



10-1982

Mennonite Board of Missions v. Adams

Lewis F. Powell Jr.

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Appellant was a rentgaze -
not owner of prop. sold at
~~Franklin~~^{tax} sale.

Our decisions have not
extended the Mullane requirement
of due notice to mortgagor.

PRELIMINARY MEMORANDUM

September 27, 1982 Conference
List 15, Sheet 1

No. 82-11

MENNONITE BOARD OF
MISSIONS

Appeal from Ind.Ct.App.
(Staton, Hoffman, Garrard)

v.

ADAMS

State/Civil

Timely¹

¹Appellant states that it filed a Petition to Transfer to the Indiana Supreme Court, which denied the petition on April 13, 1982. Appellant does not include the denial in its statement, but the Clerk's office confirmed that it had a record of the denial in its file. The action is timely.

DWS
FQ
Don - I am inclined to agree with the memo writers. This case seems
correctly decided. Any split is with an old (1964) Arizona case ^{that} I
would wait for a case to come out the other way.

JOB

1. SUMMARY: Appellant mortgagee argues that Indiana tax sale statutes and redemption statutes violate appellant's due process and equal protection rights because they fail to give mortgagees proper notice of tax sales and redemption rights.

2. FACTS AND DECISIONS BELOW: Moore executed a mortgage in favor of appellant and the mortgage was recorded. Moore was obligated to pay the property taxes but failed to so, although she continued to make her monthly mortgage payments. The property subject to the mortgage was sold to appellee. Appellant concedes that Moore received notice by mail of the sale, but appellant received no personal notice because the Indiana tax sale statute provides only for notice by publication and posting to any party other than the owner. Indiana law also provides that any party with an interest in tax sale property may redeem the property anytime within two years of the tax sale, although only former owners are notified of the expiration of the redemption period and other parties apparently do not even receive constructive notice through publication. During the redemption period, Moore continued to make her mortgage payments, and never told appellant of the tax sale. Appellant learned of the sale only after the redemption period was over. Appellee then filed an action to quiet title naming appellant and Moore as defendants. Moore never responded to the complaint, and a default judgment was entered against her. The trial court found in favor of appellee on summary judgment.

On appeal, the Ind.Ct.App. affirmed against appellant's contentions that the tax sale and redemption statutes violated appellant's due process and equal protection rights because pre-sale tax notice by publication to parties other than the owner violates due process, no notice of redemption rights violates due process, and the provision of personal notice of a tax sale to owners but not to mortgagees violates equal protection. As to pre-sale tax notice by publication, the court relied on its earlier decision in First Savings and Loan Ass'n v. Furnish, 367 N.E.2d 596 (Ind.Ct.App. 1977) (contained in juris.st. at 29). Furnish examined the contention that Mullane v. Hanover Bank & Trust Co., 339 U.S. 306 (1950) requires that a mortgagee who records must be given actual notice prior to tax sale, and concluded that Mullane and subsequent U.S. Sup.Ct. cases (Schroeder v. City of New York, 371 U.S. 208 (1962) and Walker v. City of Hutchinson, 352 U.S. 112 (1956) required that actual notice be given to owners of affected property, but that actual-notice protection was not extended to any group other than owners. Furnish also surveyed state practice, and was able to find only one 1964 Arizona case that extended Mullane to mortgagees. See Laz v. Southwestern Land Co., 97 Ariz. 69 (1964). The Furnish court concluded that mortgagees were not entitled to Mullane protection because the mortgagee, as a lender of money, could be expected to protect itself by keeping records of the mortgagor's payment of taxes. With respect to appellant's contention that due process required the state to provide notice to it of its right of redemption, the court relied on Short v.

Texaco, 406 N.E.2d 625 (Ind. 1980), aff'd 102 S.Ct. 781 (1982), and held that "(a)s in Short, all mortgagees have notice of the right of redemption by the enactment of the tax sale statutes and a grace period of two years granted by those statutes to protect their interests." Finally, the court held that the legislative scheme that provides actual notice of a tax sale to an owner, but only notice by publication to a mortgagee, withstands rational basis analysis (increased protection for owners and collection of taxes) under both federal and state standards, which the court held to be coextensive.

