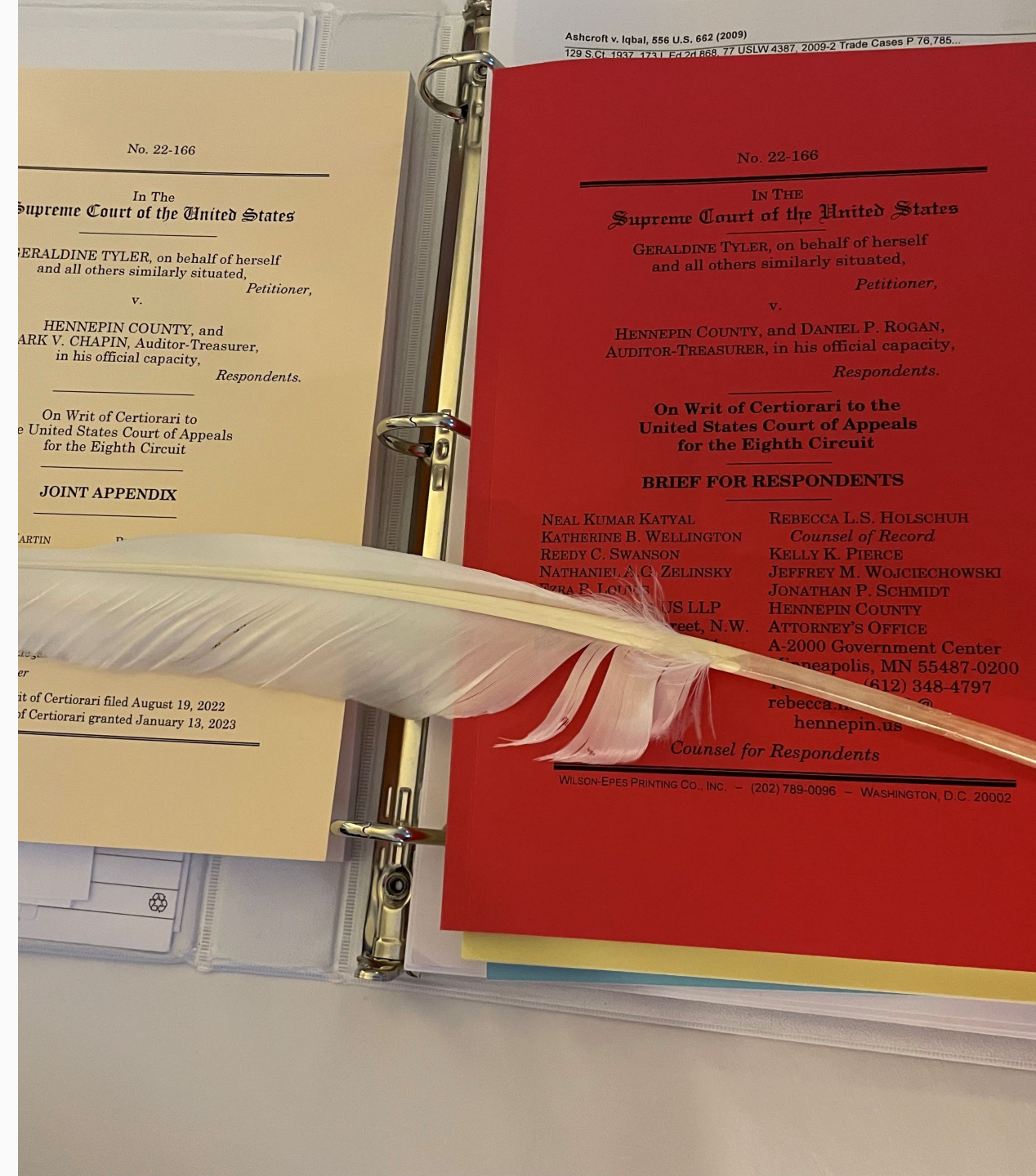


# Tyler v. Hennepin County and a more robust Takings Clause

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The opinions expressed in this presentation are those of the presenters and may not reflect the opinions of the presenters' employer.

