

## Nonprofit Urges Justices To Curb 'Avaricious' Takings

By **Chuck Slothower**

Law360 (March 3, 2023, 5:32 PM EST) -- Minnesota's "avaricious" practice of allowing local governments to keep the surplus proceeds from seized property to satisfy a smaller debt violates the Fifth Amendment's takings clause, attorneys for the Atlantic Legal Foundation told the U.S. Supreme Court on Friday.

"State laws, such as the one at issue here, authorize a local taxing entity to take title to a privately owned home, sell that property in foreclosure to satisfy a tax lien, and keep for itself the surplus proceeds from the home sale, destroying the former owner's equity in her home, without just compensation," Washington, D.C., attorney Nancie G. Marzulla and the ALF's Lawrence S. Ebner **wrote in an amicus brief.**

The case, *Tyler v. Hennepin County, Minnesota, et al.*, presents an opportunity for the high court to examine the scope of the takings clause, which bars government seizure of property without just compensation. Justices also agreed to examine whether the forfeiture constitutes a fine under the Eighth Amendment.

A constellation of conservative-leaning and libertarian voices concerned with property rights are weighing in. The Pacific Legal Foundation, based in Sacramento, California, represents the plaintiff, Geraldine Tyler.

Tyler, 94, fell behind on property taxes on her Minneapolis condominium. Hennepin County first placed a lien on the property before seizing it to satisfy \$15,000 in unpaid taxes and related penalties. The property eventually sold for \$40,000, and the county kept the full amount.

Minnesota is one of 13 states that authorize local governments to keep proceeds from foreclosures greater than the debt amount.

At the heart of **the case** is whether Minnesota's practice gives debtors an adequate opportunity to redeem their seized property. The ALF brief says the Eighth Circuit Court of Appeals, in upholding Hennepin County's actions, misinterpreted *Nelson v. City of New York*, a 1956 Supreme Court decision. The circuit court also "denigrated the Fifth Amendment's protection of property rights from substantive to merely procedural, denying just compensation if adequate notice is rendered," the group told the high court.

The ALF argues that Minnesota improperly "legislated away" property owners' Fifth Amendment rights. The Eighth Circuit "failed to recognize that a state violates the Fifth Amendment if it enacts legislation that redefines private property as public property," the group's brief states.

Oral argument is scheduled for April 26.

Representatives for the county could not be immediately reached for comment Friday.

Tyler is represented by Christina M. Martin, Lawrence G. Salzman, Deborah J. La Fetra, David J. Deerson and Joshua W. Polk of the Pacific Legal Foundation, Charles R. Watkins of Guin Stokes & Evans LLC, Garrett D. Blanchfield and Roberta A. Yard of Reinhardt Wendorf & Blanchfield, and Vildan Teske of Teske Katz PLLP.

The county is represented by Rebecca Lee Stark Holschuh, Kelly K. Pierce and Jeffrey M. Wojciechowski of the Hennepin County Attorney's Office.

The Atlantic Legal Foundation is represented in-house by Lawrence S. Ebner and by Nancie G. Marzulla of Marzulla Law LLC.

The case is *Tyler v. Hennepin County, Minnesota, et al.*, case number 22-166, in the U.S. Supreme Court.

--Editing by Covey Son.