No. 24-

IN THE

Supreme Court of the United States

ROBERT R. TURNER,

Petitioner,

v.

SHARON W. JORDAN, TIEYONE MITCHELL, BARRY A. BAKER, AND TRACY K. BALDWIN,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Suwannee County, Florida initiated a tax foreclosure sale of petitioner's home, which was indisputably worth over $30,000, and sold it for roughly $3,500, leaving petitioner with nothing: without his home and without the surplus between the home's value and its foreclosure sale price.

In *Fair Assessment in Real Estate Association v. McNary*, 454 U.S. 100 (1981) and *Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010), this Court recognized that comity principles may require federal courts to abstain from deciding cases that risk disruption of state tax administration.

Both the Second and Sixth Circuits have recognized *McNary*'s and *Levin*'s limits and would permit a constitutional takings suit to recover surplus value—like the one that petitioner brought in this case—to proceed because such suits do not impermissibly impede a state's ability to collect taxes. *See Dorce v. City of New York*, 2 F.4th 82 (2d Cir. 2021); *Freed v. Thomas*, 976 F.3d 729 (6th Cir. 2020); *Harrison v. Montgomery Cnty.*, 997 F.3d 643 (6th Cir. 2021). Over a dissent from Judge Newsom, an Eleventh Circuit majority concluded the opposite and thus created a circuit split. The creation of that circuit split is particularly egregious because, just two Terms ago, this Court held in *Tyler v. Hennepin County*, 598 U.S. 631 (2023), that a property's surplus value is not a tax; thus, a takings suit to recover that surplus value risks no disruption of state tax administration.

The question presented is:

Whether federal courts must abstain from constitutional takings cases that seek to recover only the surplus value of a property that was taken pursuant to a tax foreclosure.

STATEMENT OF RELATED PROCEEDINGS

Turner v. Jordan, No. 3:21-CV-303-TJC-MCR, U.S. District Court for the Middle District of Florida. Order dismissing case entered Sept. 12, 2022.

Turner v. Jordan, No. 22-13159, U.S. Court of Appeals for the Eleventh Circuit. Opinion issued Sept. 17, 2024.

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INTRODUCTION

Suwanee County officials sold petitioner Robert Turner's home via a tax foreclosure sale for $3,540.45. Shortly before the sale, the county assessed his property as having a value of $30,595. Thus, after living on that property for more than twenty years, Turner had nothing—no property and no equity.

Relying on *Fair Assessment in Real Estate Association v. McNary*, 454 U.S. 100 (1981) and *Levin v. Commerce Energy, Inc.*, 560 U.S. 413 (2010), the Eleventh Circuit held that principles of comity required abstention from hearing Turner's claims in federal court. Judge Newsom dissented, believing that abstention principles should be narrowly applied, and that Turner's case should proceed in federal court.

The Eleventh Circuit's decision creates a circuit split with the Second and Sixth Circuits, which held that suits asserting constitutional violations because of a government's failure to pay the homeowner a property's surplus value after a tax sale do not require comity abstention. *See Dorce v. City of New York*, 2 F.4th 82 (2d Cir. 2021); *Freed v. Thomas*, 976 F.3d 729 (6th Cir. 2020); *Harrison v. Montgomery Cnty.*, 997 F.3d 643 (6th Cir. 2021). The Second and Sixth Circuit decisions align with this Court's recent decision in in *Tyler v. Hennepin County*, 598 U.S. 631 (2023). There, the Court struck a logical balance between a state's autonomy in collecting taxes and the Constitution's protections against government takings: suits challenging a government taking of *surplus value* from a tax foreclosure do not contest tax liability and, therefore, do not risk disrupting state tax administration.

Not only does the Eleventh Circuit's decision create a circuit split, it also misapplies this Court's precedent. *See Levin*, 560 U.S. at 417; *Hibbs v. Winn*, 542 U.S. 88, 107 n.9 (2004). Federal courts have grappled with how to apply *Levin* and *Hibbs*. The Eleventh Circuit and *Dorce* both attempted to apply the three *Levin* factors to situations substantially similar to each other—constitutional violations emanating from an unlawful taking in conjunction with a tax foreclosure sale—but reached different results. The Second Circuit and Judge Newsom in dissent concluded that the *Levin* factors do not warrant abstention in a case like this. However, the majority for the Eleventh Circuit held here that they require abstention. But "[a]bstention from the exercise of federal jurisdiction is the exception, not the rule." *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 813 (1976). Thus, in cases that are a "close call" federal courts have a "virtually unflagging obligation . . . to exercise the jurisdiction given them." *Id.* at 817.

PETITION FOR A WRIT OF CERTIORARI

Petitioner Robert Turner respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for the Eleventh Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App.1a-39a) is reported at 117 F.4th 1289.

The opinion of the district court (Pet. App.40a-50a) is not published in the Federal Supplement but is available at 2022 WL 4372620.

JURISDICTION

On September 17, 2024, the Eleventh Circuit published the decision below. Petitioner did not move for rehearing. On November 26, 2024, Justice Thomas extended the time to file a petition for writ of certiorari to and including January 15, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The First Amendment to the United States Constitution states that "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech. . . ."

The Fifth Amendment to the United States Constitution provides, "nor shall private property be taken for public use, without just compensation."

Section 1 of the Fourteenth Amendment to the United States Constitution states: "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State 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."

Title 42 U.S.C. § 1983 provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia,

> subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. . . .

Florida Statute § 197.432(1) states:

> (1) On the day and approximately at the time designated in the notice of the sale, the tax collector shall commence the sale of tax certificates on the real property on which taxes have not been paid. The tax collector shall continue the sale from day to day until each certificate is sold to pay the taxes, interest, costs, and charges on the parcel described in the certificate. The tax collector shall offer all certificates on the property as they are listed on the tax roll. The tax collector may conduct the sale of tax certificates for unpaid taxes pursuant to this section by electronic means, which may allow for proxy bidding. Such electronic means must comply with the procedures provided in this chapter. A tax collector who chooses to conduct such electronic sales may receive electronic deposits and payments related to the tax certificate sale.

Florida Statute § 197.502(6)(c)-(7) (2015) provides:

> (6) The opening bid:
>
> . . . .

(c) On property assessed on the latest tax roll as homestead property shall include, in addition to the amount of money required for an opening bid on nonhomestead property, an amount equal to one-half of the latest assessed value of the homestead.

(7) On county-held or individually held certificates for which there are no bidders at the public sale and for which the certificateholder fails to timely pay costs of resale or fails to pay the amounts due for issuance of a tax deed within 30 days after the sale, the clerk shall enter the land on a list entitled "lands available for taxes" and shall immediately notify the county commission that the property is available. During the first 90 days after the property is placed on the list, the county may purchase the land for the opening bid or may waive its rights to purchase the property. Thereafter, any person, the county, or any other governmental unit may purchase the property from the clerk, without further notice or advertising, for the opening bid, except that if the county or other governmental unit is the purchaser for its own use, the board of county commissioners may cancel omitted years' taxes, as provided under s. 197.447. Interest on the opening bid continues to accrue through the month of sale as prescribed by s. 197.542.

Florida Statute Section 197.512(1) (2015) states:

(1) Upon the receipt of the application as provided by s. 197.502, and after the proper

> charges have been paid, the clerk shall publish a notice once each week for 4 consecutive weeks at weekly intervals in a newspaper selected as provided in s. 197.402. The form of notice of the application for a tax deed shall be as prescribed by the department. No tax deed sale shall be held until 30 days after the first publication of the notice.

Florida Statute Section 197.542(3) (2105) provides:

> (3) If the sale is canceled for any reason or the buyer fails to make full payment within the time required, the clerk shall readvertise the sale within 30 days after the buyer's nonpayment or, if canceled, within 30 days after the clerk receives the costs of resale. The sale shall be held within 30 days after readvertising. Only one advertisement is necessary. The amount of the opening bid shall be increased by the cost of advertising, additional clerk's fees as provided for in s. 28.24(21), and interest as provided for in subsection (1). If, at the subsequent sale, there are no bidders at the tax deed sale and the certificateholder fails to pay the moneys due within 30 days after the sale, the clerk may not readvertise the sale and shall place the property on a list entitled "lands available for taxes." The clerk must receive full payment before the issuance of the tax deed.

STATEMENT OF THE CASE

I. Florida's property taxation scheme.

Florida, like many other states, authorizes local governments to collect ad valorem taxes to fund government functions. If a taxpayer fails to pay its property taxes, the tax collector sells tax certificates. Fla. Stat. § 197.432(1). The sale of a tax certificate creates a lien on the property. *Id.* § 197.432(2). Once a tax certificate is sold, the taxpayer has two years to pay the taxes, fees, and interest associated with the tax certificate. *Id.* If the tax certificate remains unpaid after two years, the certificate holder may apply for a tax deed. *Id.* § 197.502(1). This application initiates the process to sell the property via a tax deed sale. *See id.* § 197.542.

After providing notice to certain parties, including the property owner, *id.* § 197.502(4)-(5), and publishing public notice of the sale, *id.* § 197.512(1), the clerk of court holds an auction to sell the property, *id.* § 197.502. At that time, the clerk sets the "opening bid." *See id.* For "property assessed on the latest tax roll as homestead property" the opening bid "shall include, in addition to the amount of money required for an opening bid on nonhomestead property, an amount equal to one-half of the latest assessed value of the homestead." *Id.* § 197.502(6)(c). When "the opening bid included the homestead assessment pursuant to s. 197.502(6)(c), that amount must be treated as surplus and distributed in the same manner." *Id.* § 197.582(2)(a). If the property is not sold at auction, it is added to the list entitled "lands available for taxes." *Id.* § 197.502(7); *see also* § 197.542(3). During the first ninety days after being listed, the county may buy the property for the

opening bid. *Id.* § 197.502(7). After the first ninety days on this list, "any person . . . may purchase the property from the clerk, without further notice or advertising, for the opening bid. . . ." *Id.*

II. The comity doctrine in state 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*, 560 U.S. at 417; *see also Fair Assessment*, 454 U.S. at 106-07 (extending comity abstention to § 1983 damages actions where the recovery would "first require a federal-court declaration that" the state tax violated the constitution). Similarly, the Tax Injunction Act, 28 U.S.C. § 1341, a codified subset of the comity doctrine, "restrain[s] state taxpayers from instituting federal actions to contest their liability for state taxes. . . ." *Hibbs*, 542 U.S. at 108. But not all cases that involve state taxation procedures are subject to abstention under the comity doctrine. *See, e.g.*, *id.* at 107 n.9; *Freed*, 976 F.3d at 737; *Dorce*, 2 F.4th at 99–101; *Harrison*, 997 F.3d at 652.

Rather, the comity doctrine bars § 1983 actions *only* if the "recovery of damages . . . first requires a 'declaration' or determination of the unconstitutionality of a state tax scheme that would halt its operation." *Fair Assessment*, 454 U.S. at 115; *see id.* at 116 ("[W]e hold that taxpayers are barred by the principle of comity from asserting § 1983 actions against the *validity* of state tax *systems* in federal courts." (emphasis added)).

This Court's precedents confirm the limited reach of *Fair Assessment*. For example, comity considerations do

not preclude resolution of a First Amendment challenge under § 1983 to a state tax scheme. *See Hibbs*, 542 U.S. at 107 n.9; *see also Levin*, 560 U.S. at 430. In *Hibbs*, the plaintiffs alleged that an Arizona tax law violated the Establishment Clause by authorizing state agencies to distribute state funds to children of particular religious denominations or children attending schools of particular religious denominations. *Hibbs*, 542 U.S. at 95–96. The *Hibbs* opinion focused on the Tax Injunction Act, relegating its ruling on the comity doctrine to a footnote stating: "We note, furthermore, that this Court has relied upon 'principles of comity,' to preclude original federal-court jurisdiction only when plaintiffs have sought district-court aid in order to arrest or countermand state tax collection." *Id.* at 107 n.9 (citations omitted).

The *Hibbs* footnote on the comity doctrine created a circuit split. The First, Sixth, Seventh, and Ninth Circuits read *Hibbs* "to rein in the comity doctrine" while the Fourth Circuit "concluded that *Hibbs* left [the] comity doctrine untouched. . . ." *Levin*, 560 U.S. at 420-21 (citing *Coors Brewing Co. v. Mendez-Torres*, 562 F.3d 3 (1st Cir. 2009); *Levy v. Pappas*, 510 F.3d 755 (7th Cir. 2007); *Wilbur v. Locke*, 423 F.3d 1101 (9th Cir. 2005); *DIRECTV, Inc. v. Tolson*, 513 F.3d 119 (4th Cir. 2008)).

This Court addressed the Tax Injunction Act and comity doctrine to resolve the circuit split in *Levin*. *Id.* In that case, marketers of natural gas challenged—on equal protection and dormant commerce clause grounds—Ohio tax exemptions given to competitors who were local distributors of natural gas. *Id.* at 418-19. The sole defendant was the Tax Commissioner of Ohio. *Id.* at 419. The district court granted the Commissioner's motion to

dismiss on comity grounds. *Id.* The district court found that the comity doctrine counselled against "involvement in a state's management of its fiscal operations." *Id.* at 420 (citations and quotations omitted). The Sixth Circuit disagreed, finding that *Hibbs* limited the comity doctrine and would not bar suit. *Id.*

This Court reversed, finding that "[c]omity's constraint has particular force when lower federal courts are asked to pass on the constitutionality of state taxation of commercial activity." *Id.* at 421. In so doing, the Court "clarif[ied]" its footnote in *Hibbs*. *Id.* at 430. Specifically, the Court stated that a "confluence of factors" in *Levin*, "absent in *Hibbs*," warranted dismissal on comity grounds. *Id.* at 431. The Court then identified three factors for federal courts to consider when determining whether comity should preclude federal court review. *Id.* at 431-32. First, the plaintiffs in *Levin* did not assert violations of a "fundamental right or classification that attracts heightened judicial scrutiny." *Id.* at 431. Second, although the plaintiffs in *Levin* "portray[ed] themselves as third-party challengers to an allegedly unconstitutional tax scheme, they [we]re in fact seeking federal-court aid in an endeavor to improve their competitive position." *Id.* Third, state "courts are better positioned than their federal counterparts to correct any violation because they are more familiar with state legislative preferences and because the TIA does not constrain their remedial options." *Id.* at 431-32. Critically, the Court concluded that any one factor, individually, "may not compel forbearance on the part of federal district courts; in combination, however, they demand deference to the state adjudicative process." *Id.* at 432.