3. CONTENTIONS: On appeal, appellant argues that the court erred in following Furnish, which, appellant contends, is in conflict with Mullane and Greene v. Lindsey, 50 U.S.L.W. 4483 (1982). Appellant argues that there is substantial conflict in the state courts as to whether actual notice is required in tax-sale situations. Appellant contends that the court should not have relied on Short because its appeal was pending to this Court at the time, and that, in any event, the decision of this court that affirmed Short is not applicable because the mineral lapse statute in Short was self-executing whereas the statutes in the present case "require a series of affirmative acts by the State." Appellant does not explicitly address the equal protection argument apart from listing it as a question presented. Finally, appellant states that this Court has noted probable jurisdiction in cases similar to the present case, but has dismissed for reasons not applicable here.

4. DISCUSSION: Decisions of this Court cited by appellant concerning actual notice in various situations have not extended protection to parties other than the owners of the affected property, with the exception of Greene, which is clearly distinguishable. The state cases that appellant argues support its position also concern the owners of property with the exception of the 1964 Arizona case, which did extend Mullane to mortgagees. The cases that appellant cites as ones where the court noted probable jurisdiction and then dismissed are also cases involving owners and not mortgagees. Lower court resolution of the equal protection argument seems reasonable and appellant does not offer any new argument on appeal. According to the lower court, appellant offered no authority to show that the state is required to notify mortgagees of redemption rights, and appellant offers no argument in the statement other than that Texaco v. Short is not applicable, and his general reliance on Mullane throughout.

I recommend DWSFQ.

There is no responsive motion.

August 9, 1982

Francione

Op'n in pet'n

Court

Voted on....., 19...

Argued, 19...

Assigned, 19...

No. 82-11

Submitted, 19...

Announced, 19...

vs.

ADAMS

WFB Hunter
Mullane Q is
substantial.
But Mullane
has never been
extended to
non-possessory
interests

Note

(Relucted
for
BRW

to take
second look)

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Burger, Ch. J.						✓							
Brennan, J.				✓									
White, J.				✓									
Marshall, J.													
Blackmun, J.													
Powell, J.													
Rehnquist, J.													
Stevens, J.				✓									
O'Connor, J.						✓							

Mike would affirm, agreeing that the Ind. law (providing only for notification of mortgagees by publication of a tax ~~sale~~ sale) does not violate the D/P rationale of Mullane & Green (the recent Ky. case involving a "detainer action" "that could happen at any time").

These tax sales are held once a year at specified ~~tax~~ date & at Court House.

Also in this case the owner of the prop. ~~cont~~ had never defaulted on the mty. payments

- tho she BENCH MEMORANDUM had failed to pay taxes. No. 82-11 Also, ~~the~~ even after tax sale, owner

Mennonite Board of Missions v. Adams

Michael F. Sturley

(Held mty.)

continued to pay mortgage installments.

March 28, 1983

Pebr. prepared the mortgage

Questions Presented

1. Does due process require that a mortgagee receive actual notice of a tax sale?
2. Does due process require that a mortgagee receive actual notice of a right of redemption following a tax sale?
3. Does it violate equal protection to give actual notice of a tax sale to an "owner" but not to a mortgagee?

I. Background

A. Statutory Background

Under certain conditions, Indiana law permits a county to recover delinquent taxes by selling the property at public auction. Ind. Code §6-1.1-24-1 (1978). Such auctions are conducted at the county courthouse, §6-1.1-24-2(4), on the second Monday in August each year, §6-1.1-24-2(5). Prior to the auction, the county auditor must post a specified notice "at a public place of posting in the county courthouse at least three (3) weeks before the date of sale." §6-1.1-24-3. In addition, the law requires that notice "shall be printed in two (2) newspapers which represent different political parties and which are published in the county," §6-1.1-22-4(b), "once each week for three (3) consecutive weeks before the sale," §6-1.1-24-3. Property owners are also entitled to "a notice of the sale by certified mail ... at their last address" 21 days prior to the auction. §6-1.1-24-4. *Prop. owners*

Indiana law provides a redemption period of two years following a tax auction. During this redemption period, an interested person may pay the tax delinquency and retain his interest in the property. §6-1.1-25-1. At the end of the redemption period, if no redemption has occurred, the tax sale purchaser receives a tax deed vesting him with a fee simple absolute estate free of prior encumbrances. §6-1.1-25-4. The former owner is entitled to receive a notice by certified mail between 30 and 60 days before a tax deed is executed. §6-1.1-25-6. *Redemption - time period 2 yrs*

B. Facts

In 1973, ap'ant Mennonite Board of Missions (MBM) conveyed certain property on Stevens Avenue in Elkhart, Indiana, to one Moore. She, in turn, executed a mortgage on the property in favor of MBM to secure \$14,000 in indebtedness. One condition of the mortgage was that Moore would pay property taxes. After 1974, however, she neglected to do so--despite the fact that she continued to make her mortgage payments.