# Tyler: Key Concepts of Tax Forfeiture

- **Forfeiture.** Legal process by which property transfers to the government to collect delinquent property taxes
- **Surplus value.** Some properties are worth in excess of amount of delinquent property taxes
- **Redemption period.** Period of time during which property owner may take action to avoid forfeiture (3 years in Minnesota)

"Does government keeping surplus value establish a taking?"

# Takings Clause of Fifth Amendment

"[N]or shall private property be taken for public use, without just compensation."

"The question of what constitutes a 'taking' for purposes of the Fifth Amendment has proved to be a problem of considerable difficulty."

-Justice Brennan in *Penn Central*



Credit: Collection of the Supreme Court of the United States

# Key takings decisions: last decade

Decision	Property Owner	Government
Koontz (2013)	✓	
Horne (2015)*	✓	
Knick (2019)*	✓	
Cedar Point Nursery (2021)*	✓	
Tyler (2023)*	✓	✓
Sheetz (2024)	✓	

\*Chief Justice Roberts' majority opinion



Chief Justice John Roberts  
Credit: Collection of the Supreme  
Court of the United States

# Where do property rights come from?

- **State law.** "Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to 'existing rules or understandings that stem from an independent source such as state law.'" *Phillips v. Washington Legal Found.*, 524 U.S. 156, 164 (1998) (quoting *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972)).
- **Tradition.** "[S]tate law cannot be the only source" of property interests, because states could redefine them, "[s]o we also look to 'traditional property law principles' plus historical practice and this Court's precedents." *Tyler*, 598 U.S. at 638. Note this exchange at the *Tyler* argument:

# Property Forfeiture in Minnesota

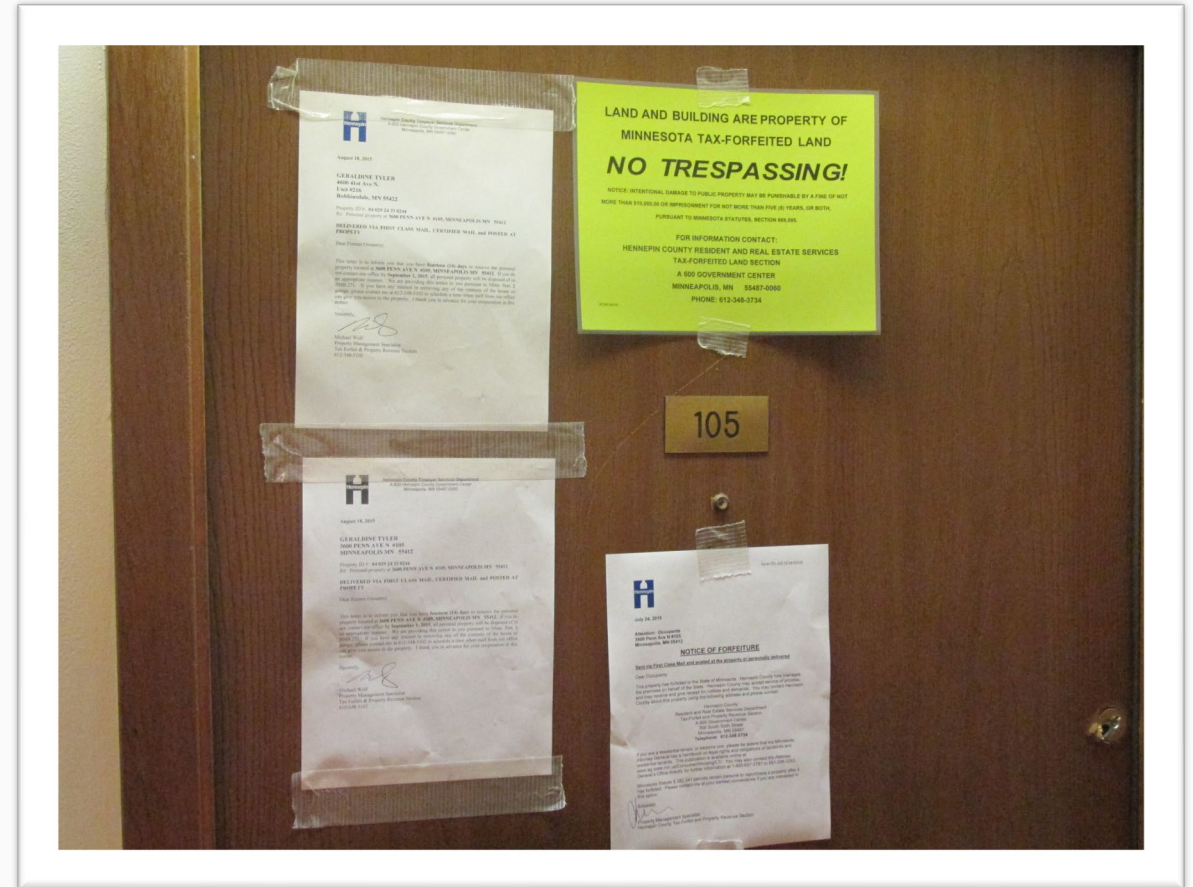
- Minnesota statutes have governed property forfeiture since 1851, prior to statehood (1858)