III. Suwannee County officials sell Robert Turner's home for a fraction of its assessed value, depriving Turner of the surplus value.

Robert Turner is an Air Force veteran. Outside of his service to this country, Turner has spent his entire life in Florida. Since 1995, Turner had a homestead exemption for his property in Suwannee County, Florida. App.11a. For nearly twenty years, his homestead exemption renewal was automatic. *Id.* Even after Turner hit a rough patch and fell behind on his property taxes, his property retained its homestead status. *Id.* Although Suwannee County officials issued tax certificates on Turner's property for tax years 2010 through 2013, the property retained its homestead exemption. *Id.* During this time, Turner protested Suwanee County's agricultural policies, including calling for the firing of the Suwannee County property appraiser. *Id.*

In 2015, Turner's homestead property was given an assessed value of $30,595. *Id.* Eventually, a purchaser of one of the tax certificates demanded a tax deed sale, and on March 5, 2015, the Suwannee County Clerk of Court conducted a public auction. *Id.* On that date, Turner's property still had a valid homestead exemption and an assessed value of $30,595. *Id.* No one bid on Turner's property, so the clerk placed Turner's property on the "List of Lands Available for Taxes." App.11a-12a. But on October 14, 2015, Suwannee County officials "shortchanged" Turner, "selling his property at a fraction of its assessed value." App.34a-35a. His property was sold for a mere $3,540.45—the amount he owed in outstanding taxes, fees, and interest. App.12a. Turner received nothing from the sale.

IV. Turner pursues legal action to redress the fact that he received nothing from the tax deed sale of his homestead but does not attack the constitutionality of Florida's property-tax scheme.

Proceeding without a lawyer, Turner sought relief in court. App.13a. His suits in Florida and federal court were dismissed, as both courts perceived Turner's *pro se* complaints to be challenging the removal of his homestead exemption. App.13a-14a. Again proceeding *pro se*, Turner filed his complaint in this case in federal court. App.14a. Respondents moved to dismiss Turner's amended complaint based on, among other things, the Tax Injunction Act and comity doctrine. App.14a. On referral, the magistrate judge recommended that the complaint be dismissed as a shotgun pleading. App.14a. But the magistrate judge also recommended that respondents' motion to dismiss be denied because the record was insufficient to determine if the TIA or comity doctrine applied. App.14a.

Turner then filed a second amended complaint. *Id.* The gist of Turner's argument in the second amended complaint is that respondents unconstitutionally "took" more than $15,000[1] when they failed to collect and pay him for any of the surplus value in his property. App.15a. Turner did not facially challenge the constitutionality of Florida's property-tax administration. Respondents again moved to dismiss, arguing that the district court lacked jurisdiction under the TIA, or, alternatively, that the

1. Turner did not sue for the full value of his surplus equity in his property. Instead, he only sought one-half of its assessed value—roughly $15,000—that should have been added to the "opening bid" under Florida Statute § 197.502(6)(c).

district court should abstain under the comity doctrine. App.15a-16a. The district court granted the motion to dismiss, finding that the comity doctrine required it to abstain. *Id.*

V. The Eleventh Circuit affirms dismissal of Turner's federal civil rights claims on principles of comity, creating a circuit split with the Second and Sixth Circuits.

Turner timely appealed and the Eleventh Circuit appointed counsel to represent him. App.16a. The Eleventh Circuit affirmed the district court in a two-to-one decision. Although recognizing that "[a]bstention rarely should be invoked because the federal courts have a virtually unflagging obligation to exercise the jurisdiction given them," App.18a (alteration adopted) (quoting *Ankenbrandt v. Richards*, 504 U.S. 689, 705 (1992)), the majority stated that "both the Supreme Court and [the Eleventh Circuit] have confirmed that the comity doctrine is to be construed broadly in state taxation cases." App.19a.

The Eleventh Circuit then analyzed the three *Levin* factors. App.19a-20a. As to the first factor, the Eleventh Circuit found that "Turner's suit falls in the fundamental rights bucket" by stating claims based on "freedom of political expression, procedural due process, and a taking without just compensation." App.20a-21a. Thus, the first factor weighed "against invoking the comity doctrine." App.21a. The Eleventh Circuit found applying the second factor "trickier" because it is not "straightforward" whether Turner "seeks federal-court aid in an endeavor to improve his competitive position. . . ." *Id.* (alterations adopted) (quoting *Levin*, 560 U.S. at 431). After reviewing

Levin, the Eleventh Circuit concluded that "the heart of the second factor is whether the plaintiff objects to his or her own tax situation." App.22a. Although finding that Turner "does not contest his tax liability or the County's right to sell his property via tax deed sale," the Eleventh Circuit concluded that the second factor favored comity because Turner "objects to the way his taxes were collected, both the lack of notice he received and how the County calculated the opening bid for the tax deed sale. . . ." App.23a. The Eleventh Circuit then analyzed the third factor: "whether Florida courts are better positioned than federal courts to correct the violations Turner alleges." *Id.* According to the Eleventh Circuit, this factor favors abstention when "the correction sought requires greater familiarity with state legislative preferences and when the federal courts' remedial options would be constrained by the Tax Injunction Act." *Id.* The Eleventh Circuit stated that for Turner to prevail on his due process and takings claims, a court would need to interpret and apply Florida law "and their implicated interpretations of those state-law provisions, 'may be far from what the Florida Legislature would have willed.'" App.23a-24a (alteration adopted) (quoting *Levin*, 560 U.S. at 429). Additionally, the Eleventh Circuit concluded that Turner's remedy could diminish state revenues and that any damages "would have to be paid out of state revenue unrelated to the sale itself." App.25a. Thus, the Eleventh Circuit found that the third factor favored comity. *Id.*

The Eleventh Circuit then briefly distinguished three of the cases Turner cited: *Dorce*, *Freed*, and *Coleman ex rel. Bunn v. District of Columbia*, 70 F. Supp. 3d 58 (D.D.C. 2014). According to the Eleventh Circuit the "critical" difference was that those cases "challenged

the government's retention of the surplus in tax deed sales" whereas "Turner challenges the mechanics of the tax deed sale itself because . . . there was no surplus." App.25a-26a. The Eleventh Circuit then held that "[e]ven if we found these cases persuasive, we still have our own precedent to contend with[,]" which "puts in granite our conclusion" that Turner's relief "risk[s] disrupting Florida's tax administration." App.26a (citing *Winicki v. Mallard*, 783 F.2d 1567, 1569-71 (11th Cir. 1986)). Relying on *Winicki*, the Eleventh Circuit concluded that "entertaining" Turner's claims would "interfere" with Florida's administration of its tax scheme and would have a chilling effect on the county officials who implement that tax scheme. App.26a-27a.

Finally, the majority found that Florida offered plain, adequate, and complete remedies to address Turner's claims. App.28a-30a. Thus, the majority affirmed the district court's decision to abstain on principles of comity. App.31a.

Judge Newsom dissented. He reiterated that abstention—whether on comity or otherwise—is a narrow exception because "federal courts 'have no more right to decline to exercise the jurisdiction which is given, than to usurp that which is not given. . . .'" App.32a33a (quoting *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821)). Judge Newsom then analyzed the *Levin* factors, while expressing concern that "this sort of freewheeling balancing hardly seems like the proper way to determine the extent of federal-court *jurisdiction*." App.32a n.2.

Judge Newsom similarly concluded that the first factor "weighs against invoking the comity doctrine"

because Turner's claims implicate fundamental rights under the First, Fifth, and Fourteenth Amendments. App.34a. Judge Newsom diverged from the majority at the second factor. There, Judge Newsom, quoting from Turner's brief, recognized that Turner "expressly renounced any argument regarding his 'tax situation.'" App.34a. Thus, "Turner isn't challenging anything about his 'tax situation'—he just wants his share of the money the government shortchanged him by selling his property at a fraction of its assessed value." App.34a-35a.

After "doubt[ing]" that comity could be invoked on a single factor alone, Judge Newsom found that the third factor also favored federal court adjudication because Turner's suit would not "require us to engage in any speculation about the meaning or application of state law." App.35a. Judge Newsom reviewed *Levin*'s analysis of the third factor, where the remedy there would require courts "to speculate" about whether a state legislature would prefer "leveling up" or "leveling down." *Id.* Judge Newsom then stated that "Turner's case wouldn't require similar guesswork" because "the applicable state law here isn't particularly murky. . . ." App.36a. After reviewing the Florida law applicable to Turner's claims, Judge Newsom concluded:

> It's reasonably clear to me that the local authorities misapplied Florida law when they sold Turner's property for pennies on the dollar. Deciding Turner's case—which alleges that they did so for unconstitutional reasons and in an unconstitutional manner—wouldn't call into question Florida's property-tax scheme or his individual tax liability, nor would it require any real guesswork about the meaning or application

> of state law. I see no compelling justification for invoking a judge-made abstention doctrine to decline to hear a case that fits comfortably within the federal courts' jurisdiction as authorized by the Constitution and prescribed by Congress.

App.38a-39a. Turner now petitions this Court for a writ of certiorari to resolve the split that the Eleventh Circuit's opinion created with the Second and Sixth Circuits.

REASONS FOR GRANTING THE PETITION

I. This Court should resolve the circuit split regarding when principles of comity require federal courts to abstain from hearing civil rights cases seeking to recover a property's surplus value from a tax foreclosure.

The Second and Sixth Circuits have held that suits seeking the surplus value from tax foreclosure sales by way of constitutional violations may proceed in federal court, principles of comity notwithstanding. *See Freed*, 976 F.3d at 737-38; *Harrison*, 997 F.3d at 652; *Dorce*, 2 F.4th at 99-101. However, the Eleventh Circuit here reached the opposite result.

A. The Eleventh Circuit's decision directly conflicts with decisions of the Sixth and Second Circuits because seeking a property's surplus value is not a tax.

The Eleventh Circuit's decision directly conflicts with decisions from the Sixth and Second Circuits. *See Freed*,

976 F.3d at 737; *Harrison*, 997 F.3d at 652; *Dorce*, 2 F.4th at 99–101. In *Freed*, the plaintiff fell behind by about $1,100 on his property taxes for a property worth roughly $97,000. 976 F.3d at 732. Pursuant to Michigan law, the county's treasurer sold Freed's property at public auction for $42,000. *Id.* "Freed got nothing; he lost his home and all its equity." *Id.* So Freed filed a § 1983 action against the county and its treasurer for violating the Fifth and Eighth Amendments. *Id.* Ultimately, the district court dismissed Freed's claims. *Id.* at 733. The Sixth Circuit reversed, finding that neither the Tax Injunction Act nor the comity doctrine precluded "a takings suit in federal court where a taxpayer seeks to recover only after-tax equity. . . ." *Id.* at 736; *see id.* at 737 ("[T]akings suits in federal courts to recover excess equity as a result of state tax foreclosure sales do not violate the principle of judicial federalism."). Although "Freed's lawsuit ar[ose] as an ancillary result of and is related to Michigan's tax foreclosure scheme," a "favorable outcome for Freed . . . w[ould] not prevent Michigan from foreclosing on and selling property to recover delinquent taxes." *Id.* 737–38. As such, abstention on principles of comity was incorrect.

And just one year later, the Sixth Circuit confirmed that the government need not actually recover a surplus to allow such a takings case to proceed in federal court. *Harrison*, 997 F.3d at 646, 652. In *Harrison*, an Ohio county used Ohio law to foreclose the state's lien for property taxes by transferring the land to an authorized land bank. *Id.* at 646. The county did not sell the property at a public auction—it transferred it to a land bank and extinguished the past-due taxes, interest, and fees. *Id.* at 647. The process precluded property owners from recovering surplus value because it involved no auction

whereby the property could be sold for amounts exceeding what was owed. Believing this process violated the Constitution, Harrison filed a § 1983 claim in federal court to recover the surplus value. *Id.*

Even though the county never received the surplus value, the Sixth Circuit held that the comity doctrine did not bar the constitutional takings claim from proceeding in federal court. *Id.* at 651 ("Because she challenges only Ohio's extinguishment of her surplus equity—not its foreclosure of tax-delinquent property—her use of § 1983 does not run afoul of comity principles."); *see Fox v. Saginaw Cnty., Michigan*, 67 F.4th 284, 290 (6th Cir. 2023) ("Since [*Knick v. Township of Scott*, 588 U.S. 180 (2019)], we have held that neither exhaustion nor the Tax Injunction Act nor any other comity principle stands in the way of federal courts entertaining [surplus value Takings] claims.").

The Second Circuit similarly found that the comity doctrine did not require abstention in cases seeking to recover surplus value of property, even where the government did not collect a surplus. *Dorce*, 2 F.4th at 99. In *Dorce*, plaintiffs challenged a New York City taxing scheme where the City obtained foreclosure judgments and then transferred the tax delinquent properties to third parties without any payment to the City. *Id.* at 89–90. The City collected no surplus value and, "[o]nce the transfer to a third party is complete, there is no process by which the original owner may . . . obtain compensation for the excess value of the property over the amount of the tax lien." *Id.* at 90.

Finding that the comity doctrine did not control, the Second Circuit held that each of the plaintiffs' constitutional claims—for violating equal protection, due process, and takings provisions—did not broadly challenge the City's use of in rem foreclosure on tax liens. *Id.* at 99. For the takings claim specifically, the Second Circuit concluded "that such a claim—limited to the excess value of the property—would not be barred by comity. . . ." *Id.* Moreover, the Second Circuit found that the *Levin* factors "cut decidedly in favor of allowing Plaintiffs' claims to proceed in federal court." *Id.* at 100.

