

Forced sale in Hennepin County prompts Supreme Court to decide constitutionality of Minnesota's forfeiture law

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One of the last cases the U.S. Supreme Court will hear this year involves Hennepin County's confiscation of the proceeds of a sale of a 94-year-old woman's condo, a case that is being supported by property rights advocates and could force a change in Minnesota's forfeiture laws.

Those property rights advocates, including Minnesota's Republican members of Congress, say Minnesota's taking and selling a home to satisfy a government debt, in this case property taxes owned by condo owner Geraldine Tyler, is unconstitutional and an illegal "taking." That's the government's use of eminent domain to take private property and convert it to public use.

The Fifth Amendment says governments may only exercise this power if they provide just compensation to the property owners.

But Minnesota and nine other states allow the sale of property for back taxes without compensating owners for the surplus "excess equity" that sale might generate. In most states, the surplus proceeds from such sales are returned to the owner.

Tyler lived for a decade in a one-bedroom condominium in Hennepin County. But she moved out of her home in 2010, while in her eighties, to live in an apartment in a senior community. While she lived in her condo, she paid her property taxes in a timely fashion. But after she left, she stopped paying those taxes.

By 2015, Tyler's delinquent property taxes totaled \$2,311, and penalties, costs, and interest added an additional \$12,689, for a total property-tax debt of \$15,000.

Hennepin County sent Tyler a notice of foreclosure and a notice that she could redeem her property but says it received no response. So, the county foreclosed on the property

and sold it, for \$40,000, keeping all the proceeds of that sale. Tyler sued to retrieve what she said was her right to the \$25,000 the sale produced in excess of the taxes and penalties she owed. But Tyler lost her suit in the lower courts.

Now the U.S. Supreme Court will hear Tyler's case on April 26 to determine whether taking and selling a home violates the Fifth Amendment's takings clause and the Eighth Amendment prohibition on "excessive fines."

In its brief to the Supreme Court, Hennepin County said that according to a Minnesota law that's been in place since 1935, Tyler's tax bill was cancelled at the time of her condo's forfeiture. The law requires proceeds of the sale help pay for any improvements that increased the value of the property and help fund forest development and county parks and recreation areas.

"And finally, 40% of what remains must be distributed to the county, 40% to the school district and 20% to the town or city where the property was located," the brief said.

Hennepin County Assistant County Administrator Dan Rogan said forfeiture is not "a source of profit" for the county and that factoring in all the costs, Hennepin County's forfeiture program does not even break even.

"Here, the plaintiff left her Minneapolis condo in 2010 and stopped paying property taxes," Rogan said. "The plaintiff chose to abandon her interests in the property rather than acting to protect any equity she might have had."

He also said the county "works very hard to help anyone who wants to avoid forfeiture" through a number of programs, including one that caps property taxes for the elderly.

"When owners ignore all of these options, the legislature has chosen to protect the public from further harm by transferring title to the government – without sending a check to the former owner," Rogan said. "The taxpayers should not be the default realtor, property manager, and auctioneer."

Tyler has many influential supporters. Dozens of amicus, or "friends of the court" briefs were filed on her behalf by property rights advocates like the U.S. Chamber of Commerce, the National Association of Homebuilders and the Cato Institute.

A group of states, Utah, Arkansas, Kansas, Kentucky, Louisiana, North Dakota, Texas, and West Virginia, also filed a brief in support of Tyler, as did the ACLU and AARP.

So did Minnesota's Republican members of Congress, Reps. Tom Emmer, R-6th District, Michele Fischbach, R-7th District, Pete Stauber, R-8th District and Brad Finstad, R-1st District.

“Despite the law’s guarantee of just compensation for our property, more than 1,200 Minnesota families have had their home equity stolen by state property seizures like the one Ms. Tyler experienced,” Emmer said in a statement. “We are proud to stand against this unconstitutional infringement and fight for the Fifth Amendment rights of every American.”

Finstad said “It is disgraceful that state and county governments are able to seize a person’s home, sell it, and pocket the equity that rightfully belongs to the property owner.”

Meanwhile, Hennepin County’s case, and the state’s forfeiture law, has received little legal support by other individuals or organizations.

The Supreme Court has been slow to issue opinions in this term, so it’s unclear when it would issue a decision in the case. But it must issue that decision before the court recesses in late June or early July.