- Ability to reclaim excess value of forfeited has shifted over time
- Challenged components of statute had been in place since at least 1935

# Tyler Facts

- Plaintiff moved out of Minneapolis condo in 2010
- Payable 2011 taxes became delinquent
- Property forfeited in 2015
- Property auctioned to third party in 2016
- Alleged \$15,000 tax liability and \$40,000 auction price
- 2019 putative class action filed in state court; Hennepin County removed to federal court
  - Claims included takings, excessive fines, substantive due process



Credit: Hennepin County



# Tyler Arguments

- Plaintiff claimed the County's retention of any surplus was a taking
- County's arguments were two-fold:
  - Precedent (particularly *Nelson v. City of New York*) indicates tax forfeiture with sufficient process is not a taking
  - Minnesota's tax forfeiture policy is reasonable and fair

# District Court Opinion

- District court dismissed for failure to state a claim, applying *Nelson v. City of New York*
  - "[N]othing in the constitutions of the United States or Minnesota, nothing in any federal or state statute, and nothing in federal or state common law gives the former owner of a piece of property that has been lawfully forfeited to the state and then sold to pay delinquent taxes a right to any surplus."

# Tyler Appellate Review

- Eighth Circuit Court of appeals unanimously affirmed
- Judges Steven Colloton, Bobby Shepherd, Jane Kelly

"*Nelson* provides that once title passes to the State under a process in which the owner first receives *adequate notice and opportunity to take action to recover the surplus*, the governmental unit does not offend the Takings Clause by retaining surplus equity from a sale. That Minnesota law required Tyler to do the work of arranging a sale in order to retain the surplus is *not constitutionally significant*."



Credit: Hennepin County

# Litigating at SCOTUS

- Litigating a case at SCOTUS is unique
  - Justices have strong individual opinions, so briefing/argument might need to be targeted at specific justices
  - History/tradition arguments are more important
  - Policy arguments are more important
  - Involvement of Solicitor General's office
  - Importance of amici, coming from a wide variety of stances
    - States, local government entities, NPOs, academics/researchers

# Tyler Arguments

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Petitioner	Respondent
Petitioner has standing because she could use surplus funds to satisfy debt	No standing because of other encumbrances on property
Property interest survives forfeiture	No property interest following forfeiture, so no taking
Constitutional law must provide opportunity to recover surplus <i>funds</i>	Ample opportunity to avoid loss of property is all that is required
Tyler did not abandon property by failing to pay tax	Payment of tax is reasonable condition of ownership

# Supreme Court reverses in a 9-0 decision

- Tyler “plausibly pleaded financial harm” so has standing, even though she did not plead she still had equity in the property after taking other encumbrances into account. Tyler could use surplus to satisfy those debts.
- “[H]istory and precedent” give *Tyler* a property interest in the surplus, even if Minnesota statute does not
- Tyler has a “classic” Takings claim for excess value, distinguishing *Nelson v. City of New York* (1956)
- “[R]equiring a taxpayer to sell her house to avoid a taking is not the same as providing her an opportunity to recover the excess value of her house once the State has sold it.”
- Rejected theory of abandonment through failure to meet condition of ownership



Credit: Collection of the Supreme Court of the United States

# Tyler Takeaways and Questions

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- Monetary payment must be available for surplus when property is seized as part of collection
- Property tax collection can now be analyzed under the Takings Clause
- Is *Tyler's* holding limited to the collection of property taxes?
- Will *Nelson* remain good law?
- When can the law extinguish a property interest *without* it being a taking?