The Eleventh Circuit majority here reached the opposite conclusion from *Freed*, *Harrison*, and *Dorce*. *See* App.31a. According to the Eleventh Circuit, the "critical" difference between Turner's challenge and those raised in *Freed* and *Dorce*, was that "here there was no surplus." App.25a. But this is incorrect—in addition to being immaterial. In *Dorce* and *Harrison*, the government did not retain a surplus from the foreclosures. The foreclosure schemes in those cases involved no exchange of money at all. Rather, in *Dorce* and *Harrison*, the foreclosed properties were transferred to third parties and the tax liabilities were extinguished. *See Dorce*, 2 F.4th at 87 ("New York [can] foreclose on properties with overdue taxes and transfer ownership . . . free of charge to designated partners. . . . The property rights of the original owners are extinguished, and there is no mechanism for them to receive compensation for any value of their property in excess of their tax liability. . . ."); *Harrison*, 997 F.3d at 646 ("The state law then authorizes counties to transfer the land to authorized land banks rather than dispose of the property at auctions. . . . The State does not collect any tax delinquency. . . ."). Nor does it matter. The takings claims

contend that the government took the property without paying just compensation. Whether the government retained a surplus is not dispositive of whether the prior property owner received just compensation.

After asserting that *Dorce* and *Freed* are distinguishable, the Eleventh Circuit stated: "Even if we found these cases persuasive, we still have our own precedent to deal with." App.26a. It then went on to state that *Winicki v. Mallard*, 783 F.2d 1567, 1569 (11th Cir. 1986), foreclosed agreement with *Dorce* or *Freed*. Although the propriety of that statement is dubious—as *Winicki* is factually dissimilar in material ways[2]—it is now the law of the Eleventh Circuit. Thus, the Eleventh Circuit's decision directly conflicts with the Second and Sixth Circuit decisions in *Dorce*, *Freed*, and *Harrison*.

B. The Eleventh Circuit's application of the *Levin* factors directly conflicts with the Second Circuit and Judge Newsom's application of the same factors.

Not only did the Eleventh Circuit incorrectly state that Turner's case is distinguishable from *Dorce*, but it also applied the *Levin* factors—(1) whether the claim involves

2. In *Winicki*, the plaintiffs brought a putative class action seeking a declaration that a Florida tax law regarding homestead exemptions violated their federal constitutional rights. 783 F.2d at 1568. Thus, unlike the situations in *Dorce*, *Freed*, and *Harrison*, and here, the plaintiffs in *Winicki* expressly sought a declaration declaring a state tax law unconstitutional and a refund of taxes paid. These differences are material to the determination of whether a case requires abstention on comity grounds. *See Fair Assessment*, 454 U.S. at 102.

a fundamental right; (2) whether the challenger is a third party or seeking court aid to improve his competitive position; and (3) whether state courts are better positioned than federal courts to craft a remedy—differently despite the plaintiffs in both cases being in substantially similar situations. The Eleventh and Second Circuits agree that a Fifth Amendment takings claim asserts a violation of a fundamental right and thus "weighs against invoking the comity doctrine." *See* App.20a; *Dorce*, 2 F.4th at 100. That is where the overlap ends.

The opinions seem to agree that the "heart" of the second *Levin* factor "is whether the plaintiff objects to his or her own tax situation." App.22a, 34a; *see Dorce*, 2 F.4th at 101. The majority characterized Turner's claims as objecting "to the way his taxes were collected" and, thus concluded that this factor favored abstention. App.23a. Judge Newsom, on the other hand, found that Turner "expressly renounced any argument regarding his 'tax situation[:]'"

> Turner does not contest his liability for state taxes. Turner is not challenging—wholesale—any state taxation law as unconstitutional. Turner is not challenging the taxes he owed. Turner is not challenging the government's right to sell his property via tax deed sale. Rather, Turner challenges the unlawful—and retaliatory—sale of his property below the statutorily required amount that intentionally resulted in Turner receiving no funds from the sale of property he owned since at least 1995.

App.34a. Similarly, the Second Circuit concluded that the second factor counselled against abstention when the

plaintiffs "neither seek to avoid the payment of state taxes nor dispute the amounts owed." *Dorce*, 2 F.4th at 101. The "broad" interpretation of "tax situation" by the majority here—to include the process that resulted in a taking—improperly expands the comity abstention doctrine. Like the plaintiffs in *Hibbs* and *Dorce*, Turner—and every plaintiff who challenges a government's refusal to provide just compensation for the taking of property via a tax deed sale—was not objecting to his *tax* situation; rather, he sought compensation for a taking of property in excess of the taxes levied under state law. *See* App.34a-35a; *Dorce*, 2 F.4th at 101.

The third *Levin* factor assesses whether state courts are better positioned to remedy the alleged violation. *Levin*, in comparing *Hibbs*, looked at whether state courts were required to "level up" or "level down"—meaning, was the Court required to eliminate a tax credit that benefited the plaintiffs' competitors or add a tax credit that benefited the plaintiffs. *See Levin*, 560 U.S. at 429. In the equal protection framework, *Levin* held that state courts "are better positioned to determine—unless and until the [state] Legislature weighs in—how to comply with the mandate of equal treatment." *Id.* (citing *Davis v. Michigan Dep't of Treasury*, 489 U.S. 803, 817–818 (1989)).

The Second Circuit and Judge Newsom also determined that the third factor weighs in favor of federal court adjudication where the remedy requires no "leveling up" or "leveling down." *See* App.35a-38a ("Of course, the mere fact that a case presents a difficult state-law question has never been a sufficient reason to abstain."); *Dorce*, 2 F.4th at 100 (stating that state courts would have no greater leeway to remedy the constitutional violations

than federal courts). The majority disagreed, finding that state courts are better positioned to interpret the Florida legislature's preferences, and that granting Turner's relief could diminish state revenues. App.22-24a.

Contrary to the majority's conclusion, no such levelling is required here. Like the plaintiffs in *Dorce*, Turner is not claiming unequal treatment. Instead, the remedy Turner seeks is clear: money damages equal to one-half of his property's assessed value. State courts are no better positioned to craft such a remedy. *See Dorce*, 2 F.4th at 100-101 ("Plaintiffs have standing to seek only monetary damages. Therefore, 'state courts would have no greater leeway than federal courts to cure the alleged violation.'" (quoting *Levin*, 560 U.S. at 431)). And, "[o]f course, the mere fact that a case presents a difficult state-law question has never been a sufficient reason to abstain." App.36a (citing *Lehman Bros. v. Schein*, 416 U.S. 386, 390 (1974); *Meredith v. Winter Haven*, 320 U.S. 228, 234 (1943)). Thus, this case does not present a situation where the desired remedy would interfere with a state's legislative prerogative. The majority's decision to the contrary directly conflicts with the Second Circuit's analysis in a substantially similar situation.

As the Eleventh Circuit's decision directly and materially conflicts with decisions of the Sixth and Second Circuits, this Court should grant the writ of certiorari to announce the correct standard for determining when federal courts should abstain in cases asserting an unconstitutional taking pursuant to a tax foreclosure sale.

II. The Eleventh Circuit's decision cannot be reconciled with this Court's prior decisions because this Court's decision in *Tyler* confirms that the surplus value in a property is not a tax and abstention from congressionally granted jurisdiction should be "rare" and narrowly applied.

The decision of the Eleventh Circuit cannot be squared with this Court's jurisprudence for several reasons. First, the Eleventh Circuit's decision cannot be reconciled with this Court's recent decision in *Tyler*, which held that the surplus value in a property is not a tax. Second, the Eleventh Circuit incorrectly concluded that the comity doctrine as applicable to state taxation cases should be "construed broadly." App.19a. But this assertion is contrary to how this Court considers and applies abstention doctrines.

a. The Eleventh Circuit's decision cannot be reconciled with this Court's recent opinion in *Tyler*, which stated that a property's surplus value is not a tax.

The Eleventh Circuit's decision is also wrong because it cannot be squared with this Court's recent opinion in *Tyler*. This Court stated in *Tyler* that a property's surplus value above that owed to the government for past-due taxes, interest, and fees is not a tax. *See Tyler*, 598 U.S. at 639 ("The County had the power to sell Tyler's home to recover the unpaid property taxes. But it could not use the toehold of the tax debt to confiscate more property than was due."). If the surplus value is not a tax, then suing in federal court to recover such amount does not risk disruption of a state's ability to collect taxes. *See*

Harrison, 997 F.3d at 652 ("[T]akings suits in federal courts to recover excess equity as a result of state tax foreclosure sales do not violate the principle of judicial federalism." (quoting *Freed*, 976 F.3d at 737)). Ultimately, to paraphrase the Court's decision in *Tyler* using the facts of this case, "[a] taxpayer who loses [his $30,595] house to the State to fulfill a [$3,540.45] tax debt has made a far greater contribution to the public fisc than [he] owed" and "has plausibly alleged a taking under the Fifth Amendment. . . ." *Tyler*, 598 U.S. at 647.

The Eleventh Circuit incorrectly determined that "Turner challenges the mechanics of the tax deed sale itself because here there was no surplus. If there was a surplus, Turner would have received it under Florida law." App.25a-26a. This logic is untenable. First, it ignores Turner's allegations that county officials intentionally violated his constitutional rights by purposefully not collecting the surplus required under Florida law. Second, this statement wrongly implies that there can be no post-collection takings claim if no surplus was collected—an implication refuted by *Dorce* and *Harrison* where the government defendants did not collect any surplus. Third, such a rule would incentivize tax schemes—like those in *Dorce* and *Harrison*—that extinguish tax liens when transferring property to third parties regardless of whether the property taken exceeds the amounts owed to the government. In other words, the Eleventh Circuit's attempt to distinguish *Dorce* and *Freed* insulates Fifth Amendment violations from federal court review.

b. The Eleventh Circuit's decision incorrectly states that comity abstention should be broadly applied in state taxation cases contrary to this Court's abstention jurisprudence.

This Court has often reiterated that "abstention rarely should be invoked, because the federal courts have a 'virtually unflagging obligation to . . . exercise the jurisdiction given them.'" *Ankenbrandt*, 504 U.S. at 705 (quoting *Colo. River*, 424 U.S. at 817); *see also*, *e.g.*, *Chicot Cnty. v. Sherwood*, 148 U.S. 529, 534 (1893) ("'[T]he courts of the United States are bound to proceed to judgment and to afford redress to suitors before them in every case to which their jurisdiction extends. They cannot abdicate their authority or duty in any case in favor of another jurisdiction.'" (citations omitted)); *Willcox v. Consol. Gas Co.*, 212 U.S. 19, 40 (1909) ("When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction." (citations omitted)); *Kline v. Burke Constr. Co.*, 260 U.S. 226, 234, (1922); *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 77 (2013). As Chief Justice Marshall stated: "We have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given. The one or the other would be treason to the Constitution." *Cohens*, 6 Wheat. at 404. Thus, abstention doctrines should be "rare" and exercised in only "exceptional circumstances." *Quackenbush v. Allstate Ins. Co.*, 517 U.S. 706, 716 (1996) (quoting *Colo. River*, 424 U.S. at 813). And "broad abstention requirement[s] would make a mockery of the rule that only exceptional circumstances justify a federal court's refusal to decide a case in deference to the States." *New Orleans Pub. Serv., Inc. v. Council of City of New Orleans*, 491 U.S. 350, 368 (1989). The comity doctrine is no

different. It too must be interpreted narrowly and applied in only exceptional cases. *See*, *e.g.*, *id.*; *Quackenbush*, 517 U.S. at 716.

But here, the Eleventh Circuit held that "the comity doctrine is to be construed broadly in state taxation cases." App.19a. This was error. Instead, abstention is limited to "exceptional" circumstances. As it relates to actions seeking monetary damages, principles of comity warrant abstention only where the federal court's decision "first requires a 'declaration' or determination of the unconstitutionality of a state tax scheme that would halt its operation." *Fair Assessment*, 454 U.S. at 115; *see Quackenbush*, 517 U.S. at 719 ("To the extent *Fair Assessment* does apply abstention principles, its holding is very limited. . . . [T]he award of damages turned first on a declaration that the state tax was in fact unconstitutional."). This limitation is significant because only once—in *Fair Assessment*—has this Court *ever* condoned abstention in cases seeking monetary damages. *See Quackenbush*, 517 U.S. at 719 (stating that "we have not previously addressed whether the principles underlying our abstention cases would support the remand or dismissal of a common-law action for damages" and then distinguishing *Fair Assessment* as "a case about the scope of the § 1983 cause of action, not the abstention doctrines." (citation omitted)). Indeed, authority to abstain emanated from judicial discretion in cases of equity. *See id.*; *Fair Assessment*, 454 U.S. at 119-22 (Brennan, J., concurring) ("There is little room for the 'principle of comity' in actions at law where, apart from matters of administration, judicial discretion is at a minimum."). Thus, the critical component in *Fair Assessment* that led the Court to apply comity abstention principles to a narrow class of damages cases was that

"the award of damages turned first on a declaration that the state tax was in fact unconstitutional." *Quackenbush*, 517 U.S. at 719 (discussing *Fair Assessment*).

Here, the Eleventh Circuit erred in expanding comity abstention on the basis that Turner challenges the constitutionality of the state tax—he expressly abandoned any such argument. App.34a. And providing Turner complete relief would not halt Florida's tax scheme because Turner seeks to recover only the amount the government took *in excess* of the taxes he owed. Nonetheless, the Eleventh Circuit "broadly" interpreted *Fair Assessment* and *Levin* to require abstention in situations even where the plaintiff is not seeking a declaration invalidating any state tax law. Because there is no facial constitutional challenge to the state law, the Eleventh Circuit was wrong to apply the reasoning of *Fair Assessment* to affirm abstaining from hearing Turner's claims.

III. The question presented is exceptionally important and warrants review in this case.

This case presents an important question at the intersection of federalism and civil liberties that only this Court can answer. Federal court jurisdiction is congressionally granted, whereas abstention doctrines are judicially crafted based on interpretations of the common law at the time federal jurisdiction was conferred. *See New Orleans Pub. Serv.*, 491 U.S. at 359. Thus, only this Court can delineate clear contours for when federal courts must abstain from congressionally granted jurisdiction.