*Owner paid
installments on
the note - but
neglected to pay
taxes*

On August 8, 1977, the property was sold to ap'ee Adams at a tax sale for \$1,167.75. The county sent the required notice to Moore, and published the required public notices. During the two-year redemption period, Moore continued to make her mortgage payments, but she did not redeem the property. On August 10, 1979, Adams received a tax deed for the property, which he recorded on August 14. MBM did not have actual knowledge of the sale or the redemption period until after Adams had received and recorded his tax deed.

C. Decisions Below

In November, 1979, Adams instituted the present action against Moore and MBM to quiet his title. Moore never responded and a default judgment was entered against her. MBM defended the action on the grounds that the tax sale procedure violated the Due Process and Equal Protection Clauses. The Elkhart Superior Court (Jones) granted summary judgment for Adams.

On appeal, the Indiana Court of Appeals (Hoffman, Staton, Garrard) affirmed. The public notice was adequate to

protect mortgagees' rights prior to the tax sale. The enactment of the tax statutes and the two-year redemption period were adequate to protect mortgagees' rights prior to the execution of the tax deed. The statutory scheme survives an equal protection challenge under rational basis scrutiny.

The Indiana Supreme Court denied discretionary review.

II. Discussion

A. Notice Prior to the Sale

The legal standard is well established here. "'An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" Greene v. Lindsey, ___ U.S. ___, ___ (1982) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)) (emphasis added by Greene Court).

Whether ~~that~~ standard has been satisfied here is essentially a judgment call. Prior cases offer some guidance, of course. In Greene, which involved detainer actions, posting notices on the doors of tenants in a public house project was held inadequate. In Mullane, which involved the settlement of accounts of a common trust fund, notice by publication was held to be adequate when the trust company did not know the addresses of interested parties, but inadequate when it did know the addresses. In the latter situation, notice by ordinary mail would have been adequate. The circumstances in each case, however, are dif-

yes

ferent, and the final decision must be made on the basis of what is "reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action."

In my view, the Indiana procedures do satisfy due process requirements. Several factors influence this conclusion.

But these are many purchases money not met. (1) It is important to remember that mortgagees tend to be very sophisticated parties. They are commonly banks. They are invariably parties that have the financial wherewithal to invest large sums for substantial periods. One cannot equate mortgagees with Greene's public housing project tenants or Mullane's small investors. (2) There were simple procedures that MBM could and should have taken to protect itself. Tax sales occur only once a year on a date fixed by statute. MBM had no excuse not to know that a tax sale would be held on August 8, 1977. As a mortgagee, it should have known to investigate the situation and to learn if any of its properties were subject to being sold. Again the situation is unlike Greene and Mullane, where detainer actions and judicial account settlements may happen at any time, and interested parties have no particular reason to watch for them. Furthermore, the required investigation in this case would have been a simple matter, for notice was posted at a specified place in the county courthouse. It also seems likely that MBM, as an organization with offices in the county for over 50 years, would know what the papers of record were. It thus should have known to look for the newspaper notices in late July. Finally, MBM could easily have sent a representative to the auction to protect its interests. (3) Due process standards must be set with re-

yes

Yes

spect to reasonably likely situations. As Mullane recognized, ordinary mail may be lost, but that does not mean that notice by ordinary mail is inadequate. Here the Indiana statutes protect mortgagees under ordinary circumstances. I suspect that a mortgagor who fails to pay taxes commonly fails to make mortgage payments, too. At the very least, I would be surprised if many mortgagors continue to make mortgage payments for two years after their property has been auctioned at a tax sale. A mortgagor with the money to make payments generally would prefer to prevent the loss of the property under the tax sale. It is only in peculiar situations such as this, therefore, that a tax sale would occur without the mortgagee learning that something was wrong with the mortgagor's finances.

