No. 22-166

In the Supreme Court of the United States

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

Petitioner,

v.

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

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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October 20, 2022

QUESTION PRESENTED

Whether taking and selling a home to satisfy a debt to the government, and keeping the surplus value as a windfall, violates the Takings Clause?

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies helps restore the principles of constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, files *amicus* briefs, conducts conferences, and produces the annual *Cato Supreme Court Review*.

This case interests *amicus* because the right to just compensation when property is taken is fundamental. Home equity is private property, so the government cannot simply take any that remains after the proceeds from a foreclosure sale satisfy a tax debt.

SUMMARY OF ARGUMENT

In 1194 A.D., near Yorkshire, England, a nobleman turned fugitive named Robin of Locksley legendarily stood up against theft dressed as taxes. The Sheriff of Nottingham levied exorbitant and capricious taxes on the people of Sherwood Forest, filling the coffers of King John, who was then the regent ruler in his brother's absence. Robin Hood was the champion of the people, defending them from abusive government power that viewed the people as sources of revenue rather than subjects to be protected.

Today, when local governments seize all the equity in a home after confiscating the home to pay for *de*

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[1] Rule 37 statement: All parties were timely notified and consented to the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

minimis tax bills, one wonders what Robin Hood would have thought. These seizures of equity largely target poorer communities—and often the elderly—who own their homes but have no disposable income to pay their taxes, much less to pay lawyers to fight on their behalf. The government will take the home and sell it to pay off the tax debt, which can sometimes be a legitimate government taking. While most states return any surplus proceeds from the sale to the owner, some states allow the government to take the surplus funds above the tax deficiency, leaving those hard-up families destitute. This practice literally steals from the poor to fill the coffers of the rich, which is precisely what Robin Hood fought against.

One of the reasons the story of Robin Hood is so iconic in our culture is that we recognize there is something evil about taking more in taxes than is required by law for the government's own profit. Robin Hood is treated as a hero because he stood up for the poor who were stolen from in the name of taxation. Even John the Baptist told tax collectors to only take what was required to fulfill the tax. *Luke* 3:12–13. Justice demands that tax collection be limited to the amount needed to pay the tax, and no more.

Yet this practice is not only unjust but unconstitutional. The Fifth Amendment guarantees that private property shall not be taken except for public use and with just compensation. This protection applies not only to real property but also to intangible property interests, such as an owner's equity in her home. Since Magna Carta, English and American common law has

required authorities to return any surplus from property taken to pay tax debts.

But 14 states have gone astray from the common law to allow local authorities to seize the surplus and deposit it in state treasuries. Two states in particular, Nebraska and Minnesota, took legislative action to change the state's law and created a tax-debt recovery scheme that allows the state government to keep any surplus from the property taken to pay off the debt.[2]

In Minnesota, 93-year-old Geraldine Tyler owed $2,300 in taxes on a condominium worth around $40,000. Pet. at 5. However, she was unable to pay her property taxes, and she accumulated almost $12,700 in fees and interest. *Id.* Hennepin County seized her home, sold it for $40,000, paid off her tax debt, and then kept the $25,000 in remaining equity. *Id.*

In both the contexts of satisfying unpaid tax debt and mortgage payments, the Minnesota Supreme Court had held that homeowners possess a right to the surplus home equity of their homes. *Farnham v. Jones*, 19 N.W. 83, 85 (Minn. 1884) (taxes); *Ayer v. Stewart*, 14 Minn. 97, 98 (1869) (mortgages); *Stromberg v. Lindberg*, 25 Minn. 513, 514–16 (1879) (same). But the Minnesota legislature changed the rules, codifying a predatory tax scheme that permits the state to keep any surplus from the property taken to pay off the debt. Minn. Stat. § 280.29 (2021).

When Minnesota's legislature decided that a delinquent taxpayer's remaining equity would go to the government's treasuries rather than back to the mulcted

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[2] The case out of Nebraska is the subject of another cert petition that was docketed the day before this case, *Fair v. Continental Resources*, No. 22-160 (Aug. 18, 2022). *Fair* presents equally valid claims.

homeowner, the state committed a legislative taking under this Court's precedents.

