No: 24-765

In The Supreme Court of the United States

ROBERT R. TURNER

Petitioner,

v.

SHARON W. JORDAN, *et. al.*

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

After Petitioner repeatedly failed to pay his property taxes, and in compliance with Florida's statutory taxation scheme, Petitioner's property was placed on Suwannee County, Florida's "*List of Lands Available for Taxes*" and sold by the County Clerk for the statutory minimum price. The state successfully recovered Petitioner's delinquent taxes, but the sale generated no surplus.

At the time of the sale, the property had lost its "homestead" status under Florida law, and the Clerk, therefore, determined that the statutory calculation for the minimum price did not include an additional amount equal to one-half of the property's assessed value. Petitioner asserts that a "correct" calculation under the statute would have yielded a surplus.

The Eleventh Circuit abstained under principles of comity, concluding that Petitioner's challenge to the process used to collect his taxes risked disrupting state tax administration and raised issues of state law better addressed by Florida's courts—which provided adequate, plain, and complete remedies for Petitioner's constitutional concerns.

The question presented is:

Do comity principles continue to counsel lower federal courts to abstain from cases that risk disrupting state tax administration through attacks on a local official's interpretation of state tax law and the mechanics by which delinquent state taxes are collected?

PARTIES

Petitioner, Robert R. Turner, Jr., was the Plaintiff/Appellant below.

Respondents, the Defendants/Appellees below, include:

- Barry Baker
  Clerk of Court
  Suwannee County, Florida

- Tracy K. Baldwin
  Deputy Clerk of Court
  Suwannee County Florida

- Sharon W. Jordan
  Tax Collector
  Suwannee County, Florida

- Tieyone S. Mitchell
  Employee in the Tax Collector's Office
  Suwannee County, Florida

Respondents are collectively referred to as "the "County"

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STATEMENT OF THE CASE

I. Introduction.

After Petitioner repeatedly failed to pay his property taxes, and in compliance with the state statutory scheme, Petitioner's property was placed on Suwannee County, Florida's "*List of Lands Available for Taxes*" and sold by the Clerk of Court for the statutory amount owed. The sale generated no surplus and no surplus was thus owed or denied to Petitioner.

The ultimate issue is whether the County Clerk of Court correctly interpreted Florida law when calculating the minimum price for the sale. At the time of the sale, the property had lost its "homestead" status, and the Clerk determined that the mathematical calculation for the minimum price under the relevant state statutes did not include an additional amount equal to one-half of the property's assessed value. This interpretation is supported by Florida law, including *Perdido Bay P'ship v. Warner*, 837 So. 2d 1154 (Fla. 1st DCA 2003). Petitioner asserts that a "correct" calculation would have included the additional amount because the property enjoyed "homestead" status at the time when it was first offered for sale months earlier—but received no bids at that price.

The Eleventh Circuit held that because the case fundamentally involved questions and interpretations of state tax law, risked disrupting state tax administration, and because Florida's courts provided Petitioner with adequate, plain, and complete remedies for his claim, the District Court did not

abuse its discretion in abstaining from the case under principles of comity.

II. The comity doctrine in taxation cases.

"[T]he comity doctrine applicable in state taxation cases restrains federal courts from entertaining claims for relief that risk disrupting state tax administration." *Levin v. Com. Energy, Inc.*, 560 U.S. 413, 417 (2010) (citing *Fair Assessment in Real Estate Assn., Inc. v. McNary*, 454 U.S. 100 (1981)).

The doctrine is a well-settled exception to the general rule that federal courts have an obligation to exercise the jurisdiction given to them, and evinces "a proper reluctance to interfere…with the fiscal operations of the state governments." *Levin* at 422 (quoting *Boise Artesian Hot & Cold Water Co. v. Boise City*, 213 U.S. 276, 282 (1909), and *Matthews v. Rodgers*, 284 U.S. 521, 525 (1932) ("The scrupulous regard for the rightful independence of state governments…and a proper reluctance to interfere by injunction with their fiscal operations, require that such relief should be denied in every case where the asserted federal right may be preserved without it.").[1]

The doctrine thus reflects:

> [A] proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate

[1] State court decisions remain reviewable by this Court to preserve any substantial federal rights. *Fair Assessment*, 454 U.S. at 116.

> state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in separate ways.

Id. (quoting Fair Assessment, 454 U.S. at 112). *See also Nat'l Private Truck Council, Inc. v. Okla. Tax Comm'n*, 515 U.S. 582, 586 (1995) ("We have long recognized that principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration.").