Yes
Yes

B. MBM's Other Contentions

If MBM is going to succeed on this appeal, it will have to do so on its first ground. Once the Court concludes that notice prior to the tax sale was adequate, it follows that the failure to provide notice during the redemption period is also permissible. If anything, the notice prior to the tax sale should be greater, since the mortgagee has a better opportunity to protect its interest prior to the auction. But in practice, the reverse is true. The mortgagee has all the opportunities that it had before the sale and, in addition, has two years for further investigation.

Yes

The equal protection challenge is totally meritless. Mortgagees are not a suspect class, so the statutory scheme need

only survive rational basis scrutiny. There are clear, rational reasons for distinguishing between property owners and mortgagees. (1) Owners tend to be less sophisticated, thus requiring greater protection. (2) Owners have much more to lose. An owner loses the fee simple estate, which in many cases means losing a basic necessity of life. The mortgagee loses only its lien, a nonpossessory interest traditionally accorded less protection. The mortgagee generally retains its contractual right to repayment of the debt from the mortgagor for whatever that might be worth. (3) The primary purpose of the statutory scheme is to insure collection of property taxes. Owners are generally the parties liable for the taxes. It is thus rational that they should receive the principal notice. These distinctions between owners and mortgagees are probably sufficient to enable the scheme to survive even heightened scrutiny. They are certainly adequate for rational basis scrutiny.

yes,
or
crown

III. Conclusion

The decision of the Indiana Court of Appeals should be affirmed. Under all of the circumstances, the notice provisions of the tax sale scheme are sufficient to satisfy the requirements of due process. The distinctions between owners and mortgagees are justified for rational reasons.

I'll take
and then
look
at
briefs.

*Constructive notice only to
a mtg. sec.*

summarized

Cohen (Petr)

Refer to Hale w/ Rev article (1975) -
- 21 states do not provide for written
notice.

Mullane controls.

Miller (Rush)

Under Ind. law a mortgage
is not an "owner" & has no "title"
to the land. ~~A mortgage does~~
have a prop. interest - a "lien".

(J P S asked "what is state
interest in not being required
to ~~sign~~ give written notice. ~~?~~
Answer not persuasive)

Distinguishes mortgage from
owner.

(lots of purchase money ~~money~~
mortgs)

The Chief Justice

Rev
Inclined to Aff m - not at vest
x x x
After discussion - Rev,

Justice Brennan

Rev.

Close

Justice White

Rev.

Justice Marshall *Rev.*

Justice Blackmun *Rev*
Can't draw line bet. supplemented
& unsupplemented.

Justice Powell *Aff'm tentative - probably not dissent.*
On facts here I'm inclined
to aff'm.
If we depart from facts
it is not easy to know where
to end the reach of Q/P.
Yet the problem of purchase
money m'tgs is ~~was~~ serious

Justice Rehnquist *Off.*

Justice Stevens *Rev.*

No state interest not to give notice.
#

Justice O'Connor *Rev - & remand for factual*

Green is persuasive

7
Would limit to this type
of mty.

Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: _____

*I'll join
when she
circulates.*

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-11

MENNONITE BOARD OF MISSIONS, APPELLANT v.
RICHARD C. ADAMS

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

[June —, 1983]

JUSTICE O'CONNOR, dissenting.

Today, the Court departs significantly from its prior decisions and holds that before the State conducts *any* proceeding that will affect the legally protected interests of *any* party, the State must provide notice to that party by means certain to ensure actual notice as long as the party's identity and location are "reasonably ascertainable." *Ante*, p. 7. Applying this novel and unjustified principle to the ~~the~~ present case, the Court decides that the mortgagee involved deserved more than the notice by publication and posting that were provided. I dissent because the Court's approach is unwarranted both as a general rule and as the rule of this case.

I

In *Mullane v. Central Hanover Trust Co.*, 339 U. S. 306, 314 (1950), the Court established that the "elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." We emphasized that notice is constitutionally adequate when "the practicalities and peculiarities of the case . . . are reasonably met," *id.*, at 314-315. See also *Walker v. City of Hutchinson*, 352 U. S. 112, 115

This looks good. SOL could make the case even stronger by mentioning that the address in the record was wrong. But I don't think that matters to the analysis. I suggest you join White

(1956); *Schroeder v. City of New York*, 371 U. S. 208, 211–212 (1962); *Greene v. Lindsey*, 456 U. S. 444, 449–450 (1982). The key focus is the “reasonableness” of the means chosen by the State. *Mullane, supra*, 339 U. S., at 315. Whether a particular method of notice is reasonable depends on the outcome of the balance between the “interest of the State” and “the individual interest sought to protected by the Fourteenth Amendment.” *Id.*, at 314. Of course, “[i]t is not our responsibility to prescribe the form of service that the [State] . . . must adopt.” *Greene, supra*, 456 U. S., at 455, n. 9. It is the primary responsibility of the State to strike this balance, and we will upset this process only when the State strikes the balance in an irrational manner.