# Minnesota legislature responds to *Tyler*

- Appropriation to fund statewide settlement of 3 class actions
  - [Ch. 113, 2024 Minn. Laws](#)
- New sale requirement to generate surplus
  - [Art. 70, Ch. 127, 2024 Minn. Laws](#)



# Post-Tyler: Three Minnesota class actions

- Transferred all cases to one judge
- Goal: efficient and uniform statewide settlement
- Statewide data collection by counties to inform settlement
- Two mediations with retired federal judge
- February 28, 2024 term sheet
  - \$109M fund
  - 7-year lookback from start of each suit
  - Claimants receive up to 90 percent of surplus with 4.5 percent simple annual interest
  - Class counsel receives \$15M plus 8 percent of claims paid
  - Rules to calculate surplus: relying on sale and estimated market value (assessed value)
- Final approval granted December 16, 2024

## TYLER/SPORLEDER/DEMARS SETTLEMENT TERMS SHEET

### BACKGROUND

*Tyler v. Hennepin County* was initially filed in 2019, and both *DeMars v. St. Louis County* and *Sporleder v. State of Minnesota* were filed in 2023 following the *Tyler* decision. All three actions have now been transferred to Ramsey County District Court and are assigned to the Honorable Chief Judge Castro. *Sporleder v. State of Minnesota* seeks to certify both a statewide class of individuals who lost surplus value through property tax forfeiture, and a class of all 87 Minnesota counties.

All three cases seek compensation for "surplus" value in property that forfeited to the state of Minnesota pursuant to a property tax enforcement system that had been in effect for well over a century. On May 25, 2023 the United States Supreme Court held Minnesota law is unconstitutional because there is no opportunity for a property owner to recover surplus value in a property seized in exchange for a tax debt.

Class counsel in all three actions—and counsel for the state of Minnesota, St. Louis County, and Hennepin County (collectively, "Negotiating Parties")—have extensively negotiated this Terms Sheet with the goal of achieving a uniform, statewide resolution of claims following the *Tyler* decision.

The signatories to this Terms Sheet intend to incorporate these agreed upon terms into a settlement agreement as soon as practicable. The settlement agreement must be approved by the governing bodies of all named defendants and by the court.