A home is often the most valuable asset a person owns. "The importance of a home for the typical owner

can hardly be overstated. . . . For the great majority of these homeowners, the equity in their home is the most important savings they have." D. Benjamin Barros, *Home As A Legal Concept*, 46 Santa Clara L. Rev. 255, 306 n.186 (2006) (quoting William A. Fischel, *The Homevoter Hypothesis* 4 (2001)). Yet nearly every state authorizes the foreclosure of a home to recover unpaid taxes. *See Tyler*, 598 U.S. at 639-46. Home foreclosure is one of the most devastating things that can happen to someone, and it happens all the time. The facts here demonstrate the seriousness of this predicament: before the sale, Turner owed $3,540.45 and owned property valued at $30,595. App.11a-12a. After the sale, he owed nothing and owned nothing. "Shocking cases are common." Brief for Petitioner at 28, *Tyler*, 598 U.S. 631 (No. 22-166) (compiling cases).

Yet, the Eleventh Circuit's decision deprives victims of such schemes from seeking redress in federal court. Instead, the Eleventh Circuit's decision requires victims—like Turner—to redress violations of the Constitution by suing *local court* officials *in the courts for which they work*. App.2a n.1 (listing respondents to include the Suwannee County Circuit Court Clerk and deputy clerk). Of course, "the guarantee of a federal forum rings hollow for takings plaintiffs, who are forced to litigate their claims in state court." *Knick*, 588 U.S. at 185; *see also*, *e.g.*, *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 66 (1989) ("Although Congress did not establish federal courts as the exclusive forum to remedy these deprivations, it is plain that 'Congress assigned to the federal courts a paramount role' in this endeavor[.]" (citation omitted) (quoting *Patsy v. Board of Regents of Florida*, 457 U.S. 496, 503 (1982))); *Steffel v. Thompson*, 415 U.S. 452, 472–73 (1974) ("When federal claims are

premised on 42 U.S.C. s 1983 . . . we have not required exhaustion of state judicial or administrative remedies, recognizing the paramount role Congress has assigned to the federal courts to protect constitutional rights."); *Mitchum v. Foster*, 407 U.S. 225, 242 (1972) ("[Section 1983's] legislative history makes evident that Congress . . . was concerned that state instrumentalities could not protect [constitutional] rights; it realized that state officers might, in fact, be antipathetic to the vindication of those rights; and it believed that these failings extended to the state courts."). Thus, this Court should protect homeowners from unlawful takings by providing them with a federal forum to vindicate their federal rights.

Additionally, this Court's comity doctrine precedents no longer accord with its Takings clause jurisprudence post-*Knick*. In *Fair Assessment*, the Court held that the comity doctrine barred federal taxpayer suits for damages under § 1983 where such suits risked disruption of a state's administration of taxes as long as the state offered plain, adequate, and complete state remedies. Then, in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), this Court held that a property owner could not bring federal takings claims "until a state court ha[d] denied his claim for just compensation under state law." *Knick*, 588 U.S. at 184. Thus, as of 1985 both takings claims and § 1983 taxpayer suits against state or local governments were—for the most part—required to be brought in state court. So, it did not matter if a takings claim was brought as a result of a tax foreclosure sale—either way, state courts were required to hear the case first.

This changed in 2019. *See Knick*, 588 U.S. at 202. In *Knick*, this Court acknowledged that *Williamson County*'s result was untenable. 588 U.S. at 185–86, 194–06. *Knick* stated that "the 'general rule' is that plaintiffs may bring constitutional claims under § 1983 without first bringing any sort of state lawsuit, even when state court actions addressing the underlying behavior are available." *Id.* at 194 (quotations and citation omitted). The Court adopted the general rule for takings claims and concluded that such claims may proceed initially in federal court. *See id.* at 202. *Knick* made no special exception for takings pursuant to a tax deed sale. *See id.*; *see Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 479 (2021) (stating that § 1983 "guarantees 'a federal forum for claims of unconstitutional treatment at the hands of state officials.' That guarantee includes 'the settled rule' that 'exhaustion of state remedies is *not* a prerequisite to an action under . . . § 1983.'" (quoting *Knick*, 588 U.S. at 185)).

The issue raised here is one that is likely to reoccur with increasing frequency in the lower federal courts. Now that *Williamson County* is no bar to federal court adjudication of takings claims, and the constitutional right to the surplus value in property is clearly established, *Tyler*, 598 U.S. at 647, more constitutional-violation claims seeking the surplus value are likely to occur in federal court. Suwannee County alone—a small county with a population of less than 50,000—has more than 3,000 tax certificates currently for sale. *See* Suwannee County, *Official Tax Certificate Sale Site*, https://suwanneefl.realtaxlien.com/index.cfm?folder=previewitems (last visited Jan. 7, 2025). As such, this Court should resolve the split identified in this petition to provide clear guidance to the lower federal courts regarding when abstention

is appropriate, and so that location of property does not dictate whether a plaintiff may pursue a constitutional takings claim in federal court.

Moreover, this case presents the Court with an opportunity to clarify the circumstances in which the *Levin* factors should apply. *Levin* was a commercial equal protection case, and because its facts are unlike those here—or those of *Dorce, Freed*, or *Harrison*—the *Levin* factors are not clearly applicable to these types of takings cases. *Compare* App.20a-25a (interpreting *Levin* factors and finding that they warrant abstention), *with* App.33a-38a (applying the same *Levin* factors differently to the same situation), and *Dorce*, 2 F.4th at 100-01 (same). Because the *Levin* factors, at least as applied to cases like Turner's, do not "carefully define[] . . . the areas in which such 'abstention' is permissible," *New Orleans Pub. Serv.*, 491 U.S. at 359 (quoting *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 236 (1984)), this Court should take the opportunity to develop the contours of the comity doctrine applicable to takings cases. At minimum, doing so will allow lower federal courts to avoid "trick[y]" applications of this Court's precedent in areas as significant as whether they can abstain from congressionally granted jurisdiction. *See* App.21a, 34a (both Judge Newsom and the majority characterizing the application of the second *Levin* factor as "trickier" than the first because the facts here are dissimilar to *Levin*).

Ultimately, Suwannee County took more property than it was owed. Such a taking should be no different than if the state built a highway through Turner's property and underpaid him. Yet, the Eleventh Circuit took the broadest possible reading of a discretionary judge-made doctrine to

avoid vindicating Turner's constitutional rights. And it did this even though Turner's remedy—a meager $15,000—would not prevent Florida from collecting taxes, would not prevent future tax deed sales to pay for past-due taxes, and would not otherwise disrupt Florida's property tax scheme. Because of the "paramount role Congress has assigned to the federal courts to protect constitutional rights," *Steffel*, 415 U.S. at 473, claims that seek only the surplus value for property sold in government tax foreclosures should be permitted—like every other takings claim—to proceed initially in federal court.

CONCLUSION

This Court should grant the petition.

DATED: January 15, 2025.

Respectfully submitted,

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APPENDIX

TABLE OF APPENDICES

APPENDIX A — OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT, FILED SEPTEMBER 17, 2024

In the
United States Court of Appeals
For the Eleventh Circuit

No. 22-13159

ROBERT R. TURNER,

Plaintiff-Appellant,

versus

SHARON W. JORDAN, TIEYONE MITCHELL,
BARRY A. BAKER, TRACY K. BALDWIN,

Defendants-Appellees.

Filed: September 17, 2024

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 3:21-cv-00303-TJC-MCR

Before ROSENBAUM, NEWSOM, and TJOFLAT, Circuit Judges.

TJOFLAT, Circuit Judge:

Florida, like most states, allows property owners to claim a homestead exemption on their permanent residences. And, like most states, Florida permits counties

to sell properties to collect past due property taxes. That's what happened to Robert Turner in Suwannee County. Just one small hitch: Turner claimed that the County sold his homestead property at an impermissibly low amount under Florida law.[1] Had the property been sold at the required amount for qualifying homesteads, Turner would have received any surplus after his back taxes and required costs were deducted.

After unsuccessful attempts in state and federal court for relief, Turner filed the instant pro se complaint.[2] Among other things, Turner asserted that the sale was an unlawful taking of the sale's potential surplus. The County moved to dismiss, and the District Court found dismissal warranted based on comity. We must now decide whether the District Court abused its discretion by doing so.

After careful review, and with the benefit of oral argument, we affirm. The relief Turner seeks risks disrupting Florida's administration of its ad valorem property tax scheme, and plain, adequate, and complete state remedies were available. Dismissal under the comity doctrine was warranted.

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1. Turner's complaint named four defendants: (1) Suwannee County Tax Collector, Sharon W. Jordan; (2) Suwannee County Tax Collector employee, Tieyone S. Mitchell; (3) Suwannee County Circuit Court Clerk, Barry A. Baker; and (4) Suwannee County Circuit Court Deputy Clerk, Tracy K. Baldwin. Later, he also named Suwannee County. We refer to these defendants collectively as the County.

2. As explained below, Turner's second amended complaint is the operative complaint.

Appendix A

Our opinion proceeds in four parts. First, we explain the statutory, factual, and procedural background. Second, we lay out the applicable standards of review. Third, we discuss why the District Court did not abuse its discretion by abstaining from exercising its jurisdiction under the comity doctrine. Last, we briefly conclude.

I. Background

For context, we first explain Florida's ad valorem property tax scheme. We then detail the factual and procedural background of Turner's case.

A. Florida's Ad Valorem Property Tax Scheme

In Florida, "[p]roperty taxes are collected on all non-exempt properties . . . as a means of funding counties, school boards, and local governments." *Nikolits v. Haney*, 221 So. 3d 725, 728 (Fla. Dist. Ct. App. 2017). Florida property taxes are due annually by April 1. Fla. Stat. § 197.122(1) (2024).

1. Tax Deed Sales for Unpaid Property Taxes

If property taxes are unpaid, "the tax collector shall commence the sale of tax certificates." *Id.* § 197.432(1). And "[e]ach certificate shall be awarded to the person who will pay the taxes, interest, costs, and charges and will demand the lowest rate of interest." *Id.* § 197.432(6). The sale of a tax certificate creates a lien on the property. *Id.* § 197.432(2).

If the tax certificate remains unpaid after two years from the date the taxes became delinquent, the certificate holder "may file the certificate and an application for a tax deed with the tax collector" to force a tax deed sale.[3] *See id.* § 197.502(1). A tax deed sale, like the name suggests, is where a deed "is issued to the highest bidder on property sold at a public auction because of nonpayment of ad valorem taxes." *Vosilla v. Rosado*, 944 So. 2d 289, 292 (Fla. 2006); Fla. Stat. § 197.542(1)-(2). When an application for a tax deed has been made, "[t]he tax collector shall deliver to the clerk of the circuit court a statement that . . . [certain] persons are to be notified prior to the sale of the property." Fla. Stat. § 197.502(4).

Those persons include:

> Any legal titleholder of record if the address of the owner appears on the record of conveyance of the property to the owner. However, if the legal titleholder of record is the same as the person to whom the property was assessed on the tax roll for the year in which the property was last assessed, the notice may be mailed to the address of the legal titleholder as it appears on the latest assessment roll.

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3. Florida courts have referred to a tax deed sale as "a foreclosure by tax deed proceeding." *See Priest v. Plus Three, Inc.*, 447 So. 2d 338, 339 (Fla. Dist. Ct. App. 1984). We use "tax deed sale" because that's how the statutes and recent Florida court cases refer to these sales. *See, e.g.*, Fla. Stat. § 197.512(1) (2001); *Vosilla v. Rosado*, 944 So. 2d 289, 291 (Fla. 2006).

Id. § 197.502(4)(a).[4] And "[f]or purposes of determining who must be noticed[,] . . . the tax collector must contract with a title company or an abstract company to provide a property information report." *Id.* § 197.502(5)(a).

After the clerk of the circuit court receives the property information report, the clerk "shall notify [the legal titleholder], by certified mail with return receipt requested. . . . at least 20 days prior to the date of sale." *Id.* § 197.522(1)(a).[5] "If no address is listed in the tax collector's statement, then no notice shall be required." *Id.* The clerk also must "publish a notice once each week for 4 consecutive weeks . . . in a newspaper," and "[n]o tax deed sale shall be held until 30 days after the first publication of the notice." *Id.* § 197.512(1).[6]

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4. Subject to conditions, the tax collector must also notify any: (1) lienholder of record who has a recorded lien against the property, (2) mortgagee of record, (3) vendee of a recorded contract for deed, (4) lienholder who has applied to the tax collector to receive notice, (5) person to whom the property was most-recently assessed on the tax roll, (6) lienholder of record who has a recorded lien against a mobile home located on the property, and (7) legal titleholder of record of property contiguous to the property. Fla. Stat. § 197.502(4)(b)-(h).

5. The notice must inform the owner (1) that there are unpaid taxes, (2) the date of the public auction, and (3) the clerk of court's contact information to make a payment or for further information. Fla. Stat. § 197.522(1)(b).

6. If no newspaper is available, "the clerk shall execute and file in his or her office a certificate of the posting of the notices, stating where and on what dates the notices were posted." *Id.* § 197.512(2).

"The failure of anyone to receive notice . . . shall not affect the validity of the tax deed issued pursuant to the notice." *Id.* § 197.522(1)(d). And both forms of notice are "deemed conclusively sufficient to provide adequate notice of the tax deed application and the sale at public auction." *Id.* § 197.502(5)(e).

Should the public auction flop, like it did here, "the clerk shall enter the land on a list entitled 'lands available for taxes.'" *Id.* § 197.502(7). During the first ninety days after the property is listed, the county may buy the property for the opening bid or waive its right to do so. *Id.* After that period, anyone may buy the property from the clerk. *Id.*

Under either sale method, the statutes dictate the "opening bid" amounts. *See id.* § 197.502(6). For individually held certificates, the opening bid

> must include, in addition to the amount of money paid to the tax collector by the certificateholder at the time of application, the amount required to redeem the applicant's tax certificate and all other costs, fees paid by the applicant, and any additional fees or costs incurred by the clerk, plus all tax certificates that were sold subsequent to the filing of the tax deed application, current taxes, if due, and omitted taxes, if any.