State taxpayers must therefore "seek protection of their federal rights by state remedies, provided ... that those remedies are plain, adequate, and complete." *Fair Assessment,* 454 U.S. at 116. This is true even in claims for damages under 42 U.S.C. § 1983 where recovery would "first require a federal-court declaration" that state officials violate constitutional rights in "administering the state tax." *Fair Assessment,* at 112-116.

It is sufficient "disruption" that state tax officials may reasonably fear being hauled into federal court for performing their duties in good faith:

> [A] judicial determination of official liability…would have an undeniable chilling effect upon the actions of all County officers governed by the same practicalities or required to implement the same policies. There is little doubt that such officials, faced with the prospect of personal liability to numerous taxpayers, not to mention the

> assessment of attorney's fees under 42 U.S.C. § 1988, would promptly cease the conduct found to have infringed petitioners' constitutional rights, whether or not those officials were acting in good faith.

Fair Assessment, 454 U.S. at 115.

The Court has identified a non-exclusive "confluence of [three] factors" to help determine whether comity counsels abstention. *Levin*, at 415-16. First, abstention is disfavored in suits involving a "fundamental right or classification that attracts heightened judicial scrutiny." *Id*. Second, abstention is disfavored in suits by third-party challengers, but is favored in suits by plaintiffs who seek to improve their own personal/competitive positions. *Id*. Finally, abstention is favored when state courts are "better positioned…to correct any violation because they are more familiar with state legislative preferences[.]" *Id*.

III. The Tax Injunction Act.

When federal courts began intervening too freely in state taxation issues, Congress passed the Tax Injunction Act, 28 U.S.C § 1341 ("the Act"), in 1937 "to reverse [the] trend." *Levin* 560 U.S. at 423. The Act prohibits federal district courts from enjoining, suspending, or restraining the assessment, levy, or collection of any tax under state law if a plain, speedy, and efficient remedy is available in the state's courts. 28 U.S.C. § 1341.

The Act's purpose was to "limit drastically federal district court jurisdiction to interfere with so

important a local concern as the collection of taxes." *Rosewell v. LaSalle Nat. Bank*, 450 U.S. 503 (1981).

The passage of the Tax Injunction Act, however, did not affect the doctrine of comity. *Levin*, at 424. Thus, where principles of comity alone warrant abstention, courts need not address the Tax Injunction Act. *Fair Assessment*, 454 U.S. at 107 ("Because we decide today that the principle of comity bars federal courts from granting damages relief in such cases, we do not decide whether [the Act], standing alone, would require such a result.").

IV. Florida's comprehensive tax scheme.

Florida has adopted a comprehensive scheme for the assessment and collection of ad valorem taxes "as a means of funding counties, school boards, and local governments." *Nikolits v. Haney*, 221 So. 3d 725, 728 (Fla. 4th DCA 2017). The scheme is implemented at the county level by "Property Appraisers," "Tax Collectors," and "Clerks of Court," each with distinct and non-overlapping constitutional/statutory roles. Fla. Const. Art. VIII, §1(d).[2]

Relevant here, tax payments are due annually by April 1st. § 197.122, *Fla. Stat.* If unpaid, a "tax certificate" may be sold, with the highest bidder awarded a Tax Lien Certificate. § 197.432, *Fla. Stat.*

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[2] Property Appraisers assess property value, approve/reject exemptions, and certify a final tax roll. [Chapter 193, *Fla. Stat.*]. Tax Collectors, collect and distribute taxes shown on the tax roll, approve deferrals, and sell tax certificates. [§ 197.332, *Fla. Stat.*]. Clerks of Court advertise and perform tax deed sales. [§§ 197.522 and 197.582 *Fla. Stat.*].

If the certificate remains unpaid more than two years, the certificate holder can apply to force a tax deed sale. §§ 197.502, and 197.542, *Fla. Stat*. Monies collected from the sale are used to pay off the amount owed to the tax lien certificate holder and other costs incurred in the process. §§ 197.582(2)(a), *Fla. Stat.* Any surplus from the sale "must be retained by the clerk for the benefit of" the property owner. §§ 197.582(1), (2)(a); 197.552(1)(a).

