



Supreme Court Hears Arguments in Home Equity “Theft” Case

The Supreme Court is hearing oral arguments in [Tyler v. Hennepin County, Minnesota](#) today. The justices will hear from lawyers affiliated with the Pacific Legal Foundation (PLF) representing Geraldine Tyler, a 94-year-old grandmother, and lawyers representing the county where she used to own a one-bedroom condominium.

The facts, on the surface, are simple. When Tyler fell behind on paying the real estate taxes on her condo, the county sold it. She owed \$15,000 in taxes (including fees, interest and penalties), and the county sold the condo for \$40,000 — and kept the balance.



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She thinks that is not only unfair but unconstitutional. She cites (through her lawyers) both the Fifth Amendment (“nor shall private property be taken for public use without just compensation”) and the Eighth Amendment (“nor excessive fines [be] imposed”).

The county prevailed in two lower courts before the high court agreed in January to hear her case on appeal. The lower courts ruled that Tyler was given the opportunity to pay the taxes (and other costs), but she didn’t. In due course the county filed a lien on her condo, erasing all of her rights to it to satisfy the debt.

This is how it’s done in 12 other states (Alabama, Arizona, Colorado, Illinois, Maine, Massachusetts, Minnesota, Nebraska, New Jersey, New York, Oregon, and South Dakota), with some variations on the same theme. In Nebraska, for example, the lien is sold to investors hoping the homeowner doesn’t pay the back taxes by a due date, at which time the property belongs to them. Most people find a way to pay those taxes long before they lose their property, and the investor is out his bet that they won’t.

But in Tyler’s case, she didn’t have the money. And as the fees, penalties and other costs mounted, her original \$2,300 real estate tax bill escalated to \$15,000. If she couldn’t pay the \$2,300, she certainly couldn’t pay the \$15,000. She now lives in an assisted living facility.

There are two questions before the high court today: 1) Can the state keep the surplus? and 2) Is the \$25,000 the state kept an excessive fine?

Christina Martin, a senior attorney at PLF, summed up Tyler’s argument: “We agree that the government [Hennepin County] can seize the property to collect a debt. What it can’t do is take more than it’s owed.”

She added:

We’re not asking for anything unusual here. We’re asking that the government not [receive] self-dealing, preferential treatment that allows them to just take a massive windfall, usually



Written by [Bob Adelman](#) on April 26, 2023

at the expense of the most vulnerable people.

She has plenty of support. Amici briefs have been filed by a number of high-profile entities, including the National Taxpayers Union Foundation, the Howard Jarvis Taxpayers Association, the Buckeye Institute, the Competitive Enterprise Institute, and the Cato Institute.

Tyler isn't a rare case, unfortunately. PLF represents Tawanda Hall, a resident in Oakland County, Michigan, who also lost her home when she failed to pay her real estate taxes. She owed the county \$900 — that grew to \$22,642 after fees, penalties, and other costs were added. Oakland sold her home for more than \$300,000, and kept the difference.

According to PLF, more than 1,200 Minnesotans lost their homes between 2014 and 2020 to cover tax debts that averaged just eight percent of the homes' value. The counties kept the difference.

Nationally, Tyler and Hall represent a tiny fraction of those suffering similar losses. Estimates are that from 2014 through 2021 nearly 9,000 people lost their homes when they were sold to pay unpaid taxes, and the governments involved received nearly a billion dollars from those forced sales.

Tyler is hoping for a better outcome. A reversal of the lower courts' rulings would affirm that this so-called "home equity theft" is unconstitutional. That would cause serious upheaval in those states that still allow the practice. And it could clarify just what the Eighth Amendment means when it rules out "excessive" fines.

As the attorneys representing Tyler are presenting their case before the high court today, they will likely declare that tax liens "neither wipe out equity nor relieve the government's obligation to pay just compensation." And "property rights," they may say, "do not evaporate simply because you owe the government money."



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