. Redress for any perceived unfairness in this generally applicable law is to be found at the ballot box, not the courthouse.

**II. A.** Even if petitioner's challenge were cognizable under the Takings Clause, black-letter property law forecloses her specific claims. For over 150 years, Minnesota has not recognized a property interest in the surplus proceeds occasionally generated by tax-forfeiture sales. That alone decides this case, for “[p]roperty interests are created and defined by state law.” *Butner v. United States*, 440 U.S. 48, 55 (1979). Minnesota has never recognized a general, common-law property right to the surplus

proceeds from a tax-forfeiture sale. And in any event, any common-law rights on which petitioner could have relied have long since been abrogated by statute. Since at least 1878 Minnesota has provided that all proceeds from tax-forfeiture sales be paid to state authorities. See Minn. Laws ch. 1, § 102 (1878); Minn. Laws ch. 386, § 8 (1935) (codified as Minn. Stat. § 282.08). Indeed, Minnesota's right to the surplus was well established before the Takings Clause was even incorporated against the states. See *Chicago Burlington and Quincy R.R. v. City of Chicago*, 166 U.S. 226, 236 (1897). Petitioner cannot now use that clause to rewind the clock.

**B.** Moreover, this Court's precedents long ago foreclosed the claims petitioner now advances. To determine whether a tax forfeiture constitutes a taking, this Court looks to the property rights provided by the relevant statute. See *United States v. Taylor*, 104 U.S. 216, 217-218 (1881); *United States v. Lawton*, 110 U.S. 146, 149-150 (1884). In *Nelson v. City of New York*, 352 U.S. 103 (1956), this Court held that "nothing in the Federal Constitution prevents" a municipality's retention of surplus proceeds from a tax-forfeiture sale "where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings," *id.* at 110. That clear holding controls the outcome in this case.

Although this Court has occasionally curtailed states' abilities to redefine property rights, it has done so only outside the context of state taxation powers and only where a state has departed dramatically from property interests "long recognized under state law." *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 167 (1998); see also *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164-165 (1980). But no

such situation is before the Court today. Minnesota's property-tax enforcement scheme is nearly as old as the state itself, and in its core features it is similar to the laws in over half the states. If petitioner finds that scheme overly harsh, "relief" should be sought from "the state legislature, and not \* \* \* the courts." *Nelson*, 352 U.S. at 111.

**III. A.** Nor can petitioner seek refuge in the Eighth Amendment. The Excessive Fines Clause is not a catch-all protection from any economic loss at the hands of the state. "Fines" are limited to those payments imposed as *punishment* for an offense. *Austin v. United States*, 509 U.S. 602, 609-610 (1993). Minnesota's tax-forfeiture scheme looks nothing like punishment.

*First*, each part of Minnesota's tax-forfeiture scheme is wholly unrelated to the "culpability" of the property owner. *Austin*, 509 U.S. at 619. For one, the scheme can result in a windfall for the taxpayer. Also, an interested party—such as a mortgagee—can lose its interest in the property under the statute, regardless of its culpability for the nonpayment. Minn. Stat. §§ 282.07, 276.041. And there is only a thin connection between the failure to pay taxes and forfeiture, in light of the many opportunities over many years to avoid that outcome. See Minn. Stat. §§ 281.01-281.02, 281.17, 279.37. Minnesota's statute thus looks little like punishment.

*Second*, the tax-forfeiture scheme can be explained by Minnesota's remedial goals of collecting unpaid taxes and returning a property to its tax-generating status. The state's losses from tax delinquency extend far beyond an individual's unpaid taxes, interest, penalties, and costs. As such, what may seem like surplus proceeds might properly be

considered remedial compensation. See *Stockwell v. United States*, 80 U.S. 531, 547 (1871). But even if the value of the property did exceed the value of the loss to the State, petitioner’s claim still fails. This Court has never imposed a rule requiring parity between the government’s estimated costs and the net proceeds from the forfeiture. See *United States v. Halper*, 490 U.S. 435, 442 (1989). More, this Court has never even imposed a narrow-tailoring requirement on the connection between surplus proceeds and a government’s tax losses.

*Finally*, unlike the civil forfeitures that have been considered “fines” by this Court, the tax-forfeiture scheme here is unconnected to the commission of a crime. See, e.g., *United States v. Bajakajian*, 524 U.S. 321 (1998); *Timbs v. Indiana*, 139 S. Ct. 682 (2019). In this respect, too, Minnesota’s statute looks unlike any “fine” this Court has seen before.

**B.** Minnesota’s tax-forfeiture scheme is also in good historical company. Its tax-forfeiture process descends from a historical tradition of civil *in rem* proceedings—proceedings which have long “occup[ie]d” a place outside the Excessive Fines Clause.” *Bajakajian*, 524 U.S. at 331. Forfeitures tied to violations of revenue statutes were commonplace pre- and post-ratification of the Eighth Amendment, see Caleb Nelson, *The Constitutionality of Civil Forfeiture*, 125 Yale L.J. 2446, 2465 (2016), providing strong evidence that such forfeitures were not considered “fines” under the Excessive Fines Clause.

Minnesota’s tax-forfeiture scheme may be frustrating for petitioner. It may even seem like bad policy. But since it is not a “fine,” the Excessive Fines Clause can offer no relief.

## ARGUMENT

### I. MINNESOTA'S TAX-FORFEITURE SCHEME IS AN EXERCISE OF THE STATE'S TAXING AND FORFEITURE POWERS, NOT ITS TAKING POWER.

1. The power of the states to levy taxes on their citizens is as broad as it is old. In *McCulloch v. Maryland*, Chief Justice Marshall wrote that the states' power to tax "is essential to the very existence of government, and may be legitimately exercised \* \* \* to the utmost extent to which the government may choose to carry it." 17 U.S. (4 Wheat.) 316, 428 (1819). Given its centrality to states' continued existence, "[t]he only security against the abuse" of the taxing power is "the structure of the government itself": an electoral mechanism that activates when "the legislature acts upon its constituents." *Ibid.* That fundamental commitment to redress through the political process has led this Court to admonish that "the modes adopted [by states] to enforce the taxes levied should be interfered with as little as possible." *Dows v. Chicago*, 78 U.S. (11 Wall.) 108, 110 (1870).

Respect for the states' taxing powers is even more paramount when it comes to property taxes. Property taxes nationally comprised over one third of state- and local-government revenues in 2020—more than any other category except taxes on sales and gross receipts.<sup>7</sup> The picture is comparable in Minnesota,

---

<sup>7</sup> U.S. Census Bureau, *Annual State and Local Government Finances Summary: 2020*, at 2 fg.2 (Sept. 22, 2022), [https://www2.census.gov/programs-surveys/gov-finances/tables/2020/2020\\_alfin\\_summary\\_brief.pdf](https://www2.census.gov/programs-surveys/gov-finances/tables/2020/2020_alfin_summary_brief.pdf).

where property taxes made up almost 30 percent of state and local tax revenue in 2020.<sup>8</sup> Efficient collection of these critical taxes is a persistent challenge for states and localities; one source has estimated that property-tax delinquencies totaled almost \$15 billion nationally in 2010.<sup>9</sup> Nonpayment of property taxes means underfunded schools, sewers, roads, and other critical public services.

Of course, if the collection of taxes violates a constitutional guarantee, such as due process, state taxation cannot be immune from constitutional scrutiny. See *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 798 (1983). But petitioner has conceded that she has received all the process she is due, in light of the multiple opportunities she was given to avoid the forfeiture of her property. See *Tyler*, 505 F. Supp. 3d at 890. Instead, petitioner challenges the *substance* of Minnesota’s tax-forfeiture scheme itself, claiming that no amount of procedure would permit the state to take what she believes is hers. See *id.* at 889. But *that* challenge, this Court has long maintained, is one properly heard in the halls of the Minnesota State Capitol, not the local federal district court. See *McCulloch*, 17 U.S. (4 Wheat.) at 428 (“The people of a state \* \* \* prescribe no limits to the exercise of [the taxing power], resting confidently on the interest of the legislator, and on the influence of the constituent over their representative, to guard

---

<sup>8</sup> U.S. Census Bureau, *State and Local Government Finances by Level of Government and by State: 2020*, tbl.1 (Sept. 20, 2022), <https://www.census.gov/data/datasets/2020/econ/local/public-use-datasets.html>.

