

1 Veronica Lucero (030292)
Davillier Law Group, LLC
 2 4105 N. 20th St. Ste. 110
 3 Phoenix, AZ 85016
 4 Telephone: (602) 730-2985
 5 Fax: (602) 801-2539
 6 Emails:
 Vlucero@davillierlawgroup.com
 PhxAdmin@davillierlawgroup.com (file copies)

7 Grady J. Block (TX Bar No. 24120616) (*pro hac vice pending*)
 8 William E. Trachman (CO Bar No. 456384) (*pro hac vice pending*)
 Mountain States Legal Foundation
 9 2596 S. Lewis Way
 10 Lakewood, Colorado 80227
 Telephone: (303) 292-2021
 11 gblock@mslegal.org
 12 wtrachman@mslegal.org
 13 *Attorneys for Plaintiff*

14 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA IN AND**
 15 **FOR THE COUNTY OF MARICOPA**

16 Christine M. Searle,

17 Plaintiff,

18 v.

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

24 Defendants
 25

Case No.

Verified Complaint

26 Plaintiff Christine M. Searle (“Ms. Searle”) is on the verge of losing her home based
 27 on an Arizona state tax lien regime that is unconstitutional. That’s not just an unfounded
 28

1 assertion. The Arizona Attorney General agrees, and the State Legislature has amended the
2 regime at issue because it knew that the law that applied to Ms. Searle was unconstitutional
3 in its past form. Yet the new law is not retroactive, and Ms. Searle is, to this day, threatened
4 with eviction from her home.
5

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

15 INTRODUCTION

16 1. This case challenges a legal regime under Arizona law, where small,
17 sometimes incredibly minor, amounts of delinquent taxes can lead to the seizure of a
18 property and the eviction of its owners.¹
19

20 2. Under this Arizona tax lien scheme, either the State or private entities may
21 take possession and title of the property or sell it, often for amounts well exceeding the
22 unpaid taxes. Consequently, the lien purchaser retains all of the homeowner's equity in the
23
24

25 ¹ On April 23, a bill was signed by the Arizona Governor Katie Hobbs changing this
26 regime. However, the bill is not retroactive, and therefore has not protected Ms. Searle. *See*
27 Arizona Senate Bill 1431 (Signed by Governor on April 23, 2024) (SB 1431),
28 <https://legiscan.com/AZ/bill/SB1431/2024>

1 property. *See, e.g., Arizona Tax Liens Wreaking Havoc On Lenders, Borrowers, QUARLES*
2 & BRADY NEWS AND INSIGHTS (May 9, 2014) (“With shocking frequency across the
3 counties of Arizona, homeowners and lenders are failing to redeem delinquent tax liens,
4 and are thereby losing their pecuniary and fee simple interests.”).²

5
6 3. Ms. Searle is a 71-year-old woman, who has been deprived of her property
7 located at 513 S. Ash St., Gilbert, AZ 85233 (the “Home”) that she had owned since
8 purchasing it in 2005.

9
10 4. Defendant Arapaho Investment Properties, LLC (Arapaho or Defendant
11 Arapaho) purchased 2015 and 2016 tax liens issued by the Maricopa County Treasurer’s
12 office against Ms. Searle’s home, which stemmed from Ms. Searle’s delinquent taxes.

13
14 5. In late 2021, Arapaho began foreclosure proceedings based on Arizona’s tax
15 lien scheme. But Ms. Searle maintained her ownership of her property at that time.
16 Although the foreclosure process began in 2021, the constitutional violation did not occur
17 until at least the issuance of the Treasurer’s Deed, and Defendants’ failure to pay Ms. Searle
18 just compensation and fair market value for the equity that she had accumulated in the
19 home. *See infra*, ¶ 18 (the taking in *Tyler* is the retention of the excess value).

20
21 6. Upon information and belief, Arapaho subsequently transferred its interest in
22 Ms. Searle’s home to Defendant American Pride Properties, LLC (American Pride or
23 Defendant American Pride) on February 3, 2022.

24
25
26
27
28

² <https://www.quarles.com/newsroom/publications/arizona-tax-liens-wreaking-havoc-on-lenders-borrowers>

1 7. Neither Arapaho nor American Pride have ever provided to Ms. Searle any
2 funds over and above what she owed in taxes; nor have they provided any assurance that,
3 to the extent that a future sale occurs, she will be provided with the “delta” between the
4 purchase price or market value of the home, and the amount of the tax lien.³
5

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

8 9. In May 2023, the Supreme Court decided the case of *Tyler v. Hennepin Cnty.*,
9 *Minnesota*, 598 U.S. 631 (2023).
10

11 10. In *Tyler*, the Supreme Court of the United States held that a county’s decision
12 to retain funds following a forfeiture process constituted a taking under the Fifth
13 Amendment.
14

15 11. As the Supreme Court found in *Tyler*, “The taxpayer must render unto Caesar
16 what is Caesar’s, but no more.” 598 U.S. 631 (2023); *see also Palazzolo v. Rhode Island*,
17 533 U.S. 606, 627 (2001) (“A State would be allowed, in effect, to put an expiration date
18 on the Takings Clause. This ought not to be the rule. Future generations, too, have a right
19 to challenge unreasonable limitations on the use and value of land.”).
20
21
22
23

24 ³ 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 12. *Tyler* recognized the common law general rule, as stated in Blackstone: “If a
2 tax collector seized a taxpayer’s property, he was ‘bound by an implied contract in law to
3 restore the property on payment of the debt, duty, and expenses, before the time of sale; or,
4 when sold, to render back the overplus.’” *Tyler*, 598 U.S. at 640 (citing 2 Commentaries
5 on the Laws of England 453 (1771)) (internal brackets omitted).
6

7 13. *Tyler*’s holding applies equally to situations where a county merely
8 authorizes a third-party to retain the delta between a debtor’s tax debt and the price of their
9 home. As stated broadly in *Tyler*, “Our precedents have also recognized the principle that
10 a taxpayer is entitled to the surplus in excess of the debt owed.” *Id.*
11

12 14. Here, the numbers are even more grossly disproportional and offensive to the
13 Constitution than they were in *Tyler*. At the time of the foreclosure action leading to the
14 issuance of the treasurer’s deed, the relevant tax lien to Ms. Searle was only \$1,607.68.
15 Meanwhile, her home is worth several hundred thousand dollars.
16

17 15. Upon information and belief, Defendants Arapaho and American Pride have
18 actual knowledge of the Supreme Court’s decision in *Tyler*, yet have not provided Ms.
19 Searle with just compensation, or any assurance of future compensation. On the contrary,
20
21
22
23
24
25
26
27
28

1 counsel for Arapaho initially notified Ms. Searle that eviction proceedings would soon
2 occur. [*See* Exhibit 1.]⁴

3 16. The practice of taking the entire value of a property, including the surplus
4 value, in excess of the amount of unpaid taxes and associated charges constitutes a taking
5 under *Tyler*.