If there are no bidders at the tax sale, the property may be sold by the Clerk "without further notice or advertising, for the opening bid." The "opening" or "minimum" bid, is not a fixed event, but a mathematical calculation that changes with time as provided by §§ 197.542(1) ("Sale at public auction"), and 197.502(6) ("The opening bid"), *Fla. Stat*. The calculation changes as additional taxes become due and delinquent, and even daily with the accrual of interest—and all such sums are added to the minimum price. *Id*. If property has been "assessed on the latest tax roll as homestead property," the amount of the opening/minimum bid "must be increased to include an amount equal to one-half of the assessed value of the homestead property." *Id*.

Because the amount continually fluctuates, the Clerk's calculation of the minimum price does not occur until after there is interest or an offer. In *Perdido Bay P'ship v. Warner*, 837 So. 2d 1154 (Fla. 1st DCA 2003), for example, Florida's First District Court of Appeal explained that the opening bid is calculated *after* property is included on the "lands available for taxes" list, and approved the Clerk's calculation of the opening bid *after* receiving offers for

purchase. *Id*. at 1154 ("[The Clerk] accepts offers to purchase on a first-come, first-served basis, and ***thereafter*** it calculates the amount of the opening bid and informs the applicant of the amount due.") (e.s.).

V. The tax sale of Petitioner's property.

Since 1995, Petitioner's property was regularly assessed by the Property Appraiser as Petitioner's "homestead." App.11a. When Petitioner failed to timely pay his 2010 property taxes, the Tax Collector's office issued/sold a tax certificate for the property. *Id*. Tax certificates were also subsequently issued/sold for unpaid taxes in 2011, 2012, and 2013. More than two years later, and upon the demand of the original certificate holder, the Clerk advertised and conducted a public auction of the property on March 5, 2015. *Id*.

At that time, the property continued to be assessed as Petitioner's "homestead," and, as per §§ 197.502, *Fla. Stat*., the minimum price included one-half of the property's assessed value. *Id*. The property, however, received *no bids* at that time or price—suggesting that the real-world fair market value of the property was far less than its artificially "assessed" value. *Id*. at 11a-12a. Although the property could have been purchased thereafter at any time for the statutory minimum price, no one purchased the property at that price—again confirming a disconnect between the "assessed" and real-world values. *Id*. Petitioner's property could not sell on the free market, even for just slightly more than one-half its "assessed" value.

A subsequent investigation of the Property Appraiser in 2015 determined that the property no

longer qualified as Petitioner's "homestead" because it was not his "permanent residence" on January 1st of that year. *Id*. at 12a. When the 2015 tax roll was later certified on October 7, 2015, *Id*., the property no longer qualified to have its minimum price increased by one-half its assessed value because, as per the statute, it was not "assessed on the latest tax roll as homestead property." § 197.502, *Fla. Stat*.

With the new/lower price, there was immediate interest. Upon receipt of an inquiry or offer, the Tax Collector calculated the minimum/opening bid and sold the property for that price. *Id*. The sale did not generate a surplus because that's how Florida's tax scheme worked in this circumstance. *Id*.

VI. The courts below dismissed the action, finding that comity principles warranted abstention.

The District Court abstained from the case citing comity principles because it recognized that "[Petitioner], in essence, is asking the Court to opine on the constitutionality of Suwannee County's tax enforcement scheme and procedures," [App. 45a-46a], and because "plain, adequate, and complete state remedies [were] available" to Petitioner in Florida's state courts. *Id*. at 49a ("[T]he Court finds that dismissal based on the comity doctrine is warranted.").

The Eleventh Circuit affirmed, holding that the District Judge did not abuse his discretion in abstaining from the case on principles of comity. App.1a-39a.

Addressing the issue in detail, and weighing the respective *Levin* factors in light of the particular facts of the case, the Eleventh Circuit rejected Petitioner's argument that his claims did not risk disrupting state tax administration. *Id.* Although the Eleventh Circuit found that Petitioner sought to redress a fundamental right—and that this factor weighed against abstention—it determined that the remaining factors weighed in favor of comity.

Under the second *Levin* factor, the Eleventh Circuit noted the obvious: "[Petitioner] is not a third-party challenger" and "[h]e is in no sense an 'outsider' to the revenue-raising state-tax regime he asks the federal courts to restrain." App.21a (quoting *Levin* at 435). Although Petitioner, an individual, had no business "competitive position" to advance, he was certainly advancing his own personal/private position and interests. *Id.*

Importantly, while the Eleventh Circuit recognized that Petitioner was "adamant" that he did not contest his tax liability or the County's right to sell his property via a tax deed, the court recognized that Petitioner nonetheless did "object to his own [personal] tax situation," because he contests "the way his taxes were collected…[including] how the County calculated the opening bid for the tax deed sale it used to satisfy his tax liability." App.22a-23a, and 25a ("Turner challenges the mechanics of the tax deed sale…[and] [t][hat difference is critical.").

