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Attorneys for Christine M. Searle

13 **IN THE UNITED STATES DISTRICT COURT**
14 **FOR THE DISTRICT OF ARIZONA**

15 Christine M. Searle,

16 Plaintiff,

17 v.

18 John M. Allen (“Allen”), in his official
19 capacity as The Treasurer of Maricopa
20 County; Arapaho LLC; American
21 Pride Properties, LLC; Maricopa
22 County, John Doe, Jane Doe, Black
23 Corporations, White Partnerships, and
24 Green Limited Liability Companies,

25 Defendants

Case No. CV-24-00025-PHX-JJT

Assigned Judge: John J. Tuchi

**SECOND AMENDED COMPLAINT FOR
DECLARTORY AND INJUNCTIVE
RELIEF AND DAMAGES**

1 Plaintiff Christine M. Searle (“Ms. Searle”) filed her first complaint on January 5,
2 2024. Her First Amended Complaint was filed with the consent of all parties on January
3 26, 2024. This Second Amended Complaint (SAC) is filed pursuant to the Court’s order
4 on April 16, 2024, which granted an extension of time until April 24, 2024, for Ms. Searle
5 to file a Second Amended Complaint. [ECF 41, at 2.] A “compare” version of the First
6 Amended Complaint and the SAC is attached as Exhibit 1 to Ms. Searle’s Notice of
7 Amended Pleading. [ECF 44.]¹

8 Ms. Searle brings this action to challenge a violation of her constitutional rights
9 through the improper taking of her property, invoking the protections of the Takings Clause
10 of the Fifth Amendment and the Excessive Fines Clause of the Eighth Amendment to the
11 United States Constitution, as incorporated against the states by the Fourteenth
12 Amendment. Additionally, she brings claims for violations of the Gift Clause, Takings
13 Clause, and Excessive Fines Clause of the Arizona Constitution, and asserts a cause of
14 action for unjust enrichment.

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20 ¹ The request for an extension stated the following: “Ms. Searle does not intend to add any
21 Counts to her Second Amended Complaint with respect to Defendants Arapaho LLC and
22 American Pride Properties LLC, such that the current schedule on these Defendants’ reply
23 brief in support of their motion to dismiss [ECF 31] would need to change.” *See* ECF 40,
24 at ¶ 17. Defendants Arapaho and American Pride lodged a proposed reply brief on April
25 16, 2024, along with a “First [sic] for Leave to File Excess Pages.” [ECF 42-43 (it was
26 actually their second).] In the interest of transparency, Ms. Searle states that she has added
27 several relevant facts to her claims—including the Attorney General’s statements in ECF
28 32, citations to the Supreme Court’s April 16, 2024 decision in *DeVillier v. Texas*, 601 U.S.
—, — S. Ct. —, 2024 WL 1624576, *3 (Apr. 16, 2024), and to a legislative fix that was
signed by the Governor of Arizona just yesterday, on April 23. (Senate Bill 1431). Ms.
Searle stands by her word—she has not added any Counts against Arapaho or American
Pride. Yet it is impossible to blind herself to these factual developments, and it does not
benefit the Court to omit them here, such that they are thus included in this SAC.

INTRODUCTION

1
2 1. This case challenges a legal regime² under Arizona law, where small,
3 sometimes incredibly minor, amounts of delinquent taxes can lead to the seizure of a
4 property and the eviction of its owners.

5
6 2. Under this Arizona tax lien scheme, either the State or private entities may
7 take possession and title of the property or sell it, often for amounts well exceeding the
8 unpaid taxes. Consequently, the lien purchaser retains all of the homeowner’s equity in the
9 property. *See, e.g., Arizona Tax Liens Wreaking Havoc On Lenders, Borrowers, QUARLES*
10 *& BRADY NEWS AND INSIGHTS* (May 9, 2014) (“With shocking frequency across the
11 counties of Arizona, homeowners and lenders are failing to redeem delinquent tax liens,
12 and are thereby losing their pecuniary and fee simple interests.”).³

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15 3. Ms. Searle is a 70-year-old woman, who has been deprived of her property
16 located at 513 S. Ash St., Gilbert, AZ 85233 (the “Home”) that she had owned for 18 years.

17
18 4. Defendant Arapaho Investment Properties, LLC (Arapaho or Defendant
19 Arapaho) purchased 2015 and 2016 tax liens issued by the Maricopa County Treasurer’s
20 office against Ms. Searle’s home, which stemmed from Ms. Searle’s delinquent taxes.

21
22 5. In late 2021, Arapaho began foreclosure proceedings based on Arizona’s tax
23 lien scheme. But Ms. Searle maintained her ownership of her property at that time.

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25 _____
26 ² At the time of filing this Second Amended Complaint, a bill has been signed by the
27 Arizona Governor Katie Hobbs changing this regime. However, the bill does not protect
28 Ms. Searle, as it is not retroactive. *See* Arizona Senate Bill 1431 (Signed by Governor on
April 23, 2024) (SB 1431), <https://legiscan.com/AZ/bill/SB1431/2024>

³ <https://www.quarles.com/newsroom/publications/arizona-tax-liens-wreaking-havoc-on-lenders-borrowers>

1 Although the foreclosure process began in 2021, the constitutional violation did not occur
2 until at least the issuance of the Treasurer’s Deed, and Defendants’ failure to pay Ms. Searle
3 just compensation and fair market value for the equity that she had accumulated in the
4 home. *See infra*, ¶ 18 (the taking in *Tyler* is the retention of the excess value).

5
6 6. Upon information and belief, Arapaho subsequently transferred its interest in
7 Ms. Searle’s home to Defendant American Pride Properties, LLC (American Pride or
8 Defendant American Pride) on February 3, 2022.

9
10 7. Neither Arapaho nor American Pride have ever provided to Ms. Searle any
11 funds over and above what she owed in taxes; nor have they provided any assurance that,
12 to the extent that a future sale occurs, she will be provided with the “delta” between the
13 purchase price or market value of the home, and the amount of the tax lien.⁴

14
15 8. Upon information and belief, Arapaho and American Pride intend to retain
16 the delta connected to the sale of Ms. Searle’s home.

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18 9. In May 2023, the Supreme Court decided the case of *Tyler v. Hennepin Cnty.*,
19 *Minnesota*, 598 U.S. 631 (2023).

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24 ⁴ Note that in the Supreme Court oral argument in the *Devillier* case, the State of Texas
25 agreed with the position that a failure to justly compensate the victim of a taking is an
26 ongoing violation, that occurs every day until just compensation occurs. *See* Oral
27 Argument before the U.S. Supreme Court in *Devillier v. Texas*, No 22-913, at 47:7-11 (Jan.
28 16, 2024) (“Justice Kagan: It’s an ongoing violation of the Constitution, right? I’ve taken
Mr. McNamara’s property. I haven’t paid him. Every day, I’m violating the Constitution,
correct? MR. NIELSON: Yes, Your Honor.”).

1 10. In *Tyler*, the Supreme Court of the United States held that a county’s decision
2 to retain funds following a forfeiture process constituted a taking under the Fifth
3 Amendment.

4 11. As the Supreme Court found in *Tyler*, “The taxpayer must render unto Caesar
5 what is Caesar’s, but no more.” 598 U.S. 631 (2023); *see also Palazzolo v. Rhode Island*,
6 533 U.S. 606, 627 (2001) (“A State would be allowed, in effect, to put an expiration date
7 on the Takings Clause. This ought not to be the rule. Future generations, too, have a right
8 on the Takings Clause. This ought not to be the rule. Future generations, too, have a right
9 to challenge unreasonable limitations on the use and value of land.”).

10 12. *Tyler* recognized the common law general rule, as stated in Blackstone: “If a
11 tax collector seized a taxpayer’s property, he was ‘bound by an implied contract in law to
12 restore the property on payment of the debt, duty, and expenses, before the time of sale; or,
13 when sold, to render back the overplus.’” *Tyler*, 598 U.S. at 640 (citing 2 Commentaries
14 on the Laws of England 453 (1771)) (internal brackets omitted).