6
7 17. In *Tyler*, the Court specifically tied the “taking” to the retention of the excess
8 value from the sale of a property. The Court stated:

9
10 The County argues that the delinquent taxpayer could sell her house to pay
11 her tax debt before the County itself seizes and sells the house. But requiring
12 a taxpayer to sell her house to avoid a taking is not the same as providing her
13 an opportunity to recover the excess value of her house once the State has
14 sold it.

15 598 U.S. at 644-45 (emphasis added).

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

19 19. Separately, Ms. Searle seeks a permanent injunction against Arapaho and
20 American Pride on the basis that merely providing the “delta” on the value of her home—
21 while perhaps “just” compensation—is not truly for public use, and therefore violates the
22

23
24 ⁴ Previously, before the federal District Court, Arapaho and Ms. Searle reached an
25 agreement that stipulates to the injunctive relief sought in Ms. Searle’s original motion for
26 a temporary restraining order and preliminary injunction. Eviction proceedings are
27 therefore no longer expected to occur imminently. [*See* Exhibit 2, at 5 (“Defendant
28 Arapaho has stipulated to the relief 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 U.S. Constitution. Whatever public use exists in getting people to pay their tax bill hardly
2 encompasses losing one’s personal home to a private party—as opposed to merely
3 redeeming the debt with additional fees and/or penalties.

4 20. Additionally, while not an issue reached in the majority opinion in *Tyler*, Ms.
5 Searle seeks a permanent injunction against Arapaho and American Pride on the basis that
6 the taking at issue is an excessive fine, and therefore violates the U.S. Constitution, without
7 regard to whether she ultimately receives just compensation.
8

9 21. Here, Ms. Searle’s claims seek declarations that Arizona’s prior tax lien
10 statutes violated the Arizona Constitution, and must therefore be declared invalid and
11 enjoined in their application to Ms. Searle..
12

13 22. Searle alleges various state law claims against various defendants.
14

15 23. Searle also seeks other relief in the form of damages against Arapaho and
16 American Pride, as well as relief establishing that the Arizona’s prior tax lien scheme
17 constitutes a taking, under the logic of *Tyler*, as well as an excessive fine.
18

19 24. Additionally, Searle is seeking recovery of attorney's fees as permitted under
20 A.R.S. § 12-341.01, reimbursement for expenses and costs of the suit, and any other relief
21 deemed just and appropriate by the court. *See Corrigan v. Scottsdale*, 720 P.2d 513, 516
22 (Ariz. 1986) (“More significantly, in a case very similar to the one before us the New
23 Hampshire Supreme Court not only allowed damages for a [] taking but also reasonable
24 attorney[‘]s fees and double costs.”).
25
26
27
28

PARTIES

1
2 25. Plaintiff Christine M. Searle is an individual residing in Arizona who
3 purchased her home in 2005.

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

7 27. Defendant American Pride Properties is a limited liability company. Upon
8 information and belief, American Pride now owns Ms. Searle’s home.

9 28. Defendant John M. Allen (“Allen”) is sued in his official capacity as the
10 Treasurer of Maricopa County. His office is responsible for the administration of tax
11 collection, imposition and sale of tax liens, and related proceedings in Maricopa County.
12 *See* ARIZ. REV. STAT. ANN. § 42-18001; *see also* ARIZ. REV. STAT. ANN. § 42-18101.

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

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

20 31. All Defendants` were acting and/or continue to act under color of state law
21 at all times relevant hereto. All Defendants are “persons” for purposes of 42 U.S.C. § 1983.
22
23
24
25
26
27
28

JURISDICTION AND VENUE

1
2 32. Ms. Searle brings this action for the deprivation of Ms. Searle’s right secured
3 by the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution.

4 33. Additionally, she brings claims for violations of the Gift Clause, Takings
5 Clause, and Excessive Fines Clause of the Arizona Constitution, and asserts a cause of
6 action for unjust enrichment.
7

8 34. Ms. Searle incorporates by reference all other allegations made in this
9 Verified Complaint.
10

11 35. This Court has subject matter jurisdiction over this action pursuant to
12 Arizona Revised Statutes (A.R.S.) § 12-123 because the amount in controversy exceeds
13 the jurisdictional threshold for Arizona Superior Courts, and the claims arise under Arizona
14 state law, and the United States Constitution.
15

16 36. Venue is appropriate in this district under A.R.S. § 12-401 because all, or
17 substantially all, parts of the events or omissions giving rise to Ms. Searle’s claims occurred
18 in this district and all real property at issue in this litigation is located in Maricopa County,
19 Arizona where Ms. Searle currently reside.
20

21 37. Ms. Searle possesses standing because she will suffer a “classic pocketbook
22 injury” from the sale of her home, when the sale results in price over and above what she
23 owed in taxes. *Tyler*, 598 U.S. at 636 (injury caused by County illegally appropriating
24 \$25,000 in excess value from sale).
25

STATEMENT OF FACTS

Arizona’s Statutory Scheme Allowed Equity Theft

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

4 39. In Arizona, tax liens are created under ARIZ. REV. STAT. ANN. § 42-17153,
5 which established that taxes levied on property become liens on the assessed property from
6 January 1 of the tax year, having priority over most other liens. This statute worked in
7 tandem with ARIZ. REV. STAT. ANN. § 42-17154, which extended the liability for taxes
8 beyond the specific property assessed, allowing for mutual liability between real and
9 personal property.
10

11 40. The County Treasurer, as tax collector, has the additional duty of securing
12 payment on delinquent taxes by selling liens and/or foreclosing the right to redeem those
13 liens. *See* ARIZ. REV. STAT. ANN. § 42-18001; *see also* ARIZ. REV. STAT. ANN. § 42-18101.
14 Once sold, the County Treasurer must issue a certificate of purchase to the purchaser or
15 assignee, which constitutes prima facie evidence of a valid purchase. *See* ARIZ. REV. STAT.
16 ANN. § 42-18118; *see also* ARIZ. REV. STAT. ANN. § 42-18119.
17

18 41. Should the lien not be purchased by a private party as outlined above, the
19 lien is assigned to the State by the County Treasurer. *See* ARIZ. REV. STAT. ANN. § 42-
20 18113.
21

22 42. After three years from the sale or assignment of a tax lien, the purchaser or
23 the State may initiate an action to foreclose the right to redeem if the lien is not redeemed.
24 *See* ARIZ. REV. STAT. ANN. § 42-18201.
25
26
27
28

1 48. In 2005, Christine Searle purchased Assessor Parcel No. 302-35-259, which
2 is the property located at 513 S. Ash St., Gilbert, AZ 85233 (the “Home”). For years, she
3 was the sole owner, and enjoyed the benefits of home ownership including renting it out
4 as one of her sole forms of income in retirement.
5

6 49. The Maricopa County Assessor has valued this property at \$376,800 for the
7 2024 tax year. As is common with many areas, the market value of this property is likely
8 significantly higher than this valuation. For example, although online real estate estimates
9 are not as reliable as individual professional appraisals, the Zillow estimated range for
10 purchasing Ms. Searle’s house is between \$438,000-484,000.⁵ Redfin, another real estate
11 website, estimates the Home’s value at \$430,000-512,000.⁶ Finally, Trulia and Realtor.com
12 list the estimated value as \$461,200,⁷ and between \$433,581-480,000,⁸ respectively.
13
14

15 50. Defendant Arapaho purchased the 2015 and 2016 tax liens issued by the
16 Maricopa County Treasurer’s office against Ms. Searle’s home stemming, from Ms.
17 Searle’s delinquent taxes.
18
19
20

21 ⁵ 513 S Ash St, Gilbert, AZ 85233, Zillow (Jan. 26, 2024)
22 https://www.zillow.com/homedetails/513-S-Ash-St-Gilbert-AZ-85233/8180247_zpid/.

