

Stealing from the Poor and Giving to the Government?

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Even though the legend of Robin Hood is 800 years old, some modern local governments haven't gotten the message that the Sheriff of Nottingham — who stole from the poor via oppressive and exorbitant taxes — was the bad guy. In fact, some local governments today have even taken theft a step further, seizing property and pocketing home equity when citizens fail to pay small property-tax bills.

Take the case of Geraldine Tyler, age 94. Tyler owned a condominium in Hennepin County, Minn. Owing to health and safety concerns, she moved to a senior-living apartment when she was 80. After missing property-tax payments on the condo, she ended up owing \$2,300 in taxes and \$12,700 in fees and penalties for those unpaid taxes. Hennepin County initiated a tax foreclosure and sold the condo for \$40,000. But instead of taking only the \$15,000 that Tyler owed and letting her keep the rest of her equity, the county pocketed the remaining \$25,000, too.

Tyler sued the county, arguing that taking the remainder of her home equity was unconstitutional. This week, the Supreme Court will hear oral argument in *Tyler v. Hennepin County*.

This case will affect many more people than just Geraldine Tyler. The practice of taking the surplus equity on top of what is owed in taxes and fees, colloquially referred to as home-equity theft, occurs in more than a dozen states and disproportionately harms the poor and the elderly. It is also unconstitutional and contrary to historical legal practice. The Supreme Court should put an end to it nationwide.

The American legal system, and the English system from which it is derived, traditionally protected property owners from excessive tax forfeitures. The Magna Carta, which became the cornerstone of the English common-law system and influenced the American Founding, prohibited tax collectors from taking more property than was required to satisfy a debt.

In line with this foundational principle, the U.S. Constitution's Fifth Amendment requires that just compensation be paid when private property is taken for public use. That rule should decide this case in Tyler's favor. When a delinquent taxpayer's home is taken to satisfy an unpaid tax bill, the homeowner is entitled to keep the remainder of the home equity — which is the homeowner's property. Home-equity theft takes a homeowner's private property with no just compensation (indeed, without *any* compensation).

But Hennepin County argues that, under Minnesota law, Tyler's remaining equity is not hers at all and that it did not seize any property in the first place. This dangerous argument would give states carte blanche to define away property interests and violate the Fifth Amendment with impunity. States should not be allowed to so easily circumvent a core constitutional protection.

Historically, Minnesota courts recognized that a property owner had a right to the remaining equity after a tax-lien foreclosure. But that changed in 1905, when a Minnesota statute determined that all remaining equity instead belonged to the state. The county relies on this statute to argue that Tyler had already lost all interest in her home equity by the time her condo was seized.

To be sure, states have traditionally defined what constitutes private property. But the Supreme Court has held numerous times that if a legislature defines away a property right, that legislature has effectively "taken" the property and must pay just compensation. Just as the government would violate the Fifth Amendment if it seized property without paying for it, the government cannot legislatively convert private property to government property without compensation.

This principle is grounded in history. The Founders recognized that there were limits to how a state could define (or define away) property. In *The Federalist Papers*, James Madison explained that democracies must be constrained to ensure that property rights are preserved. And during the Constitutional Convention, one of the arguments for ratification of the Constitution was that it would prohibit states from legislatively eliminating certain property rights.

The line between permissible changes to the definition of property and unconstitutional legislative takings may not always be clear, but there is no ambiguity in this case: The county offers no limiting principle to its claim that a legislature can, without paying compensation, define away property however and whenever it chooses. That is unconstitutional.

Local governments such as Hennepin County must be stopped from continuing home-equity theft. The Supreme Court should protect Tyler's property and make clear that home-equity theft is unconstitutional.

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