As discussed in the petition, Pet. at 3, Minnesota is one of 14 states that allow the state to take title and "any equity [the owner] has accrued in the property, no matter how small the amount of taxes due or how large the amount of equity." *Tallage Lincoln, LLC v. Williams*, 485 Mass. 449, 453 (2020). Stories of clear injustices are becoming common. In Michigan, a family underpaid their property taxes by $144, spurring Wayne County to take two homes and sell them for $108,000, with the county pocketing $107,498.55. Dan McCaleb, *Michigan Woman Sues County Over "Home Equity Theft,"* The Center Square (July 9, 2019).[3]

All takings that are legitimately for a public purpose require just compensation under the Fifth Amendment. As this Court recently recognized in *Cedar Point v. Hassid*, 141 S. Ct. 2063 (2021), the takings analysis considers whether a property interest has been completely seized or merely restricted. Here, the state legislature seized all the remaining equity in Ms. Tyler's home, leaving her nothing. This taking without compensation is unconstitutional and contrary to the English and American common-law tradition. Because this taking violates the Fifth Amendment and contravenes basic property principles, this Court should grant certiorari.

[3] Available at https://bit.ly/3xFISpT.

ARGUMENT

HOME EQUITY IS HISTORICALLY A PRIVATE PROPERTY RIGHT AT MINNESOTA COMMON LAW, SO THIS COURT SHOULD CLARIFY HOW AND WHEN A LEGISLATURE CAN CHANGE LONG-STANDING RULES AND CONFISCATE VESTED EQUITY IN REAL PROPERTY

This Court's precedents have sent mixed signals about the relationship between legislatures and property rights that existed at common law. This case is a good vehicle for the Court to clarify this cloudy area of law.

A. Home Equity Is the Private Property of the Homeowner Under Common Law

The common law is the main source of traditional property rights. *See* Denise Johnson, *Reflections on the Bundle of Rights*, 32 Ver. L. Rev. 247, 248 (2007). Private property rights primarily flow from the English common law, including Magna Carta, and those rights ramified into American common law. *See Horne v. Dep't of Agric.*, 576 U.S. 351, 358 (2015); Johnson, *supra*, at 248. To determine whether a property right exists, courts look back to the common law and "background principles" of property. *Lucas v. S.C. Coastal Council*, 505 U.S. 1003, 1029–32 (1992). Common law is not the only source of property rights, but it is sufficient to create them. *See Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702, 733 n.12 (2010) (Scalia, J.) (plurality) ("[W]hether the source of a property right is the common law or a statute makes no difference, so long as the property owner continues to have what he previously had.").

Since at least Magna Carta, there has been a long common-law tradition of the remaining value of the home or estate being treated as private property after a tax debt is satisfied. Magna Carta Clause 26 states that when selling a deceased man's estate to pay off his tax debt, the "residue shall be given over to the executors to carry out the dead man's will." *See also Hall v. Meisner*, No. 21-1700, slip op. at 11 (6th Cir. Oct. 13, 2022); Vincent R. Johnson, *The Ancient Magna Carta and the Modern Rule of Law: 1215 to 2015*, 47 St. Mary's L.J. 1, 46–47 (2015). Later, Blackstone explained that creditors or officials who seize goods to pay a debt or tax must give the property back upon payment, or, if the debtor or taxpayer did not pay the debt, must "render back the overplus" after satisfying the debt from the property. 2 William Blackstone, Commentaries *453. That principle carried over into the colonies, where land could not be taken to pay a tax until all other property had been sold to satisfy the tax. *Martin v. Snowden*, 59 Va. 100, 137–40 (1868). If the government could keep surplus property, there would be no purpose in forbidding the taking of land before satisfying the debt in the seizure of goods. *See id.*

Minnesota common law similarly historically recognized home equity as a property right. In *Farnham v. Jones*, the Minnesota Supreme Court interpreted an 1881 Minnesota statute detailing procedures for the sale and redemption of property after a tax lien sale. 19 N.W. at 84–85. The court emphatically concluded that once the state's tax lien has been satisfied, "any surplus . . . must revert to the owner" and "the claim of the land-owner to the balance remains unimpaired." *Id.* at 85. Although the court did not explain the source of this right, it clarified that the right to the surplus

"exists independently of [any] statutory provision." *Id.* In *Farnham*, the court continued the centuries long common-law recognition of the right to the surplus.