23 ⁶ 513 S Ash St, Gilbert, AZ 85233, REDFIN (Jan. 26, 2024),
24 <https://www.redfin.com/AZ/Gilbert/513-S-Ash-St-85233/home/28096951>.

25 ⁷ 513 S Ash St, Gilbert, AZ 85233, Trulia (Jan. 26, 2024),
26 <https://www.trulia.com/home/513-s-ash-st-gilbert-az-85233-8180247>.

27 ⁸ 513 S Ash St, Gilbert, AZ 85233, REALTOR (Jan. 26, 2024),
28 https://www.realtor.com/realestateandhomes-detail/513-S-Ash-St_Gilbert_AZ_85233_M29465-56767

1 51. In 2021, Defendant Arapaho began the initial stages of foreclosure
2 proceedings on those tax liens. According to Defendant Arapaho’s verified complaint in
3 that action, at the time of the foreclosure action, Ms. Searle owed \$1,607.68 in delinquent
4 taxes. *See* Exhibit 1. Arapaho won a default judgment in accordance with the statutory
5 scheme outlined above, and was issued a treasurer’s deed for the Home on February 1,
6 2022. *See* Exhibit 4 at 2.

7
8 52. The Treasurer’s deed formally removed Ms. Searle’s ownership of the
9 property in question, and is the earliest possible time when she was first owed just
10 compensation under the Fifth Amendment. *See Salt River Project Agricultural*
11 *Improvement and Power Dist. v. Miller Park, LLC*, 183 P.3d 467, 500 (Ariz. 2008) (“An
12 owner of condemned property is constitutionally entitled to ‘just compensation.’ Just
13 compensation equals the fair market value of the property.”) (quoting U.S. Const. amend.
14 V; Ariz Const. art. 2 § 17); *See Sprang v. Petersen Lumber, Inc.*, 798 P.2d 395, 400 (Ariz.
15 App. 1st Div. 1990) (“A treasurer’s deed usually conveys a new and complete title under
16 an independent grant from the sovereign, free of any prescriptive title and all other liens
17 and encumbrances.”); *See Allied Am. Inv. Co. v. Petit*, 179 P.2d 437, 438-39 (Ariz. 1947)
18 (describing the character and the numerous rights that a treasurer’s deed triggers).

19
20
21 53. Following the entry of the default judgment, Ms. Searle received a letter
22 dated February 10, 2022, informing her of the issuance of the Treasurer’s and foreclosure.
23 *See* Exhibit 4 at 1. Ms. Searle then moved to set the default judgment aside, contending
24 that she had not received proper notice regarding foreclosure action. However, this motion
25 was denied. Ms. Searle then filed an appeal challenging the denial of her motion to set
26
27
28

1 aside the default judgment. The Court of Appeals of Arizona, Division 1 affirmed the
2 denial of Ms. Searle’s motion on February 9, 2023. *See Arapaho LLC v. Searle*, No. 1 CA-
3 CV 22-0478, 2023 WL 1830382 (Ariz. Ct. App. Feb. 9, 2023), review denied (Oct. 17,
4 2023).

5
6 54. On October 17, 2023, further review in the Arizona appellate courts was
7 denied. *Id.*

8
9 55. Due to the foreclosure action resulting in default judgment and the
10 subsequent appeals being limited in scope to a notice issue, the merits of the foreclosure
11 case have not been litigated. In fact, none of the issues surrounding takings or excessive
12 fines have even been litigated with respect to Ms. Searle’s home. As a result, neither res
13 judicata or collateral estoppel have any bearing on this suit.

14
15 56. *Tyler* represents new law. *Compare Automatic Art LLC v. State of Arizona*,
16 No. CV 08-1484, 2010 WL 11515708, *6 (D. Ariz. March 18, 2010) (“[T]he Court still
17 concludes that Ms. Searle’s interest in the subject property terminated completely with the
18 issuance of the treasurer’s deed, and no deprivation of constitutional rights occurred.”)⁹;
19 *see contra* Testimony of Maricopa County Treasurer John Allen regarding Senate Bill
20 1431, Arizona State Senate Finance and Commerce Committee, at 25:35 (Feb. 12, 2024)
21 (“We don’t give a mechanism [to distribute excess proceeds] in the liens [context.] And so
22
23

24
25
26 ⁹ Note that even the Court in *Automatic Art* pinned the deprivation of property rights to no
27 earlier than “the issuance of the treasurer’s deed.” *Id.* at *6 (“[T]he Court has concluded
28 that Plaintiff had no continuing property interest in the subject property after the treasurer’s
deed issued.” (emphasis added).

1 this is adding that mechanism to the liens so that you have the ability to say ‘I’m owed
2 something here. I would like to get it back.’”¹⁰; *see infra*, para. 81.

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

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

13
14
15 59. Unfortunately, Arapaho and/or American Pride will obtain a massive
16 windfall: obtaining a property valued in the mid-\$400,000s over a tax lien that at the time
17 of foreclosure was roughly \$1,600.¹¹

18
19
20
21
22
23

¹⁰ <http://www.azleg.gov/videoplayer/?eventID=2024021046&startStreamAt=1147>

24 ¹¹ After conferral with Arapaho’s counsel in the federal district court case, it came to light
25 that Ms. Searle does owe other debts, and that the property is otherwise encumbered.
26 However, these amounts do not exceed the value of Ms. Searle’s home, and, under *Tyler*,
27 they make little difference to the legal claims in this case. *Tyler*, 598 U.S. at 637 (“Had
28 Tyler received the surplus from 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.

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

1
2
3
4
5
60. The United States and Arizona Constitutions prohibit the taking of private property without a “public use.” Moreover, even where a public use can be shown, “just compensation” must be provided if such property is taken.

6
7
8
9
10
11
12
13
14
61. Article 2, Section 17 of the Arizona Constitution states: “Private property shall not be taken for private use, except for private ways of necessity, and for drains, flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or sanitary purposes. No private property shall be taken or damaged for public or private use without just compensation having first been made . . .” This provision, akin to its federal counterpart, restricts takings absent a public purpose and ensures compensation for property owners.