Under the final factor, the Eleventh Circuit again found the obvious: that Florida's courts were better positioned than the federal courts to correct the violations Petitioner alleges (*i.e.* if the Clerk correctly

interpreted the relevant state statute in performing the statutory price calculation):

> For Turner to prevail on his claims under the Takings Clause, a federal court must determine, at least, that the County impermissibly applied the opening bid requirement under Florida Statutes § 197.502(6)….Because this case requires the presiding court to make significant decisions about the meaning of Florida law—for instance, when Florida law permits opening bids to be set or recalculated—we conclude that state courts are better positioned than federal courts to resolve these claims.

App.23a-25a (noting that state courts also "have greater leeway to avoid constitutional holdings by adopting narrowing constructions that might obviate the constitutional problem and intelligently mediate federal constitutional concerns and state interests.") (quoting *Levin*, at 428 n.7).

Citing the Tax Injunction Act, the Eleventh Circuit explicitly addressed how relief risked "diminishing state revenues" and disrupting state tax administration. App.25a. The Court noted that Petitioner's property "didn't sell until it was listed for a second time with a lower opening bid amount." *Id*. As the court explained:

> Had the County required a minimum bid for one-half of the assessed value in the second sale, the property might not have

> sold, thereby depriving the County from collecting the delinquent taxes. Further, because the sale did not, in fact, result in a surplus, the damages Turner seeks would have to be paid out of state revenue unrelated to the sale itself.

App.25a.

Judge Newsome dissented because he would have weighed the *Levin* factor differently than the majority. App.32a-39a.

REASONS FOR DENYING THE PETITION

I. No circuit split exists.

Petitioner cites no case from any Circuit reaching a different conclusion under similar facts. Rather, Petitioner relies on decisions reached by other courts in the face of distinguishable facts.

In *Freed v. Thomas*, 976 F.3d 729 (6th Cir. 2020), for example, the tax sale auction generated a surplus that the state kept for itself rather than returning to the property owner. The issue did not implicate any state taxation issues—including the state's ability to collect taxes via the sale—but rather only involved a "post-collection failure to reimburse" the plaintiff with the already collected surplus. *Freed*, 976 F.3d at 734 (noting that the case involved "post-collection" constitutional violations and was thus "not a tax case.").

As the Eleventh Circuit explained:

> If there was a surplus, Turner would have received it under Florida law. *See* Fla. Stat. § 197.582(2)(a). That difference is critical. It means Turner's claims are more than the "post-collection federal constitutional violations" at issue in the cases he cites. *See Freed*, 976 F.3d at 734. Instead, he directly challenges the sale process by which the state collected proceeds to satisfy his tax liabilities.

App.26a (e.s).

The Sixth Circuit's opinion in *Harrison v. Montgomery Cty.*, 997 F.3d 643 (6th Cir. 2021), is also readily distinguishable. In *Harrison*, there was *no collection of taxes at all*—and thus neither the Tax Injunction Act, nor principals of comity required abstention. Rather, *Harrison* involved a challenge to a procedure by which the government seized land and transferred it to third parties *without any collection of taxes* for the state whatsoever. As in *Freed*, because the issues did not implicate the state's procedures, mechanisms, or ability to collect taxes, abstention was inappropriate.

The Second Circuit's opinion in *Dorce v. City of N.Y.*, 2 F.4th 82 (2d Cir. 2021), is distinguishable for the very same reason. As occurred in *Harrison*, the plaintiff in *Dorce* challenged procedures that seized and transferred land to third parties "free of charge" and unrelated to the state's collection of any tax. As the court explained:

> Comity does not bar Plaintiffs' claims here because their claims…do not

> challenge or disrupt any aspect of the City's administration, calculation, or collection of any tax.

Dorce at 98.

In direct contrast to *Freed*, *Harrison*, and *Dorce,* Petitioner's claim disrupting state tax administration because he directly challenges the mechanics of a tax sale used by Florida to raise and collect state tax revenue. Petitioner's case neither involves only a "post-collection failure to reimburse" as in *Freed*, nor a scheme where land is seized and transferred unrelated to tax collection as in *Harrison* and *Dorce*. Because these cases are distinguishable on the facts, they do not create a "circuit split" in need of redress.