Minnesota has also traditionally upheld equity as a property in the mortgage foreclosure context. The legislature guaranteed the mortgagor "any surplus money, after satisfying the mortgage on which such real estate was sold." 1858 Minn. Laws 645. The Minnesota Supreme Court affirmed this statute many times over in the next few decades. *Bailey v. Merritt*, 7 Minn. 159, 162, 165–66 (1862) (mortgagor could sue for the surplus paid at a foreclosure auction); *Ayer*, 14 Minn. at 98 (mortgagor is entitled to the surplus); *Fowler v. Johnson*, 26 Minn. 338, 343 (1880) (mortgagor is to receive the surplus in a foreclosure on an instalment contract after the future-due remainder of the entire mortgage was satisfied); *Taylor v. Burgess*, 26 Minn. 547, 552 (1880) (property surplus belonged to the mortgagor by right).

Moreover, Minnesota courts have implied that any remaining home equity is the property of the homeowner, regardless of any statutory right. In *Labor v. McCarthy*, the court explained that lien holders only wished for the foreclosure sale proceeds to be sufficient to cover their liens, but the mortgagor wanted the surplus proceeds to be as large as possible. 24 Minn. 417, 419 (1878). This assumes that the surplus is returned to the mortgagor. *Id.* And in *Stromberg v. Lindberg*, the court rejected a mortgagee's attempt to claim some of the surplus proceeds. 25 Minn. at 514–16. Instead, the surplus was to be returned to the mortgagor, and the mortgagee could only receive the funds necessary to satisfy the mortgage. *Id.* at 515–16. This was not a statutory rule—rather, the court simply presupposed this basic principle. *Id.*

Finally, it is a basic principle that if a debtor's property is seized and liquidated to pay the debts, the debtor is entitled to any remainder left after the debts are paid. For example, in the bankruptcy context, after the assets are liquidated and all creditors are paid, the debtor receives any remaining funds. 11 U.S.C. § 726(a)(6). The Eighth Circuit and the Minnesota Court of Appeals have both applied this statute accordingly. *Hollingsworth v. Kaler (In re Hollingsworth)*, 331 B.R. 399, 401 (B.A.P. 8th Cir. 2005) ("In fact, the estate had sufficient funds to pay all creditors in full and to return excess funds to the Debtor in accordance with 11 U.S.C. § 726(a)(6)."); *In re Marriage of Nelson*, No. A18-1104, 2019 Minn. App. Unpub. LEXIS 603, at *8 (July 1, 2019) ("And in fact, 11 U.S.C. § 726 (a)(6) (2012) explicitly provides that once assets are collected into the bankruptcy estate and all creditors are paid what they are owed, any remaining assets of the estate are to be paid back to the debtor."). But the Eighth Circuit's opinion below stands in stark contradiction. The court in this case assumes—wrongly—that there is no property interest in the equity because the government is the creditor, and so denies Ms. Tyler the surplus equity in her home to which she would ordinarily be entitled. *See Tyler v. Hennepin Cty.*, 26 F.4th 789, 792–93 (8th Cir. 2022).

Citizens would be rightly appalled if private creditors could take more assets than needed to satisfy the debt. Yet the rule that a creditor cannot obtain more than necessary to satisfy a debt should apply more to governments, which are not only constitutionally prohibited from taking property without paying just compensation, but are able to self-deal through the taking of property. This Court has held that the government cannot take property to "secure a windfall for itself."

Palazzolo v. Rhode Island, 533 U.S. 606, 627–28 (2001); *see also Hall*, slip op. at 14 (explaining that "the equities" prevent the government from profiting from the surplus). Nor can government "transform private property into public property" for its own profit. *Webb's*, 449 U.S. at 164. "This is the very kind of thing that the Takings Clause of the Fifth Amendment was meant to prevent." *Id.* So just as the surplus of a private debt must be returned to the debtor, the surplus after a tax lien belongs to the homeowner, not the government. This Court should grant certiorari to redress the inapposite decision below.

B. The Minnesota Legislature Gradually Removed the Homeowner's Right to Recover the Equity

Although the Minnesota common law declared a property right in home equity, the legislature began gradually eroding this property right in tax sales. Initially, in 1881 the statute was silent regarding the surplus. 1881 Minn. Laws 176–77; *Farnham*, 19 N.W. at 85 (explaining that the right to surplus came from a non-statutory source). In 1891, the statute directed that all proceeds be channeled to the state tax funds, and since the statute explained what to do when the proceeds were insufficient but not when there was a surplus, this statute implied that any surplus was treated like normal tax proceeds. Minn. Stat. § 1576 (1891). In 1894, any proceeds exceeding the required amount were distributed as normal tax monies. Minn. Stat. § 1617 (1894). And finally, in 1905, the statute directed that "the excess, if any, above the taxes, penalties, interest, and costs . . . be paid in like manner for the benefit of the state." Minn. Stat. § 939 (1905). Thus by 1905 the legislature had completely done away with the mortgagor's property right in the surplus. *See id.*;

Minn. Debenture Co. v. Scott, 106 Minn. 32, 35–36 (1908).