15
16
17
18
19
20
21
22
62. The Fifth Amendment to the United States Constitution articulates similar restrictions, declaring “nor shall private property be taken for public use, without just compensation.” The Fourteenth Amendment extends these protections to the states, affirming, “No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.”

23
24
25
26
27
28
63. Both the United States and Arizona Constitutions also prohibit excessive fines. The Eighth Amendment to the United States Constitution, applicable to the states, and Article 2, Section 15 of the Arizona Constitution, both stipulate: “Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.”

1 64. Despite these constitutional guarantees, Arizona, through its statutory
2 scheme described above, permitted the seizure of property from homeowners with unpaid
3 real property taxes, transferred title to the state or third parties, and deprived the original
4 property owner of the equity or value of their property after taxes and charges are satisfied.
5
6 Furthermore, there is no provision for the original owner to reclaim this excess equity or
7 surplus from a private party.

8 65. By permitting a private entity to obtain the home of a delinquent taxpayer,
9 Arizona’s statutory scheme effectuated a *per se* unconstitutional taking for private use, a
10 taking of private property without just compensation, and imposed an excessive fine
11 beyond any penalties and tax arrears. *Cao v. PFP Dorsey Inv., LLC*, 545 P.3d 459, 464 (“In
12 addition to prohibiting government-executed takings for private use, article 2, section 17
13 prohibits the legislature from authorizing private individuals to take property for private
14 use, except for some enumerated exceptions not implicated here.”).

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

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

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

19 69. Testifying further, Treasurer Allen described the foreclosure process as a
20 delegation of power by stating “we subcontract that activity” regarding the priority of the
21 lien for the purposes of foreclosure. Tax Lien; Redemption; Property Sale: Hearing on H.B.
22 2098 Before the H. Comm. on Ways & Means, 2024 Leg., Fifty-sixth Legislature – Second
23 Regular Sess. (Ariz. 2024) (testimony taken on Feb. 14, 2024 by John Allen at 35:03,
24 Treasurer of Maricopa County).
25
26
27
28

1 70. The principle that government should not have the unchecked authority to
2 take property from one individual and give it to another has been a foundational concept in
3 American jurisprudence, underscored by cases like *Calder v. Bull*, and enshrined in both
4 the U.S. and Arizona Constitutions as a safeguard against government overreach. 3 U.S.
5 386 (1798) (“It is against all reason and justice for a people to entrust a legislature” with
6 the power to enact “a law that takes property from A and gives it to B.”)
7

8 71. While case law concerning unconstitutional takings often addresses eminent
9 domain and inverse condemnation, the overarching legal principle is clear: the government
10 must fairly compensate the owner whenever a taking occurs, thereby protecting individuals
11 from bearing disproportionate costs meant for the public benefit.
12

13 72. A home or other real property, as well as the equity or value remaining after
14 settling valid taxes and charges, is unequivocally protected under the U.S. and Arizona
15 Constitutions. The concept that a person's home is their sanctuary is deeply embedded in
16 our legal system, as noted in *Lombard v. Louisiana* by Justice Douglas, who asserted “The
17 principle that a man’s home is his castle is basic to our system of jurisprudence.” 373 U.S.
18 267 (1963). Equity in real property holds the same protections and is governed by the same
19 principles as any other form of property.
20
21

22 73. The Arizona Supreme Court has recognized that homeowners were equitably
23 subrogated to the mortgage lien's priority for the amount they paid to satisfy the mortgage,
24 thereby recognizing their entitlement to proceeds from any sale of the property in the
25 amount they paid to satisfy the debt. *Sourcecorp, Inc. v. Norcutt*, 274 P.3d 1204 (Ariz.
26
27
28

1 2012). This indicates an acknowledgment of the homeowner's right to equity realized
2 through their financial contributions.

3 74. 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 (1934) (emphasis added). Should this sort of taking occur, “[The owner]
7 is entitled to be put in as good a position as pecuniarily as if his property had not been
8 taken.” *Id.*

9 75. Arizona courts have long recognized the broad scope of protection afforded
10 by the takings clauses in both the state and federal constitutions. In *State ex. rel. Herman*
11 *v. Southern Pac. Co.*, the court emphasized: “the prohibition against ‘taking’ private
12 property for public use without just compensation, contained in both our State and National
13 Constitutions, is designed to protect not only the landowner’s proprietary interest, but also
14 his economic interest.” 445 P.2d 186 (Ariz. 1968). This underscores that Ms. Searle’s full
15 property rights, including her accrued equity, are protected against unconstitutional
16 takings.

17
18
19
20
21 ***Tyler v. Hennepin* Undoubtedly Invalidated The Arizona Tax Lien Scheme That Led**
22 **to the Deprivation of Ms. Searle’s Home.**

23 76. Arizona’s statutory regime was cited as a particularly egregious form of
24 equity theft in the plaintiff’s complaint in *Tyler v. Hennepin*. See Joint Appendix in *Tyler*
25
26
27
28

1 *v. Hennepin*, No. 20-166, at 15, ¶ 44 (Feb. 23, 2023) (referring to tax forfeitures in Arizona
2 “to which the elderly are particularly vulnerable.”).¹²

3 77. The Arizona regime and the case law underlying it were cited numerous
4 times in the briefing in *Tyler*.

5 78. For instance, Arizona’s tax lien scheme was prominently referred to by amici
6 supporting the Petitioner in *Tyler*. As an example, in the amicus brief for the National Legal
7 Aid & Defender Association in support of *Tyler*, the amici cited an article specifically
8 referring to Arizona’s statistics. *See* AMICUS BRIEF OF NATIONAL LEGAL AID & DEFENDER
9 ASSOCIATION AS AMICUS CURIAE IN SUPPORT OF PETITIONER, at 8-9 (Mar. 6, 2023) (“As
10 property tax delinquency has fallen disproportionately on historically disadvantaged
11 communities, so too has the weight of home equity theft. In Arizona, the impacts of the tax
12 foreclosure scheme are concentrated in high-poverty neighborhoods.”).¹³ The article even
13 uses Maricopa County as an example: “But of the cases that do lead to foreclosure—1,734
14 in Maricopa County since 2010—more than a third are primary residences. That means
15 that 642 homeowners lost their homes and all their equity.”¹⁴

16
17
18
19
20
21
22 ¹² https://www.supremecourt.gov/DocketPDF/22/22-166/255642/20230227174156602_Tyler%20Joint%20Appendix.pdf

23 ¹³ https://www.supremecourt.gov/DocketPDF/22/22-166/256341/20230306143341766_22-166%20NLADA%20Amicus.pdf. *See id.* at 9
24 (“Other hard-hit areas in Arizona are those with large Latino and African-American
25 populations.”).

