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Supreme Court Strengthens Federal Protections for Property Rights

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May 30, 2023

Last week, the Supreme Court issued its decision in an important Takings Clause case that increased protections for property rights. ***Tyler v. Hennepin County*** addressed "home equity theft," a legal regime under which local governments can seize the entire value of a property in order to pay off a smaller delinquent property tax debt. The ruling has substantial implications for the relationship between state law and constitutional property rights. While states are free to protect property rights — and other rights — more than the federal Constitution requires, the latter sets a vital floor below which states must not fall.

Geraldine Tyler, the plaintiff in the case, is a 94-year-old African American widow whose home was seized by Hennepin County, Minnesota, in 2015 after she couldn't pay off $15,000 in taxes, penalties, interest, and fees. After selling the home for $40,000, the county then kept the entire $40,000 for itself, as Minnesota law allows. Geraldine Tyler sued the county, arguing that the seizure of the surplus funds is a taking of private property requiring the payment of "just compensation" under the Takings Clause of the Fifth Amendment. While takings cases often split the Court along ideological lines, *Tyler* was unanimous. Liberal and conservative justices agreed that home equity theft is a taking requiring the payment of "just compensation" under the Takings Clause of the Fifth Amendment.

In addition to forbidding home equity theft, which was permitted in at least 12 states and the District of Columbia, *Tyler* also decisively repudiated the idea that states can avoid takings liability simply by redefining property rights through legislation. Chief Justice John Roberts's opinion for the Court holds that "state law is one important source [of property rights]. But state law cannot be the only source." If it were, "a State could sidestep the Takings Clause by disavowing traditional property interests in assets it wishes to appropriate." Along with state law, judges considering takings cases must also "look to traditional property law principles, plus historical practice and this Court's precedents."

The theory of state supremacy over the definition of property rights is one longstanding argument for judicial deference to states in takings cases. The Court was right to reject it.

Property rights also have a basis in legal tradition, and **natural rights principles** embraced by the Founding generation and the drafters of the Fourteenth Amendment, which made the Fifth Amendment applicable to the states.

Another standard rationale for deference to states on takings issues is the claim that state and local governments are best able to consider diverse local conditions affecting land-use issues. But this "diversity" rationale would **justify** gutting federal judicial protection for a wide range of constitutional rights. Many rights address issues that vary based on local circumstances. For example, conditions affecting the "reasonableness" of law-enforcement searches under the Fourth Amendment might literally vary from house to house and street to street.

Judicial protection for property rights actually **promotes diversity and decentralization**, rather than undermining it. By giving individual property owners greater control over their own land, judicial review allows a broader range of land uses and more local diversity than if states and localities retain unconstrained power to impose one-size-fits-all restrictions over large areas.

An **ideologically diverse** range of groups filed amicus briefs supporting Tyler. This broad agreement may be because the case **combines** traditional conservative and libertarian interest in property rights with left-liberal solicitude for the interest of the poor, the elderly, and minorities — groups disproportionately victimized by home equity theft.

While the cross-ideological coalition in *Tyler* was unusual, home equity theft is just the tip of a much larger iceberg of situations where **stronger judicial enforcement** of property rights could help protect the poor, the politically weak, and minorities. The best example is exclusionary zoning, as regulatory restrictions on housing construction price millions of lower-income people out of areas where they could otherwise find greater opportunity. Experts across the political spectrum **agree** that zoning restrictions inflict enormous harm, and disproportionately affect the poor and racial minorities. The Supreme Court would do well to reconsider its poorly reasoned decision in the 1926 case ***Euclid v. Ambler Realty***, which ruled that such restrictions are generally not takings.

The same applies to the cases like ***Berman v. Parker*** (1954), and ***Kelo v. City of New London*** (2005), which ruled that almost anything — including privately owned "economic development" — can qualify as a "public use" under the Fifth Amendment, allowing the government to seize property through the use of eminent domain. This ultra-broad definition of "public use" is **at odds with** the original meaning of the Fifth Amendment, and has enabled state and local governments to **forcibly displace** many thousands of primarily poor and minority residents, often for the benefit of politically connected private interests, **including the likes of Donald Trump**.

Zoning and public use are far from the only issues where there is a compelling cross-ideological case for strengthening federal judicial protection for property rights. Others include **asset forfeitures**, **inadequate compensation** for owners of condemned property, and more. Stronger constitutional protection for property rights can help constrain the abuses of red and blue state governments alike. For example, they could be used to **challenge red-state laws** preventing property owners from banning the carrying of firearms on their land.

In some situations, state constitutions have provided stronger protections for property rights than required by the U.S. Supreme Court's interpretation of the federal Constitution. In the wake of *Kelo*, several state supreme courts struck down takings for private "economic development" under their state constitutions, while other states enacted new constitutional amendments to that effect. Three years before *Tyler*, the Michigan Supreme Court **invalidated home equity theft under its state constitution**. Some states have also adopted stronger protection against regulatory takings and zoning restrictions than federal precedent requires.

As with other constitutional rights, states remain free to provide greater protection for property rights than the federal Constitution requires. Prominent liberal Supreme Court Justice William Brennan rightly emphasized the value of that in **a famous 1977 article**. Sometimes, as with home equity theft, state court rulings can also set the stage for a strengthening of federal doctrine.

But states' ability to rise above the federal floor is not a justification for letting them fall below it. A variety of political pathologies often incentivize states and localities to under-protect constitutional rights — **including property rights** — especially those of the poor, minorities, and the politically weak. In such situations, federal judicial protection is vital. That's especially true where strong judicial review actually enhances the federalist virtues of decentralization and diversity.

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