In this way, even though Minnesota common law and statutes recognized home equity as a property right, the legislature over time stripped away the homeowner's right to any remaining surplus after a tax lien sale. This series of legislative acts raises the question of whether this was a legislative taking.

C. This Case Is an Opportunity to Clarify When a Legislature Can Remove a Common-Law Property Right Without Just Compensation

This Court's precedents unambiguously provide that legislatures may commit Fifth Amendment takings. Unfortunately, other statements from this Court muddy the standards for determining when a legislature can change a common-law property right without paying compensation. This case allows the Court to provide much needed guidance.

The Court has long held that it is up to the judiciary to protect property rights against legislative incursion: "If, therefore, a statute . . . is a palpable invasion of rights secured by the fundamental law, it is the duty of the courts to so adjudge, and thereby give effect to the Constitution." *Mugler v. Kansas*, 123 U.S. 623, 661 (1887). And when a legislature changes a property interest from private to public, it can commit a compensable taking. *Stop the Beach*, 560 U.S. at 715 (Scalia, J., plurality op.) ("If a legislature . . . declares that what was once an established right of private property no longer exists, it has taken that property, no less than if the State had physically appropriated it or destroyed its value by regulation."); *Phillips v. Wash. Legal Found.*, 524 U.S. 156, 167 (1998) ("'[A] State

by *ipse dixit*, may not transform private property into public property without compensation' simply by legislatively abrogating the traditional rule . . . .") (quoting *Webb's Fabulous Pharmacies, Inc., v. Beckwith*, 449 U.S. 155, 164 (1980)); s*ee also Hall*, slip op. at 5–6 ("But the Takings Clause would be a dead letter if a state could simply exclude from its definition of property any interest that the state wished to take.") (deciding that a state statute allowing government to take surplus after a tax lien sale is unconstitutional).

This Court recently affirmed the need for courts to protect property against legislative as well as executive action. In *Cedar Point Nursery v. Hassid*, the Court explained that it does not ask which branch of government impinged the property interest but instead "whether the government has physically taken property for itself or someone else[.]" 141 S. Ct. at 2072. Members of this Court have similarly opined that there is no constitutional difference between a taking via legislative act and a particularized *ad hoc* administrative taking. *See*, *e.g.*, *Parking Ass'n of Ga., Inc. v. City of Atlanta*, 515 U.S. 1116, 1118 (1995) (Thomas, J., dissenting). Thus, the legislature is just as capable of committing a taking as administrative agencies of the executive branch.

That said, legislatures are not entirely foreclosed from altering common-law property interests. But when and why such legislation may be permitted is unclear from this Court's precedents, and this case offers a good chance to clarify that question.

On one hand, multiple cases explain that legislatures can change property interests, even as these cases wrestle with the extent and nature of the permissible changes. In *Munn v. Illinois*, this Court

looked at whether a statutory limit on the prices a warehouse could charge for grain storage represented a deprivation of property under the Due Process Clause. 94 U.S. 113, 123 (1876). The Court held that it did not, even though there was a general common-law right for sellers to price products and services at their own discretion. *Id.* at 133–34. The Court was clear that a legislature can be almost whimsical in its abrogation of common-law rights, as long as it comports with the Constitution: "Rights of property which have been created by the common law cannot be taken away without due process; but the law itself, as a rule of conduct, may be changed at the will, or even at the whim, of the legislature, unless prevented by constitutional limitations." *Id.* at 134. The unanswered question, of course, is what those constitutional limitations are.

One of those limitations is that the analysis in *Munn* applies to statutes that modify rather than terminate common law rights. The *Munn* Court described a law to "limit the rate of charge for services rendered in a public employment" as "only changing a regulation which existed before," whether at common law or via statute. *Id.* Such rate regulation is part of the common law, where the rule "requires the charge to be reasonable," which "is itself a regulation as to price." *Id.* Thus, the statute "establishe[d] no new principle in the law, but only [gave] a new effect to an old one." *Id.* The common law wasn't supplanted, only updated, because "the great office of statutes is to remedy defects in the common law as they are developed, and to adapt it to the changes of time and circumstances." *Id.* The Court's decision was thus limited to statutes updating common-law rules, and the Court did not address the constitutionality of statutes categorically terminating such rights, as the home equity rule does here.