<sup>9</sup> John Rao, *The Other Foreclosure Crisis*, Nat’l Prop. Law Ctr. 11 (July 2012), <https://www.nclc.org/wp-content/uploads/2022/09/tax-lien-sales-report.pdf>.

them against its abuse.”). Discontent with local taxation schemes rarely, if ever, presents a federal constitutional question.

The Takings Clause is no exception to this general principle. Historically, the Takings Clause aimed “to restrain the arbitrary and oppressive mode of obtaining supplies for the army, and other public uses, by impressment, as was too frequently practised during the revolutionary war.”<sup>1</sup> Blackstone’s Commentaries 305-306 (St. George Tucker ed., Philadelphia, William Young Birch & Abraham Small 1803) [hereinafter Blackstone’s Commentaries]. Consistent with that historical understanding, this Court has held that the Clause “was designed to bar 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.” *Armstrong v. United States*, 364 U.S. 40, 49 (1960). The strictures of the Takings Clause have thus been applied to the government’s exercise of eminent domain, to physical appropriations of private property, and to particularly invasive regulations of individual property. *Cedar Point Nursery v. Hassid*, 141. S. Ct. 2063, 2071-2072 (2021).

But neutral and generally applicable property-tax schemes are not takings. By definition, they force *all* eligible persons to shoulder the burden of funding the public fisc. That the burden may occasionally fall heavily on delinquent taxpayers no more raises a takings issue than does progressively taxing income or calibrating property taxes to the appraised value of one’s home. Instead, this Court has instructed that “in order to bring taxation imposed by a state \* \* \* within the scope” of the Takings Clause, there must be “no doubt that such taxation \* \* \* is

really spoliation under the guise of exerting the power to tax.” *Henderson Bridge Co. v. City of Henderson*, 173 U.S. 592, 614 (1899). That high standard is met, for instance, when a tax is “apparently aimed at a single person” in order to force them to bear “the entire cost” of some local benefit. *French v. Barber Asphalt Paving Co.*, 181 U.S. 324, 344 (1901). Otherwise, “the Federal courts ought not to interfere when what is complained of is the enforcement of the settled laws of the state applicable to all persons in like circumstances and conditions.” *Cass Farm Co. v. City of Detroit*, 181 U.S. 396, 398 (1901).

Just so: petitioner here was subject to the same tax provisions that have been applicable to every property owner in Minnesota for nearly her entire life. She cannot find refuge in the Takings Clause merely because she now finds them unfair. Cf. *A. Magnano Co. v. Hamilton*, 292 U.S. 40, 44 (1934) (holding that “a tax within the lawful power of a state” may not be invalidated “simply because its enforcement may or will result in restricting or even destroying particular occupations or businesses”).

2. Moreover, this Court has long recognized that forfeiture of property to enforce tax collection is a valid exercise of state taxing authority. “People must pay their taxes, and the government may hold citizens accountable for tax delinquency by taking their property.” *Jones v. Flowers*, 547 U.S. 220, 234 (2006); see also 3 Blackstone’s Commentaries 153 n.3 (noting that failure to pay taxes “operates as a forfeiture under our present laws” because of the “principle implied in every government, that those who enjoy property under it, shall contribute to support it.”). It was never considered a constitutional issue that forfeiture might divest the delinquent taxpayer of all

value in their property. See 2 Thomas Cooley, A Treatise on the Law of Taxation, Including the Law of Local Assessments 861-862 (Albert Poole Jacobs ed., Chicago, Callaghan & Co. 1903) (1886) (“[T]here is no imperative principle of government which requires the legislature \* \* \* to fix upon those laws which would be most for the advantage of a negligent or defaulting citizen.”). On the contrary, the first Congress routinely passed civil *in rem* forfeiture statutes requiring forfeiture of goods worth far more than the statutory violation cost the state. See pp. 46-49, *infra*. Those who ratified the Fifth and Fourteenth Amendments operated against this common-law and statutory backdrop.

Wisely, petitioner has declined to challenge the constitutionality of the forfeiture itself, instead claiming that the Takings Clause protects a right to the surplus equity of her forfeited property. See *Tyler*, 505 F. Supp. 3d at 890. But the two cannot be so easily separated. Under Minnesota law, property forfeited to the state may be used for public purposes without a sale. See Minn. Stat. § 282.01 subd. 1a(d)-(e). In such cases, any surplus equity in the home may be destroyed. Yet just as the constitutionality of tax forfeiture is beyond dispute, it has also been long established that “the law affords no remedy” for destruction of property value as a consequence of some other lawful government action. *Omnia Comm. Co. v. United States*, 261 U.S. 502, 508 (1923). Petitioner is thus in the position of claiming that the state cannot keep for itself what it has the lawful authority to destroy in the first instance. No precedent supports that bizarre conclusion.

Property owners in Minnesota are on notice that the eventual result of the persistent nonpayment of

property taxes may be forfeiture of the entire value of their property. That system helps to ensure that Minnesota collects the taxes it needs to fund vital public services. Nothing in the federal constitution forbids this effective method of tax collection.

**II. TYLER HAS NO PROPERTY INTEREST IN THE SURPLUS EQUITY OF HER HOME AND THEREFORE NO VIABLE TAKINGS CLAIM.**

Even if petitioner’s challenge to Minnesota’s longstanding property-tax scheme were properly evaluated under the Takings Clause, it fails as a matter of black-letter property law. At the root of any viable takings claim is the contention that the government has taken something that belongs to the claimant. That “something” must be a property interest recognized by state law. See *Palazzolo v. Rhode Island*, 533 U.S. 606, 626 (2001). However, neither Minnesota’s common law nor its statutes recognize a property interest in the surplus equity from a tax-forfeiture sale. Moreover, this Court has time and again declined to find a tax-forfeiture taking unless state law has explicitly created a property interest in surplus equity unlawfully withheld. If petitioner finds Minnesota’s property laws unjust, the solution is a state legislative enactment—not a request that this Court entirely rewrite its takings jurisprudence.

**A. Minnesota state law does not recognize a property interest in the surplus equity contingently generated by tax-forfeiture sales.**

It is “axiomatic” that state law defines the property interests protected by the Takings Clause. *Nollan v. Cal. Coastal Comm’n*, 483 U.S. 825, 857

(1987) (Brennan, J., dissenting); see also *Butner v. United States*, 440 U.S. 48, 55 (1979) (“Property interests are created and defined by state law.”). This axiom is no less true for real property. See *Hughes v. Washington*, 389 U.S. 290, 295 (1967). To succeed on her takings claim, petitioner must be able to show that Minnesota unambiguously recognizes a property interest in any surplus proceeds generated from a tax-forfeiture sale. This she cannot do.

1. *Minnesota’s common law does not recognize any property interest in the surplus proceeds from tax-forfeiture sales.*

For the proposition that Minnesota’s common law has ever supported a property interest in the surplus proceeds from a tax-forfeiture sale, petitioner relies primarily on *Farnham v. Jones*, 19 N.W. 83 (Minn. 1884). In that case, the Minnesota Supreme Court interpreted an 1881 Minnesota statute that governed tax-forfeiture sales of properties that were delinquent in 1879 or earlier. The provision governing distribution of the proceeds was sparsely worded, providing only that those proceeds “shall be distributed to the several funds for which the taxes were levied.” Minn. Laws ch. 135, § 8 (1881). In light of the statute’s ambiguity, the Minnesota Supreme Court interpreted the statute to require the return of any surplus to the original property owner. See *Farnham*, 19 N.W. at 85. The court noted that the statute “evidently proceeded upon the theory that owners had rights and interests remaining which it was intended to recognize and protect, notwithstanding the stringent provisions of the act.” *Id.* at 84. Those provisions—and, in particular, the statute’s command that delinquent properties be sold “in distinct parcels”—were designed to maximize the

price received for the properties, a move that “was doubtless intended for the benefit of the land-owner.” *Id.* at 85. This overall statutory scheme led the court to conclude that the statute permitted “any surplus realized from the sale \* \* \* to revert to the owner.” *Ibid.*