Id. § 197.502(6)(b). Also pertinent is the statutes' required opening bid for homestead properties. The opening bid

"[o]n property assessed on the latest tax roll as homestead property shall include, in addition to the amount of money required for an opening bid on nonhomestead property, *an amount equal to one-half of the latest assessed value of the homestead*." *Id.* § 197.502(6)(c) (emphasis added); *id.* § 197.542(1).

Funds collected from the tax sale are used to pay off the amount owed to the certificate holder and other costs incurred in the sale. *See id.* § 197.582(1). If the sale creates a surplus, "the clerk shall [first] distribute the surplus to . . . governmental units" to pay off any other liens and omitted taxes. *Id.* § 197.582(2)(a). Any remaining surplus "must be retained by the clerk for the benefit of" the property owner. *Id.; id.* § 197.522(1)(a).

2. Administration

Florida's ad valorem property tax scheme is managed at the county level by property appraisers, tax collectors, and clerks of the circuit courts. *See* Fla. Const. art. VIII, § 1(d). Each office has its own role in administering the property tax scheme. *See id.* A property appraiser assesses property value, adjusts those values by approving or rejecting exemptions, and certifies this information on the official tax roll. *See* Fla. Stat. §§ 193 *et seq.* A tax collector collects and distributes taxes shown on the tax roll, approves deferrals, and as noted above, sells tax certificates. *See id.* §§ 197 *et seq.* The clerk of the circuit court advertises and conducts tax deed sales, including sending the required notices and distributing any surplus from the sale. *See id.* §§ 197.522, 197.582.

Appendix A

3. Homestead Exemptions

One type of exemption property appraisers administer is the homestead exemption. *See id.* § 193.155(8)(*l*); Fla. Const. art. X, § 4. A property owner is entitled to a homestead exemption if, "on January 1, [he or she] has the legal title . . . [and] in good faith makes the property his or her permanent residence or the permanent residence of" his or her legal dependents. Fla. Stat. § 196.031(1)(a).

i. Application Process

To claim a homestead exemption, qualifying property owners must, "on or before March 1 of each year, file an application for exemption with the county property appraiser." *Id.* § 196.011(1)(a). After an original homestead exemption is granted, the property appraiser "shall mail a renewal application to the applicant," which generally "shall be accepted as evidence of exemption" once returned. *Id.* § 196.011(7)(a). But the property appraiser retains discretion to deny the exemption. *Id.*

Counties, at the request of a property appraiser, may elect to waive the annual application requirement "after an initial application is made and the exemption granted." *Id.* § 196.011(10)(a). This automatic renewal process "shifts to the property owner the burden of notifying the property appraiser proactively of any changes that may affect the exempt status of the property, subject to penalties for failure to do so." *Crapo v. Acad. for Five Element Acupuncture, Inc.*, 278 So. 3d 113, 123 (Fla. Dist. Ct. App. 2019) (en banc) (per curiam). When a county authorizes

the automatic renewal process, property owners receive a postcard that only requires a response if they no longer qualify for the exemption. *See* Fla. Admin. Code Ann. r. 12D-16.002 (2024) (listing form DR-500AR).

ii. Denials and Challenges

Even under the automatic renewal process, a homestead exemption is not final until the property appraiser is satisfied "that all property is properly taxed" and completes the tax roll certification. *See* Fla. Stat. § 193.122(2). The automatic exemption will be removed if, before that time: (1) the owner returns the receipt acknowledging non-entitlement, or (2) "the property appraiser determines that [the] property claimed as . . . exempt . . . is not entitled to any exemption." *Id.* § 196.193(5)(a); *see also id.* § 196.151.[7]

Florida's constitution requires a "Taxpayer's Bill of Rights" that "guarantee[s] that the rights, privacy, and property of [Florida] taxpayers . . . are adequately safeguarded and protected during tax levy, assessment, collection, and enforcement processes." *Id.* § 192.0105; *see* Fla. Const. art. I, § 25. Florida's Taxpayer's Bill of

7. Property appraisers must physically inspect properties every five years to ensure the tax roll is accurate. Fla. Stat. § 193.023(2). A property appraiser's decision to grant or remove an exemption is subject to the appraiser's "sound discretion" that the "property either factually qualifies or factually does not qualify for the exemption." Fla. Admin. Code Ann. r. 12D-8.021(2)(d) (2006).

Rights,[8] and the associated statutes, include protections and processes for homestead exemption denials and challenges for all matters related to property taxation—like voiding tax deed sales in the circuit courts. *See* Fla. Stat. § 194.171(1); Fla. Admin. Code Ann. r. 12D-13.066(1) (2016).

For example, if the property appraiser denies a homestead exemption, the property owner may appeal to the local value adjustment board. Fla. Stat. § 196.151; *see also id.* § 194.011(3)(d). The board "shall review the application and evidence presented to the property appraiser . . . and shall hear the applicant in person or by agent." *Id.* § 196.151. And the board "shall reverse . . . or shall affirm the decision of the property appraiser." *Id.* The board's decision is final unless, "within 15 days" of the board's decision, the property owner seeks a declaratory judgment "in the circuit court of the county" where the property is situated. *Id.*; *see also* §§ 194.036(2), 192.0105(2)(i). But property owners must do so within "60 days from the date the assessment being contested is certified . . . or [within] 60 days from the date a decision is rendered . . . by the value adjustment board." *Id.* § 194.171(2). This time limit is jurisdictional. *See Ward v. Brown*, 894 So. 2d 811, 813 (Fla. 2004) (per curiam).

8. Broadly speaking, Florida's Taxpayer's Bill of Rights guarantees taxpayers: (1) the right to know, (2) the right to due process, (3) the right to redress, and (4) the right to confidentiality. Fla. Stat. § 192.0105.

B. Factual and Procedural Background

With that basic understanding of Florida's ad valorem property tax scheme, we now turn to (1) how Turner's property was sold, (2) Turner's prior cases in state and federal court, and (3) his current complaint.

1. Turner's Property is Sold

In 1995, Turner received a homestead exemption on his real property in Suwannee County. That homestead exemption renewed automatically for years. But all that changed in 2015. Before we get to that, a few crucial details.

After Turner failed to pay his property taxes, the tax collector's office issued a tax certificate on May 28, 2010.[9] Two years passed and Turner failed to pay the certificate. That's when the certificate holder demanded a tax deed sale. Around that time, Turner protested Suwannee County's agricultural policies. He posted a sign on his vehicle calling for the firing of Suwannee County's property appraiser, Lamar Jenkins.

In response to the certificate holder's demand, the clerk of court advertised and conducted a public auction of Turner's property on March 5, 2015. At that time, Turner's property still had a valid homestead exemption and an assessed value of $30,595. No bidders were at the auction.

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9. The tax collector's office also issued tax certificates in 2011, 2012, and 2013.

Because there were no bidders, the clerk put Turner's property up for public sale on Suwannee County's "List of Lands Available for Taxes."

While Turner's property was on the list, the Suwannee County property appraiser determined that the property was not Turner's permanent residence.[10] And the property appraiser allegedly sent Turner written notification to that effect. When the tax roll was certified on October 7, 2015, Turner's property was no longer subject to the homestead exemption. Seven days later, the clerk of court foreclosed on Turner's property via a tax deed sale for $3,540.45. Turner never received mailed notice of the sale, despite updating his address with the Suwannee County tax collector.

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10. The notice of removal of Turner's homestead exemption was not presented to the District Court; it was filed in Turner's prior state court case. We take judicial notice of this document only to assess whether the District Court abused its discretion in abstaining from exercising its jurisdiction. *Cf. Colonial Pipeline Co. v. Collins*, 921 F.2d 1237, 1243 (11th Cir. 1991) ("In assessing the propriety of a motion for dismissal under Fed. R. Civ. P. 12(b)(1), a district court is not limited to an inquiry into undisputed facts; it may hear conflicting evidence and decide for itself the factual issues that determine jurisdiction."); *Irving v. Breazeale*, 400 F.2d 231, 236 (5th Cir. 1968) (taking judicial notice of a state law when deciding whether comity might be appropriate); *Lumen Constr., Inc. v. Brant Constr. Co.*, 780 F.2d 691, 697 n.4 (7th Cir. 1985) (explaining that when considering abstention, "it is appropriate for the reviewing court to look at the total situation as it stands at the time of appeal; we need not restrict ourselves to the materials before the district court").

2. Prior Proceedings

That's when Turner, proceeding pro se, turned to the state courts for relief.[11] In April 2017, he filed a "Petition for Suit of Equity Homestead Removal." *See Turner v. Jenkins*, No. 2017-CA-68 (Fla. Cir. Ct. 2017). In that action, Turner challenged the appraiser's removal of his homestead exemption. The state court dismissed his complaint because it found that Turner's claim was untimely under Florida law. In February 2018, Turner appealed to Florida's First District Court of Appeal. And in July 2018, the First District Court of Appeal dismissed Turner's appeal as untimely. *See Turner v. Jenkins*, 250 So. 3d 10 (Fla. Dist. Ct. App. 2018) (per curiam).

Turner continued his homestead exemption challenge in federal court. *See Turner v. Baldwin*, No. 3:18-CV-1275-J-PDB, 2019 U.S. Dist. LEXIS 183357, 2019 WL 5423389, at *1 (M.D. Fla. Oct. 23, 2019). There he filed a § 1983 action against Tracy Baldwin, a deputy clerk for the Suwannee County Clerk of Court, and Lamar Jenkins. *Id.* The Magistrate Judge construed Turner's complaint to assert that Baldwin and Jenkins violated his procedural due process rights under the Fourteenth Amendment. *Id.* at *3. Baldwin and Jenkins moved to

11. We also take judicial notice of Turner's previous state and federal cases "for the limited purpose of recognizing the 'judicial act[s]' that the order[s] represent[and] the subject matter of the litigation." *See United States v. Jones*, 29 F.3d 1549, 1553 (11th Cir. 1994); *cf. FDIC v. N. Savannah Props., LLC*, 686 F.3d 1254, 1257 n.1 (11th Cir. 2012) ("[W]e can take judicial notice of the documents that were filed in the state court proceeding.").

dismiss Turner's complaint for lack of subject matter jurisdiction. *Id.* at *1. The Magistrate Judge agreed with Baldwin and Jenkins, and dismissed Turner's complaint without prejudice because she found that abstention was warranted under the comity doctrine.[12] *Id.* at *5. After Turner unsuccessfully moved for reconsideration, he appealed to our Court to challenge the Magistrate Judge's decision not to reconsider. *See Turner v. Baldwin*, 833 F. App'x 330, 331 (11th Cir. 2021) (per curiam). We affirmed and reasoned that Turner failed to "raise any argument as to why the denial of his motion was improper." *Id.* at 332.

3. Turner's Current Case

A few months later, again proceeding pro se, Turner filed this case. After Turner filed an amended complaint at the direction of the Magistrate Judge, the County moved to dismiss. The District Court referred the County's motion to the Magistrate Judge for a report and recommendation ("R&R"). The Magistrate Judge recommended that Turner's amended complaint be dismissed as a shotgun pleading. The Magistrate Judge also recommended that the County's motion be denied because the record could not answer whether the Tax Injunction Act or comity doctrine applied.

Before the District Court could act on the R&R, Turner filed a second amended complaint. The District Court adopted the R&R, construed Turner's second

12. The parties consented to the Magistrate Judge's jurisdiction under 28 U.S.C. § 636(c).

amended complaint as a motion for leave to amend, and granted Turner's motion—thereby making the second amended complaint the operative complaint.

The crux of Turner's second amended complaint is that his property should have been sold for one-half of the assessed value because at the time of the opening bid his property still had a homestead exemption. Had it been sold for that amount, Turner would have received any residual after his back taxes were deducted. More specifically, Turner's second amended complaint stated four counts:

- Count I alleged a § 1983 First Amendment retaliation claim for "exercise of . . . protected free speech, expression [of] rights, peaceful protest[,] and for redress of grievance."

- Count II alleged a § 1983 Fourth Amendment claim for the "illegal seizure of [Turner's] homesteaded property again[s]t all defendants."

- Count III alleged a "state tort claim of conspiracy, concealment, explo[it]ation, misrepre[se]ntation, ne[g]ligence, omissions[,] and fraud and for the creation of a state-danger against all defendants."

- Count IV alleged a § 1983 claim against Suwannee County "for reckless indifference to [Turner's] clearly established const[it]utional rights."

The County again moved to dismiss. It argued that the District Court lacked jurisdiction under the Tax

Injunction Act.[13] Alternatively, the County argued that the comity doctrine required that the District Court abstain from exercising its jurisdiction.[14]

The District Court granted the County's motion. The District Court declined to consider whether the Tax Injunction Act applied because it concluded that the comity doctrine warranted abstention. It reasoned that Turner was asking the District Court to rule on the propriety of the homestead exemption removal, the sufficiency of the notice of the tax sale, and the failure of County Tax Collector employees to consider the homestead status of his property. But to rule on those issues would require the District Court to "rule on the constitutionality of Suwannee County's tax procedures." Turner timely appealed, and we appointed counsel to assist him.

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13. Under the Tax Injunction Act, "district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." 28 U.S.C. § 1341. "The limitation imposed by the act is *jurisdictional*; it embodies the general principle that the jurisdiction of the federal courts to 'interfere with so important a local concern as the collection of taxes' must be drastically limited." *Colonial Pipeline*, 921 F.2d at 1242 (quoting *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 522, 101 S. Ct. 1221, 67 L. Ed. 2d 464 (1981)).

14. Although the District Court did not reach the issue, the County also argued that Turner's state-law claims should be dismissed because the statute of limitations had run. The County did not argue that Turner's federal claims were barred by the statute of limitations. *See infra* note 15.

II. Legal Standards

"While we ordinarily review the grant of motions to dismiss . . . *de novo*, 'a district court's decision to abstain will only be reversed upon a showing of abuse of discretion.'" *Boyes v. Shell Oil Prods. Co.*, 199 F.3d 1260, 1265 (11th Cir. 2000) (citation omitted). "A district court abuses its discretion if it misapplies the law or makes findings of fact that are clearly erroneous." *Seminole Tribe of Fla. v. Stranburg*, 799 F.3d 1324, 1328 (11th Cir. 2015).