15 13. *Tyler*’s holding applies equally to situations where a county merely
16 authorizes a third-party to retain the delta between a debtor’s tax debt and the price of their
17 home. As stated broadly in *Tyler*, “Our precedents have also recognized the principle that
18 a taxpayer is entitled to the surplus in excess of the debt owed.” *Id.*

19 14. Here, the numbers are even more grossly disproportional and offensive to the
20 Constitution than they were in *Tyler*. At the time of the foreclosure action leading to the
21 issuance of the treasurer’s deed, the relevant tax lien to Ms. Searle was only \$1,607.68.
22 Meanwhile, her home is worth several hundred thousand dollars.
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1 15. Upon information and belief, Defendants Arapaho and American Pride have
2 actual knowledge of the Supreme Court’s decision in *Tyler*, yet have not provided Ms.
3 Searle with just compensation, or any assurance of future compensation. On the contrary,
4 counsel for Arapaho initially notified Ms. Searle that eviction proceedings would soon
5 occur. [See ECF 1-1.]⁵

6
7 16. The practice of taking the entire value of a property, including the surplus
8 value, in excess of the amount of unpaid taxes and associated charges constitutes a taking
9 under *Tyler*.

10
11 17. In *Tyler*, the Court specifically tied the “taking” to the retention of the excess
12 value from the sale of a property. The Court stated:

13
14 The County argues that the delinquent taxpayer could sell her house to pay
15 her tax debt before the County itself seizes and sells the house. But requiring
16 a taxpayer to sell her house to avoid a taking is not the same as providing her
17 an opportunity to recover the excess value of her house once the State has
18 sold it.

19 598 U.S. at 644-45 (emphasis added).

20 18. In other words, the act of taking extends to the withholding of any value
21 beyond the tax debt owed when a home transfers ownership, depriving the original owner
22 of potential profits from their property’s equity.

23
24 ⁵ As the Court is aware, Arapaho and Ms. Searle have reached an agreement that stipulates
25 to the injunctive relief sought in Ms. Searle’s original motion for a temporary restraining
26 order and preliminary injunction. Eviction proceedings are therefore no longer expected to
27 occur imminently. [See ECF 10, at 5 (“Defendant Arapaho has stipulated to the relief
28 requested in Searle’s motion, such that eviction proceedings shall not occur for at least 12
months.”); *see id.* at 6 (“The parties reserve all rights after the 12-month period, ending
March 15, 2025, to reach further agreement, or to apprise the Court that eviction
proceedings against Ms. Searle are once again imminent.”).]

1 26. Defendant Arapaho is a limited liability company involved in the purchase
2 of tax lien certificates and foreclosure of tax liens, including the purchase of the tax lien
3 against the home in this matter.

4 27. Defendant American Pride Properties is a limited liability company. Upon
5 information and belief, American Pride now owns Ms. Searle's home.

6 28. Defendant John M. Allen ("Allen") is sued in his official capacity as the
7 Treasurer of Maricopa County. His office is responsible for the administration of tax
8 collection, imposition and sale of tax liens, and related proceedings in Maricopa County.
9 *See* ARIZ. REV. STAT. ANN. § 42-18001; *see also* ARIZ. REV. STAT. ANN. § 42-18101.
10 Defendant Allen is no longer sued in his individual capacity.

11 29. Defendant Maricopa County is a political subdivision of the State of Arizona.
12 Maricopa County, through its Treasurer's Office, is responsible for implementing and
13 enforcing the tax lien foreclosure scheme challenged in this action.

14 30. Defendants John Doe, Jane Doe, Black Corporations, White Partnerships,
15 and Green Limited Liability Companies are fictitious names for any Defendants not named
16 of whom the Plaintiff later may become aware, who may have an interest in the real
17 property at issue or been involved in the taking of Ms. Searle's Home.

18 31. All Defendants` were acting and/or continue to act under color of state law
19 at all times relevant hereto. All Defendants are "persons" for purposes of 42 U.S.C. § 1983.
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JURISDICTION AND VENUE

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2 32. Plaintiff brings this action pursuant to 42 U.S.C. §§ 1983 & 1988 and 28
3 U.S.C. § 2201 for deprivations of Plaintiff’s rights secured by the Fifth, Eighth, and
4 Fourteenth Amendments to the United States Constitution.

5
6 33. This Court has jurisdiction over this complaint under 28 U.S.C. § 1343,
7 which provides for original jurisdiction in this Court for suits brought pursuant to 42 U.S.C.
8 § 1983. The Court also has jurisdiction under 28 U.S.C. § 1331 because this matter arises
9 under the Constitution and laws of the United States.

10
11 34. Venue is appropriate in this district under 28 U.S.C. § 1391(b)(2) because a
12 substantial part of the events or omissions giving rise to Plaintiff’s claims occurred in this
13 district and a substantial part of property that is the subject of the action is situated within
14 this district.

15
16 35. Ms. Searle possesses standing because she will suffer a “classic pocketbook
17 injury” from the sale of her home, when the sale results in price over and above what she
18 owed in taxes. *Tyler*, 598 U.S. at 636 (injury caused by County illegally appropriating
19 \$25,000 in excess value from sale).

20
21 **STATEMENT OF FACTS**

22 **Arizona’s Statutory Scheme Allowed Equity Theft**

23
24 36. The Arizona Legislature previously established a statutory scheme under
25 Title 42, Chapter 18 of the Arizona Revised Statutes in which property owners could be
26 robbed of their hard-earned home equity over relatively miniscule tax liens.

1 37. In Arizona, tax liens are created under ARIZ. REV. STAT. ANN. § 42-17153,
2 which established that taxes levied on property become liens on the assessed property from
3 January 1 of the tax year, having priority over most other liens. This statute worked in
4 tandem with ARIZ. REV. STAT. ANN. § 42-17154, which extended the liability for taxes
5 beyond the specific property assessed, allowing for mutual liability between real and
6 personal property.
7

8 38. The County Treasurer, as tax collector, has the additional duty of securing
9 payment on delinquent taxes by selling liens and/or foreclosing the right to redeem those
10 liens. *See* ARIZ. REV. STAT. ANN. § 42-18001; *see also* ARIZ. REV. STAT. ANN. § 42-18101.
11 Once sold, the County Treasurer must issue a certificate of purchase to the purchaser or
12 assignee, which constitutes prima facie evidence of a valid purchase. *See* ARIZ. REV. STAT.
13 ANN. § 42-18118; *see also* ARIZ. REV. STAT. ANN. § 42-18119.
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15 39. Should the lien not be purchased by a private party as outlined above, the
16 lien is assigned to the State by the County Treasurer. *See* ARIZ. REV. STAT. ANN. § 42-
17 18113.
18

19 40. After three years from the sale or assignment of a tax lien, the purchaser or
20 the State may initiate an action to foreclose the right to redeem if the lien is not redeemed.
21 *See* ARIZ. REV. STAT. ANN. § 42-18201.
22

23 41. If the lien is not redeemed and the right to redeem is successfully foreclosed
24 by the resulting judgment, the County Treasurer is directed to deliver a treasurer's deed
25 conveying the property to the purchaser or the State as assignee. *See* ARIZ. REV. STAT.
26 ANN. § 42-18204.
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1 significantly higher than this valuation. For example, although online real estate estimates
2 are not as reliable as individual professional appraisals, the Zillow estimated range for
3 purchasing Ms. Searle's house is between \$438,000-484,000.⁶ Redfin, another real estate
4 website, estimates the Home's value at \$430,000-512,000.⁷ Finally, Trulia and
5 Realtor.com list the estimated value as \$461,200,⁸ and between \$433,581-480,000,⁹
6 respectively.
7

8 47. Defendant Arapaho purchased the 2015 and 2016 tax liens issued by the
9 Maricopa County Treasurer's office against Ms. Searle's home stemming, from Ms.
10 Searle's delinquent taxes.
11

12 48. In 2021, Defendant Arapaho began the initial stages of foreclosure
13 proceedings on those tax liens. According to Defendant Arapaho's verified complaint in
14 that action, at the time of the foreclosure action, Ms. Searle owed \$1,607.68 in delinquent
15 taxes. *See* Exhibit 1. Arapaho won a default judgment in accordance with the statutory
16 scheme outlined above, and was issued a treasurer's deed for the Home on February 1,
17 2022. *See* Exhibit 2 at 2.
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22 ⁶ 513 S Ash St, Gilbert, AZ 85233, Zillow (Jan. 26, 2024)
23 https://www.zillow.com/homedetails/513-S-Ash-St-Gilbert-AZ-85233/8180247_zpid/.