It is true that, in stray language, the court wrote that “the right to the surplus exists independently” of any statutory provision. *Farnham*, 19 N.W. at 85. Yet the court cited to no authority for that proposition. More to the point, the basis for the court’s holding was the structure and purpose of the 1881 statute, not some robust common-law right previously unidentified in Minnesota case law. As the district court below correctly recognized, for the *Farnham* court the “separate-sale provision implied that the legislature intended to recognize and protect former property owners’ rights and interests in the surplus.” *Tyler*, 505 F. Supp. 3d at 894. And, indeed, the Minnesota Supreme Court would later construe the 1881 act as a one-off anomaly, a “sort of general clearing-up tax sale,” which “proceeded upon the theory that the state waived all rights under any prior sales or forfeitures, and recognized the owners as still having rights in the lands.” *Taxes in Hennepin Cnty. v. Baldwin*, 65 N.W. 80, 82 (Minn. 1895); accord *Mulvey v. Tozer*, 42 N.W. 387, 388 (Minn. 1889). Far from affirming that *Farnham* recognized a common-law property right to surplus equity, these cases make clear that any such right was a function of the unique circumstances of the 1881 act.

Petitioner also cannot rely on a general equity right in other areas of Minnesota law to claim that this right exists against the state during tax-forfeiture proceedings. For instance, property owners in

Minnesota of course possess a right to the surplus proceeds from a *mortgage*-foreclosure sale. See, *e.g.*, *Perkins v. Stewart*, 77 N.W. 434, 435 (Minn. 1898). But the development of equitable title in the mortgage context is not relevant to a property owner's rights against the state during *tax*-forfeiture proceedings. In Minnesota, a mortgage is considered a contract between two private parties, which in turn governs the proceeds from any foreclosure sale. See *Bailey v. Merritt*, 7 Minn. 159, 162 (1862). Minnesotan mortgages are liens against the property, in which "ownership [is] in the mortgagor" both in equity and at law, while the interest of the mortgagee is "only a security interest." George E. Osborne, *Mortgages* § 127, at 207-208 (2d ed. 1970); see Minn. Stat. § 559.17 ("A mortgage of real property is not to be deemed a conveyance \* \* \*."). The right of the mortgagor to the surplus proceeds from a foreclosure sale is thus entirely dependent on the fact that, under Minnesota law, the mortgagor always retains both legal and equitable title to the property. That right simply does not exist where—as in the tax-forfeiture context—absolute title to the property vests in the state. See Minn. Stat. § 281.18.

More importantly, the right to the surplus in a mortgage-foreclosure sale is now regulated by statute, which specifies that any surplus from a foreclosure sale "shall be brought into court for the benefit of the mortgagor." Minn. Stat. § 581.06. Minnesota statutory law thus quite clearly treats the surplus from mortgage-foreclosure sales separately from the surplus from tax-forfeiture sales. Cf. *id.* § 282.08. Other states, to the contrary, explicitly tie them together. See, *e.g.*, Neb. Rev. Stat. § 77-1916; N.D. Cent. Code § 57-22-04; Vt. Stat. tit. 32, § 5061(b).

These provisions prove the point: there is no free-floating common-law right to surplus proceeds generally. Rather, each property interest must be separately provided for by statute or case law specific to each situation.

2. *Regardless of any common-law property right to surplus proceeds, Minnesota's tax-forfeiture statutes long ago abrogated any such interest.*

Even if Minnesota did recognize a common-law property interest in surplus equity during tax-forfeiture proceedings—which it does not—the legislature is entitled to abrogate that interest by statute. See *Burt v. Rackner, Inc*, 902 N.W.2d 448, 453 (Minn. 2017).

There is no doubt that Minnesota has statutorily foreclosed any property interest in the surplus value generated by a tax-forfeiture sale. After forfeiture, absolute title to the property vests in the state. See Minn. Stat. § 281.18. The statute then details exhaustively how the proceeds from a tax-forfeiture sale must be spent. As relevant here, “[a]ny remaining balance” after covering various expenses must be apportioned 40 percent to the county, 20 percent to the town or city, and 40 percent to the school district. *Id.* § 282.08(4)(iii). The arithmetic leaves not a single dollar left for the former owner. This result is unsurprising, since Minnesota permits the public use of tax-forfeited property without a sale. See *id.* § 282.01 subd. 1a(e). Under Minnesota’s statutory scheme, therefore, surplus value is either destroyed through public conveyance or retained following a sale. In neither case does the original owner retain a property right to that surplus.

As the court below recognized, Section 282.08 is a codification of a statute passed almost ninety years ago, see Minn. Laws ch. 386, § 8 (1935), which has since been amended twenty-one times. During that period, no Minnesota court has interpreted the provision to provide former owners a property interest in the surplus proceeds from the sale of their forfeited property.

In fact, the relevant history long predates the 1935 language codified as Section 282.08. For almost 150 years Minnesota has not recognized a general property interest in the surplus equity of tax-forfeited property. As previously explained, the statute in *Farnham* governed only tax sales of properties delinquent during or before 1879. See Minn. Laws ch. 135, § 1 (1881). All *later* delinquencies were governed at the time by a separate statute: chapter 1 of the 1878 Minnesota Laws. See *Mulvey*, 42 N.W. at 388 (“This [1881] act does not purport to be in itself a complete code of procedure, but adopts, in the main, that of the general tax law.”). In that general tax statute, the Minnesota legislature was more much more explicit that surplus proceeds from a tax-forfeiture sale were to go to the state. The law provided that “[t]he proceeds of all lands or lots sold \* \* \* for a sum equal to, or exceeding the amount of taxes due thereon, shall be distributed the same as other collections of taxes.” Minn. Laws ch. 1, § 102 (1878) (emphasis added). Thus, when *Farnham* was decided, properties that had become delinquent on or before 1879 were governed by one set of rules—the 1881 statute—while all other properties were subject to a different set of rules, in which the surplus was to go to the state.

Moreover, the year after the *Farnham* decision was released, the Minnesota legislature amended the

relevant section of the 1881 statute, adding a proviso that permitted “the party entitled thereto” to apply to receive “any money paid \* \* \* in excess of the amount due.” Minn. Laws ch. 122 (1885). Thus, the *Farnham* court’s interpretation of the backwards-looking 1881 statute was statutorily superseded and ratified just a year later. Crucially, however, no such proviso was added to the 1878 law that governed delinquencies generally.

Seen in this light, the 1881 statute is the exception, not the rule. Instead, the general rule laid out in 1878—almost 150 years before petitioner commenced the present suit—was that surplus proceeds from tax-forfeiture sales were to go to the state. Indeed, that understanding was operative when the Takings Clause was incorporated against the states, see *City of Chicago*, 166 U.S. at 236, and thus was a restriction that “inhere[d]” in all titles to property in Minnesota when the state became newly subject to the Taking Clause’s demands. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1029 (1992).

Minnesota has never deviated from that “background principle.” *Lucas*, 505 U.S. at 1029. In 1902, the Minnesota legislature passed a comprehensive revision of the state’s scheme for the enforcement of property taxes. See Minn. Laws ch. 2 (1902) (later codified in the 1905 Revised Laws). Under that scheme, when the state sold property that had been forfeited absolutely, the money owed to the state would be “paid to the state treasurer,” and “the excess” above the taxes, interest, and costs would be “paid in like manner for the benefit of the state.” 1905 Minn. Rev. Laws § 939. Compare 1905 Minn. Rev. Laws § 4491 (providing that surplus from *mortgage-foreclosure* sales be paid “for the benefit of the

mortgagor”), with *id.* § 939 (providing that *tax-forfeiture* surplus be paid “for the benefit of the state”). Then, in 1927, the legislature again revised its property-tax enforcement scheme, providing that any property “bid in” by the state at a tax-judgment sale would, after five years, become the “absolute property” of the state, held in trust for the taxing districts. 1927 Mason’s Minn. Stat. § 2139-2. The state was then entitled to sell that property, with the proceeds “distributed” to the taxing districts according to the relevant proportions of taxes owed to them. *Id.* § 2139-4; see also *id.* § 2139. Not ten years later, the legislature would specify that “[a]ny balance remaining” from such a sale was to be distributed to the state (10 percent); county (30 percent); township, village, or city (20 percent); and school district (40 percent). Minn. Laws ch. 386, § 8 (1935). That provision was later codified, as amended, as Section 282.08.