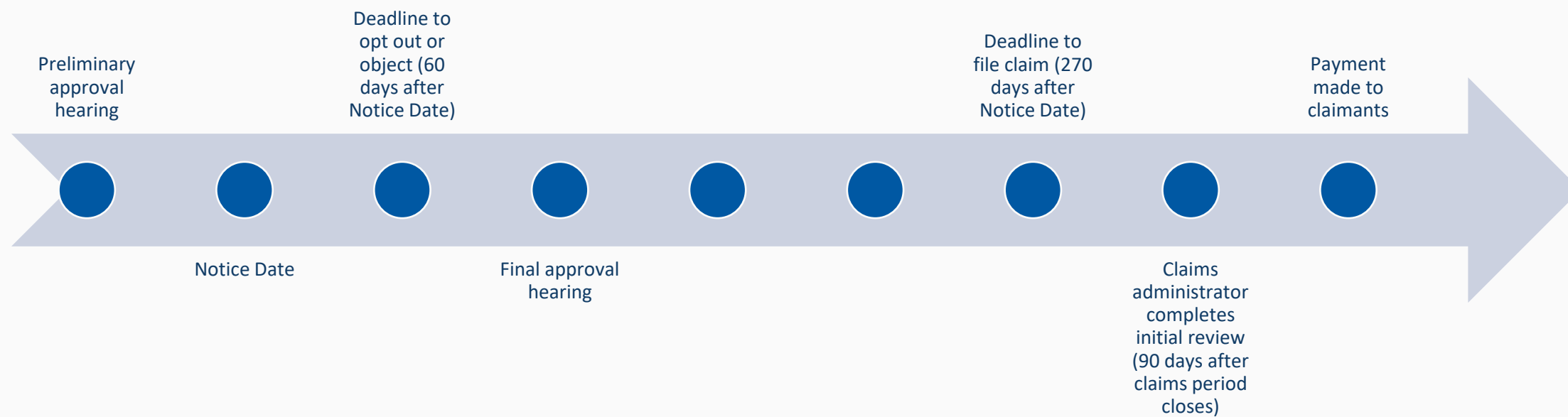
### KEY TERMS

Total Fund	Settlement subject to and conditioned on \$109,000,000 being paid into a Qualified Settlement Fund ("QSF") by the State of Minnesota, by June 19, 2024. QSF to be established by class counsel and earn interest.
Expected payment for each forfeited property	90 percent of surplus before possible reduction for fees/costs as set out under "Attorney's fees" below.
Interest rate	4.5 percent simple annual, from date of forfeiture (Date Redemption Period Expired; Column E on the spreadsheets (data set 020124.xlsx)) through date of payment into QSF.
Claims valuation (except for "properties subject to additional review," below)	The Surplus Value is the difference between an Eligible Property's actual sale price and the Tax Obligation where the sale price is at least 60 percent of Estimated Market Value. If the sale price was less than 50% of Estimated Market Value or if no sale occurred, the Surplus Value is the difference between the Estimated Market Value and the Tax Obligation. If a sale occurred and the actual sale price is between 50 and 60 percent of the Estimated Market Value, the Surplus Value is the average of the actual sale price and the Estimated Market Value. If an Eligible Property has been designated by a party as requiring additional review, Surplus Value shall be the amount determined by the agreement, Claims Administrator or the Special Master, as appropriate.
	"Tax Obligation" means the sum of all delinquent taxes, interest, penalties, fees, and costs owing to the County at the time the redemption period

# Legislation approving settlement fund

- Appropriates \$109M from state general fund for statewide settlement negotiated in these cases
- Counties are “in” unless they opt out in writing by August 1, 2024
- Counties who choose not to participate retain all risk of liability for claims related to properties forfeited before January 1, 2024
- Participating counties must provide public property tax data necessary to effectuate settlement by August 1, 2024
- Participating counties must sell existing forfeited land inventory to contribute to cost of settlement

# Settlement timeline



# Inventory sale: county requirements

- **Identify every property that forfeited between June 23, 2016 and December 31, 2023 that is still in inventory**
  - Different dates for Hennepin and St. Louis County
  - Exclude conservation land
  - Exclude properties in rehab program
- **Make “good faith effort” to sell these properties until June 30, 2029**
  - Live auction, online auction, private broker, or adjacent owner sale per 282.01, subd. 7a (if eligible)
  - Minimum price is appraised value
  - Certain residential properties must be offered first to owner-occupants
  - Cash only
- **Submit a report to MMB by December 31 of each year**
  - Describe efforts to sell inventory properties
  - For each inventory property, list date of forfeiture, sale price, and amount remitted to MMB
  - Six reports total, 2024 through 2029

# Inventory sale: proceeds

- Percentage of proceeds will reimburse state
  - 75 percent for properties sold before June 30, 2027
  - 85 percent for properties sold before June 30, 2029
- Remaining proceeds to county

# Amending the tax forfeiture scheme: constitutional requirements

- Need to create an opportunity for interested parties to claim “surplus” funds in collection process
- Need to capture market value of property for purposes of calculating surplus
- Need adequate due process for all interested parties

