

THE FINE PRINT

Mass. judge rules that state's method of taking property for unpaid taxes is unconstitutional

By [Sean P. Murphy](#) Globe Staff, Updated April 21, 2024, 4:05 p.m.



In 2017, the City of Greenfield targeted Stephen Woodbridge's property for unpaid taxes of a little less than \$6,000. Four years later, the city succeeded in gaining legal ownership of a property that had been in the Woodbridge family for 70 years. MATTHEW CAVANAUGH/FOR THE BOSTON GLOBE

For the first time, a Massachusetts court has ruled that the way some municipalities pursue tax-taking cases against homeowners — a practice critics call “equity theft” — is

unconstitutional.

The ruling comes in the wake of a unanimous US Supreme Court decision last year that said municipal and county governments may only recover the taxes owed, and not seize the remaining equity in the property.

Massachusetts is one of only a handful of states that presently allow local governments to take not only the taxes they are owed (plus interest and fees) but also the rest of the equity in properties.

Most often, the cases involve people who have inherited real estate and own it without a mortgage but lack the income to pay the taxes. In some instances, property worth hundreds of thousands of dollars is taken by municipalities when the amount owed in taxes is a small fraction of that.

Last week, Judge Michael K. Callan of Hampden Superior Court cited last year's Supreme Court decision ([Tyler v. Hennepin County, Minn.](#)) in barring the City of Springfield from taking about \$123,000 in equity from local homeowner Ashley M. Mills.

In Tyler, the Supreme Court ruled a tax-taking by a county in Minnesota violated the Fifth Amendment's prohibition against the government taking private property "without just compensation."

That ruling, while striking down the Minnesota law, said existing laws in other states may be constitutional if they provide a process for property owners to recover their equity.

Massachusetts law is mostly silent on the question of equity, and in the absence of an explicit prohibition, some municipalities have assumed the right to keep the full equity, with few safeguards for property owners.

Callan, in his ruling, said the state law used by municipalities in tax-taking, known as Chapter 60, does not provide a recovery process and therefore is “unconstitutional as applied in circumstances, such as here, where the tax debt is less than the value of the property.”

Chapter 60 “in its present form, is untenable and requires legislative correction,” Callan wrote in his 19-page ruling.

Mills first went into tax arrears on her single-family home and land in 2016, and a year later, the City of Springfield began proceedings against her on a debt of about \$2,000, which included interest of 14 percent (later bumped up to 16 percent), as legally allowed.

As of late last year, the debt had ballooned to about \$22,000, mostly due to high interest. At that time, the assessed value of Mills’s property was \$145,000, with a likely higher fair-market value.

Had the tax-taking been completed, the City of Springfield would have been free to sell Mills’s former property at auction, resulting in a likely windfall for the city of at least \$123,000, equal to the amount of equity Mills had in the property.

However, Mills received legal representation in the final stages of the process from two organizations opposed to equity theft, Pioneer Public Interest Law Center and Greater Boston Legal Service. She also got pro bono assistance from the Boston law firm Morgan, Lewis & Bockius.

There are other pending “equity theft” cases in the state and at least [one in a federal court](#) in Massachusetts, according to Frank J. Bailey, of Pioneer Public Interest Law Center.

The decision in Mills’s case, as welcome as it is, does not set a statewide precedent that is binding on other courts hearing similar cases, Bailey said. But a decision by the state

Supreme Judicial Court, if a case goes before that court, would be binding, he said.

“Our hope is for an eventual SJC ruling that Chapter 60 is unconstitutional,” he said.

“That would completely do away with equity theft in Massachusetts.”

An alternative to a SJC ruling would be an enactment by the state Legislature that explicitly prohibits equity takings, he said.

There are currently several pending bills at the Legislature that would do that.

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