Minnesota’s legislative tinkering with its system of property-tax collection is a feature, not a bug, of our federal system of property law. See Bradley C. Karkkainen, *The Police Power Revisited: Phantom Incorporation and the Roots of the Takings “Muddle,”* 90 Minn. L. Rev. 826, 835 (2006) (“We should expect property rights in our federal system to be both dynamic and divergent, as state legislatures and courts create new property rules or extend, trim, or modify old ones.”). Where Minnesota felt it proper to refund surplus proceeds, in targeted cases, it has done so. See, e.g., Minn. Special Laws ch. 18, § 4 (1864) (refunding surplus proceeds in the city of St. Anthony). Mostly, however, the state has repeatedly declined to recognize that right. In light of Minnesota’s careful adjustments to its property-tax

code, this Court should be especially skeptical of claims that any common-law rights to surplus have not long since been abrogated by statute. And despite this evolving regulatory backdrop, Section 282.08 embodies a settled understanding of the state's property law that has existed nearly as long as the state itself.

**B. Long-settled precedent from this Court forecloses Tyler’s claim.**

1. Petitioner’s claim further founders on the rocks of this Court’s own longstanding precedents. In an early pair of cases, this Court was confronted with suits against the United States for the recovery of proceeds from the tax sales of certain properties. See *United States v. Taylor*, 104 U.S. 216 (1881); *United States v. Lawton*, 110 U.S. 146 (1884). In each case, to determine whether the claimants were entitled to the proceeds, the Court looked not to some general common-law right to surplus proceeds, but to whether the federal statutes in question provided for the return of the surplus. See *Taylor*, 104 U.S. at 217-218; *Lawton*, 110 U.S. at 149-150. Only then did the Court recognize that the claimants had a property right to that surplus. *Ibid.*

That approach was ratified several decades later in *Nelson v. City of New York*, 352 U.S. 103 (1956). There, the petitioner had brought suit to recover the excess proceeds from a tax-foreclosure sale in the City of New York. See *id.* at 105-106. After satisfying itself that the City’s foreclosure process met the demands of procedural due process, see *id.* at 107-109, the Court held squarely that “nothing in the Federal Constitution prevents” a municipality’s retention of the surplus proceeds “where the record shows adequate steps were taken to notify the owners of the charges due and the foreclosure proceedings,” *id.* at 110.

*Nelson* is on all fours with this case. Petitioner has made much of the fact that the *Nelson* Court observed that the New York City code provision at issue did not “absolutely preclude[]” the recovery of surplus, as long as the property owner timely invoked

the necessary procedures. *Nelson*, 352 U.S. at 110. But that passing observation has no constitutional significance. First, the right to compensation under the Takings Clause—when properly at issue—cannot be evaded simply because the property owners failed to request compensation after the taking. The Clause mandates compensation *whenever* there is a taking, not just when aggrieved parties request it. See *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 322 (2002) (“When the government physically takes possession of an interest in property for some public purpose, it has a categorical duty to compensate the former owner \* \* \* .”). If the property owner in *Nelson* were constitutionally entitled to the surplus proceeds from the tax-forfeiture sale, her failure to avail herself of the statutory mechanism for claiming those proceeds could not have barred her from receiving compensation.

More to the point, even if an avenue to surplus recovery (whether used or not) were constitutionally relevant, Minnesota’s statutory scheme—like that in *Nelson*—does not preclude the recovery of surplus. Minnesotan property owners need only sell the property themselves, which they are permitted to do at any point prior to the final forfeiture. See *Tyler*, 26 F.4th at 793-794. Minnesota’s statute and the New York City code provision in *Nelson* are therefore functionally identical in granting taxpayers opportunities to retain the surplus value of their properties. “That Minnesota law required Tyler to do the work of arranging a sale in order to retain the surplus is not constitutionally significant.” *Id.* at 794. The Takings Clause does not require states to provide a real-estate service for delinquent taxpayers.

Indeed, not long after *Nelson*, this Court indicated that the language petitioner has highlighted is a distinction without constitutional difference. In *Balthazar v. Mari Ltd.*, 301 F. Supp. 103 (N.D. Ill. 1969), a three-judge district court relied on *Nelson* to uphold the constitutionality of an Illinois tax-delinquency statute that permitted the purchase of tax-forfeited property at a “fraction of its market value,” thus taking the surplus from the original owners, *id.* at 105. The panel specifically pointed out that delinquent taxpayers could “protect their investments” by selling the properties themselves, *id.* at 106, just as Minnesota’s statutes currently permit. Even though taxpayers who failed to do so irrevocably lost any surplus value in their delinquent properties, this Court upheld the three-judge court’s judgment in a summary affirmance. See *Balthazar v. Mari Ltd.*, 396 U.S. 114 (1969). A few years later, the same statute was challenged again for substantially similar reasons; again it was upheld by a three-judge court; and again this Court affirmed that judgment. See *Catoor v. Blair*, 358 F. Supp. 815 (N.D. Ill.), *aff’d*, 414 U.S. 990 (1973).

Although “a summary disposition affirms only the judgment of the court below,” *Anderson v. Celebrezze*, 460 U.S. 780, 785 n.5 (1983), this Court has nonetheless clarified that it functions “without doubt” to “reject the specific challenges presented in the statement of jurisdiction.” *Mandel v. Bradley*, 432 U.S. 173, 176 (1977). The plaintiffs in *Balthazar* had contended in their jurisdictional statement that the district-court had misapplied *Nelson* by failing to observe the distinction between a statute that permits the recovery of surplus after a forfeiture and one that does not. See Jurisdictional Statement at 6,

*Balthazar*, 396 U.S. 114, 1969 WL 136737. Yet that attempt to draw a clear constitutional line was rejected by this Court—not once, but twice. It would be passing strange for this Court to have summarily affirmed both *Balthazar* and *Catoor* if those cases had presented the pressing constitutional question that petitioner claims was reserved in *Nelson*.

2. Moreover, Section 282.08 is not the type of state redefinition of traditional property rights that this Court has occasionally held constitutes a taking. It is true that this Court has been wary of avulsive changes to longstanding state property interests. In *Webb’s Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), for instance, this Court held that a recently passed Florida statute appropriating the interest accrued on private funds deposited in an interpleader account was a taking. See *id.* at 164-165. In that case—unlike here—the Court observed that the creditors “had a *state-created property right* to their respective portions of the fund” on which the interest was earned. *Id.* at 161 (emphasis added). Moreover, because the court’s deposit services were already reimbursed by a separate fee, the court clerk was unable to demonstrate that the taking of the interest was pursuant to a “police power justification.” *Id.* at 164. Under those “narrow circumstances”—*i.e.*, state appropriation of the interest on “concededly private” funds deposited temporarily with the state for the resolution of claims between private parties—the Court held that a taking occurred. *Ibid.*

The *Webb’s* Court’s dicta that “a State, by *ipse dixit*, may not transform private property into public property without compensation,” *Webb’s*, 449 U.S. at 164, must be understood in the unique context of that case. Indeed, in *Phillips v. Washington Legal*

*Foundation*, 524 U.S. 156 (1998), this Court relied on *Webb's* to hold in a 5-4 decision that the interest that accrued on funds deposited by an attorney in a client trust account was likewise private property subject to the Takings Clause. See *Phillips*, 524 U.S. at 166-167. The Court explained the results in both *Webb's* and *Phillips* by articulating the principle that “a State may not sidestep the Takings Clause by disavowing traditional property interests *long recognized under state law.*” *Id.* at 167 (emphasis added). In *Webb's*, the Florida legislature had only recently abrogated the traditional rule that interest follows the principal. See *Webb's*, 449 U.S. at 156 n.1 (law was passed in 1973). And in *Phillips*, the Court indicated that departures from traditional property rights were permissible when they had a long “historical pedigree” in state law. *Phillips*, 524 U.S. at 168.