# Amending the tax forfeiture scheme: different goals for new system

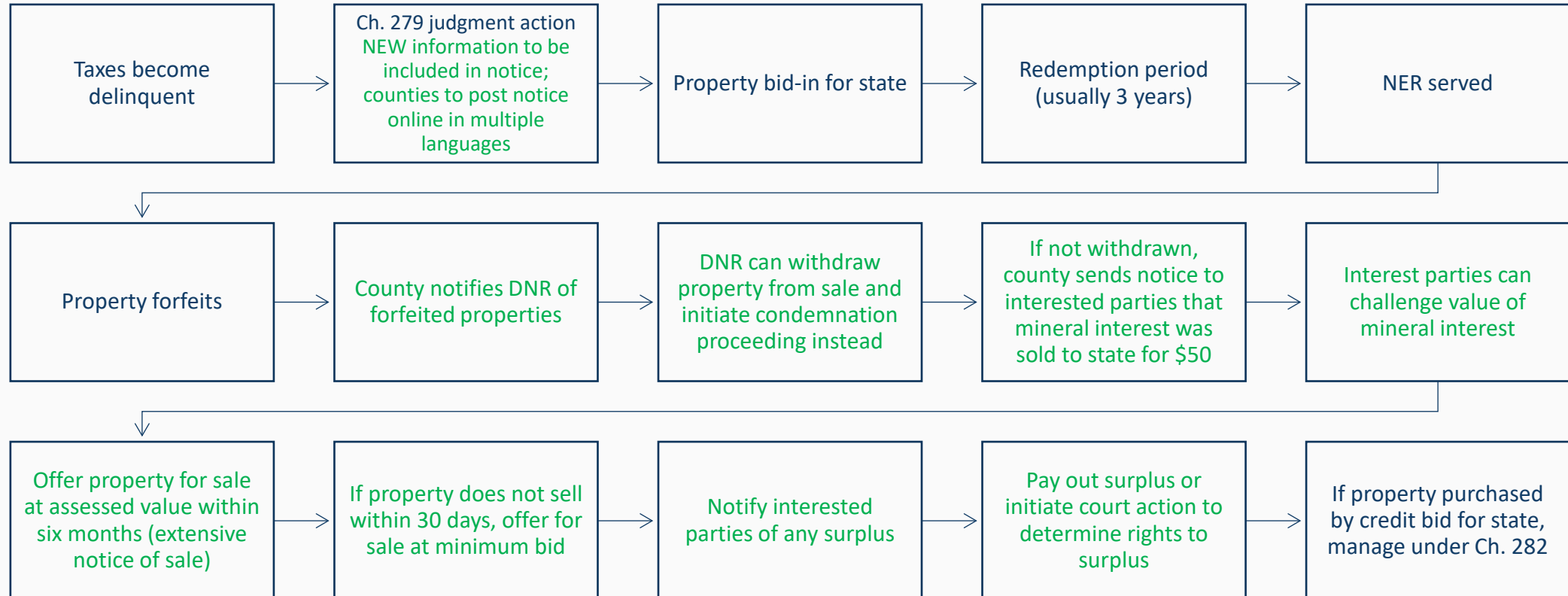
- Counties: fair, efficient, flexible, protective of interests
  - Modernization v. status quo
- Property advocates: compensation based on FMV
- State: transfer mineral interests to public
- Legislature: minimal disruption to existing statutory scheme

# New system embeds extra sales into existing forfeiture system

- New Law: Art. 70, Ch. 127, 2024 Minn. Laws; see Minn. Stat. Sec. 282.005
- Counties still obtain judgment against property through judicial action
- Properties still automatically sold to state, triggering redemption period
- Absolute title still transfers to state automatically after redemption period expires
- New post-forfeiture sale requirements to generate surplus payment to interested parties
  - Automatically severs mineral interest which is sold to state for \$50
  - Two sales of surface estate to generate surplus: first for EMV, then for minimum bid
- Unsold properties managed by counties pursuant to existing law governing forfeited property



# Overview of **new** MN forfeiture process



Post-*Tyler* decisions:

## *Campo v. United States* (Court of Federal Claims)

- Plaintiffs leased Louisiana oyster beds from the government. A spillway diverted fresh water, killing the oysters
- Do Plaintiffs have a takings claim? No. Unlike *Tyler*, no existing right was transferred from private owner to government
- "Plaintiffs, whose rights in the oysters stem exclusively from their lease contracts, which obligate plaintiffs to follow Louisiana law, therefore never had the right to sue the government for a taking arising out of integrated coastal protection, meaning this right could not be 'transform[ed] . . . into public property.' " (quoting *Webb's Fabulous Pharmacies*)

Post-*Tyler* decisions:

*Traylor v. Town of Waterford* (Second Cir.)