26 ¹⁴ Mahoney & Clark, *Arizona owners can lose homes over as little as \$50 in back taxes*,
27 *Ariz. Republic* (Jun. 16, 2017), at <https://www.azcentral.com/story/money/real-estate/2017/06/12/tax-lien-foreclosures-arizona-maricopa-county/366328001/>
28

1 79. Similarly, the Supreme Court had before it the BRIEF FOR AMICI CURIAE
2 NATIONAL ASSOCIATION OF REALTORS, MINNESOTA REALTORS, AND AMERICAN
3 PROPERTY OWNERS ALLIANCE IN SUPPORT OF PETITIONER, No. 22-166 (Mar. 6, 2023).
4 That brief grouped Arizona’s statutory scheme in with the Minnesota regime that was
5 invalidated: “These regimes vary in their operation—some permit the government itself to
6 reap the windfall free and clear, *see, e.g.*, MINN. STAT. ANN. § 280.29, others grant
7 foreclosed equity value to private investors in tax liens, *see, e.g.*, ARIZ. REV. STAT. § 42-
8 18201, et seq., while still others vest seemingly absolute discretion in the governments to
9 spend it as they prefer, *see, e.g.*, MASS. GEN. LAWS CH. 60, §§ 43, 53. Yet, for all of their
10 differences, a common thread unites them: each of these statutes deprives property owners
11 of vested property interests without compensation.” *See id.* at 9.¹⁵

12 80. As demonstrated by his testimony on SB 1431, Defendant Allen himself has
13 questioned the viability of Arizona’s prior tax lien system after *Tyler*. This is consistent
14 with the Arizona County Treasurers Association (ACTA) amicus brief in *Tyler*. *See* BRIEF
15 OF AMICI CURIAE NATIONAL TAX LIEN ASSOCIATION, THE ARIZONA COUNTY
16 TREASURERS ASSOCIATION, AND THE TAX COLLECTORS & TREASURERS ASSOCIATION OF
17 NEW JERSEY IN SUPPORT OF RESPONDENTS IN TYLER V. HENNEPIN CNTY., MINN., No. 22-
18 166 (Mar. 31, 2023).¹⁶ In the brief, the ACTA, among the others named on the brief,

19
20
21
22
23
24
25
26
27
28

¹⁵ https://www.supremecourt.gov/DocketPDF/22/22-166/256348/20230306150018709_22-166%20merits%20tsac%20NAR.pdf

¹⁶ https://www.supremecourt.gov/DocketPDF/22/22-166/262489/20230331142057501_Amicus%20Brief.pdf

1 expressly stated that a negative ruling in *Tyler* would affect jurisdictions like Arizona:
2 “Amici and their members will be affected by the outcome of this case because dramatic
3 changes to how delinquent property taxes are collected across the country could jeopardize
4 the fiscal health of local taxing authorities, resulting in safety and economic consequences
5 for these communities. For these reasons, Amici have legitimate interests in this case.”
6 (emphasis added).
7

8 81. The amicus brief joined by the ACTA and cited above also acknowledged
9 that a ruling for the Petitioner in *Tyler* would have broad consequences for tax collection
10 schemes through the country: “Because of the web of tax-collection schemes that exist
11 across the country, a broad rule adopted to address Minnesota’s statutory process would
12 unnecessarily reverberate throughout the country.” *Id.* at 30 (emphasis added).
13
14

15 82. Defendant Allen participates in Arizona County Treasurer’s Association
16 activities, and Maricopa County hosted the ACTA’s conference in Fiscal Year 2023.¹⁷
17

18 83. Moreover, Hennepin County itself considered the legality of its tax lien
19 scheme to be bound up with the viability of Arizona’s scheme. For instance, it cited
20 *Automatic Art, LLC v. Maricopa Cnty.*, 2010 WL 11515708, at *5-6 (D. Ariz. Mar. 18,
21 2010), for the proposition that “since Arizona law did not provide for distribution of equity
22 to a former owner,” Ms. Searle’s interest “terminated completely with the issuance of the
23

24
25 ¹⁷ See Maricopa County Treasurer’s Office FY 2023 Annual Report, at 3 (June 2023) (“The
26 Maricopa County Treasurer’s Annual Report is published in the summer. It provides
27 information on the preceding fiscal year. Fiscal year 2023 began July 1, 2022, and ended
28 June 30, 2023.”), at
https://treasurer.maricopa.gov/Reports/index?fileName=Annual_Report_FY2023.pdf

1 treasurer’s deed, and no deprivation of constitutional rights occurred.” *See* Respondents’
 2 Response to the Petition for Writ of Certiorari at 9.¹⁸

3 84. And for good measure, Hennepin County grouped Arizona’s law with
 4 Minnesota’s when it filed its merits brief before the Supreme Court: “Third, the disruption
 5 from ruling for Petitioner would be wide-ranging. At least nine states and the District of
 6 Columbia mirror Minnesota’s approach in most cases.” Brief for Respondents, at 43 n.19
 7 (citing Ariz. Rev. Stat. Ann. § 42-18303(C)).¹⁹

8 85. To drive home the point, during oral argument before the Supreme Court in
 9 *Tyler*, counsel for Hennepin County alluded to Arizona’s statutory scheme as one of 19
 10 states whose legal regimes were at stake. Transcript of Oral Argument in *Tyler v. Hennepin*
 11 *Cnty.*, 96:22-97:1 (“I think, here, all you need to decide is you look at this statute and the
 12 other 19 states that have exactly—you know, have very similar statutes and you ask is this
 13 reasonable[?]”).²⁰

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

17
 18
 19
 20
 21 **Defendants’ Actions Constitute a Taking Under the Clear Meaning of *Tyler***

22
 23
 24 ¹⁸ https://www.supremecourt.gov/DocketPDF/22/22-166/249158/20221206120550502_Tyler%20v%20Hennepin%20Respondents%20Response%20to%20the%20Petition%20for%20a%20Writ%20of%20Certiorari.pdf

25
 26 ¹⁹ https://www.supremecourt.gov/DocketPDF/22/22-166/260178/20230329131415863_Hennepin%20Brief%203-29-23%20Final.pdf

27
 28 ²⁰ https://www.supremecourt.gov/oral_arguments/argument_transcripts/2022/22-166_h4d8.pdf

1 87. Defendants’ actions violate the guiding principles of both the U.S. and
2 Arizona Constitutions, and the fundamental intent to protect homeowners from the severe
3 consequences of tax delinquency.

4 88. In *Tyler*, the Supreme Court recognized that the retention in excess value
5 constitutes a taking. 598 U.S. at 638 (“Here there was money remaining after Tyler’s home
6 was seized and sold by the County to satisfy her past due taxes, along with the costs of
7 collecting them. The question is whether that remaining value is property under the Takings
8 Clause, protected from uncompensated appropriation by the State.”) (emphasis added).