III. Discussion

Turner challenges the District Court's dismissal of his complaint on comity grounds. He argues that the resolution of his claims would not disrupt Florida's tax scheme. Instead, he seeks to enforce Florida and federal law to prevent government officials from violating his constitutional rights. And he contends that Florida state courts do not provide a "plain, speedy, and efficient remedy."

The County urges us to affirm the District Court's judgment. It contends that Turner's case is functionally identical to his previous cases. It adds that the relief Turner seeks would require ruling on the propriety of the removal of his homestead exemption and the sufficiency of the notice of the sale. Those rulings, according to the County, would require the District Court to opine on the constitutionality of Florida's taxation scheme. The County

also explains that Florida state courts provide adequate remedies for Turner's complaints.[15]

We agree with the County that the District Court's judgment should be affirmed. "Abstention rarely should be invoked, because the federal courts have a 'virtually unflagging obligation . . . to exercise the jurisdiction given them.'" *Ankenbrandt v. Richards*, 504 U.S. 689, 705, 112 S. Ct. 2206, 119 L. Ed. 2d 468 (1992) (omission in original) (quoting *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 817, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976)). But the Supreme Court has "long recognized that principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration." *Nat'l Priv. Truck Council, Inc. v. Okla. Tax Comm'n*, 515 U.S. 582, 586, 115 S. Ct. 2351, 132 L. Ed. 2d 509 (1995). Squeezed down, "the 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, 130 S. Ct. 2323, 176 L. Ed. 2d 1131 (2010).

This restraint creates tension for plaintiffs, like Turner, who raise constitutional claims via § 1983. "Such claims are entitled to be adjudicated in the federal courts." *McNeese v. Bd. of Educ. for Cmty. Unit Sch.*

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15. The County also argues that Turner's § 1983 claims are barred by Florida's four-year statute of limitations. This argument was not raised before the District Court, so it is not properly before us. *See Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004).

Dist. 187, 373 U.S. 668, 674, 83 S. Ct. 1433, 10 L. Ed. 2d 622 (1963). And § 1983 plaintiffs may "immediate[ly] resort to a federal court whenever state actions allegedly infringe[] constitutional rights." *Fair Assessment in Real Est. Ass'n v. McNary*, 454 U.S. 100, 104, 102 S. Ct. 177, 70 L. Ed. 2d 271 (1981). Still, "despite the ready access to federal courts" to resolve § 1983 claims, "taxpayers must seek protection of their federal rights by state remedies, provided of course that those remedies are plain, adequate, and complete." *Id.* at 116.

Admittedly a close call, Turner's case fits this standard. The relief he seeks (1) risks disrupting Florida's administration of its ad valorem property tax scheme, and (2) the Florida state courts provide plain, adequate, and complete remedies. Let us explain.

A. Risk of Disruption

We have not considered a case like Turner's. But both the Supreme Court and our Court have confirmed that the comity doctrine is to be construed broadly in state taxation cases. *See Levin*, 560 U.S. at 424-25; *Winicki v. Mallard*, 783 F.2d 1567, 1571 (11th Cir. 1986). The Supreme Court has outlined a non-exclusive "confluence of [three] factors," to determine whether resolution of a plaintiff's suit would risk disruption such "that comity precludes the exercise of original federal-court jurisdiction." *Levin*, 560 U.S. at 426, 431.

First, comity is disfavored when the plaintiff's suit "involve[s] any fundamental right or classification that

attracts heightened judicial scrutiny." *See id.* at 431. But when the plaintiff's suit seeks "federal-court review of commercial matters over which [the state] enjoys wide regulatory latitude," then this factor favors abstaining under the comity doctrine. *See id.*

Second, that a plaintiff is a third-party challenger to an allegedly unconstitutional tax scheme weighs against invoking the comity doctrine. *See id.* at 430-31. Yet when the plaintiff seeks to "improve their competitive position," that favors comity. *See id.* at 431.

The last factor asks whether the state courts are better positioned than the federal courts to correct any violation raised by the plaintiff. *Id.* at 431-32. When the federal and state courts are equally positioned to grant relief, this factor disfavors dispatching the case on comity grounds. *See id.* On the other hand, when the state courts are better positioned, this factor supports dismissal under the comity doctrine. *See id.*

No individual factor may "compel forbearance on the part of federal district courts; in combination, however, they demand deference to the state adjudicative process." *Id.* at 432. With that, we pull out the scales and weigh these factors.

1. Commercial Matters or Fundamental Rights

As to the first factor, Turner's suit falls in the fundamental rights bucket. Looking beyond the labels

in his complaint, and liberally construing his claims, *see Means v. Alabama*, 209 F.3d 1241, 1242 (11th Cir. 2000) (per curiam); *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998) (per curiam), Turner alleges several constitutional claims that implicate fundamental rights like freedom of political expression, procedural due process, and a taking without just compensation. This factor weighs against invoking the comity doctrine. *See Hibbs v. Winn*, 542 U.S. 88, 93, 107 n.9, 124 S. Ct. 2276, 159 L. Ed. 2d 172 (2004) (conveying that an Establishment Clause—grounded case cleared the comity hurdle).

2. Third-party or Personal Tax Situation Challenger

The second factor is trickier, but it leans in favor of comity. Turner is not a third-party challenger. He is "in no sense [an] 'outsider[]' to the revenue-raising state-tax regime [he] ask[s] the federal courts to restrain." *Levin*, 560 U.S. at 435 (Thomas, J., concurring). That much is clear. Whether he "seek[s] federal-court aid in an endeavor to improve [his] competitive position" is less straightforward. *Id.* at 431 (majority opinion). Answering that question requires contextualization because, unlike the plaintiff in *Levin*, Turner is not a business concerned with his "competitive position." *Cf. Illinois v. Lidster*, 540 U.S. 419, 424, 124 S. Ct. 885, 157 L. Ed. 2d 843 (2004) (looking to an opinion's "language, as well as its context"); *United States v. Dinneen*, 577 F.2d 919, 921 (5th Cir. 1978)

(stating that a court "interpreted selective portions of [another case] out of context").[16]

In describing this factor, as with the other two, the Supreme Court compared Levin's case to its previous *Hibbs* opinion. It explained that

> [t]he plaintiffs in *Hibbs* were outsiders to the tax expenditure, "third parties" whose own tax liability was not a relevant factor. In this case, by contrast, the very premise of respondents' suit is that they are taxed differently from [local distribution companies]. Unlike the *Hibbs* plaintiffs, respondents *do object to their own tax situation*, measured by the allegedly more favorable treatment accorded [local distribution companies].

Levin, 560 U.S. at 430 (emphasis added). So—in context—the heart of the second factor is whether the plaintiff objects to his or her own tax situation.

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16. Were we to read the second factor literally, it would likely never apply to individual taxpayer plaintiffs like Turner. Plaintiffs in Turner's shoes generally are not seeking to improve their "competitive positions." We do not read judicial opinions with pedantic literalism; meaning and interpretation is determined by context. It would be "a disservice to judges and a misunderstanding of the judicial process to wrench general language in an opinion out of context." *Aurora Loan Servs. v. Craddieth*, 442 F.3d 1018, 1026 (7th Cir. 2006) (Posner, J.).

With that polish, the picture becomes clearer. True, Turner is adamant that he does not contest his tax liability or the County's right to sell his property via a tax deed sale. But he does object to his own tax situation "in a very real and economically significant way." *Id.* at 435 (Thomas, J., concurring). He objects to the way his taxes were collected, both the lack of notice he received and how the County calculated the opening bid for the tax deed sale it used to satisfy his tax liability. This factor therefore favors comity.

3. Better Positioned State Courts

That brings us to the final factor: whether the Florida courts are better positioned than the federal courts to correct the violations Turner alleges. State courts are better positioned when the correction sought requires greater familiarity with state legislative preferences and when the federal courts' remedial options would be constrained by the Tax Injunction Act. *See id.* at 431-32 (majority opinion). In our view, those conditions are present. Here's why.

For Turner to prevail on his due process claims it would require a conclusion that the County failed to provide sufficient notice of the sale process under Florida Statutes sections 197.502(4)(a), 197.522, and potentially 197.512(1). 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).[17] Turner's requested remedies, and their implicated interpretations of those state-law provisions, "may be far from what the [Florida] Legislature would have willed." *Id.* at 429. And state courts "have greater leeway to avoid constitutional holdings by adopting 'narrowing constructions that might obviate the constitutional problem and intelligently mediate federal constitutional

17. Upon reviewing Florida law, the dissent concludes that the opening bid for Turner's property was established at the time of the opening sale (when it still benefited from the homestead exemption), and the opening bid could not be reduced through the final sale of the property. Dissenting Op. at 6-7. So the dissent finds that this case would not require any kind of guesswork about the relevant application of state law and that federal courts are just as equipped to adjudicate the claims as state courts. The dissent's interpretation of the statute may very well be a correct interpretation of Florida law. But it may not be. Counsel for the County argued that the opening bid would have been recalculated at the time the homestead-status change was certified. Oral Arg. at 17:02-18:22. And if that's permissible, then there could not have been an unlawful taking under Turner's theory because Turner would not have been entitled to the homestead opening-bid calculation at the time the property was sold. Counsel pointed out that the First District Court of Appeal of Florida has explained, albeit two decades ago, that the opening bid is calculated *after* a property is included on the "lands available for taxes" list and approved of a county's calculating the opening bid *after* it received offers for purchase on the property. *Perdido Bay P'ship v. Warner*, 837 So.2d 1154, 1154 (Fla. Dist. Ct. App. 2003). 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.

concerns and state interests.'" *Id.* at 428 n.7 (quoting *Moore v. Sims*, 442 U.S. 415, 429-30, 99 S. Ct. 2371, 60 L. Ed. 2d 994 (1979)). That is what would happen if the Florida courts side with the County's interpretation of the state statutes.

"Federal judges, moreover, are bound by the [Tax Injunction Act]; absent certain exceptions, the Act precludes relief that would diminish state revenues, even if such relief is the remedy least disruptive of the state legislature's design." *Id.* at 428 (citation omitted). Turner's interpretation of § 197.502(6) could diminish state revenues. After all, his property didn't sell until it was listed for a second time with a lower opening bid amount. 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.

Turner's citations to other decisions do not persuade us otherwise. *See Dorce v. City of New York*, 2 F.4th 82 (2d Cir. 2021); *Freed v. Thomas*, 976 F.3d 729 (6th Cir. 2020); *Coleman ex rel. Bunn v. District of Columbia*, 70 F. Supp. 3d 58 (D.D.C. 2014). To be sure, the plaintiffs in *Dorce, Freed*, and *Coleman* all challenged the government's retention of the surplus in tax deed sales rather than their tax liabilities. But unlike those plaintiffs, Turner challenges the mechanics of the tax deed sale itself because here there was no surplus. 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.

Even if we found these cases persuasive, we still have our own precedent to contend with. Our precedent puts in granite our conclusion that the relief Turner requests would risk disrupting Florida's tax administration. *See Winicki*, 783 F.2d at 1569-71. In *Winicki*, the plaintiffs brought a putative class action alleging that a homestead tax exemption statute violated their constitutional rights and sought damages under § 1983.[18] *Id.* at 1568. The district court dismissed their complaint under the comity doctrine. *See id.* at 1571. At the time the plaintiffs' complaint was dismissed, the Florida Supreme Court had ruled the statute unconstitutional, and the Florida legislature formally repealed it. *Id.* Because there was nothing to change in Florida's tax system to grant them damages, the plaintiffs argued that the comity doctrine was inapplicable. *Id.* at 1571.

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18. The homestead exemption statute "provided for an enhanced property tax exemption for homeowners who had been permanent residents of . . . Florida for five consecutive years prior to claiming an exemption." *Winicki v. Mallard*, 783 F.2d 1567, 1568 (11th Cir. 1986).

We disagreed. *Id.* We explained that "the comity doctrine . . . should not be so narrowly read." *Id.* And we reiterated that damages actions would hale state officers into federal court every time a taxpayer alleged a § 1983 claim. *See id.* Entertaining those claims would interfere with "rightful independence of state governments" over their tax administration. *Id.* (quoting *Fair Assessment*, 454 U.S. at 115-16).

The same is true here. Of course, Turner challenges the County's application of Florida statutes as to his property, rather than the facial validity of the statutes. Still, "a judicial determination of official liability for the acts complained of, even though necessarily based upon a finding of bad faith, would have an undeniable chilling effect upon the actions of all County officers governed by the same practicalities. . . ." *Fair Assessment*, 454 U.S. at 115. If the County's administration of tax deed sales in situations like Turner's "is indeed unconstitutional, surely the [Florida] courts are better positioned to determine—unless and until the [Florida] Legislature weighs in—how to comply with the mandate of" procedural due process, the First Amendment, and the Takings Clause. *See Levin*, 560 U.S. at 429.

B. Availability of Plain, Adequate, and Complete State Remedies

Risk of disruption aside, comity concerns yield when there are no state court remedies that are "plain, adequate, and complete." *Fair Assessment*, 454 U.S. at 116.[19] A state court remedy meets these "minimal *procedural* criteria" only when "it 'provides the taxpayer with a "full hearing and judicial determination" at which she may raise any and all constitutional objections to the tax.'" *California v. Grace Brethren Church*, 457 U.S. 393, 411, 102 S. Ct. 2498, 73 L. Ed. 2d 93 (1982) (citation omitted) (quoting *Rosewell v. LaSalle Nat'l Bank*, 450 U.S. 503, 512, 514, 101 S. Ct. 1221, 67 L. Ed. 2d 464 (1981)). It need not "be the best remedy available or even equal to or better than the remedy which might be available in the federal courts." *Waldron v. Collins*, 788 F.2d 736, 738 (11th Cir. 1986) (quoting *Bland v. McHann*, 463 F.2d 21, 29 (5th Cir. 1972)). To survive dismissal under the comity doctrine, it is the plaintiff's burden to show that these criteria are not met. *See Winicki*, 783 F.2d at 1570. With that in mind, we explore whether Turner was "precluded from enjoying a full hearing and judicial determination in the Florida

19. Although we explain above why our remedial options are constrained by the Tax Injunction Act, we need not decide whether the Act would itself block Turner's suit "[b]ecause we conclude that the comity doctrine justifies dismissal." *Levin v. Com. Energy, Inc.*, 560 U.S. 413, 432, 130 S. Ct. 2323, 176 L. Ed. 2d 1131 (2010). That said, we note that there is "no significant difference" between the Tax Injunction Act's "plain, speedy and efficient" state remedy and the comity doctrine's "plain, adequate, and complete" state remedy. *See Fair Assessment in Real Est. Ass'n v. McNary*, 454 U.S. 100, 116 n.8, 102 S. Ct. 177, 70 L. Ed. 2d 271 (1981).

courts," or whether he had access to a plain, adequate, and complete state remedy. *Id.* at 1571.