One line in *Munn*—a "person has no property, no vested interest in any rule of the common law," *id.*—has also been quoted to hold that the legislative removal of common-law remedies is not a taking. *See, e.g., N.Y. Central R. Co. v. White*, 243 U.S. 188, 201 (1917); *Silver v. Silver*, 280 U.S. 117, 122 (1929); *Duke Power Co. v. Carolina Env't Study Grp., Inc.*, 438 U.S. 59, 88 n.32 (1978). In these cases, again, the Court has looked to whether a common-law right was substituted for by a statute rather than terminated altogether. In *Duke Power*, this Court decided there was not a due process violation in the removal of a statutory remedy because a reasonable remedy was substituted. 438 U.S. at 88. But the Court noted that it was an open question whether "the Due Process Clause in fact requires that a legislatively enacted compensation scheme either duplicate the recovery at common law or provide a reasonable substitute remedy." *Id.*; *see also White*, 243 U.S. at 201 (questioning if all common-law liability rules could be set aside by statute if not replaced with a similarly suitable remedy).

In the takings context, the confusion over the *Munn* rule persists. In *PruneYard Shopping Center v. Robins*, Justice Marshall concurred and cited *Munn* in support of requiring a landowner to give up his right to exclude and allow leafleteers on his property. 447 U.S. 74, 91–94 (1980) (Marshall, J., concurring). Because that decision was based on state law, the federal constitutional issues were not resolved, but Justice Marshall pointed out that "[q]uite serious constitutional questions might be raised if a legislature attempted to abolish certain categories of common-law rights in some general way." *Id.* at 93–94. Justice Marshall surmised that the common-law rights against

trespass may be one of those rights that cannot be abolished by statute. *Id.* at 94.

Outside of the context of *Munn*'s rule, in another takings case, this Court explained that Congress could properly "take" certain common-law physical property rights. *United States v. Causby*, 328 U.S. 256, 260–61 (1946). Traditionally, the airspace—all the way up to the "periphery of the universe"—had been viewed as the property of the owner of the physical land below it, but Congress declared that area to be a public highway. *Id.*[4]

Thus, even among cases affirming that the legislature can change a property interest, there is a sizable gray area. From *Munn*, we know that the right to charge whatever price one wishes for one's goods is not within those "certain categories" of common-law rights that cannot be altered by the legislature. *See Munn*, 94 U.S. at 123. But, per Justice Marshall, there would be serious concerns if certain common-law rights were abolished "in some general way." *PruneYard*, 447 U.S. at 95 (Marshall, J., concurring). And Congress can remove certain attenuated property rights without compensation, like airspace. *Causby,* 328 U.S. at 260–61. At what point a property interest crosses the line on the "property interest-property right" continuum is still unclear.

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[4] Although this Court recognized that the common-law property right to the airspace no longer existed, the use of the airspace above the property could still be a compensable taking if the land itself became uninhabitable due to the nuisance of the flights. *Causby*, 328 U.S. at 261. This analysis separated the legislative taking of the common-law right to possess airspace (no taking) from the nuisance-driven taking of the physical land (a taking).

At the other side of the property-rights spectrum, this Court has stated that legislatures "by *ipse dixit*, may not transform private property into public property without compensation[.]" *Webb's*, 449 U.S. at 164. *Webb's* involved interest from a private trust fund operated temporarily by the county court registry that the court attempted to take as its own. *Id.* at 155. Per traditional, common-law trust rules, the interest follows the trust; therefore, because the trust was private property, the interest was as well. *Id.* at 162. Neither the legislature nor the court could recharacterize private property as public property to fill its coffers. *Id.* at 164.

A few years earlier, Justice Stewart had come to the same conclusion in *Hughes v. Washington*: "For a State cannot be permitted to defeat the constitutional prohibition against taking property without due process of law by the simple device of asserting retroactively that the property it has taken never existed at all." 389 U.S. 290, 296–97 (1967) (Stewart, J, concurring). Although that case asked whether a state court opinion interpreting a state constitutional provision was a taking, the analysis is nonetheless applicable to when any branch of government strips a previously held right. *See id.* Justice Stewart articulated the requisite test for determining if subsequent state action takes a property interest as whether the action created an "unpredictable change in state law." *Id.* at 297.