From *Mullane* on, the Court has adamantly refused to commit “itself to any formula acheiving a balance between these interests in a particular proceeding or determining when constructive notice may be utilized or what test it must meet.” 339 U. S., at 314. Indeed, we have recognized “the impossibility of setting up a rigid formula as to the kind of notice that must be given; notice will *vary* with the circumstances and conditions.” *Walker, supra*, 352 U. S., at 115 (emphasis added). Our approach in these cases has always reflected the general principle that “[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation.” *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 367 U. S. 886, 895 (1961). See also *Matthews v. Eldridge*, 424 U. S., 319, 334–335 (1976).

A

Although the Court purports to apply these settled principles in this case, its decision today is squarely at odds with the balancing approach that we have developed. The Court now holds that *whenever* a party has a legally protected property interest, “[n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition

to any proceeding which will adversely affect the interest[] . . . if [the party's] name and address are reasonably ascertainable." *Ante*, p. 7. Without knowing what state and individual interests will be at stake in future cases, the Court espouses a general principle ostensibly applicable whenever *any* legally protected property interest may be adversely affected. This is a flat rejection of the view that no "formula" can be devised that adequately evaluates the constitutionality of a procedure created by a State to provide notice in a certain class of cases. Despite the fact that *Mullane* itself accepted that constructive notice satisfied the dictates of due process in certain circumstances,¹ the Court, citing *Mullane*, now holds that constructive notice can *never* suffice whenever there is a legally protected property interest at stake.

In seeking to justify this broad rule, the Court holds that although a party's inability to safeguard its interests may result in imposing greater notice burdens on the State, the fact that a party may be more able "to safeguard its interests does not relieve the State of its constitutional obligation." *Ante*, p. 7. Apart from ignoring the fact that it is the totality of circumstances that determines the content of the State's obligation to provide notice in particular cases, the Court also neglects to consider that the constitutional obligation imposed upon the State may itself be defined by the party's ability to protect its interest. As recently as last Term, the Court held that the focus of the due process inquiry has always been the effect of a notice procedure on "a particular class of cases." *Greene, supra*, 456 U. S., at 451 (emphasis added). In fashioning a broad rule for "the least sophisticated creditor," *ante*, p. 7, the Court ignores the well-settled principle that "procedural due process rules are shaped by

¹ In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314 (1950), we held that "[p]ersonal service has not in all circumstances been regarded as indispensable to the process due to residents, and it has more often been held unnecessary as to nonresidents."

the risk of error inherent in the truth finding process as applied to the generality of cases, not the rare exceptions." *Matthews v. Eldridge*, 424 U. S. 319, 344 (1976); see also *Califano v. Yamasaki*, 442 U. S. 682, 696 (1979). If the members of a particular class generally possess the ability to safeguard their interests, then this fact must be taken into account when we consider the "totality of circumstances," as required by *Mullane*. Indeed, the criterion established by *Mullane* "is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals." 339 U. S., at 315 (quoting *American Land Co. v. Zeiss*, 219 U. S. 47, 67 (1911)).

B

The Court also holds that the condition for receiving notice under its new approach is that the name and address of the party must be "reasonably ascertainable." In applying this requirement to the mortgagee in this case, the Court holds that the State must exercise "reasonably diligent efforts" in determining the address of the mortgagee, *id.*, at 6, n. 3, and suggests that the State is required to make some effort "to discover the identity and the whereabouts of a mortgagee whose identity is not in the public record." *Ibid.* Again, the Court departs from our prior cases. In *all* of the cases relied on by the Court in its analysis, the State either actually knew the identity or incapacity of the party seeking notice, or that identity was "very easily ascertainable." *Schroeder, supra*, 371 U. S., at 212-213. See also *Mullane, supra*, 339 U. S., at 318; *Covey v. Town of Summers, supra*, 351 U. S. 141, 146 (1956); *Walker, supra*, 352 U. S., at 116, *Eisen v. Carlisle & Jacquelin*, 417 U. S. 156, 175 (1974).² Under the Court's de-

²In *Mullane*, the Court contrasted those parties whose identity and whereabouts are known or "at hand" with those "whose interests or whereabouts could not with due diligence be ascertained." 339 U. S., at

cision today, it is not clear how far the State must go in providing for reasonable efforts to ascertain the name and address of an affected party. This uncertainty becomes particularly ominous in the light of the fact that the duty to ascertain identity and location, and to notify by mail or other similar means, exists whenever any legally protected interest is implicated.