As detailed above, Florida's Taxpayer's Bill of Rights guarantees that its property owners are protected during the tax levy, assessment, collection, and enforcement processes. Fla. Stat. § 192.0105. Those protections include the right to petition the value adjustment board from denials of a homestead exemption and to seek review of the board's decision in the local circuit court. *See id.* § 196.151. And, of relevance to Turner's case, the Florida statutes empower the circuit courts with "original jurisdiction at law of all matters relating to property taxation." Fla. Stat. § 194.171(1).

Turner directly challenges the tax deed sale because it allegedly proceeded without notice and the County's misconduct resulted in the absence or loss of an expected surplus. But Florida courts can and have gone so far as to void tax deed sales. *See*, *e.g.*, *Vosilla*, 944 So. 2d at 300-01 (holding that a tax deed sale conducted without adequate notice violated the property owners' due process rights); *Schafer v. Abreu*, 905 So. 2d 947, 948 (Fla. Dist. Ct. App. 2005) (per curiam) (holding that the county tax collector failed to provide adequate notice under Fla. Stat. § 197.502 and "remand[ing] with directions to invalidate the tax deed sale"); *Cape Atl. Landowners Ass'n v. County of Volusia*, 581 So. 2d 1384, 1386 (Fla. Dist. Ct. App. 1991) ("A tax deed is void where requirements of notice to the titleholder are not strictly followed. The validity of the underlying tax assessments and compliance with all constitutional and statutory conditions prerequisite to

their issuance.") (citation omitted); *Surna Constr., Inc. v. Morrill*, 50 So. 3d 47, 53 (Fla. Dist. Ct. App. 2010) (holding that the property owner was denied due process and affirming the trial court's order "voiding the tax sale"); *Horne v. Miami-Dade County*, 89 So. 3d 987, 988-89 (Fla. Dist. Ct. App. 2012) (unwinding a tax deed sale and remanding for an evidentiary hearing to determine whether the county provided adequate notice).

Turner has not met his burden to show why he could not have done the same. He is correct that Florida law applies a sixty-day limit to tax assessment challenges. *See* Fla. Stat. § 194.171(2). But—as his brief makes clear—Turner is not challenging any tax assessment. And because Turner's claims are "not a challenge to the assessment," his "claim[s are] not barred by subsection 194.171(2)." *See Vill. of Doral Place Ass'n v. RU4 Real, Inc.*, 22 So. 3d 627, 630 (Fla. Dist. Ct. App. 2009). Put differently, if Turner's claims are not "merely an attempt to circumvent [his] failure to properly and timely challenge the tax assessment of [his] propert[y] as required by section 194.171(1)," we see no reason why he couldn't have brought them in state court. *See Ward*, 894 So. 2d at 816. Florida law provides a plain, adequate, and complete remedy. "The certain availability of this remedy must not be confused with the failure to obtain the desired end through the proper means." *Rodriguez v. Steirheim*, 465 F. Supp. 1191, 1195 (S.D. Fla. 1979), *aff'd*, 609 F.2d 1007 (5th Cir. 1980).

IV. Conclusion

In sum, resolution of Turner's constitutional claims of misconduct by the County in its administration of tax collection risks disrupting Florida's taxation efforts. Comity "serves to ensure that 'the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States.'" *Levin*, 560 U.S. at 431 (quoting *Younger v. Harris*, 401 U.S. 37, 44, 91 S. Ct. 746, 27 L. Ed. 2d 669 (1971)). We cannot say that "nothing would be lost in the currency of comity or state autonomy by permitting [Turner] to proceed in a federal forum." *See id.* And because the Florida courts provide adequate, plain, and complete remedies, we see no reason why the District Court should have interfered. We therefore hold that the District Court did not abuse its discretion by abstaining under the comity doctrine. And we affirm its judgment.

AFFIRMED.

Appendix A

NEWSOM, Circuit Judge, dissenting:

I respectfully dissent, but I'm not going to make a big stink about it. I agree with the majority that whether the so-called "comity doctrine" bars Turner's action is "a close call." Maj. Op. at 19. The majority finds that doctrine applicable. Because I'm generally skeptical of judge-made abstention rules, and because I don't think the comity doctrine squarely applies here, I lean the other way and would allow Turner's suit to proceed.

* * *

As an initial matter, I'm suspicious of court-concocted abstention rules that, in substance if not form,[1] deprive federal courts of jurisdiction that the Constitution expressly authorizes and that Congress has expressly vested. I agree with Chief Justice Marshall, who explained more than two centuries ago that federal courts "have no more right to decline to exercise the jurisdiction which is given, than to usurp that which is not given"—both, he said, are "treason to the [C]onstitution." *Cohens v.*

1. Although I'm doubtful that the various abstention doctrines are *actually* jurisdictional, they have the effect, in operation, of depriving courts of jurisdiction that they would otherwise have. In *Levin v. Commerce Energy, Inc.*, the Supreme Court described the comity doctrine as a "prudential" limit—but one that "counsels lower federal courts to resist engagement in certain cases falling within their jurisdiction." 560 U.S. 413, 421, 432, 130 S. Ct. 2323, 176 L. Ed. 2d 1131 (2010). *Cf.* Fred O. Smith, Jr., *Undemocratic Restraint*, 70 Vand. L. Rev. 845, 864-65 (2017) (exploring whether so-called "*Younger* abstention" is prudential or constitutional).

Virginia, 19 U.S. (6 Wheat.) 264, 404, 5 L. Ed. 257 (1821). At the very least, I agree with the Supreme Court's more recent (if slightly less uncompromising) admonition that "'[a]bstention rarely should be invoked, because federal courts have a virtually unflagging obligation . . . to exercise the jurisdiction given them." Maj. Op. at 18 (quoting *Ankenbrandt v. Richards*, 504 U.S. 689, 705, 112 S. Ct. 2206, 119 L. Ed. 2d 468 (1992)). In any event, all here seem to agree that abstention—pursuant to the "comity doctrine" or otherwise—"is the exception, not the rule." *Colorado River Conservation Dist. v. United States*, 424 U.S. 800, 813, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976). That's my starting point.

Against that backdrop, the question is whether the comity doctrine should be applied "broadly," as the majority says, *see* Maj. Op. at 19, or instead circumspectly, as the exception that it is. I'd vote for the latter. As the majority correctly observes, the Supreme Court in *Levin v. Commerce Energy, Inc.* "outlined a non-exclusive 'confluence of [three] factors' to determine whether" the comity doctrine should be deployed to preclude a lawsuit that otherwise falls within the federal courts' jurisdiction. *Id.* (quoting 560 U.S. 413, 431, 130 S. Ct. 2323, 176 L. Ed. 2d 1131 (2010)). Taking its cue, the majority "pull[s] out the scales and weigh[s] these factors." Maj. Op. at 20. I'll do the same; I just see the balance a little differently.[2]

2. To be honest, this sort of freewheeling balancing hardly seems like the proper way to determine the extent of federal-court *jurisdiction*. But the majority isn't to blame; it's just doing what the Supreme Court has told it to do.

Everyone agrees that the first factor "weighs against invoking the comity doctrine" because Turner's suit alleges that state taxing authorities violated his "fundamental rights" under the First, Fifth, and Fourteenth Amendments. *Id.* Easy peasy.

As for the second factor, the majority rightly recognizes that its application here is "trickier." *Id.* The majority acknowledges that Turner isn't concerned with his "competitive position" within the meaning of the Supreme Court's opinion in *Levin*. *Id.* at 22. But "contextualiz[ing]" the Court's decision there, the majority posits that the "heart of the second factor" is really "whether the plaintiff objects to his or her own tax situation"—which it says Turner does. *Id.* at 22-23. I disagree. In fact, Turner has expressly renounced any argument regarding his "tax situation." Here, in relevant part, is how Turner's brief describes his position:

> Turner does not contest his liability for state taxes. Turner is not challenging—wholesale—any state taxation law as unconstitutional. Turner is not challenging the taxes he owed. Turner is not challenging the government's right to sell his property via tax deed sale. Rather, Turner challenges the unlawful—and retaliatory—sale of his property below the statutorily required amount that intentionally resulted in Turner receiving no funds from the sale of property he owned since at least 1995.

Br. of Appellant at 27. So, at least as I understand things, Turner isn't challenging anything about his "tax

situation"—he just wants his share of the money the government shortchanged him by selling his property at a fraction of its assessed value.

Which leads us to *Levin*'s third factor. Because the first and (I think) second factors aren't met, I tend to doubt the third could salvage the comity doctrine's application here anyway. But even if it could, I'm not at all sure that it's satisfied either. This one will take a minute to unpack, but the bottom line is that it's just not clear to me that state courts are any "better positioned" than we are to correct the constitutional violations that Turner claims, or that Turner's suit would require us to engage in any speculation about the meaning or application of state law. *See* Maj. Op. at 22.

In *Levin*, the Supreme Court confronted a business's allegation that a state tax law was "discriminatory"—specifically, that it gave preferential treatment to the business's competitors. *See* 560 U.S. at 417. The Court abstained under the comity doctrine on the ground that the state courts would presumably know better than their federal counterparts whether the state legislature would have wanted to address the alleged inequality by (in my terms) "leveling up"—*i.e.*, increasing the competitors' tax burden—or "leveling down"—*i.e.*, reducing the challenger's burden. The question, the Court said, boiled down to what the state legislature "would have willed had it been apprised of the constitutional infirmity." *Id.* at 427. And answering that question, the Court thought, would require federal courts to speculate about the meaning and operation of state law.

Deciding Turner's case wouldn't require similar guesswork. Of course, the mere fact that a case presents a difficult state-law question has never been a sufficient reason to abstain. *Cf., e.g.*, *Lehman Bros. v. Schein*, 416 U.S. 386, 390, 94 S. Ct. 1741, 40 L. Ed. 2d 215 (1974); *Meredith v. Winter Haven*, 320 U.S. 228, 234, 64 S. Ct. 7, 88 L. Ed. 9 (1943). But for reasons I'll explain, the applicable state law here isn't particularly murky, in any event.

The majority accurately sets the stage: After Turner failed to pay his property taxes, the local authorities issued a "tax certificate," and when the taxes remained unpaid two years later, they noticed and conducted a public auction. Importantly here, as the majority notes, "[a]t that time, Turner's property still had a valid homestead exemption and an assessed value of $30,595." Maj. Op. at 12. The majority also accurately describes the "crux" of Turner's claim: (1) Under Florida law, "his property should have been sold for one-half of the assessed value because at the time of the opening bid his property still had a homestead exemption"; (2) "[h]ad it been sold for that amount, [he] would have received any residual after his back taxes were deducted"; and (3) the local authorities sold his property for a fraction of its assessed value—$3,540.45—for reasons and in a manner that violated the U.S. Constitution. *Id.* at 15-16.

So, what's the governing state law? The opening bid for property like Turner's is set by statute. Florida law provides that "[o]n property assessed on the latest tax roll as homestead property," the opening bid "shall include, in addition to the amount of money required for an opening bid on nonhomestead property, an amount equal to one-

half of the latest assessed value of the homestead." Fla. Stat. § 197.502(6)(c). All agree that at the all-important moment of the "opening bid," Turner's property was listed "as a homestead property" within the meaning of § 197.502(6)(c). Accordingly, Turner contends—and this much seems undeniable—the opening-bid number should have included "an amount equal to one-half of the latest assessed value of the homestead." *Id.* But, Turner complains—and again, I think undeniably—it didn't. Just file that away.

For properties that don't sell at public sale—which Turner's didn't—"the clerk shall enter the land on a list entitled 'lands available for taxes' and shall immediately notify the county commission that the property is available." *Id.* § 197.502(7). During the property's first 90 days on this list, the county can either purchase the property "*for the opening bid*" or waive its rights to purchase the property. *Id.* (emphasis added). After 90 days, "any person, the county, or any other governmental unit may purchase the property from the clerk, without further notice or advertising, *for the opening bid.*" *Id.* (emphasis added). Importantly here, Florida law (as I read it) provides only two ways in which the "opening bid" number can change between the initial public-sale offering and the subsequent land-available-for-taxes offering: first, interest on the opening bid continues to accrue through the month of sale, *id.*; and second, the taxes that would have been due are added to the minimum bid, *id.* § 197.502(8).[3]

3. If, however, the county or government purchases the land for its own use, it is possible for the county commissioners to cancel omitted years' taxes. *Id.* § 197.502(7).

Again, it is undisputed that on the date Turner's property was listed for public sale, the tax rolls showed his property as a homestead—which means, in accordance with § 197.502(6)(c), that Turner's property had to be listed for the amount required for a nonhomestead property *plus* "an amount equal to one-half of the latest assessed value of the homestead." But it wasn't—it was listed for the value of a *non*homestead property. There were no bidders at the public sale; so, in accordance with Florida law, the clerk placed Turner's property on a list of lands available for taxes. The only question, therefore, is whether any of the ways specified in Florida law for altering the opening-bid number applies to this case. But none does—certainly none that could have *reduced* the value of Turner's property. Indeed, the only two means of alteration of which I'm aware would have *increased* the number by adding interest or taxes due. *See* Fla. Stat. § 197.502(7), (8). And so far as I can tell, there's nothing in the law that would have permitted the authorities to reassess the opening bid so as to adjust it downward after the removal of Turner's homestead exemption.

* * *

Bottom line: It's reasonably clear to me that the local authorities misapplied Florida law when they sold Turner's property for pennies on the dollar. Deciding Turner's case—which alleges that they did so for unconstitutional reasons and in an unconstitutional manner—wouldn't call into question Florida's property-tax scheme or his individual tax liability, nor would it require any real guesswork about the meaning or application of state law.