- Property owner owed \$165K in property taxes on a property whose FMV was \$240K
- At tax sale, property sold for \$150K; amount was distributed entirely to government
- Court found this was not a taking, even under *Tyler*, because the foreclosure sale price did not exceed amount due
- Former owner did not sufficiently allege that town was obligated to ensure that sale price equaled or exceeded FMV

# Post-*Tyler* decisions:

## *Todman v. Baltimore* (Fourth Cir.)

- Baltimore ordinance that deems abandoned any personal property left following eviction violates procedural due process
- Court pointed to *Tyler's* rejection of condition-of-ownership theory: "[W]hen operation of a confiscatory statute is triggered by something other than long periods of nonuse, it starts to look less like abandonment and more like a government-induced forfeiture."
- Ordinance "is much too poor a proxy [for abandonment] to operate without individual notice or an opportunity to contest the deprivation."
- "Were we to hold otherwise, local governments could opt out of the Due Process Clause altogether by recharacterizing any deprivation as an abandonment."

Post-*Tyler* decisions:

*Bowles v. Sabree* (Sixth Cir.)

- Huge group of cases challenging MI's forfeiture laws, both pre- and post-*Tyler*
- MI had changed its law before *Tyler*
- District court certified a class of former owners, but appeals court reversed because surplus equity claims (involving value at FMV) can't be litigated by formula and so are inappropriate for class treatment
- This means groups of surplus equity + surplus proceeds claims can't be litigated in the same class

## Post-*Tyler* decisions:

### *Biesemeyer v. Anchorage* (D. Alaska)

- City foreclosed property following failure to pay property taxes and retained surplus; property owner did not make a claim, and argued he should not have to
- State law allowed one year to redeem property and six months to claim surplus sale proceeds. This “meets the low threshold implied by *Tyler and Nelson*.”
- Action was time-barred, but Court also said there is no takings claim because mechanism to recover surplus was adequate and “states may properly enact procedures that restrict a property owner's ability to claim that excess”

Post-*Tyler* decisions:

*Sharritt v. Henry* (N.D. Ill.)

- In Illinois, counties sell amounts of unpaid taxes at tax sales, which (when paid by the winner) give the winner the right to collect the tax from the former owner and a lien on the property
- When former owners sued, counties moved to dismiss, arguing there was no taking because private buyers (not government) received any surplus entity
- The court disagreed: "The Fifth Amendment prohibits the government from "tak[ing] for public use" privately-owned property. It does not limit this prohibition to situations where the government also *retains* the property."

Post-*Tyler* decisions:

*Davenport v. Town of Reading* (D. Mass.)

- MA had a statute like MN's that precluded former owner from recouping surplus equity
- Dispute relates to when a former property's owners' injury occurred: when town obtained absolute title (meaning claim was time-barred) or when town refused to return surplus from property sale
- Since former owner raised takings claim about retention of surplus equity, court holds key time was when town refused to pay former owner any surplus funds



Post-*Tyler* decisions:

*Ramsey v. City of Newburgh* (S.D.N.Y.)

- Property owner fell behind on taxes, City seized property, and deed was transferred to City; Plaintiff (who was still living in the property) alleged takings claim for difference between FMV and tax lien
- City had not sold the property because property owner was still living there; Court holds that takings claim was not ripe

# Post-*Tyler* decisions:

## *Continental Resources v. Fair* (Neb.)

- Nebraska sold tax liens via “certificates” to private investors; investor could request tax deed if property was not redeemed in three years or initiate judicial foreclosure action
- Continental Resources obtained tax deed and filed quiet title action
- Court initially rejected takings claim alleging private use and failure to provide just compensation; SCOTUS granted cert, vacated judgment, and remanded for reconsideration following *Tyler*
- On reconsideration, *Fair* has a takings claim: “In *Tyler*, the U.S. Supreme Court made clear that state law alone cannot and does not determine whether a claimant has a property interest that is protected by the Takings Clause.”
- Investor can be liable for just compensation because “pursuit of the tax deed qualifies as state action”

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