More recently, this Court looked at the relationship between common law and legislation in defining property rights in *Lucas v. S.C. Coastal Council*. The issue in *Lucas* was whether a statute prohibiting new construction close to the tidal line on the beach "took" the Lucas's property since the property was left without any economic use. 505 U.S. at 1006. But Justice Scalia

emphasized that "[a]ny limitation so severe cannot be newly legislated or decreed (without compensation), but must inhere in the title itself, in the restrictions that background principles of the State's law of property and nuisance already place upon land ownership." *Id.* at 1029.

Justice Stevens dissented, raising concerns that the Court had cabined legislative freedom, binding legislatures to long-held common-law rules. *Id.* at 1068–69 (Stevens, J., dissenting). He quoted *Munn*, arguing that the Court had abandoned the prior rule that legislatures could alter "the law governing the rights and uses of property." *Id.*

But the *Lucas* majority never addressed *Munn*, so the relationship between *Lucas* and *Munn*'s continuum is unclear. Whether the requirement that legislative action be based in common-law "background principles" applies only to "rights of property" or also to "rule[s] of conduct" has not been explained. *See id.* at 1029–31; *Munn*, 94 U.S. at 134.

This overview of this Court's decisions about legislatures' taking property rights or changing remedies demonstrates the need for clarity. While some precedents trend towards protecting common-law property rights from legislative restrictions not based in traditional property principles, *see Lucas*, 505 U.S. at 1029, this Court should take this opportunity to clearly explain whether a legislative act that categorically removes a property right previously deeply rooted in the common law is a compensable taking under the Fifth Amendment.

And this case tees up that issue nicely, as Ms. Tyler had a common-law property right in the equity of her home, established both in the "background principles"

of property law stemming from Magna Carta, as well as Minnesota common law. *See Lucas*, 505 U.S. at 1031; *Farnham*, 19 N.W. at 85.

The forced transfer here also would likely be a taking under Justice Stewart's analysis, since the legislature created an "unpredictable change in state law" by changing the law over fifteen years to give the state the authority to seize the remaining equity, even though the common law established that belonged to the homeowner. *See Hughes*, 389 U.S. at 296–97 (Stewart, J., concurring).

And, as in *Webb's*, the property here is an intangible monetary asset, which the Court has recognized as property under the Fifth Amendment. *See Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 613–14 (2013). These similarities in facts and legal issues to the Court's prior precedents provide an opportunity to clarify whether a legislative action that removes a property interest long held in "background principles," such that the statute creates an "unpredictable change in state law," takes the property.

Further, this is a complete, categorical legislative taking: property is not just being limited or regulated—it is being completely taken. It would be no less a complete taking than if the Minnesota legislature turned every fee simple into a life estate and transferred the future interests to the state. Ms. Tyler owned $40,000 in equity and owed $12,700 in taxes, interest, and fees. Hennepin County then took her property, sold it to pay the taxes, and kept the remaining $25,000 for its own benefit, all via statutory authority. As a result, the only asset left to her—the surplus home equity—was completely taken by statute. The government should not be allowed to perpetrate

this manifest injustice simply because it came from a legislatively enacted statute.

This is also a good opportunity to resolve a circuit split that the decision below catalyzed. Here, the Eighth Circuit upheld a statute that "abrogated any common-law rule" giving homeowners a property interest in the surplus equity. *Tyler*, 26 F.4th at 793. But the Sixth Circuit recently declared a similar statute unconstitutional and contrary to English and American common law. *Hall*, slip op. at 12. ("Thus—by that *ipse dixit*—the Act 'sidestep[ped] the Takings Clause by disavowing traditional property interests long recognized under state law.'") (quoting *Phillips,* 524 U.S. at 167). Thus, this issue divides the circuits, and this case provides an excellent opportunity to resolve this split.

As discussed above, Magna Carta provided protections for tax-debt surplus, requiring it to be returned to the estate, and Magna Carta was introduced to curb the tyrannical abuses of King John. Robin Hood attempted to defend poor people from King John and the Sheriff of Nottingham's onerous taxes that filled royal coffers. It is not unreasonable to speculate that Robin Hood may have protected people from this very thing—having one's home-value surplus seized after the sheriff's tax was satisfied. But would Robin Hood have been any less justified if, instead of emanating from executive action (Sheriff of Nottingham via King John's instruction) the taking was effected via a statute enforced by the sheriff? That is what the state below claimed.

CONCLUSION

The taking of home equity is unconstitutional and unjust.

For the foregoing reasons, and those described by the Petitioner, this Court should grant the petition.

Respectfully submitted,

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October 20, 2022