24 ⁷ 513 S Ash St, Gilbert, AZ 85233, REDFIN (Jan. 26, 2024),
25 <https://www.redfin.com/AZ/Gilbert/513-S-Ash-St-85233/home/28096951>.

26 ⁸ 513 S Ash St, Gilbert, AZ 85233, Trulia (Jan. 26, 2024),
27 <https://www.trulia.com/home/513-s-ash-st-gilbert-az-85233-8180247>.

28 ⁹ 513 S Ash St, Gilbert, AZ 85233, REALTOR (Jan. 26, 2024),
https://www.realtor.com/realestateandhomes-detail/513-S-Ash-St_Gilbert_AZ_85233_M29465-56767

1 49. The Treasurer’s deed formally removed Ms. Searle’s ownership of the
2 property in question, and is the earliest possible time when she was first owed just
3 compensation under the Fifth Amendment. *See DeVillier v. Texas*, 601 U.S. —, — S. Ct.
4 —, 2024 WL 1624576, *3 (Apr. 16, 2024) (“A property owner acquires an irrevocable
5 right to just compensation immediately upon a taking because of the self-executing
6 character of the Takings Clause with respect to compensation.”) (emphasis added); *Petro-*
7 *Hunt, L.L.C. v. United States*, 862 F.3d 1370, 1378 (Fed. Cir. 2017) (“Generally, such a
8 taking occurs when the government deprives an owner of the use of his or her property.”)
9 (emphasis added); *Sprang v. Petersen Lumber, Inc.*, 165 Ariz. 257, 262 (Ariz. Ct. App.
10 1990) (“A treasurer’s deed usually conveys a new and complete title under an independent
11 grant from the sovereign, free of any prescriptive title and all other liens and
12 encumbrances.”); *Allied Am. Inv. Co. v. Petit*, 65 Ariz. 283, 286 (Ariz. 1947) (describing
13 the character and the numerous rights that a treasurer’s deed triggers).

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17 50. Following the entry of the default judgment, Ms. Searle received a letter
18 dated February 10, 2022, informing her of the issuance of the Treasurer’s and foreclosure.
19 *See* Exhibit 2 at 1. Ms. Searle then moved to set the default judgment aside, contending
20 that she had not received proper notice regarding foreclosure action. However, this motion
21 was denied. Ms. Searle then filed an appeal challenging the denial of her motion to set
22 aside the default judgment. The Court of Appeals of Arizona, Division 1 affirmed the
23 denial of Ms. Searle’s motion on February 9, 2023. *See Arapaho LLC v. Searle*, No. 1 CA-
24 CV 22-0478, 2023 WL 1830382 (Ariz. Ct. App. Feb. 9, 2023), review denied (Oct. 17,
25 2023).

1 51. On October 17, 2023, further review in the Arizona appellate courts was
2 denied. *Id.*

3 52. Due to the foreclosure action resulting in default judgment and the
4 subsequent appeals being limited in scope to a notice issue, the merits of the foreclosure
5 case have not been litigated. In fact, none of the issues surrounding takings or excessive
6 fines have even been litigated with respect to Ms. Searle’s home. As a result, neither res
7 judicata or collateral estoppel have any bearing on this suit.

8 53. *Tyler* represents new law. *Compare Automatic Art LLC v. State of Arizona*,
9 No. CV 08-1484, 2010 WL 11515708, *6 (D. Ariz. March 18, 2010) (“[T]he Court still
10 concludes that Plaintiff’s interest in the subject property terminated completely with the
11 issuance of the treasurer’s deed, and no deprivation of constitutional rights occurred.”)¹⁰;
12 *see contra* Testimony of Maricopa County Treasurer John Allen regarding Senate Bill
13 1431, Arizona State Senate Finance and Commerce Committee, at 25:35 (Feb. 12, 2024)
14 (“We don’t give a mechanism [to distribute excess proceeds] in the liens [context.] And so
15 this is adding that mechanism to the liens so that you have the ability to say ‘I’m owed
16 something here. I would like to get it back.’”)¹¹; *see infra*, para. 81.

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¹⁰ Note that even the Court in *Automatic Art* pinned the deprivation of property rights to no earlier than “the issuance of the treasurer’s deed.” *Id.* at *6 (“[T]he Court has concluded that Plaintiff had no continuing property interest in the subject property after the treasurer’s deed issued.” (emphasis added).

¹¹ <http://www.azleg.gov/videoplayer/?eventID=2024021046&startStreamAt=1147>

1 54. Because of the issuance of the treasurer’s deed, and an imminent future
2 foreclosure, Ms. Searle will be deprived of the value of all the equity she had built in her
3 home, in addition to one of her sole streams of retirement income via renting the house.

4 55. Had the State of Arizona been the assignee of the tax lien, rather than a
5 private entity, Arizona law states that Ms. Searle would be entitled to the difference of any
6 sale price and the amount she owed, plus the related costs. Testimony of Maricopa County
7 Treasurer John Allen regarding Senate Bill 1431, Arizona State Senate Finance and
8 Commerce Committee, at 25:30 (Feb. 12, 2024) (“When I sell property I do distribute the
9 excess proceeds.”).

10 56. Unfortunately, Arapaho and/or American Pride will obtain a massive
11 windfall: obtaining a property valued in the mid-\$400,000s over a tax lien that at the time
12 of foreclosure was roughly \$1,600.¹²

13 57. Ms. Searle is not seeking a review of the state court’s judgment and is not
14 arguing that the judgment was improper based on the Arizona statutory schemes. Instead,
15 Ms. Searle raises separate constitutional claims based on the retention of a delta, and the
16 delivery of her home to a private party, which constitutes an unconstitutional taking under
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24 ¹² After conferral with Arapaho’s counsel, it has come to light that Ms. Searle does owe
25 other debts, and that the property is otherwise encumbered. However, these amounts do
26 not exceed the value of Ms. Searle’s home, and, under *Tyler*, they make little difference to
27 the legal claims in this case. *Tyler*, 598 U.S. at 637 (“Had Tyler received the surplus from
28 the tax sale, she could have at the very least used it to reduce any such liability.”). Ms.
Searle does not mean to suggest that Arapaho or American Pride are engaging in
impropriety or unethical behavior by retaining a windfall.

1 the Fifth Amendment, an unconstitutional taking without just compensation, an excessive
2 fine, and unjust enrichment, among other things.

3 58. These issues were not, and could not have been, adjudicated in the state court
4 proceedings focused on notice and procedural aspects of the foreclosure in the context of
5 a default judgment.
6

7 59. The U.S. Supreme Court has clarified that the *Rooker-Feldman* doctrine does
8 not bar federal jurisdiction over a claim alleging a legal injury that is separate from the
9 state court decision, even if both cases share some common factual predicates. *See Exxon*
10 *Mobil Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 (2005).
11

12 **States May Not Seize Property for a Private Purpose, nor Seize Property for a**
13 **Public Purpose Without Providing Just Compensation, nor Levy an Excessive Fine**

14 60. The United States and Arizona Constitutions prohibit the taking of private
15 property without a “public use.” Moreover, even where a public use can be shown, “just
16 compensation” must be provided if such property is taken.
17

18 61. Article 2, Section 17 of the Arizona Constitution states: “Private property
19 shall not be taken for private use, except for private ways of necessity, and for drains,
20 flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or
21 sanitary purposes. No private property shall be taken or damaged for public or private use
22 without just compensation having first been made . . .” This provision, akin to its federal
23 counterpart, restricts takings absent a public purpose and ensures compensation for
24 property owners.
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1 62. The Fifth Amendment to the United States Constitution articulates similar
2 restrictions, declaring “nor shall private property be taken for public use, without just
3 compensation.” The Fourteenth Amendment extends these protections to the states,
4 affirming, “No State shall...deprive any person of life, liberty, or property, without due
5 process of law; nor deny to any person within its jurisdiction the equal protection of the
6 laws.”
7