I see no compelling justification for invoking a judge-made abstention doctrine to decline to hear a case that fits comfortably within the federal courts' jurisdiction as authorized by the Constitution and prescribed by Congress. Accordingly, I respectfully dissent.

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT, MIDDLE DISTRICT OF FLORIDA, JACKSONVILLE DIVISION, FILED SEPTEMBER 12, 2022

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

ROBERT R. TURNER,

Plaintiff,

v.

SHARON W. JORDAN, TIEYONE MITCHELL, BARRY A. BAKER, and TRACY K. BALDWIN,

Defendants.

Case No. 3:21-cv-303-TJC-MCR

Filed September 12, 2022

ORDER

This case is before the Court on *pro se* Plaintiff Robert R. Turner's Second Amended Complaint (SAC) (Doc. 24), Defendants' Motion to Dismiss (Doc. 27), Turner's Motion to Compel (Doc. 29), and Turner's Motion for Defense to Respond/Mediation (Doc. 33). Turner responded in opposition to Defendants' Motion to Dismiss (Doc. 28) and Defendants responded in opposition to Turner's Motion to Compel (Doc. 31).

Appendix B

As stated in United States Magistrate Judge Richardson's Report and Recommendation,

> On March 17, 2021, *pro se* Plaintiff, Robert R. Turner, commenced this action under 42 U.S.C. § 1983 by filing an Application to Proceed in District Court Without Prepaying Fees or Costs ("Application") and a Complaint against four Defendants: Sharon W. Jordan, Suwannee County Tax Collector; Tieyone Mitchell; Barry A. Baker, Clerk of the Circuit Court; and Tracy K. Baldwin, Deputy Clerk. (Docs. 1 & 2.) On May 5, 2021, the Court entered an Order taking the Application under advisement and directing Plaintiff to file a notarized, long-form application and an amended complaint no later than May 24, 2021, because the original Complaint failed to state a claim on which relief may be granted. (Doc. 4.)
>
> On May 24, 2021, Plaintiff filed a notarized, long-form Application and an Amended Complaint. (Docs. 5 & 6.) The Amended Complaint names the same four Defendants as the original Complaint . . . . Plaintiff refers to the office of the Tax Collector of Suwannee County and the office of the Clerk of the Circuit Court of Suwannee County, collectively, as the "County," alleging that these offices "are a subset of the State of Florida's governing body." (*Id.* at 5-6.) Plaintiff alleges that all Defendants are state actors, acting on behalf of Suwannee County.

(*Id.* at 6.) The Amended Complaint includes the following four counts, each one incorporating by reference the allegations of all preceding paragraphs:

> Count I: A claim under 42 U.S.C. § 1983 of retaliation for exercising First Amendment rights of free speech, expression, peaceful protest, and for redress of grievances;
>
> Count II: A claim under 42 U.S.C. § 1983 for Fourth Amendment illegal seizure of Plaintiff's property against all Defendants;
>
> Count III: A state tort claim for civil conspiracy against Defendants Mitchell and Baldwin; and
>
> Count IV: A claim under 42 U.S.C. § 1983 against the County for reckless indifference to Plaintiff's clearly established constitutional rights. (*Id.* at 9-10.)

(Doc. 23 at 2-4) (footnotes omitted). Judge Richardson also took judicial notice of Turner's previously filed cases in both federal and state court. (Doc. 23 at 2-3 n.2). Judge Richardson ultimately recommended that Turner's Amended Complaint be dismissed as a shotgun pleading and that Turner be given leave to amend his complaint.

(Doc. 23 at 22-23). Turner filed his SAC before the Court could rule on the Report and Recommendation. (Doc. 24). The Court adopted the Report and Recommendation in full and the SAC became the operative complaint. (Doc. 26).

Turner's SAC contains substantially the same counts as the Amended Complaint[1] against the same Defendants. (*See* Docs. 5 at 9-10; 24 at 9-10). Turner seeks $18,206 plus costs and fees, a trial by jury, "injunctive relief putting safeguards in Florida Homestead Law preventing bad actors acting under color of state from manipulation and exploxation [sic]," and relief to make Turner whole. (Doc. 24 at 10-11). Defendants moved to dismiss the SAC, arguing that the Tax Injunction Act, 28 U.S.C. § 1341, precludes the Court from hearing the case, the Court should abstain based on comity, Turner is outside the statute of limitations, he has failed to state a claim for relief, and that the SAC is still a shotgun pleading. (Doc. 27).

Defendants contend that the Tax Injunction Act deprives this Court of subject matter jurisdiction. (Doc. 27 at 5-15). The Tax Injunction Act states simply that "[t]he district courts shall not enjoin, suspend or restrain the

1. Counts I, II, and IV are the same but Turner's Count III in the SAC is titled: "State Tort Claim of Conspiracy, Concealment, Exploxation [sic], Misreprentation [sic], Negligence, Omissions and Fraud and for the Creation of a State-Danger Against All Defendants." (*See* Docs. 5 at 10; 24 at 9).

assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State." § 1341. The Court declines to consider whether this case is barred by the Tax Injunction Act, because as United States Magistrate Judge Barksdale found in Turner's previous federal case, principles of comity alone warrant dismissal. *See Turner v. Baldwin*, No. 3:18-CV-1275-J-PDB, 2019 U.S. Dist. LEXIS 183357, 2019 WL 5423389, at *5 (M.D. Fla. Oct. 23, 2019).

"The comity doctrine counsels lower federal courts to resist engagement in certain cases falling within their jurisdiction." *Levin v. Com. Energy, Inc.*, 560 U.S. 413, 421, 130 S. Ct. 2323, 176 L. Ed. 2d 1131 (2010). "Comity, in sum, serves to ensure that the National Government, anxious though it may be to vindicate and protect federal rights and federal interests, always endeavors to do so in ways that will not unduly interfere with the legitimate activities of the States." *Id.* at 431 (internal quotation marks and citations omitted). Federal courts often dismiss cases based on the comity doctrine when the federal court is asked to opine on a state's taxation scheme. *See id.* at 421 ("Comity's constraint has particular force when lower federal courts are asked to pass on the constitutionality of state taxation of commercial activity."); *Winicki v. Mallard*, 783 F.2d 1567, 1569 (11th Cir. 1986) ("For more than a century a series of decisions has injected a particular vitality into the principle of comity where operations of state tax systems have been challenged in

federal courts."). The passage of the Tax Injunction Act did not affect the doctrine of comity. *Levin*, 560 U.S. at 424; *Winicki*, 783 F.2d at 1569 ("The principle of comity was not weakened or altered in 1937 by passage of 28 U.S.C. Section 1341, The Tax Injunction Act.").

Here, Turner alleges that his personal homestead property was wrongfully sold by Defendants.[2] (Doc. 24 ¶¶ 16-18). Turner is asking the Court to rule on the propriety of the removal of Turner's property's homestead status (either as a violation of his constitutional rights or in retaliation), the sufficiency of the notice of the tax sale of his property, and the failure of Defendants, two of whom are the Tax Collector of Suwannee County and an employee at the Tax Collector's office, to consider the homestead status of the property. Turner, in essence,

2. Judge Barksdale's prior Order sheds some additional light on the underlying facts:

> On February 13, 1995, [Turner] applied for an ad valorem homestead tax exemption for 5.45 acres of property, parcel number 32-03S-14E-0287800.3000. The homestead exemption was "continuous and automatic." On November 18, 2014, Ms. Baldwin warned of a tax sale of the property without mentioning its homestead status. In 2015, Mr. Jenkins removed the homestead tax exemption without a verifiable signed complaint. Ms. Baldwin's and Mr. Jenkins's actions resulted in the property being sold for $3,540.45, which was less than half its assessed value despite that Fla. Stat. § 197.502 requires a minimum bid of half the assessed value for homesteads, and resulted in Mr. Turner receiving no consideration from the sale.

is asking the Court to opine on the constitutionality of Suwannee County's taxation enforcement scheme and procedures.

Turner alleges his constitutional claims through 42 U.S.C. § 1983. (Doc. 24 at 9-10). "[W]here a Section 1983 action is grounded in an allegation of an unconstitutional tax scheme, to survive dismissal the plaintiff must demonstrate that there is no plain, adequate, and complete state remedy available." *Winicki*, 783 F.2d at 1570. Turner attempts to make this showing with a conclusory allegation: "Between the stonewalling and the impediments the Plaintiff shows reasonable person standard that there was no 'plain, adequate, and complete state remedy available.'" (Doc. 24 ¶ 24). Additionally, in a statement attached to the SAC, Turner says: "Suwannee County local government (Defendants) removate [sic], deceitful, intentional, unequal (only homesteader) actions prohibited and prevented an adequate, plain, timely State

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Turner, 2019 WL 5423389, at *1 (footnotes and internal citations omitted). Here, Turner alleges, in part, that Defendants (1) retaliated against him for a peaceful protest of Suwannee County's "discrimatory [sic] agricultural polices by displaying a sign on plaintiff['s] transportation that read 'Fire Jenkins' during the 2012 election cycle," (2) failed to deliver a subpoena or other legal notice of the sale of his property, (3) failed to provide "equal protection from unreasonable seizure and eventual" loss of his property, (4) failed to collect onehalf of the assessed value of the property, and (5) failed to consider the homestead status of the property. (Doc. 24).

Court Challenge."[3] (Doc. 24-1 at 2). Turner has not met his burden to show the unavailability of state remedies. As noted by Judge Barksdale, Turner's prior cases alone show that he has been able to file suit in Florida state and appellate courts.[4] *See Turner*, 2019 U.S. Dist. LEXIS

3. While Turner's statement is titled an Affidavit/Statement of Claim of Robert R. Turner (Doc. 24-1), it is really more of an extension of Turner's complaint because it is still Turner's good-faith recollection of the facts. *See Roberts v. Carnival Corp.*, 824 F. App'x 825, 826 (11th Cir. 2020) ("[T]he court is ordinarily barred from considering facts not alleged in the complaint or documents attached to a motion to dismiss. But an exception to this rule applies if a document attached to the complaint is 'referred to in the complaint, central to the plaintiff's claim, and of undisputed authenticity.'") (internal citations omitted) (quoting *Hi-Tech Pharm., Inc. v. HBS Int'l Corp.*, 910 F.3d 1186, 1189 (11th Cir. 2018)); *Hughes v. Rowe*, 449 U.S. 5, 9, 101 S. Ct. 173, 66 L. Ed. 2d 163 (1980) (stating that *pro se* litigants are held to "less stringent standards than formal pleadings drafted by lawyers") (citation omitted).

4. Specifically, Judge Barksdale stated:

> To his motion to dismiss, Mr. Jenkins attaches a final order of dismissal in *Turner v. Jenkins*, No. 2017-CA-68, an earlier action Mr. Turner had brought against Mr. Jenkins in the Circuit Court, Third Judicial Circuit, Suwannee County, Florida. Doc. 15-1. In the order, the state court dismisses Mr. Turner's challenge of Mr. Jenkins's denial of a homestead tax exemption on the property for lack of subject-matter jurisdiction, ruling that Mr. Turner filed the action outside the 60-day period under FLA. STAT. § 194.171(2) for challenging tax assessments and that Mr. Turner lacked standing because he no longer owned the

183357, 2019 WL 5423389, at *2, 5; *Echols v. Monroe County*, No. 10-10085-CIV, 2012 U.S. Dist. LEXIS 198901, 2012 WL 13018371, at *8 (S.D. Fla. June 5, 2012)

> property. Doc. 15-1. The court found that, for the 2016 tax year, Mr. Jenkins had certified the tax roll for collection on October 4, 2016, making December 3, 2016, the last day Mr. Turner could challenge the assessment and making his complaint filed on April 10, 2017, and any complaint about earlier tax years outside the 60-day statutory period. Doc. 15-1 at 2-3. Mr. Turner appealed an order denying a motion for rehearing to Florida's First District Court of Appeal without success. *See* docket in *Turner v. Jenkins*, No. 1D18-509 (Fla. 1st DCA). Three months after his state-court appeal ended, Mr. Turner filed this action here. . . .
>
> Mr. Turner has not met his burden of showing the unavailability of plain, adequate, and complete state remedies, and the order dismissing the action he first tried to bring in state court shows otherwise. *See* Doc. 15-1; FLA. STAT. Title XIV ("Taxation and Finance"), Ch. 194 ("Administrative and Judicial Review of Property Taxes"). That the state court ruled it was without jurisdiction to decide the action does not change the result; Mr. Turner could have avoided the ruling by filing the state action sooner or with a successful argument that asserted procedural irregularities meant the 60-day period had not been triggered. *See, e.g., Miles v. Parrish*, 199 So. 3d 1046 (Fla. 4th DCA 2016) (holding "statute of nonclaim under section 194.171" was not triggered because of property appraiser's failure to follow statutory mandates).

Turner, 2019 U.S. Dist. LEXIS 183357, 2019 WL 5423389, at *2, 5 (footnotes omitted).

("Moreover, the Florida legislature has provided remedies for any taxpayer to pursue when he or she objects to an assessment.").

In conclusion, even if Turner adequately alleged that his rights were violated, Turner asks the Court to rule on the constitutionality of Suwannee County's tax procedures. Plain, adequate, and complete state remedies are available to Turner, so the Court finds that dismissal based on the comity doctrine is warranted. This Court is not the proper forum to raise these claims. Accordingly, it is hereby

ORDERED:

1. Defendants' Motion to Dismiss (Doc. 27) is **GRANTED**.

2. Plaintiff Robert R. Turner's Second Amended Complaint (Doc. 24) is **DISMISSED without prejudice**.

3. Turner's Motion to Compel (Doc. 29) and Motion for Defense to Respond/Mediation (Doc. 33) are **DENIED as moot**.

4. The Clerk is directed to terminate the pending motions and deadlines and close the file.

DONE AND ORDERED in Jacksonville, Florida the 12th day of September, 2022.

/s/ Timothy J. Corrigan
TIMOTHY J. CORRIGAN
United States District Judge