9 89. As part of a joint motion in the federal district court case, (Exhibit 3) the
10 Arizona Attorney General, Kristin Mayes, stated and acknowledged that:

11 a. In *Tyler v. Hennepin County*, 598 U.S. 631 (2023), the U.S. Supreme
12 Court confirmed that states can collect “taxes on property,” and “[i]n collecting
13 these taxes, [states] may impose interest and late fees,” *id.* at 637-38, as well as
14 “seize and sell property, including land, to recover the amount owed,” *id.* at 638,
15 639. The Supreme Court held, however, that states cannot “confiscate more property
16 than [is] due,” which violates the Fifth Amendment’s Takings Clause as
17 incorporated against the states through the Fourteenth Amendment. *See id.* at 637,
18 639 (citation omitted).

19 b. Consistent with *Tyler*, Arizona’s statutory scheme recognizes that
20 when the State forecloses on an unsatisfied tax lien, it cannot confiscate more than it
21 is owed. *See* A.R.S. §§ 42-18303(C), 42-18113(B)(1). Rather, the State must
22 sell the encumbered property, subtract the amount owed—including interest,
23
24
25
26
27
28

1 penalties, fees, and costs—and return the “balance remaining” to “the owner of the
2 property who was dispossessed by the sale.” A.R.S. § 42-18303(C); *see id.* § 42-
3 18113(A), (B)(1) (providing that a county treasurer can assign the lien to the State,
4 and that taxes “assessed against that property are not payable until they have been
5 derived from the sale or redemption of the property” or resale of the lien).
6

7 c. Arizona’s statutory scheme allows county treasurers to sell tax
8 liens to private parties to “secure the payment of unpaid delinquent taxes.” A.R.S.
9 § 42- 18101(A); *id.* § 42-18114 (authorizing sale to “the person who pays the
10 whole amount of delinquent taxes, interest, penalties and charges due on the
11 property, and who in addition offers to accept the lowest rate of interest on the
12 amount so paid to redeem the property”). When county treasurers sell tax liens
13 to private parties, they do so on the State’s behalf. *See id.* § 42-18001(A)(1).
14
15

16 d. Under *Tyler*, the State cannot “extinguish a property interest
17 that it recognizes everywhere else to avoid paying just compensation when it is
18 the one doing the taking.” 598 U.S. at 645. And because the State cannot authorize
19 others to do that which the State is not empowered to do, county treasurers cannot
20 sell to private parties more of a property interest than the State itself could be
21 assigned and retain. Thus, when a private party purchases a tax lien pursuant to
22 A.R.S. §§ 42-18101 *et seq.*, only the interest in the tax lien (including authorized
23 fees, costs, and interest) is conveyed.
24
25

26 e. Accordingly, under *Tyler*, A.R.S. § 42-18204(B) is unconstitutional
27 to the extent it purports to extinguish a dispossessed owner’s property interest in the
28

1 sale proceeds or value of the equity that exceed what the State is owed and could
2 retain by statute. Further, to the extent a private party retains the excess proceeds
3 of a sale or value of the equity in a home that exceeds what the State could retain
4 by statute, that result is an unconstitutional taking under *Tyler*.

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

15 16 17 **Defendants’ Actions Constitute an Excessive Fine**

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

24
25 92. In alignment with the United States Constitution, proportionality underlies
26 the constitutional examination under the Excessive Fines Clause of the Arizona
27
28

1 Constitution. The extent of forfeiture must be commensurate with the severity of the
2 underlying offense it intends to penalize.

3 93. Defendant Arapaho's and American Pride's plan—and ability under
4 Arizona's tax lien scheme—to retain the surplus following the seizure of Ms. Searle's
5 home, which is estimated to be worth well over 200 times that of the amount of the
6 remaining tax balance, violates the Excessive Fines Clause as enshrined in both the Arizona
7 and United States Constitutions as an unjust, excessive fine.

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

16
17
18
19 **CAUSES OF ACTION**

20 **FIRST CLAIM FOR RELIEF**

21 **THE VIOLATION OF PLAINTIFF'S PROPERTY RIGHTS UNDER 42 U.S.C. § 1983 –**
22 **FAILURE TO PAY JUST COMPENSATION**

23 **AGAINST ALL DEFENDANTS**

24 95. Plaintiff realleges and incorporates by reference the allegations set forth
25 above as if fully set forth herein.
26
27
28

1 96. Arizona’s statutes in Title 42, Chapter 18, governing the sale of tax liens and
2 the disposition of proceeds, does not make any provision for returning the surplus of
3 appropriated property to the original owner.

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

8 98. Ms. Searle’s rights to her property and the equity therein have been
9 unequivocally infringed under the U.S. Constitution. The Constitution protects against the
10 taking of private property without just compensation, and ensures that equity in real
11 property is treated with the same regard as any other form of property.
12

13 99. The public cannot confiscate the benefits of a property owner’s bargain.
14 *Olson*, 292 U.S. at 255.
15

16 100. In *Scottsdale v. CGP-Aberdeen, L.L.C.*, 177 P.3d 1198, 1200 (Ariz. 2008)
17 the court discussed the requirement for just compensation under both the United States and
18 Arizona Constitution, emphasizing that property may not be taken without just
19 compensation being paid to the owner. The case also addressed the issue of valuation dates
20 in condemnation actions, highlighting the importance of fair compensation based on the
21 property’s value at the time of taking.
22

23 101. All Defendants were acting and/or continue to act under color of state law at
24 all times relevant hereto.
25

26 102. All Defendants are “persons” for purposes of 42 U.S.C. § 1983.
27
28

1 103. Defendants’ seizure and subsequent retention of Ms. Searle’s property,
2 including the substantial equity that she accumulated since purchasing the home in 2005,
3 are the proximate cause of Ms. Searle’s significant and demonstrable harm.

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

10 105. Given that the *Tyler* Court expressly held that a homeowner whose property
11 is taken to satisfy a tax debt is entitled to the surplus value after the sale of the home, this
12 right is clear. *See Tyler*, 598 U.S. 631.

13 106. The Arizona tax lien scheme was patently violative of fundamental
14 constitutional principles.

15 107. Given these violations, Ms. Searle seeks redress under 42 U.S.C. § 1983,
16 which entitles her to seek relief for the deprivation of her constitutional rights. This
17 includes just compensation for the property taken, as well as any additional relief deemed
18 appropriate by the Court, such as nominal damages, compensatory damages, punitive
19 damages, attorney fees, and costs. *See Corrigan*, 720 P.2d at 516. (“We believe that once
20 a taking is found, the Arizona Constitution mandates the payment of money as damages
21 for the injury suffered.”).

1 119. The Fifth Amendment to the United States Constitution, made applicable to
2 the states via the Fourteenth Amendment, states, “nor shall private property be taken for
3 public use, without just compensation.”

4 120. With respect to the allegations in Count 1 and Count 2, Ms. Searle brings
5 takings claims for just compensation and a no-public-use-taking claim pursuant to 42
6 U.S.C. § 1983.