8 63. Both the United States and Arizona Constitutions also prohibit excessive
9 fines. The Eighth Amendment to the United States Constitution, applicable to the states,
10 and Article 2, Section 15 of the Arizona Constitution, both stipulate: “Excessive bail shall
11 not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.”
12

13 64. Despite these constitutional guarantees, Arizona, through its statutory
14 scheme described above, permitted the seizure of property from homeowners with unpaid
15 real property taxes, transferred title to the state or third parties, and deprived the original
16 property owner of the equity or value of their property after taxes and charges are satisfied.
17 Furthermore, there is no provision for the original owner to reclaim this excess equity or
18 surplus from a private party.
19

20 65. By permitting a private entity to obtain the home of a delinquent taxpayer,
21 Arizona’s statutory scheme effectuated a *per se* unconstitutional taking for private use, a
22 taking of private property without just compensation, and imposed an excessive fine
23 beyond any penalties and tax arrears.
24

25 66. In analyzing a nearly identical statutory scheme in Colorado, the Colorado
26 Office of the Attorney General issued guidance stating the logic of *Tyler* (and of takings
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1 jurisprudence in general) does not warrant a different outcome where the county gives
2 property away, versus selling it. *See* Formal Opinion of Philip J. Weiser, Attorney General,
3 No. 23-01, 2023 WL 6279010, at 4 (Colo. A.G. July 27, 2023) (“There does not appear to
4 be a reasonable basis to conclude that the *Tyler* Court would have ruled differently where
5 the government gives the property to a third party who has paid the tax debt with no
6 opportunity for the taxpayer to recover the excess.”).

7
8 67. Indeed, in *Tyler*, the Court emphasized that confiscating a property to satisfy
9 a tax debt, taking more value than was due, was a “classic taking in which the government
10 directly appropriates private property for its own use.” *Tyler*, at 639 (quoting *Tahoe-Sierra*
11 *Preservation Council, Inc. v. Tahoe Regional Planning Agency*, 535 U.S. 302 (2002)). The
12 fact that the government delegates this power to a third party, in this case Defendant
13 Arapaho, does not change the underlying fact that transferring the title is unquestionably a
14 taking.

15
16 68. In fact, in his testimony regarding Ariz. H.B. 2098, which was one bill
17 offered as a potential legislative solution in the wake of *Tyler*, Treasurer Allen recognized
18 that a private purchaser stood in the place of the government, stating that “the purchase of
19 the original lien was under the understanding that [the purchaser] would have an
20 opportunity to own the property[.]” Tax Lien; Redemption; Property Sale: Hearing on H.B.
21 2098 Before the H. Comm. on Ways & Means, 2024 Leg., Fifty-sixth Legislature – Second
22 Regular Sess. (Ariz. 2024) (testimony taken on Feb. 14, 2024 by John Allen at 34:15,
23 Treasurer of Maricopa County).

1 69. Testifying further, Treasurer Allen described the foreclosure process as a
2 delegation of power by stating “we subcontract that activity” regarding the priority of the
3 lien for the purposes of foreclosure. Tax Lien; Redemption; Property Sale: Hearing on H.B.
4 2098 Before the H. Comm. on Ways & Means, 2024 Leg., Fifty-sixth Legislature – Second
5 Regular Sess. (Ariz. 2024) (testimony taken on Feb. 14, 2024 by John Allen at 35:03,
6 Treasurer of Maricopa County).
7

8 70. The principle that government should not have the unchecked authority to
9 take property from one individual and give it to another has been a foundational concept in
10 American jurisprudence, underscored by cases like *Calder v. Bull*, and enshrined in both
11 the U.S. and Arizona Constitutions as a safeguard against government overreach. 3 U.S.
12 386 (1798) (“It is against all reason and justice for a people to entrust a legislature” with
13 the power to enact “a law that takes property from A and gives it to B.”)
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16 71. While case law concerning unconstitutional takings often addresses eminent
17 domain and inverse condemnation, the overarching legal principle is clear: the government
18 must fairly compensate the owner whenever a taking occurs, thereby protecting individuals
19 from bearing disproportionate costs meant for the public benefit.
20

21 72. A home or other real property, as well as the equity or value remaining after
22 settling valid taxes and charges, is unequivocally protected under the U.S. and Arizona
23 Constitutions. The concept that a person's home is their sanctuary is deeply embedded in
24 our legal system, as noted in *Lombard v. Louisiana* by Justice Douglas, who asserted “The
25 principle that a man’s home is his castle is basic to our system of jurisprudence.” 373 U.S.
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1 267 (1963). Equity in real property holds the same protections and is governed by the same
2 principles as any other form of property.

3 73. The U.S. Supreme Court has recognized that a homeowner is entitled to any
4 equity he or she may have realized since the purchase of the property: “The public may not
5 by any means confiscate the benefits . . . of the owner’s bargain.” *Olson v. United States*,
6 292 U.S. 246, 255, 54 S. Ct. 704, 708, 78 L. Ed. 1236 (1934) (emphasis added). Should
7 this sort of taking occur, “[The owner] is entitled to be put in as good a position as
8 pecuniarily as if his property had not been taken.” *Id.*

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11 ***Tyler v. Hennepin* Undoubtedly Invalidated Arizona’s Tax Lien Scheme.**

12 74. Arizona’s statutory regime was cited as a particularly egregious form of
13 equity theft in the plaintiff’s complaint in *Tyler v. Hennepin*. See Joint Appendix in *Tyler*
14 *v. Hennepin*, No. 20-166, at 15, ¶ 44 (Feb. 23, 2023) (referring to tax forfeitures in Arizona
15 “to which the elderly are particularly vulnerable.”)¹³

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17 75. The Arizona regime and the case law underlying it were cited numerous
18 times in the briefing in *Tyler*.

19
20 76. For instance, Arizona’s tax lien scheme was prominently referred to by amici
21 supporting the Petitioner in *Tyler*. As an example, in the amicus brief for the National Legal
22 Aid & Defender Association in support of *Tyler*, the amici cited an article specifically
23 referring to Arizona’s statistics. See AMICUS BRIEF OF NATIONAL LEGAL AID & DEFENDER
24 ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER, at 8-9 (Mar. 6, 2023) (“As
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28 ¹³ https://www.supremecourt.gov/DocketPDF/22/22-166/255642/20230227174156602_Tyler%20Joint%20Appendix.pdf

1 property tax delinquency has fallen disproportionately on historically disadvantaged
2 communities, so too has the weight of home equity theft. In Arizona, the impacts of the tax
3 foreclosure scheme are concentrated in high-poverty neighborhoods.”¹⁴ The article even
4 uses Maricopa County as an example: “But of the cases that do lead to foreclosure—1,734
5 in Maricopa County since 2010—more than a third are primary residences. That means
6 that 642 homeowners lost their homes and all their equity.”¹⁵

7
8 77. Similarly, the Supreme Court had before it the BRIEF FOR AMICI CURIAE
9 NATIONAL ASSOCIATION OF REALTORS, MINNESOTA REALTORS, AND AMERICAN
10 PROPERTY OWNERS ALLIANCE IN SUPPORT OF PETITIONER, No. 22-166 (Mar. 6, 2023).
11 That brief grouped Arizona’s statutory scheme in with the Minnesota regime that was
12 invalidated: “These regimes vary in their operation—some permit the government itself to
13 reap the windfall free and clear, *see, e.g.*, MINN. STAT. ANN. § 280.29, others grant
14 foreclosed equity value to private investors in tax liens, *see, e.g.*, ARIZ. REV. STAT. § 42-
15 18201, *et seq.*, while still others vest seemingly absolute discretion in the governments to
16 spend it as they prefer, *see, e.g.*, MASS. GEN. LAWS CH. 60, §§ 43, 53. Yet, for all of their
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24 ¹⁴[https://www.supremecourt.gov/DocketPDF/22/22-](https://www.supremecourt.gov/DocketPDF/22/22-166/256341/20230306143341766_22-166%20NLADA%20Amicus.pdf)
25 [166/256341/20230306143341766_22-166%20NLADA%20Amicus.pdf](https://www.supremecourt.gov/DocketPDF/22/22-166/256341/20230306143341766_22-166%20NLADA%20Amicus.pdf). *See id.* at 9
26 (“Other hard-hit areas in Arizona are those with large Latino and African-American
27 populations.”).