Those situations are a far cry from what the Court confronts today: a tax-forfeiture scheme that, in the main, dates back to just twenty years after the state's founding. Whatever are the limits of a state's power to redefine property rights—and the Court in *Webb's* and *Phillips* identified two specific instances of those limits—they surely do not prevent states from enforcing, through their extremely broad taxation powers, an understanding of property rights that predates the incorporation of the Takings Clause itself.

Moreover, invalidating Minnesota's judgment of which property interests to recognize would be a gross invasion of the state's sovereign power. See U.S. Const. amend. X. It would also be perverse: the common-law equity right on which petitioner's argument hangs was *itself* the product of a gradual evolution in property rights prompted by the courts of

equity. See Osborne, *Mortgages* § 7, at 15-16. Petitioner is not entitled to—and the Constitution does not require this Court to accept—only those changes in property rights that occurred three centuries ago. That judgment would freeze the law of property in the eighteenth century, abrogating state sovereignty and dampening local innovation. See Abraham Bell & Gideon Parchomovsky, *Of Property and Federalism*, 115 *Yale L.J.* 72, 75 (2005) (“American property law may \* \* \* be viewed as a giant laboratory in which states vie to develop the most efficient property regime.”).

In short, neither *Webb’s* nor *Phillips* disavowed the fundamental rule that “the existence of a property interest is determined by reference to \* \* \* state law.” *Phillips*, 524 U.S. at 164 (internal quotation marks omitted). That axiom refers, of course, to the law of the state where the property interest is claimed—here, Minnesota’s property law. But even if the laws of the several states are the relevant constitutional baseline, Minnesota is in good company. Over half of all states currently require property owners to take some affirmative action in order to claim the surplus proceeds from tax-forfeiture sales—whether that means filing a claim within a certain time period or arranging for the sale themselves. See pp. 5-6, *supra*. Compare, *e.g.*, Conn. Gen. Stat. § 12-157(i)(2) (requiring the surplus to be claimed within 90 days), with Mont. Code. § 15-17-322 (requiring property-owner to arrange the sale themselves if they wish to claim the surplus). And in over a fifth of all states, property owners who fail to arrange the sale themselves lose all or part of their equity. See pp. 5-6 notes 2-3, *supra*. The rule that petitioner prefers as a matter of policy—automatic return of the surplus—is

thus far from “firmly embedded” in the “law of the various States.” *Phillips*, 524 U.S. at 165.

At root, what petitioner seeks from this Court is a revolution in its takings jurisprudence over a disagreement with her state’s tax policy. But relief from tax statutes—even harsh ones—is to be sought through the normal political process. See *Nelson*, 352 U.S. at 111 (“[R]elief from the hardship imposed by a state statute is the responsibility of the state legislature and not of the courts \* \* \* .”). That process is exactly what is playing out in Minnesota right now, where two bills have been introduced to recognize a right to surplus proceeds following tax forfeitures. See H.F. No. 1929 (introduced Feb. 16, 2023); S.F. No. 1109 (introduced Feb. 2, 2023). Unless and until those bills become law, however, Minnesota’s sovereign prerogative to design an effective property-tax regime “should be interfered with as little as possible.” *Dows*, 78 U.S. (11 Wall.) at 110.

### **III. MINNESOTA’S TAX-FORFEITURE SCHEME IS NOT A “FINE” SUBJECT TO THE EXCESSIVE FINES CLAUSE.**

The Excessive Fines Clause is not a catch-all restriction on all payments made to the state. The clause limits only forfeitures made to the state as *punishment* for an offense. The district court correctly held that the tax forfeiture here “bears none of the hallmarks of punishment.” *Tyler*, 505 F. Supp. 3d at 896. First, forfeiture—both whether it occurs and the value of any associated loss—is unconnected to the “culpability” of the property owner and thus serves no punitive purpose. Second, each step of Minnesota’s detailed tax-forfeiture scheme is motivated by a remedial purpose: to collect tax debts and return properties to a tax-generative status. Finally, a

connection to criminal activity—the defining feature of all other “fines” this Court considered before—is wholly absent in Minnesota’s tax-forfeiture scheme.

As a historical matter, too, Minnesota’s tax-forfeiture scheme descends from a longstanding tradition of civil *in rem* forfeitures. Since the Founding, these *in rem* forfeitures have been considered nonpunitive. In addition, forfeitures tied to revenue statutes were commonplace pre- and post-ratification of the Eighth Amendment, providing additional evidence that such forfeitures were not considered “fines.” Thus, nothing related to the tax forfeiture is a “fine” subject to the Excessive Fines Clause.

**A. The tax-forfeiture scheme is not a “fine” because it does not serve as punishment.**

Civil forfeitures are “fines” under the Excessive Fines Clause only when they punish someone for an offense. “At the time the Constitution was adopted, the word ‘fine’ was understood to mean a payment to a sovereign as punishment for some offense.” *United States v. Bajakajian*, 524 U.S. 321, 327 (1998). Thus, the Excessive Fines Clause “limits the government’s power to extract payments \* \* \* as *punishment* for some offense,” not for any other purpose. *Austin v. United States*, 509 U.S. 602, 609-610 (1993). Whether a proceeding is civil or criminal, to be a “fine,” the forfeiture must serve in part to punish “the offender himself” for an offense. *Bajakajian*, 524 U.S. at 330.

1. *The tax-forfeiture scheme is unconnected to any culpability of the property owner.*

Minnesota’s tax-forfeiture scheme is unconnected to any “culpability” of the taxpayer and

thus cannot serve to punish her. *Austin*, 509 U.S. at 619.

First, Minnesota’s tax-forfeiture scheme can generate a windfall for the taxpayer, an outcome inconsistent with the “retributive or deterrent purposes” that define punishment. *Austin*, 509 U.S. at 610. Even when the “value of the property that is forfeited is less than the amount of taxes owed,” the entire tax debt, including the excess debt, is forgiven upon final forfeiture. *Tyler*, 505 F. Supp. 3d at 896. Final forfeiture can also cancel other liens against the property held by other parties. *Id.* at 884; see Minn. Stat. § 282.07; Delinquent Tax Manual at 138-141. Taxpayers may therefore benefit from the forfeiture.

Second, any interested parties in the property—such as mortgagees, lienholders, or lessees—also lose their interest in the property at final forfeiture. See Minn. Stat. §§ 282.07, 276.041. This loss incurs *regardless* of the interested party’s culpability for the nonpayment. For example, at the end of the redemption period, a mortgage lien would be forfeited along with the property owner’s title. See Delinquent Tax Manual at 140. In such cases, the mortgagee would lose its interest in the property, even though it had no responsibility to pay the property tax in the first place. In *Austin*, the narrow focus of the forfeiture provision “only upon those who are significantly involved in a criminal enterprise” demonstrated that the statute was focused on “culpability of the owner” as required for punishment. See *Austin*, 509 U.S. at 619; *id.* at 625 (Scalia, J., concurring) (concurring in the judgment that the statute was punishment on the limited grounds that it required the owner to have some culpability for the “guilty” property); see also *Bajakajian*, 524 U.S. at

322 (observing that the statutory forfeiture at issue could not be imposed on an innocent owner). But such an “innocent owner” defense is entirely absent here. As long as a debt remains unpaid at the end of the redemption period, final forfeiture occurs, and any interested party loses its interest.

Relatedly, an individual’s failure to pay property taxes is only weakly connected to final forfeiture of the property. Individuals who fail to pay their taxes do not immediately or invariably lose their property. Indeed, even after a property is put on the delinquent-tax list, the taxpayer has multiple opportunities to avoid the forfeiture and any associated loss in surplus. See pp. 2-6, *supra*; Minn. Stat. §§ 281.01, 281.17, 279.37. Even after final forfeiture, the taxpayer has an opportunity to repurchase her property. *Id.* §§ 282.241-282.251. Unsurprisingly, then, in Hennepin County, “the vast majority of tax-delinquent properties are redeemed within two to three years and ultimately few properties are forfeited to the state.” Ryan Allen, *What Explains the Resolution of Property Tax Delinquency Prior to Forfeiture? Evidence from Hennepin County, Minnesota*, 39 J. Urb. Affs. 528, 530 (2017). Had Minnesota’s purpose been to punish delinquent taxpayers, it is unlikely to have offered them so many opportunities—over multiple years—to avoid potential loss. Its defining goal is instead to recover its tax debts and continue collecting property taxes on a property.