7 121. Ms. Searle also seeks relief directly under the Fifth Amendment, on the basis
8 that relief is always directly available under the Fifth Amendment, regardless of any
9 limitation on 42 U.S.C. § 1983. *See DeVillier v. Texas*, 601 U.S. 285, 291 (2024) (“We
10 have explained that a property owner acquires an irrevocable right to just compensation
11 immediately upon a taking because of the self-executing character of the Takings Clause
12 with respect to compensation.”) (cleaned up); *Bonito Partners, LLC v. City of Flagstaff*,
13 229 Ariz. 75, 79 (Ariz. Ct. App. 2012) (a party has a right to bring a takings action when a
14 valid police power is exercised to deprive an individual of a property right).

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

18 123. This claim is not subject to any relevant statute of limitations under 42 U.S.C.
19 § 1983. However, to the extent that the Court deems this or any claim to outside of the
20 statute of limitations, Ms. Searle asks that the Court equitably toll the statute in light of the
21 Supreme Court’s decision in *Tyler*, as well as equitable factors.

1 small amounts of delinquent taxes constitutes an excessive fine under the Eighth
2 Amendment to the United States Constitution. *See Tyler*, 598 U.S. 631, 649-50 (Gorsuch,
3 J., concurring, with Jackson, J., joining) (“Economic penalties imposed to deter willful
4 noncompliance with the law are fines by any other name. And the Constitution has
5 something to say about them: They cannot be excessive.”).

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

12 131. Although *Tyler* did not reach the question of whether the taking at issue also
13 constituted an excessive fine, the fine placed on Ms. Searle was grossly disproportional to
14 the taxes owed.

16 132. Ms. Searle has suffered, and continues to suffer, significant and irreparable
17 harm. If a permanent injunction is not issued, she will soon be evicted from her home, due
18 to the ongoing risk of property rights violations by Defendants.

20 133. Ms. Searle is entitled to prospective equitable relief, injunction relief, and an
21 award of damages against each Defendant named in his or her individual capacity in an
22 amount to be proven at trial.

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

FIFTH CLAIM FOR RELIEF

TAKING OF PRIVATE PROPERTY IN VIOLATION OF THE ARIZONA CONSTITUTION – NO JUST COMPENSATION

AGAINST ALL DEFENDANTS

1
2
3
4
5 135. Plaintiff realleges and incorporates by reference the allegations set forth
6 above as if fully set forth herein.

7
8 136. Article 2, Section 17 of the Arizona Constitution states: “Private property
9 shall not be taken for private use, except for private ways of necessity, and for drains,
10 flumes, or ditches, on or across the lands of others for mining, agricultural, domestic, or
11 sanitary purposes. No private property shall be taken or damaged for public or private use
12 without just compensation having first been made. . . .” This clause mandates that if
13 property is taken, just compensation must be provided.

14
15 137. Arizona statutes, while dictating that any surplus earned by the State
16 following a sale must be returned to the original owner, were silent regarding the surplus
17 after a private transfer when Ms. Searle’s home was foreclosed upon.

18
19 138. As such, Ms. Searle has had her property taken without being justly
20 compensated for the taking, and has no available mechanism to recover the surplus other
21 than filing this action.

22
23 139. These tax forfeiture statutes allow the seizure of Ms. Searle’s private
24 property without just compensation, thereby violating Ms. Searle’s constitutional rights
25 under the Arizona Constitution.
26
27
28

1 152. The confiscation of the entire value of Ms. Searle’s property, including the
2 delta in value between the tax owed and the price of the home, due to the non-payment of
3 relatively small amounts of delinquent taxes constitutes an excessive fine under Article 2,
4 Section 15 of the Arizona Constitution.

5
6 153. Defendants are engaged in the assessment and collection of fines that are
7 excessive and thus prohibited under the Arizona Constitution.

8
9 154. To the extent that the Court deems Arapaho or American Pride to be the party
10 that is levying an excessive fine, either entity does so under color of law.

11 155. Ms. Searle has been harmed and incurred damages due to the imposition of
12 unlawful excessive fines under the Arizona Constitution and is entitled to damages and
13 other relief as a result of this constitutional violation.

14
15 156. 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 **EIGHTH CLAIM FOR RELIEF**

20 **VIOLATION OF THE ARIZONA GIFT CLAUSE**

21 **AGAINST DEFENDANTS ALLEN AND MARICOPA COUNTY**

22
23 157. Plaintiff realleges and incorporates by reference the allegations set forth
24 above as if fully set forth herein.

25 158. The Arizona Constitution provides that “Neither the state, nor any county,
26 city, town, municipality, or other subdivision of the state shall ever give or loan its credit
27
28

1 in the aid of, or make any donation or grant, by subsidy or otherwise, to any individual,
2 association, or corporation.” Ariz. Const. art. IX, § 7.

3 159. Arizona applies a two-pronged test for Gift Clause violations. First, the court
4 must determine whether the challenged expenditure serves a legitimate public purpose.
5 *Schires v. Carlat*, 480 P.3d 639, 642–43 (Ariz. 2021) citing *Wistuber v. Paradise Valley*
6 *Unified Sch. Dist.*, 687 P.2d 354, 357 (1984). If not, the expenditure is considered a Gift
7 Clause violation. *Id.* If a public purpose exists, the second step is to assess whether “the
8 value to be received by the public is significantly outweighed by the consideration being
9 paid by the public,” which would also constitute a Gift Clause violation. *Id.*

12 160. Under this framework, the acquisition of a tax lien by a private entity
13 followed by the subsequent foreclosure on the property constitutes a clear Gift Clause
14 violation.

16 161. The critical aspect of the Gift Clause analysis lies in whether the value
17 received by the public is significantly exceeded by the consideration paid by the public. In
18 this case, if the private entity acquires the property at a tax lien sale for a sum substantially
19 lower than the property’s fair market value, such as here, the public entity is essentially
20 providing a substantial subsidy to the private entity. In other words, if the public entity’s
21 goal is to collect delinquent taxes, penalties, and interest, but the private entity ends up
22 acquiring a property with a market value far in excess of the amount owed, the value
23 received by the public (the tax debt) is dwarfed by the benefit conferred upon the private
24 entity (ownership of a valuable property).