28 ¹⁵ Mahoney & Clark, *Arizona owners can lose homes over as little as \$50 in back taxes*,
Ariz. Republic (Jun. 16, 2017), at <https://www.azcentral.com/story/money/real-estate/2017/06/12/tax-lien-foreclosures-arizona-maricopa-county/366328001/>

1 differences, a common thread unites them: each of these statutes deprives property owners
2 of vested property interests without compensation.” *See id.* at 9.¹⁶

3 78. As demonstrated by his testimony on SB 1431, Defendant Allen himself has
4 questioned the viability of Arizona’s prior tax lien system after *Tyler*. This is consistent
5 with the Arizona County Treasurers Association (ACTA) amicus brief in *Tyler*. *See* BRIEF
6 OF AMICI CURIAE NATIONAL TAX LIEN ASSOCIATION, THE ARIZONA COUNTY
7 TREASURERS ASSOCIATION, AND THE TAX COLLECTORS & TREASURERS ASSOCIATION OF
8 NEW JERSEY IN SUPPORT OF RESPONDENTS IN TYLER V. HENNEPIN CNTY., MINN., NO. 22-
9 166 (Mar. 31, 2023).¹⁷ In the brief, the ACTA, among the others named on the brief,
10 expressly stated that a negative ruling in *Tyler* would affect jurisdictions like Arizona:
11 “Amici and their members will be affected by the outcome of this case because dramatic
12 changes to how delinquent property taxes are collected across the country could jeopardize
13 the fiscal health of local taxing authorities, resulting in safety and economic consequences
14 for these communities. For these reasons, *Amici* have legitimate interests in this case.”
15 (emphasis added).

16 79. The amicus brief joined by the ACTA and cited above also acknowledged
17 that a ruling for the Petitioner in *Tyler* would have broad consequences for tax collection
18 schemes through the country: “Because of the web of tax-collection schemes that exist
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26 ¹⁶ https://www.supremecourt.gov/DocketPDF/22/22-166/256348/20230306150018709_22-166%20merits%20tsac%20NAR.pdf

27 ¹⁷ https://www.supremecourt.gov/DocketPDF/22/22-166/262489/20230331142057501_Amicus%20Brief.pdf
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1 across the country, a broad rule adopted to address Minnesota’s statutory process would
2 unnecessarily reverberate throughout the country.” *Id.* at 30 (emphasis added).

3 80. Defendant Allen participates in Arizona County Treasurer’s Association
4 activities, and Maricopa County hosted the ACTA’s conference in Fiscal Year 2023.¹⁸

5
6 81. Moreover, Hennepin County itself considered the legality of its tax lien
7 scheme to be bound up with the viability of Arizona’s scheme. For instance, it cited
8 *Automatic Art, LLC v. Maricopa Cnty.*, 2010 WL 11515708, at *5-6 (D. Ariz. Mar. 18,
9 2010), for the proposition that “since Arizona law did not provide for distribution of equity
10 to a former owner,” plaintiff’s interest “terminated completely with the issuance of the
11 treasurer’s deed, and no deprivation of constitutional rights occurred.” *See* Respondents’
12 Response to the Petition for Writ of Certiorari at 9.¹⁹

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15 82. And for good measure, Hennepin County grouped Arizona’s law with
16 Minnesota’s when it filed its merits brief before the Supreme Court: “Third, the disruption
17 from ruling for Petitioner would be wide-ranging. At least nine states and the District of
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23 ¹⁸ *See* Maricopa County Treasurer’s Office FY 2023 Annual Report, at 3 (June 2023) (“The
24 Maricopa County Treasurer’s Annual Report is published in the summer. It provides
25 information on the preceding fiscal year. Fiscal year 2023 began July 1, 2022, and ended
26 June 30, 2023.”), at
https://treasurer.maricopa.gov/Reports/index?fileName=Annual_Report_FY2023.pdf

27 ¹⁹ [https://www.supremecourt.gov/DocketPDF/22/22-
28 166/249158/20221206120550502_Tyler%20v%20Hennepin%20Respondents%20Respo
nse%20to%20the%20Petition%20for%20a%20Writ%20of%20Certiorari.pdf](https://www.supremecourt.gov/DocketPDF/22/22-166/249158/20221206120550502_Tyler%20v%20Hennepin%20Respondents%20Response%20to%20the%20Petition%20for%20a%20Writ%20of%20Certiorari.pdf)

1 Columbia mirror Minnesota’s approach in most cases.” Brief for Respondents, at 43 n.19
2 (citing Ariz. Rev. Stat. Ann. § 42-18303(C)).²⁰

3 83. To drive home the point, during oral argument before the Supreme Court in
4 *Tyler*, counsel for Hennepin County alluded to Arizona’s statutory scheme as one of 19
5 states whose legal regimes were at stake. Transcript of Oral Argument in *Tyler v. Hennepin*
6 *Cnty.*, 96:22-97:1 (“I think, here, all you need to decide is you look at this statute and the
7 other 19 states that have exactly—you know, have very similar statutes and you ask is this
8 reasonable[?]”).²¹

9 84. As noted above, the Colorado Attorney General announced in an official
10 opinion that there does not appear to be “a reasonable basis” for concluding that *Tyler* does
11 apply where the government gives the property to a third party.

12 **Defendants Actions Constitute a Taking Under the Clear Meaning of *Tyler***

13 85. Defendants’ actions violate the guiding principles of both the U.S. and
14 Arizona Constitutions, and the fundamental intent to protect homeowners from the severe
15 consequences of tax delinquency.

16 86. In *Tyler*, the Supreme Court recognized that the retention in excess value
17 constitutes a taking. 598 U.S. at 638 (“Here there was money remaining after Tyler’s home
18 was seized and sold by the County to satisfy her past due taxes, along with the costs of
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26 ²⁰ https://www.supremecourt.gov/DocketPDF/22/22-166/260178/20230329131415863_Hennepin%20Brief%203-29-23%20Final.pdf

27 ²¹ https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/22-166_h4d8.pdf

1 collecting them. The question is whether that remaining value is property under the Takings
2 Clause, protected from uncompensated appropriation by the State.”) (emphasis added).

3 87. As part of a joint motion in the present case, (ECF 32) the Arizona Attorney
4 General, Kristin Mayes, stated and acknowledged that:

5
6 a. In *Tyler v. Hennepin County*, 598 U.S. 631 (2023), the U.S. Supreme Court
7 confirmed that states can collect “taxes on property,” and “[i]n collecting these
8 taxes, [states] may impose interest and late fees,” *id.* at 637-38, as well as “seize and
9 sell property, including land, to recover the amount owed,” *id.* at 638, 639. The
10 Supreme Court held, however, that states cannot “confiscate more property than [is]
11 due,” which violates the Fifth Amendment’s Takings Clause as incorporated against
12 the states through the Fourteenth Amendment. *See id.* at 637, 639 (citation omitted).

13
14 b. Consistent with *Tyler*, Arizona’s statutory scheme recognizes that when the
15 State forecloses on an unsatisfied tax lien, it cannot confiscate more than it is owed.
16 *See* A.R.S. §§ 42-18303(C), 42-18113(B)(1). Rather, the State must sell the
17 encumbered property, subtract the amount owed—including interest, penalties,
18 fees, and costs—and return the “balance remaining” to “the owner of the property
19 who was dispossessed by the sale.” A.R.S. § 42-18303(C); *see id.* § 42-18113(A),
20 (B)(1) (providing that a county treasurer can assign the lien to the State, and that
21 taxes “assessed against that property are not payable until they have been derived
22 from the sale or redemption of the property” or resale of the lien).