Minnesota further allows any interested party—such as a mortgagee—to “redeem” the property during the redemption period. Minn. Stat. § 272.44; Delinquent Tax Manual at 69. In such cases, the taxpayer would not lose any surplus proceeds,

even if the mortgagee foreclosed on the property. See, e.g., *Perkins v. Stewart*, 77 N.W. 434, 435 (Minn. 1898). Thus, final forfeiture—and any associated loss in surplus proceeds—may turn on the mortgagee’s decision to redeem the property, not on any action of the taxpayer. Forfeiture is consequently best understood as a last resort measure to recover taxable property, not as punishment imposed on a taxpayer for her failure to pay taxes.

Taken as a whole, Minnesota’s tax-forfeiture statute—providing no “innocent owner” defense and multiple options to satisfy one’s debt following delinquency—does not focus on the “culpability” of the taxpayer. It is therefore not punishment—and, *ipso facto*, not a “fine” within the meaning of the Eighth Amendment.

2. *The tax-forfeiture scheme can be explained by the remedial purposes of collecting unpaid debt and returning property to a tax-generating status.*

1. Minnesota’s tax-forfeiture scheme serves a fully remedial purpose: “assisting the government in collecting past-due property taxes and compensating the government for the losses caused by the non-payment of property taxes.” *Tyler*, 505 F. Supp. 3d at 896.

A forfeiture is “remedial” when it, for example, removes dangerous or illegal items from society or compensates the government for a loss. See *Austin*, 509 U.S. at 610. Minnesota’s tax forfeiture is designed to achieve similar remedial purposes: to remove an unproductive property from society so that it can generate taxes again and to compensate Minnesota for its losses due to tax delinquency.

Petitioner makes much of the fact that the value of the tax-forfeited property may eclipse the value of unpaid taxes, penalties, costs, and interest—what she mistakenly assumes is the only loss for which Minnesota needs compensation. But these costs underestimate the extent to which Minnesota’s interests in collecting property taxes are undermined by tax delinquency. Indeed, tax-delinquent properties have a significant and negative impact on the value of nearby homes. *Allen*, 39 J. Urb. Affs. at 539. This “contagion effect of tax delinquency on property values” results in a “reduced tax based for cities” for which compensation is due. *Ibid.* On this ground alone, recovery in excess of the costs petitioner describes is consistent with a remedial purpose.

Indeed, the very funds to which surplus proceeds are first disbursed relate to improving property values. The surplus proceeds, first, go toward expenses for improvements or cleanup that increased the appraised value of the property. See Minn. Stat. § 282.08(1)-(2). Any remaining proceeds then go to reimbursing special assessments—taxes levied to pay for specific local infrastructure projects. See *id.* § 282.08(3). Far from revealing a punitive purpose, such statutory provisions are evidence of Minnesota’s remedial goals.

Persistent tax delinquency also risks effectively removing a property from Minnesota’s tax base, a possibility for which Minnesota can seek compensation. Even with the option for final forfeiture, Minnesota may be unable to resell the tax-forfeited property. After all, many forfeited properties are abandoned properties that have not been maintained. See *Allen*, 39 J. Urb. Affs. at 531. Thus, when a taxpayer fails to or cannot pay her property

taxes to the point of final forfeiture, Minnesota experiences both the loss petitioner points to and a risk that the property will fail to generate property taxes in the future. The potential loss of prospective property taxes is proportional to the amount forfeited—namely, the property’s value. As such, the forfeiture can hardly be criticized as having “absolutely no correlation to any damages sustained by society or to the cost of enforcing the law.” *United States v. Ward*, 448 U.S. 242, 254 (1980).

2. Even if the value of the forfeited property did exceed Minnesota’s losses, the surplus still wouldn’t imply—as petitioner mistakenly assumes—a punitive purpose. The Court has cautioned that “a civil remedy does not rise to the level of ‘punishment’ merely because [the legislature] provided for civil recovery in excess of [the state’s] actual damages.” *United States v. Ursery*, 518 U.S. 267, 280 (1996). Rather, *United States v. Halper*—the case on which *Austin* relies—simply suggests “the possibility that in a particular case a civil penalty \* \* \* may be so extreme and so divorced” from “actual damages and expenses to constitute prohibited punishment.” *United States v. Halper*, 490 U.S. 435, 442 (1989). In *Halper*, the authorized recovery was 220 times the estimated sum of the government’s losses, raising the inference that the civil proceeding was punishment. *Halper*, 490 U.S. at 439. Here, by contrast, the surplus proceeds, \$25,000, are not even twice the value of the tax debt, \$15,000. *Tyler*, 505 F. Supp. 3d at 883. Petitioner offers no suggestion that in all—or even most—instances of final forfeiture the surplus proceeds are so divorced from costs that they constitute punishment, as in *Halper*.

If anything, the lack of correlation between the surplus proceeds and the underlying debt would make the statute look less, not more, like punishment. See *Austin*, 509 U.S. at 619. After all, if the alleged “fine”—the loss of surplus proceeds—were punishment for tax delinquency, one would expect the fine to increase with the underlying debt, not the opposite. Cf. *Stockwell v. United States*, 80 U.S. 531, 547 (1871) (holding that because “the amount recoverable is in proportion to the value of the goods,” and not “in proportion to the degree of criminality of the act,” the act “must therefore be considered remedial”).

3. Petitioner also mistakenly points to the existence of surplus proceeds as proof of punishment because it has a deterrent effect on tax delinquency. To be sure, when the value of a tax-forfeited property exceeds the underlying debt, taxpayers could be deterred from continuing delinquency. Petitioner, relying on *Austin*, argues that deterrence is dispositive evidence of a punitive scheme. But this reliance is misplaced. It is true that *Austin* characterized “fines” as sanctions that “can only be explained as also serving either retributive or deterrent purposes.” *Austin*, 509 U.S. at 610; see also *Halper*, 490 U.S. at 448. But four years after *Austin*, in *Hudson v. United States*, 522 U.S. 93 (1997), this Court deemed that test for punishment “unworkable,” *id.* at 102. The *Hudson* Court recognized that “all civil penalties have some deterrent effect” but that not all civil penalties are punishment. *Ibid.*; see also *Dep’t of Revenue of Mont. v. Kurth Ranch*, 511 U.S. 767, 777 (1994) (“We begin by noting that neither a high rate of taxation nor an obvious deterrent purpose automatically marks this tax as a form of

punishment.”). If a forfeiture must be *entirely nondeterrent* to not be punishment, and if all forfeitures naturally have some deterrent effect, then no forfeiture could ever be beyond the scope of “punishment.” *Austin*’s distinction between punitive and non-punitive forfeitures would then be vacuous.

*Hudson* thus refined *Austin*’s sweeping claim about deterrence in two ways. First, it considered deterrence as just one guidepost among many in evaluating whether a civil remedy was punishment. And second, it distinguished between deterrence that serves civil goals and deterrence that serves criminal goals. See *Hudson*, 522 U.S. at 99, 105; see also *Bennis v. Michigan*, 516 U.S. 442, 451 (1996) (“[F]orfeiture \* \* \* serves a deterrent purpose distinct from any punitive purpose.”). In sum, the prospect of final forfeiture may naturally deter tax delinquency—but acknowledging this inevitable reality is distinct from using the tool of final forfeiture for the express purpose of deterring a resident’s tax delinquency.