II. The decision below does not conflict with the prior decisions of this Court.

Petitioner asserts that the Eleventh Circuit's decision below "cannot be reconciled with this Court's prior decisions." That is not so.

a. The decision below does not conflict with this Court's decision in *Tyler*.

Petitioner's assertion that the decision below conflicts with this Court's decision in *Tyler v. Hennepin Cty*., 598 U.S. 631 (2023), is without merit.

In *Tyler*, and as occurred in *Freed,* the government's sale of tax-delinquent property generated a surplus that the government kept for itself rather than returning to the property owner. Indeed, the applicable Minnesota statute mandated

that any surplus from the sale belonged to the state, and provided the owner with no right or ability to recover the same.[3] *Id*. at 635. As the Court described:

> [T]here was money remaining after Tyler's home was seized and sold by the County to satisfy her past due taxes, along with the costs of collecting them. The question is whether that remaining value is property under the Takings Clause, protected from uncompensated appropriation by the State.

Id. at 638 (e.s.).

The *Tyler* case did not raise, address, involve, or resolve questions of comity or abstention—presumably because, as in *Freed*, the issue related only to the government's *post-tax-collection retention of a surplus*, and not, as here, a challenge to the mechanics of a tax sale itself.

Petitioner's contention that *Tyler* recognized that a surplus is "not a tax" and that, therefore, "suing in federal court to recover [a surplus] does not risk disruption of a state's ability to collect taxes," is certainly true—but the case at bar does not present those facts. Petitioner does not sue to recover a surplus collected and retained by the County. Rather, Petitioner challenges the mechanics of the tax sale used to collect his taxes, which, unlike *Tyler*, *does* risk

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[3] Florida law applicable here provides for exactly the opposite. § 197.582(2)(a), *Fla. Stat*. (providing that any surplus "must be retained by the clerk for the benefit of" the property owner).

disrupting state tax administration. App.25a ("Had the County required a minimum bid for one-half of the assessed value in the second sale, the property might not have sold, thereby depriving the County from collecting the delinquent taxes.").

Petitioner's conclusory assertion that he is not challenging the mechanics of the tax sale (a denial at odds with reality) but is rather alleging that "his constitutional rights were violated by [Respondents] purposefully not collecting the surplus *required* under Florida law," [Pet., p.26 (e.s.)], just brings us full circle: this is a challenge to the mechanics of the tax sale which turns on whether state law indeed "required" a calculation different from the one applied by the Clerk.

The decision below thus does not conflict with *Tyler*, which addressed wholly distinct facts and issues.

b. The decision below does not conflict with this Court's abstention jurisprudence.

Petitioner argues that the Eleventh Circuit's recognition that "the comity doctrine should be construed broadly in state taxation cases," conflicts with this Court's recognition that the federal courts have a "virtually unflagging obligation to…exercise the jurisdiction given to them." [Pet., pp.27-28]. Not so.

Petitioner's argument conflates the general rule that abstention should be "rare," with the fact that comity principles in state taxation cases represent one

of the most well-settled of the "rare" exceptions. In this limited circumstance, comity is "construed broadly" because it converges with a policy of equal weight: federalism and "a proper reluctance to interfere…with the fiscal operations of the state governments." *Levin* at 422. *See also Nat'l Private Truck Council, Inc.*, at 586 ("We have long recognized that principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration.").

III. The decision below presents no exceptionally important question or change to well-established law.

The Eleventh Circuit applied this Court's precedent in *Levin* to arrive at a conclusion appropriate to the specific and unique facts of the case before it. While Judge Newsome would have weighed the *Levin* factors differently, such is the nature of any balancing endeavor. Had the facts been different, as in *Tyler*, *Freed*, *Harrison*, or *Dorce*, the result would likely have been different here too. Petitioner merely disagrees with the result of the Eleventh Circuit's balancing and wishes—*as does every litigant losing an appeal*—that the outcome had been different. Such does not present an "exceptionally important" issue for the Court to resolve.

Finally, the Eleventh Circuit's decision is *not* that Petitioner is without a remedy to address his constitutional claims—just that such claims, given the particular facts and issues involved in the case, are better raised and resolved in Florida's state courts.

CONCLUSION

The Petition for Writ of Certiorari should be denied.

Respectfully submitted this 18th day of March 2025.

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