23
24 c. Arizona’s statutory scheme allows county treasurers to sell tax liens to
25 private parties to “secure the payment of unpaid delinquent taxes.” A.R.S. § 42-
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1 18101(A); *id.* § 42-18114 (authorizing sale to “the person who pays the whole
2 amount of delinquent taxes, interest, penalties and charges due on the property,
3 and who in addition offers to accept the lowest rate of interest on the amount so
4 paid to redeem the property”). When county treasurers sell tax liens to private
5 parties, they do so on the State’s behalf. *See id.* § 42-18001(A)(1).
6

7 d. Under *Tyler*, the State cannot “extinguish a property interest that it
8 recognizes everywhere else to avoid paying just compensation when it is the one
9 doing the taking.” 598 U.S. at 645. And because the State cannot authorize others
10 to do that which the State is not empowered to do, county treasurers cannot sell to
11 private parties more of a property interest than the State itself could be assigned
12 and retain. Thus, when a private party purchases a tax lien pursuant to A.R.S. §§
13 42-18101 *et seq.*, only the interest in the tax lien (including authorized fees, costs,
14 and interest) is conveyed.
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16

17 e. Accordingly, under *Tyler*, A.R.S. § 42-18204(B) is unconstitutional to the
18 extent it purports to extinguish a dispossessed owner’s property interest in the sale
19 proceeds or value of the equity that exceed what the State is owed and could retain
20 by statute. Further, to the extent a private party retains the excess proceeds of a
21 sale or value of the equity in a home that exceeds what the State could retain by
22 statute, that result is an unconstitutional taking under *Tyler*.
23
24

25 88. As this Court recognized in its Order granting an extension of time, [ECF 41,
26 at 2] the Attorney General’s pronouncements are not binding on the Court. (citing *Students*
27 *for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181, 304
28

1 n. 9 (2023) (Gorsuch, J., concurring) (“To be sure, parties are free to frame their arguments.
2 But they are not free to stipulate to a statute’s meaning and no party may waive the proper
3 interpretation of the law by failing to invoke it.”) (cleaned up).

4 89. However, the Arizona “attorney general shall have charge of and direct the
5 department of law and shall serve as chief legal officer of the state.” AZ Stats. § 41-192(A).
6 As such, its interpretation of Arizona law—borne out by the swift and unanimous passage
7 of SB 1431—should be given the deference that it is due. *Accord Skidmore v. Swift & Co.*,
8 323 U.S. 134, 140 (1944) (“The weight of such a judgment in a particular case will depend
9 upon the thoroughness evident in its consideration, the validity of its reasoning, its
10 consistency with earlier and later pronouncements, and all those factors which give it
11 power to persuade, if lacking power to control.”) (describing *Skidmore* deference by judges
12 to federal executive branch pronouncements).

16 **Defendants Actions Constitute an Excessive Fine**

17 90. When Defendants take real property pursuant to property tax seizure and
18 retain the surplus beyond the tax debt owed, such retention transcends a mere remedial
19 action and assumes a punitive or deterrent character. This retention of value or equity from
20 Ms. Searle thus violates the Excessive Fines Clause of the Eighth Amendment to the U.S.
21 Constitution.

22 91. In alignment with the United States Constitution, proportionality underlies
23 the constitutional examination under the Excessive Fines Clause of the Arizona
24 Constitution. The extent of forfeiture must be commensurate with the severity of the
25 underlying offense it intends to penalize.
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1 92. Defendant Arapaho’s and American Pride’s plan—and ability under
2 Arizona’s tax lien scheme—to retain the surplus following the seizure of Ms. Searle’s
3 home, which is estimated to be worth well over 200 times that of the amount of the
4 remaining tax balance, violates the Excessive Fines Clause as enshrined in both the Arizona
5 and United States Constitutions as an unjust, excessive fine.
6

7 93. Similarly, when the State is the assignee in Arizona, federal law provides that
8 excess proceeds from a tax sale belong to and must be returned to the former owner. *See,*
9 *e.g., United States v. Rodgers*, 461 U.S. 677, 690-94 (1983) (in a forced sale to recover
10 delinquent federal taxes under 26 U.S.C. § 7403, government may not ultimately collect,
11 as satisfaction for the indebtedness owed to it, more than the amount actually due. If seizure
12 of property extends beyond property necessary to satisfy tax debt, the excess must be repaid
13 as compensation for the taking).
14
15

16 **Ms. Searle’s Suit Is Not Barred by the Tax Injunction Act**

17 94. Ms. Searle’s relief is not precluded by the Tax Injunction Act.
18

19 95. The legislative history of the Tax Injunction Act underscores a targeted
20 focus: addressing cases where taxpayers preemptively attempt to circumvent their tax
21 obligations through federal court interventions.
22

23 96. Ms. Searle’s lawsuit, grounded in constitutional claims and not seeking to
24 evade tax liabilities, does not fit within this congressional concern. Ms. Searle’s suit does
25 not seek to avoid payment of taxes, or to prevent Arizona counties from collecting tax
26 revenues in constitutionally appropriate manners.
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CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

THE VIOLATION OF PLAINTIFF’S PROPERTY RIGHTS UNDER 42 U.S.C. § 1983

AGAINST ALL DEFENDANTS

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97. Plaintiff realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

98. Ms. Searle’s rights to her property and the equity therein have been unequivocally infringed under the U.S. Constitution. The Constitution protects against the taking of private property without just compensation, and ensures that equity in real property is treated with the same regard as any other form of property.

99. Moreover, the Constitution prohibits the taking of private property for a non-public use, even if just compensation is paid. *See supra*, ¶ 70 (*citing Calder v. Bull*, 3 U.S. 386 (1798)). Here, Ms. Searle alleges that the taking of her home was not for a valid public use, and in the alternative, even if it was for a public use, she was not provided with the constitutionally required just compensation.

100. Defendants Arapaho and American Pride seized private property—a personal home of Ms. Searle—without public use. They could just have easily charged Ms. Searle to pay more in fees or penalties related to her tax lien, rather than permanently take away her home, which has intrinsic and intangible value to her. By seizing private property without a legitimate public use, Defendants have violated of the Takings Clause of the Fifth Amendment to the United States Constitution.

1 101. Separately, there is no public use rationale to justify the appropriation or
2 retention of surplus equity from property tax sales, particularly when such equity exceeds
3 the amount of taxes and related charges due. As the passage of SB 1431 shows, the state
4 does not need to retain a homeowner’s equity to achieve any public purpose. The U.S.
5 Constitution prohibits such arbitrary exercises of governmental authority.
6

7 102. The Supreme Court’s precedent in *Olson* reinforces this protection by stating
8 that the public cannot confiscate the benefits of a property owner’s bargain. 292 U.S. 246,
9 255, 54 S. Ct. 704, 708, 78 L. Ed. 1236 (1934) (emphasis added). These constitutional
10 provisions are at the heart of Ms. Searle’s claim, as her home and its accrued equity have
11 been taken without just compensation.
12

13 103. All Defendants were acting and/or continue to act under color of state law at
14 all times relevant hereto.
15

16 104. All Defendants are “persons” for purposes of 42 U.S.C. § 1983.
17

18 105. Defendants’ seizure and subsequent retention of Ms. Searle’s property,
19 including the substantial equity that she accumulated over 18 years, are the proximate cause
20 of Ms. Searle’s significant and demonstrable harm.
21

22 106. As noted by the U.S. Supreme Court, these rights were clearly enunciated in
23 the Magna Carta. *See Tyler*, 598 U.S. at 640 (“King John swore in the Magna Carta that
24 when his sheriff or bailiff came to collect any debts owed him from a dead man, they could
25 remove property ‘until the debt which is evident shall be fully paid to us; and the residue
26 shall be left to the executors to fulfil the will of the deceased.’”) (citing W. McKechnie,
27 Magna Carta, A Commentary on the Great of King John, ch. 26, at 322 (rev. 2d ed. 1914)).
28

1 112. Plaintiff realleges and incorporates by reference the allegations set forth
2 above as if fully set forth herein.

3 113. Defendants acted pursuant to an official, albeit unconstitutional, Arizona
4 statutory scheme.