4. Precedent also counsels against automatically finding a punitive purpose when there are surplus proceeds. As early as 1871, this Court recognized that statutes requiring payments in excess of a government’s immediate costs can be remedial. See *Stockwell*, 80 U.S. at 531 (interpreting a customs statute involving full forfeiture of illegally imported goods and a sum of double the goods’ value). In *Stockwell*, the Court expressly disclaimed that a statute is any less remedial “because the liability of the wrongdoer is measured by double the value of the goods \* \* \* instead of their single value.” *Id.* at 547. As long as the customs statute’s purpose “was to secure full compensation for interference with the rights of the United States,” it “must be considered as

remedial, as providing indemnity for loss.” *Id.* at 547, 551; see also *Bajakajian*, 524 U.S. at 342 (affirming *Stockwell*). Thus, the existence of surplus does not transform Minnesota’s statutory scheme into punishment.

Above all, this Court has never imposed any sort of narrow-tailoring requirement between a forfeiture and its remedial objectives. See, e.g., *Halper*, 490 U.S. at 449 (requiring only a “rational relation” to the goal of compensating a government for its loss); see also *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 169 (1963) (considering whether there is “an alternative purpose [instead of punishment] to which [the civil proceeding] may rationally be connected”). Minnesota’s tax-forfeiture statute is nonetheless carefully crafted to help its counties collect unpaid debts, recover costs, rehabilitate their tax base, and return properties to a productive, tax-generative status. Its provisions can be fully explained by a remedial purpose, so it is not subject to the Excessive Fines Clause.

3. *Unlike the civil forfeitures that have been considered punishment, the forfeiture here is not tied to any criminal activity.*

Even further, Minnesota’s tax-forfeiture statute is missing the principal hallmark of punishment in this court’s Excessive Fines Clause jurisprudence: a tie to the commission of a crime. Although the form of proceeding need not be criminal, this Court has only ever applied the Excessive Fines Clause to a civil forfeiture when a proceeding involved or was adjacent to someone’s commission of a crime. See *Bajakajian*, 524 U.S. 321 (applying the Excessive Fines Clause to a forfeiture ordered as a sanction for someone’s criminal activity); *Alexander v. United States*, 509

U.S. 544 (1993) (same); *Timbs*, 139 S. Ct. 682 (involving a civil action brought after the property owner already been convicted of a crime); *Austin*, 509 U.S. 602 (same).

The connection to a criminal offense in all these cases is no accident. Tying “forfeiture directly to the commission” of a crime provides a “clear focus” on the “culpability of the owner,” as required to punish someone for an offense. *Austin*, 509 U.S. at 620-622; see also *Bajakajian*, 524 U.S. at 328 (concluding, with “little trouble,” that a statutory forfeiture was punishment because it is “imposed at the culmination of a criminal proceeding and requires conviction of an underlying felony”).

The text of the Eighth Amendment further suggests that the Excessive Fines Clause is tied to the criminal-law function of government. The Eighth Amendment provides that “[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.” U.S. Const. amend. VIII. “Taken together, these Clauses place parallel limitations on the power of those entrusted with the criminal-law function of government.” *Timbs*, 139 S. Ct. at 687; see also *Ingraham v. Wright*, 430 U.S. 650, 664 (1977) (“Bail, fines, and punishment traditionally have been associated with the criminal process.”); *Browning-Ferris Industries of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 275 (1989) (“[T]he text of the Amendment points to an intent to deal only with the prosecutorial powers of government.”).

Nineteenth-century practice also confirms that fines have a criminal-law nexus. As Justice Story explained, unlike forfeitures annexed to an offense with no mode of prosecution prescribed, the word “fine” “almost invariably applied to the act of the court

in pronouncing a criminal sentence for a pecuniary forfeiture.” *United States v. Mann*, 26 F. Cas. 1153, 1154-1155 (C.C.D.N.H. 1812) (No. 15,718); *Browning-Ferris*, 492 U.S. at 265 (“[T]hen, as now, fines were assessed in criminal \* \* \* actions.”). Thus, the weight of authority holds that a criminal-law nexus is central—if not necessary—to a determination that a forfeiture serves to punish someone for an offense.

But Minnesota’s regime of property-tax collection has no nexus with punishing crimes. See Minn. Stat. §§ 279-282. Functionally, the tax-collection process begins when taxes on a property remain unpaid in the year in which they are due—not when a criminal act is committed, charged, or adjudicated. See *Delinquent Tax Manual* at 9; cf. *Bajakajian*, 524 U.S. at 322 (observing that the statute directed the court to order forfeiture at the culmination of a criminal proceeding). And after this initial step, a civil-court judgment is brought against *the property*, not the taxpayer. See Minn. Stat. § 279.14; cf. *Bajakajian*, 524 U.S. at 333 (finding relevant that the United States proceeded *in personam* against the person, rather than *in rem* against the currency).

By contrast, Minnesota’s tax-forfeiture scheme more closely resembles statutory forfeitures under revenue laws, which have repeatedly been upheld against charges that they are punishment. See, e.g., *Helvering v. Mitchell*, 303 U.S. 391, 401 (1938) (“The remedial character of sanctions imposing additions to a tax has been made clear by this Court in passing upon similar legislation.”); *Taylor v. United States*, 44 U.S. 197, 210 (1845) (opinion of Story, J.) (“[S]uch [revenue] laws are often deemed, and truly deserve to be called, remedial.”).

Evaluating Minnesota’s tax-forfeiture scheme as a “fine” would thus dramatically deviate from precedential, textual, and historical understandings of the Excessive Fines Clause. In doing so, a wide array of economic payments—such as taxes and tax collection—would become subject to unprecedented constitutional scrutiny.

**B. Historical practice and the original meaning of the Eighth Amendment confirm that the tax-forfeiture scheme is not a “fine.”**

1. *Since the Founding, forfeitures like Minnesota’s—traditional civil in rem forfeitures—have not been considered punishment.*

What precedent indicates, history confirms. Minnesota’s tax-forfeiture scheme resembles traditional civil *in rem* forfeitures, a class of forfeitures which have historically been considered nonpunitive. See *Bajakajian*, 524 U.S. at 322.

For nearly all of American history, civil *in rem* forfeitures “were considered to occupy a place outside the Excessive Fines Clause.” See *Bajakajian*, 524 U.S. at 331. At the time the Eighth Amendment was ratified, many early customs statutes required the forfeiture of goods imported in violation of customs laws.<sup>10</sup> Other statutes—passed in the First

---

<sup>10</sup> See *Bajakajian*, 524 U.S. at 331 (collecting statutes involving forfeiture of goods unladen without permit from the collector); see also *Lock v. United States*, 11 U.S. (7 Cranch) 339 (1813) (involving forfeiture of goods unladen without permit); *Harford v. United States*, 12 U.S. (8 Cranch) 109 (1814) (same).

Congress<sup>11</sup> and soon after<sup>12</sup>—imposed monetary “forfeitures” proportioned to the value of the goods involved in the violation. At the Founding era and beyond, these forfeitures were not considered to be punishment for an offense. See *Bajakajian*, 524 U.S. at 340; *One Lot Emerald Cut Stones & One Ring v. United States*, 409 U.S. 232, 237 (1972) ; *Stockwell*, 80 U.S. at 547.

Classifying these statutes as remedial, and not punitive, is appropriate. Like the tax forfeitures at issue here, these forfeitures were historically enforced in *in rem* proceedings against a property, not *in personam* proceedings against an individual. See Caleb Nelson, *The Constitutionality of Civil Forfeiture*, 125 Yale L.J. 2446, 2465 (2016). And because *in rem* proceedings were understood to be unconnected to the culpability of the owner, they were not considered punishment. See, e.g., *The Little Charles*, 26 F. Cas. 979, 982 (C.C.D. Va. 1818) (No. 15,612) (opinion by Marshall, J.) (holding that in a “proceeding against a vessel, for an offense committed by the vessel,” forfeiture occurs regardless of the culpability of the owner); *The Palmyra*, 25 U.S. (12 Wheat.) 1, 14-15 (1927) (opinion by Story, J.) (“[N]o personal conviction of the offender is necessary to enforce a forfeiture *in rem*.”).

This Court’s more recent decisions have largely confirmed this presumption. See *Bajakajian*, 524 U.S. at 330 (“Traditional *in rem* forfeitures were \* \* \* not considered punishment against the individual for

---

<sup>11</sup> See *Bajakajian*, 524 U.S. at 331 (collecting provisions from the Act of July 31, 1789 and Act of Aug. 4, 1790).