1 162. The ostensible public purpose here is the collection of delinquent taxes.
2 However, this purpose becomes questionable when examining the disproportionate
3 outcome of the transaction. In Ms. Searle’s case, her property, valued conservatively
4 between \$425,000 to \$505,000 based on various real estate estimates, was acquired by
5 through the foreclosure of a tax lien for a mere \$1,607.68 in delinquent taxes.
6

7 163. When applying the second prong of the *Wistuber* test, which examines the
8 balance between the value received by the public and the consideration paid, the disparity
9 becomes starkly evident. The amount recovered in delinquent taxes is substantially
10 outweighed by the value of the property. This imbalance suggests that the public, in this
11 case, has paid considerably more in consideration—in the form of lost property value and
12 potential tax revenue from a higher-valued property—than the value it received, which was
13 merely the satisfaction of a relatively small tax debt.
14

15 164. In essence, the transaction facilitated by the state’s statutory scheme but
16 completed by Defendant Allen has resulted in a significant and unjust enrichment of a
17 private entity at the expense of both Ms. Searle and the public interest.
18

19 165. This substantial subsidy to Arapaho and/or American Pride, achieved
20 through the acquisition of a high-value property for a fraction of its worth, indicates that
21 the value to the public is indeed significantly outweighed by what the public has paid,
22 thereby constituting a Gift Clause violation under the Arizona Constitution.
23

24 166. To the extent that the Court deems this or any claim to outside of the statute
25 of limitations, Ms. Searle asks that the Court equitably toll the statute in light of the
26 Supreme Court’s decision in *Tyler*, as well as equitable factors.
27
28

NINTH CLAIM FOR RELIEF

UNJUST ENRICHMENT

AGAINST ARAPAH0; AMERICAN PRIDE; JOHN DOE, JANE DOE, BLACK CORPORATIONS, WHITE PARTNERSHIPS, AND GREEN LIMITED LIABILITY COMPANIES

1
2
3
4
5
6
167. Plaintiff realleges and incorporates by reference the allegations set forth above as if fully set forth herein.

7
8
9
10
11
12
13
14
15
16
17
168. Ms. Searle contends that Arapaho, American Pride, John Doe, Jane Doe, Black Corporations, White Partnerships, and Green Limited Liability Companies have been unjustly enriched at her expense, as delineated in *Trustmark Ins. Co. v. Bank One, Ariz., NA*, where the Arizona Court of Appeals defined unjust enrichment as a situation where “one party has and retains money or benefits that in justice and equity belong to another.” 48 P.3d 485, 491 (Ariz. Ct. App. 2002). In the present case, Defendants’ retention of the difference between taxes and Ms. Searle’s property value falls squarely within this definition.

18
19
20
21
22
169. “To establish a claim for unjust enrichment, the plaintiff must allege an impoverishment on his part, an enrichment to the defendant, a connection between the two, the absence of justification, and the absence of a legal remedy.” *Haller v. Advanced Indus. Computer Inc.*, 13 F. Supp. 3d 1027, 1031 (D. Ariz. 2014).

23
24
25
170. Ms. Searle has suffered impoverishment by losing her property and the equity she had built in it over years, which far exceeds the amount of unpaid taxes.

26
27
28
171. Arapaho has been enriched by acquiring the property, including the surplus equity.

1 B. Find and declare that relevant provisions of Title 42, Chapter 18 of the
2 Arizona Revised Statutes are unconstitutional under the United States and Arizona
3 Constitutions as applied to Ms. Searle;

4 C. Declare that confiscations and sales taking place under Title 42, Chapter 18
5 of the Arizona Revised Statutes imposed a taking;

6 D. Declare that confiscations and sales taking place under Title 42, Chapter 18
7 of the Arizona Revised Statutes as applied to Ms. Searle imposed a taking;

8 E. Declare that confiscations and sales taking place under Title 42, Chapter 18
9 of the Arizona Revised Statutes are null and void;

10 F. Declare that confiscations and sales taking place under Title 42, Chapter 18
11 of the Arizona Revised Statutes are null and void as applied to Ms. Searle;

12 G. Find and declare that relevant portions of Title 42, Chapter 18 of the Arizona
13 Revised Statutes violate the Gift Clause of the Arizona Constitution;²¹

14 H. Find and declare that relevant portions of Title 42, Chapter 18 of the Arizona
15 Revised Statutes violate the Gift Clause of the Arizona Constitution as applied to Ms.
16 Searle;

17
18
19
20
21
22 ²¹ 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 injunction against Defendants preventing eviction proceedings from
2 proceeding against Ms. Searle, on the basis that (1) evicting her without just compensation
3 constitutes a taking, and (2) evicting her constitutes an excessive fine, without regard to
4 whether she ultimately receives just compensation;
5

6 J. Find and declare that Defendants' taking and sale of Ms. Searle's property,
7 including all equity therein, was not attended by payment or securing just compensation
8 and as such, violates the United States and Arizona Constitutions;
9

10 K. Find and declare that Defendants' taking and sale of Ms. Searle's property,
11 including all equity therein, is for no public use and violates the United States and Arizona
12 Constitutions;
13

14 L. To the extent that the Court finds that the taking and sale of Ms. Searle's
15 property, including all equity therein, is at least partially for public use, in the alternative,
16 that this Court rule that the delta between the value of Ms. Searle's home and her tax lien
17 debt is a taking not for a public purpose;
18

19 M. Find and declare that Defendants' appropriation of Ms. Searle's real estate
20 equity is an excessive fine in violation of the United States and Arizona Constitutions;
21

22 N. Enter an award of damages, including nominal damages, Maricopa County,
23 Arapaho, and American Pride, given that *Tyler* and other case law establish that the sale of
24 Ms. Searle's home will trigger a taking;
25

26 O. Enter an award of punitive damages against Defendants Arapaho and
27 American Pride, on the basis that Defendants continue to act in reckless disregard of Ms.
28

1 Searle's rights, given that the Supreme Court's decision in *Tyler* is clear that Ms. Searle
2 cannot be deprived of her property without just compensation.

3 P. Retain jurisdiction of this matter for the purpose of enforcing the Court's
4 orders;

5
6 Q. To the extent that Ms. Searle is deprived of her property, enter an award of
7 compensatory damages against all Defendants under the Fifth Amendment's just
8 compensation clause, as incorporated in the Fourteenth Amendment;

9
10 R. To the extent that Ms. Searle is deprived of her property, enter an order to
11 disgorge the delta between the value of the home and the amount of the tax lien;

12 S. Enter an award of attorney fees and costs of suit against all Defendants
13 pursuant to A.R.S. § 12-348;

14
15 T. Enter an award of attorney fees and costs of suit against all Defendants
16 pursuant to the Arizona Private Attorney General Doctrine;

17
18 U. Order such other and further relief as the Court may deem just, proper and
19 necessary under the circumstances.

Jury Demand

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

Dated this 19th day of August, 2024.

Respectfully submitted,

By: /s/ Veronica Lucero

Veronica Lucero
Davillier Law Group LLC
4105 N. 20th St., Ste. 110
Phoenix, AZ 85016

Grady J. Block*
William E. Trachman*
Mountain States Legal Foundation
2596 S. Lewis Way
Lakewood, Colorado 80227
**Pro Hac Vice Pending*

Attorneys for Plaintiff

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Verification

I, Christine M. Searle, declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. To the extent I am relying on documents as to matters of fact of which I do not have personal knowledge, I have a reasonable belief that those documents are genuine and accurate.

Executed on:

By:  Signed by:
7DF9C2E613CE4D1...
Christine M. Searle