5 114. The Fifth Amendment to the United States Constitution, made applicable to
6 the states via the Fourteenth Amendment, states, “nor shall private property be taken for
7 public use, without just compensation.”
8

9 115. Arizona’s statutes in Title 42, Chapter 18 governing the sale of tax liens and
10 the disposition of proceeds does not make any provision for returning the surplus of
11 appropriated property to the original owner.
12

13 116. These statutes facilitate and necessitate the appropriation of Plaintiff’s private
14 property without just compensation, thereby violating Plaintiff’s rights as guaranteed by
15 the Fifth and Fourteenth Amendments to the United States Constitution.
16

17 117. The cause of action for an unconstitutional taking is presented as a direct
18 claim under the Fifth Amendment, as incorporated by the Fourteenth Amendment to the
19 United States Constitution.
20

21 118. Plaintiff has suffered harm and damage due to the lack of just compensation
22 for the taken property and is therefore entitled to appropriate relief including compensatory
23 damages.
24

25 119. Plaintiff seeks a ruling that the Constitution demands that a direct claim for
26 a taking be available under the Fifth Amendment, regardless of any statutory direction
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1 otherwise. *See Devillier v. State of Texas*, 63 F.4th 416, 434 (5th Cir. 2023)²² (Oldham, J.,
2 dissenting from denial of en banc review) (“At the Founding, it was clear that the Takings
3 Clause afforded a remedy for uncompensated takings separate and apart from any
4 statute.”).

5
6 120. This claim is not subject to any relevant statute of limitations under 42 U.S.C.
7 § 1983. However, to the extent that the Court deems this or any claim to outside of the
8 statute of limitations, Ms. Searle asks that the Court equitably toll the statute in light of the
9 Supreme Court’s decision in *Tyler*, as well as equitable factors.

10
11 **THIRD CLAIM FOR RELIEF**

12 **TAKING OF PRIVATE PROPERTY WITHOUT A VALID PUBLIC USE IN VIOLATION OF**
13 **THE UNITED STATES CONSTITUTION**

14 **AGAINST ALL DEFENDANTS**

15 121. Plaintiff realleges and incorporates by reference the allegations set forth
16 above as if fully set forth herein.

17
18 122. The Defendants’ actions violate Plaintiff’s constitutional right to her
19 property.

20 123. Defendants Arapaho and American Pride seized private property—a
21 personal home of Ms. Searle—without public use. They could just have easily charged Ms.
22

23
24 ²² A writ of certiorari was granted in this case, and oral argument before the U.S. Supreme
25 Court took place on January 16, 2024. *See* Supreme Court of the United States October
26 Term 2023, Oral Arguments, Argument Audio, Term Year 2023, at
27 https://www.supremecourt.gov/oral_arguments/audio/2023/22-913. A decision was issued
28 on April 16, 2024. *See DeVillier v. Texas*, 601 U.S. —, — S. Ct. —, 2024 WL 1624576,
*3 (Apr. 16, 2024). The decision did not reach the question of whether the Takings
Clause—because it is “self-executing”—permits a direct claim under the Fifth
Amendment.

1 Searle to pay more in fees or penalties related to her tax lien, rather than permanently take
2 away her home, which has intrinsic and intangible value to her. By seizing private property
3 without a legitimate public use, Defendants have violated of the Takings Clause of the Fifth
4 Amendment to the United States Constitution.

5
6 124. Separately, there is no public use rationale to justify the appropriation or
7 retention of surplus equity from property tax sales, particularly when such equity exceeds
8 the amount of taxes and related charges due. As the passage of SB 1431 shows, the state
9 does not need to retain a homeowner’s equity to achieve any public purpose. The U.S.
10 Constitution prohibits such arbitrary exercises of governmental authority.

11
12 125. The cause of action for an unconstitutional taking is presented as a direct
13 claim under the Fifth Amendment, as incorporated by the Fourteenth Amendment to the
14 United States Constitution.

15
16 126. To the extent that Arizona statutes allow or seem to permit Defendants, or
17 any of them, to seize private property without public use, such statutes, including specific
18 sections of the Arizona Revised Statutes relevant to property tax liens, are unconstitutional.

19
20 127. Plaintiff seeks a ruling that the Constitution demands that a direct claim for
21 a taking be available under the Fifth Amendment, regardless of any statutory direction
22 otherwise. *See Devillier v. State of Texas*, 63 F.4th 416, 434 (5th Cir. 2023) (Oldham, J.,
23 dissenting from denial of en banc review) (“At the Founding, it was clear that the Takings
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1 Clause afforded a remedy for uncompensated takings separate and apart from any
2 statute.”).²³

3 128. This claim is not subject to any relevant statute of limitations under 42 U.S.C.
4 § 1983. However, to the extent that the Court deems this or any claim to outside of the
5 statute of limitations, Ms. Searle asks that the Court equitably toll the statute in light of the
6 Supreme Court’s decision in *Tyler*, as well as equitable factors.
7

8 **FOURTH CLAIM FOR RELIEF**

9 **EXCESSIVE FINES VIOLATION OF THE UNITED STATES CONSTITUTION**

10 **AGAINST ALL DEFENDANTS**

11
12 129. Plaintiff realleges and incorporates by reference the allegations set forth
13 above as if fully set forth herein.
14

15 130. The Eighth Amendment to the United States Constitution safeguards the
16 people against the imposition of excessive fines.
17

18 131. Even a tax forfeiture sale that serves some remedial purpose not tied to
19 criminal culpability and that occasionally confiscates property worth less than the debt
20 owned may nevertheless constitute an excessive fine.
21

22 132. The seizure of the entire value of Plaintiff’s property, including the delta in
23 value between the tax owed and the price of the home, due to non-payment of relatively
24 small amounts of delinquent taxes constitutes an excessive fine under the Eighth
25 Amendment to the United States Constitution. *See Tyler*, 598 U.S. 631, 649-50 (Gorsuch,
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²³ *See supra*, ¶ 126.

1 J., concurring, with Jackson, J., joining) (“Economic penalties imposed to deter willful
2 noncompliance with the law are fines by any other name. And the Constitution has
3 something to say about them: They cannot be excessive.”).

4 133. Defendant Allen is responsible for the administration of tax collection,
5 imposition and sale of tax liens, and related proceedings in Maricopa County. These tax
6 lien seizures effectively operate as grossly excessive fines and are thus prohibited under
7 the Eighth Amendment.

8 134. Although *Tyler* did not reach the question of whether the taking at issue also
9 constituted an excessive fine, the fine placed on Ms. Searle was grossly disproportional to
10 the taxes owed.

11 135. Plaintiff has suffered, and continues to suffer, significant and irreparable
12 harm if a permanent injunction is not issued, due to the ongoing risk of property rights
13 violations by Defendants.

14 136. Plaintiff is entitled to an award of damages against each Defendant named in
15 his or her individual capacity in an amount to be proven at trial.

16 137. To the extent that the Court deems this or any claim to outside of the statute
17 of limitations, Ms. Searle asks that the Court equitably toll the statute in light of the
18 Supreme Court’s decision in *Tyler*, as well as equitable factors.

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24 **FIFTH CLAIM FOR RELIEF**

25 **TAKING OF PRIVATE PROPERTY WITHOUT A VALID PUBLIC OR PRIVATE USE IN**
26 **VIOLATION OF THE ARIZONA CONSTITUTION**

27 **AGAINST ALL DEFENDANTS**
28

1 138. Plaintiff realleges and incorporates by reference the allegations set forth
2 above as if fully set forth herein.