<sup>12</sup> *Ibid.* (collecting provisions from the Act of Mar. 2, 1799 and the Act of Mar. 3, 1823).

an offense.”); *Ursery*, 518 U.S. at 293 (Kennedy, J., concurring) (“[C]ivil *in rem* forfeiture is not punishment of the wrongdoer for his criminal offense.”). The one exception came in *Austin* when—200 years after the ratification of the Bill of Rights—this Court held that *in rem* forfeitures were subject to the Excessive Fines Clause for the first time. But in *Austin*, four Justices refused to sign on to the majority’s claim that *in rem* forfeitures were traditionally considered punishment. See *Austin*, 509 U.S. at 624 (Scalia, J., concurring); *id.* at 629 (Kennedy, J., concurring) (refusing, along with Chief Justice Rehnquist and Justice Thomas, to accept that all *in rem* forfeitures were connected to someone’s blameworthiness).

Just five years later, *Bajakajian* superseded *Austin* on this exact point. In *Bajakajian*, this Court sharply distinguished between “historic *in rem* forfeitures of guilty property,” which are considered nonpunitive, and “*in personam*[] criminal forfeitures,” which are considered punitive. *Bajakajian*, 524 U.S. at 331. Precisely because the statute at issue descended from a historical tradition of *in personam* forfeitures—not *in rem* forfeitures—the Court applied the Excessive Fines Clause. *Ibid.*

Minnesota’s tax-forfeiture statute descends from the historical tradition of *in rem* forfeitures. As discussed, see pp. 42-43, *supra*, the tax-collection process begins when taxes on a *property* are unpaid, not when any *individual* is charged with an offense. And after, a civil-court judgment is brought against the *property* and never the taxpayer. See Minn. Stat. § 279.14. Thus, the longstanding historical treatment of civil *in rem* forfeitures as nonpunitive can alone

provide a basis to reject petitioner’s claim, as tax forfeiture shares the same defining features.

2. *Even if such forfeitures seem punitive, their widespread use when the Eighth Amendment was ratified suggests they were not considered “fines” under the Excessive Fines Clause.*

The historical record unambiguously reveals that statutes like Minnesota’s were commonplace at the Founding and remained so well after. This record—including pre- and post-ratification practice—strongly suggests that Founding-era constitutional understandings of the term “fine” would not have covered the forfeiture here. Cf. *District of Columbia v. Heller*, 554 U.S. 570, 605 (2008) (describing post-Ratification history as a “critical tool of constitutional interpretation”). This record compels this conclusion, even if such statutes are considered punitive under *Austin’s* ahistorical test. Indeed, this Court’s Excessive Fines Clause jurisprudence has credited historical practice as decisive evidence of the Clause’s scope. See *Browning-Ferris*, 492 U.S. at 274 (declining to subject punitive damages to the Excessive Fines Clause because the practice of awarding such damages was “well recognized at the time the Framers produced the Eighth Amendment”).

The origins and text of the Eighth Amendment provide initial indication of its scope. The text of the Excessive Fines Clause comes directly from article I, section 9 of the Virginia Declaration of Rights of 1776, which, in turn, adopted verbatim the language of the English Bill of Rights of 1689. Nicholas A. McLean, *Livelihood, Ability to Pay, and the Original Meaning of the Excessive Fines Clause*, 40 *Hastings Const. L.Q.* 833, 839 (2013). The English version of the Eighth

Amendment was passed to “curb the excesses of English judges under the reign of James II.” *Browning-Ferris*, 492 U.S. at 267. Those excesses included the use of heavy fines to produce debtors’ prisons. *Ibid.* Indeed, Justice Story has suggested that the Eighth Amendment was adopted to prevent “such violent proceedings as had taken place in England in the arbitrary reins of some of the Stuarts.” 2 Joseph Story, *Commentaries on the Constitution of the United States* 624 (T. Cooley ed., 4th ed. 1873). In this light, the Eighth Amendment was understood as “limiting the ability of the sovereign to use its prosecutorial power, including the power to collect fines, for improper ends.” *Browning-Ferris*, 492 U.S. at 267.

Historical records reveal, however, that in-kind forfeitures—in particular those enforced *in rem* under revenue and customs statutes—were widely imposed at the Founding without any suggestion of offending such ideals. “Long before the American Revolution, both the English Parliament and legislatures in the American colonies were using the threat of forfeiture to encourage compliance with statutes.” Nelson, 125 *Yale L.J.* at 2457. Some of the most prominent forfeiture provisions in English law appeared in acts of trade and navigation, imposing the threat of forfeiture for customs violations, such as illegal import and the payment of custom duties. *Id.* at 2457-2458; see p. 44, *supra*. Much like state statutes governing property taxes, such statutes served essential government functions. Until the Civil War, the main and often the only federal taxes were customs duties on imported goods. See W. Elliot Brownlee, *Federal Taxation in America: A Short History* 13-30 (2d ed. 2004).

In the American colonies, too, *in rem* forfeitures for such violations were common. See *C.J. Hendry Co. v. Moore*, 318 U.S. 133, 149 (1943) (noting how *in rem* forfeiture cases “had become a recognized part of the common law system as developed in England and received in this country long before the American Revolution”). Even after the United States gained its independence, “the new states continued to use the threat of forfeiture to back up their own customs and antismuggling laws.” Nelson, 125 Yale L.J. at 2464.

Ratification of the Bill of Rights did not change Congress’s practices with regard to forfeiture. In 1799, Congress reevaluated the Collection Act of 1790 and kept in place extensive forfeiture proceedings. Nelson, *supra*, at 2465; see also Kevin Arlyck, *The Founders’ Forfeiture*, 119 Colum. L. Rev. 1449, 1466 (2019) (collecting additional statutes involving forfeitures). Individual states also widely imposed forfeitures for customs violations both before and after the ratification. See, e.g., Beth Colgan, *Reviving the Excessive Fines Clause*, 102 Calif. L. Rev. 277, 304 n.146 (2014).

Forfeitures during this time extended beyond the customs context, applying also to revenue statutes governing those within the United States. In the 1790s and 1810s, the early Congresses imposed “internal revenue taxes,” which were enforced with the same sort of forfeitures that Congress used to enforce customs duties. Stefan B. Herpel, *Towards a Constitutional Kleptocracy: Civil Forfeiture in America*, 96 Mich. L. Rev. 1910, 1922 n.46 (1998); see also Nelson, 125 Yale L.J. at 2470 nn.126-127 (collecting statutes). Forfeiture-based enforcement of revenue-related statutes continued throughout the nineteenth, twentieth, and twenty-first centuries.

See pp. 40-43, *supra*. And until *Austin* in 1993, *in rem* forfeitures were considered beyond the scope of the Excessive Fines Clause. *Bajakajian*, 524 U.S. at 331.

Such widespread and persistent legislative practice would be hard to explain had these provisions been considered “fines” subject to the Eighth Amendment. Nor is there any suggestion that such forfeitures were considered “fines” but that they didn’t provoke constitutional challenges because they weren’t considered “excessive.” After all, such forfeitures, even when they produced harsh consequences, were left unchallenged on constitutional grounds. See, e.g., *United States v. The Louisa Barbara*, 26 F. Cas. 1000 (E.D. Pa. 1833) (No. 15,632) (upholding, following a statutory challenge, the forfeiture of a large vessel for exceeding the weight limit by a single traveler).

This longstanding and uninterrupted historical pedigree of civil forfeiture strongly supports a presumption that such forfeitures were never subject to the Excessive Fines Clause to begin with. See *United States v. Curtiss-Wright Export Corp.*, 200 U.S. 304, 327-328 (1936) (highlighting that longstanding legislative practices “go[] a long way in the direction of proving the unassailable ground for the constitutionality of the practice”). Thus, whether or not tax forfeiture is “punishment,” historical practice confirms that it is outside the reach of the Excessive Fines Clause.

## CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals for the Eighth Circuit should be affirmed.

Respectfully submitted.

RUSSELL C. BOGUE  
PRAGYA MALIK  
*Counsel of Record*  
*127 Wall Street*  
*New Haven, CT 06511*

*Counsel for Respondent*