3 139. Article 2, Section 17 of the Arizona Constitution states: “Private property
4 shall not be taken for private use, except for private ways of necessity, and for drains,
5 flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or
6 sanitary purposes. No private property shall be taken or damaged for public or private use
7 without just compensation having first been made. . . .” This clause mandates that the
8 government must provide or secure just compensation before seizing private property for
9 public use.
10

11 140. The taking of the surplus value of the property does not fit in any of the
12 enumerated permissible private takings.
13

14 141. There is no public use rationale under Arizona law to support or justify
15 allowing the retention of surplus or equity when that equity exceeds the amount of taxes
16 and associated charges owed. The Arizona Constitution prohibits such arbitrary exercises
17 of governmental authority.
18

19 142. Arizona statutes, particularly those found in Title 42, Chapter 18, allowing
20 Defendants to seize Plaintiff’s property for purposes other than public use or one of the
21 enumerated private uses, are unconstitutional.
22

23 143. By appropriating private property without a public use, or one of the
24 enumerated private uses, Defendants are in violation of the Arizona Constitution.
25
26
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28

1 outweighed by the consideration being paid by the public,” which would also constitute a
2 Gift Clause violation. *Id.*

3 163. Under this framework, the acquisition of a tax lien by a private entity
4 followed by the subsequent foreclosure on the property constitutes a clear Gift Clause
5 violation.
6

7 164. The critical aspect of the Gift Clause analysis lies in whether the value
8 received by the public is significantly exceeded by the consideration paid by the public. In
9 this case, if the private entity acquires the property at a tax lien sale for a sum substantially
10 lower than the property’s fair market value, such as here, the public entity is essentially
11 providing a substantial subsidy to the private entity. In other words, if the public entity’s
12 goal is to collect delinquent taxes, penalties, and interest, but the private entity ends up
13 acquiring a property with a market value far in excess of the amount owed, the value
14 received by the public (the tax debt) is dwarfed by the benefit conferred upon the private
15 entity (ownership of a valuable property).
16
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19 165. The ostensible public purpose here is the collection of delinquent taxes.
20 However, this purpose becomes questionable when examining the disproportionate
21 outcome of the transaction. In Ms. Searle’s case, her property, valued conservatively
22 between \$425,000 to \$505,000 based on various real estate estimates, was acquired by
23 through the foreclosure of a tax lien for a mere \$1,607.68 in delinquent taxes.
24

25 166. When applying the second prong of the *Wistuber* test, which examines the
26 balance between the value received by the public and the consideration paid, the disparity
27 becomes starkly evident. The amount recovered in delinquent taxes is substantially
28

1 outweighed by the value of the property. This imbalance suggests that the public, in this
2 case, has paid considerably more in consideration—in the form of lost property value and
3 potential tax revenue from a higher-valued property—than the value it received, which was
4 merely the satisfaction of a relatively small tax debt.
5

6 167. In essence, the transaction facilitated by the state’s statutory scheme but
7 completed by Defendant Allen has resulted in a significant and unjust enrichment of a
8 private entity at the expense of both Ms. Searle and the public interest.
9

10 168. This substantial subsidy to Arapaho and/or American Pride, achieved
11 through the acquisition of a high-value property for a fraction of its worth, indicates that
12 the value to the public is indeed significantly outweighed by what the public has paid,
13 thereby constituting a Gift Clause violation under the Arizona Constitution.
14

15 169. To the extent that the Court deems this or any claim to outside of the statute
16 of limitations, Ms. Searle asks that the Court equitably toll the statute in light of the
17 Supreme Court’s decision in *Tyler*, as well as equitable factors.
18

19 **NINTH CLAIM FOR RELIEF**

20 **UNJUST ENRICHMENT**

21 **AGAINST ARAPAHO; AMERICAN PRIDE; JOHN DOE, JANE DOE, BLACK**

22 **CORPORATIONS, WHITE PARTNERSHIPS, AND GREEN LIMITED LIABILITY COMPANIES**
23

24 170. Plaintiff realleges and incorporates by reference the allegations set forth
25 above as if fully set forth herein.
26

27 171. Plaintiff contends that Arapaho, American Pride, John Doe, Jane Doe, Black
28 Corporations, White Partnerships, and Green Limited Liability Companies have been

1 unjustly enriched at her expense, as delineated in *Trustmark Ins. Co. v. Bank One, Ariz.,*
2 *NA*, where the Arizona Court of Appeals defined unjust enrichment as a situation where
3 “one party has and retains money or benefits that in justice and equity belong to another.”
4 202 Ariz. 535, 48 P.3d 485, 491 (Ariz. Ct. App. 2002). In the present case, Defendants’
5 retention of the difference between taxes and Plaintiff’s property value falls squarely within
6 this definition.
7

8 172. “To establish a claim for unjust enrichment, the plaintiff must allege an
9 impoverishment on his part, an enrichment to the defendant, a connection between the two,
10 the absence of justification, and the absence of a legal remedy.” *Haller v. Advanced Indus.*
11 *Computer Inc.*, 13 F. Supp. 3d 1027, 1031 (D. Ariz. 2014).
12

13 173. Plaintiff has suffered impoverishment by losing her property and the equity
14 she had built in it over years, which far exceeds the amount of unpaid taxes.
15

16 174. Arapaho has been enriched by acquiring the property, including the surplus
17 equity.
18

19 175. There is a direct connection between Plaintiff’s impoverishment and
20 Arapaho’s enrichment, as the latter’s gain directly corresponds to the former’s loss.
21

22 176. There is no justifiable reason for Arapaho or American Pride to retain the
23 delta, as it exceeds the amount required to satisfy the unpaid taxes and related charges.
24 Indeed, if Arapaho or American Pride were the state, they would be compelled by state and
25 federal law to return the excess.
26
27
28

1 D. Enter an injunction against Defendants preventing eviction proceedings on
2 the basis that the taking at issue is an excessive fine, and therefore violates the U.S.
3 Constitution, without regard to whether she ultimately receives just compensation;

4 E. Find and declare that Defendants' taking and sale of Plaintiff's property,
5 including all equity therein, was not attended by payment or securing just compensation
6 and as such, violates the United States and Arizona Constitutions;

7 F. Find and declare that Defendants' appropriation of Plaintiff's real estate
8 equity is an excessive fine in violation of the United States and Arizona Constitutions;

9 G. Find and declare that relevant provisions of Title 42, Chapter 18 of the
10 Arizona Revised Statutes are unconstitutional under the United States and Arizona
11 Constitutions, causing such confiscations and sales to be null and void and in violation of
12 the United States and Arizona Constitutions;

13 H. Find and declare that relevant portions of Title 42, Chapter 18 of the Arizona
14 Revised Statutes violate the Gift Clause of the Arizona Constitution;²⁴

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²⁴ Because SB 1431 is not retroactive, Ms. Searle does not view her claims directed at
23 Arizona's prior tax lien scheme as moot. *See, e.g., Federal Bureau of Investigation v. Fikre*,
24 144 S. Ct. 771, 777 (Mar. 19, 2024) (a litigant's complaint is moot only when "a
25 complaining party manages to secure outside of litigation all the relief he might have won
26 in it"); *Fikre v. Federal Bureau of Investigation*, 904 F.3d 1033, 1037 (9th Cir. 2018)
27 ("Regarding mootness, a defendant's voluntary cessation does not moot a case unless (1)
28 it can be said with assurance that there is no reasonable expectation that the alleged
violation will recur, and (2) interim relief or events have completely and irrevocably
eradicated the effects of the alleged violation.") (emphasis added and internal quotation
marks omitted).

1 I. Enter an award of damages, including nominal damages, against Arapaho
2 and American Pride, given that *Tyler* and other case law establish that the sale of Ms.
3 Searle's home will trigger a taking;

4 J. Enter an award of punitive damages against Defendants Arapaho and
5 American Pride, on the basis that Defendants continue to act in reckless disregard of Ms.
6 Searle's rights, given that the Supreme Court's decision in *Tyler v. Hennepin* is clear that
7 Ms. Searle cannot be deprived of her property without just compensation.
8

9 K. Retain jurisdiction of this matter for the purpose of enforcing the Court's
10 orders;
11

12 L. To the extent that Plaintiff is deprived of her property, enter an award of
13 compensatory damages against all Defendants under the Fifth Amendment's just
14 compensation clause, as incorporated in the Fourteenth Amendment;
15

16 M. To the extent that Plaintiff is deprived of her property, enter an order to
17 disgorge the delta between the value of the home and the amount of the tax lien;
18

19 N. Enter an award of attorney fees and costs of suit against all Defendants
20 pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 54; and
21

22 O. Order such other and further relief as the Court may deem just, proper and
23 necessary under the circumstances.
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JURY DEMAND

Plaintiff requests a trial by jury on all issues and claims so triable.

DATED this 24th day of April, 2024.

Respectfully submitted,

/s/ Grady J. Block

Grady J. Block*

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