II

Once the Court effectively rejects *Mullane* and its progeny by accepting a *per se* rule against constructive notice, it applies its rule and holds that the mortgagee in this case must receive personal service or mailed notice because it has a legally protected interest at stake, and because the mortgage was publicly recorded. See *ante*, p. 6. If the Court had observed its prior decisions and engaged in the balancing required by *Mullane*, it would have reached the opposite result.

It cannot be doubted that the State has a vital interest in the collection of its tax revenues in whatever reasonable manner that it chooses: "In authorizing the proceedings to enforce the payment of the taxes upon lands sold to a purchaser at tax sale, the State is in exercise of its sovereign power to raise revenue essential to carry on the affairs of state and the due administration of the laws. . . . 'The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain.'" *Leigh v. Green*, 193 U. S. 79, 89 (1904) (quoting *Bell's Gap Railroad Company v. Pennsylvania*, 134 U. S. 232, 239

318, 317. This language must be read in the light of the facts of *Mullane*, in which the identity and location of certain beneficiaries were actually known. In addition, the Court in *Mullane* expressly rejected the view that a search "under ordinary standards of diligence" was required in that case. *Id.*, at 317.

(1890)). The State has decided to accommodate its vital interest in this respect through the sale of real property on which payments of property taxes have been delinquent for a certain period of time.³

The State has an equally strong interest in avoiding the burden imposed by the requirement that it must exercise "reasonable" efforts to ascertain the identity and location of any party with a legally protected interest. In the instant case, that burden is not limited to mailing notice. Rather, the State must have someone check the records and ascertain with respect to each delinquent tax payer whether there is a mortgagee, perhaps whether the mortgage has been paid off, and whether there is a dependable address.

Against these vital interests of the State, we must weigh the interest possessed by the relevant class—in this case, mortgagees.⁴ Contrary to the Court's approach today, this interest may not be evaluated simply by reference to the fact that we have frequently found constructive notice to be inadequate since *Mullane*. Rather, such interest "must be judged in the light of its practical application to the affairs of men as they are ordinarily conducted." *North Laramie Land Co. v. Hoffman*, 268 U. S. 276, 283 (1925).

Chief Justice Marshall wrote long ago that "it is part of common prudence for all those who have any interest in [property], to guard that interest by persons who are in a situation to protect it." *The Mary*, 13 U. S. (9 Cranch) 126, 144 (1815). We have never rejected this principle, and, in-

³The Court suggests that the notice that it requires "may ultimately relieve the county of a more substantial administrative burden if the mortgagee arranges for payment of the delinquent taxes prior to the tax sale." *Ante*, p. 7, 4. The Court neglects the fact that the State is a better judge of how it wants to settle its tax debts than is this Court.

⁴This is not to say that the rule espoused must cover all conceivable mortgagees in all conceivable circumstances. The flexibility of due process is sufficient to accommodate those atypical members of the class of mortgagees.

deed, we held in *Mullane* that “[a] State may indulge” the assumption that a property owner “usually arranges means to learn of any direct attack upon his possessory or proprietary rights.” 339 U. S., at 316. When we have found constructive notice to be inadequate, it has always been where an owner of property is, for all purposes, *unable* to protect his interest because there is no practical way for him to learn of state action that threatens to affect his property interest. In each case, the adverse action was one that was completely unexpected by the owner, and the owner would become aware of the action only by the fortuitous occasion of reading “an advertisement in small type inserted in the back pages of a newspaper . . . [that may] not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention.” *Mullane*, *supra*, 339 U. S., at 315. In each case, the individuals had no reason to expect that their property interests were being affected.

This is not the case as far as tax sales and mortgagees are concerned. Unlike condemnation or an unexpected accounting, the assessment of taxes occurs with regularity and predictability, and the state action in this case cannot reasonably be characterized as unexpected in any sense. Unlike the parties in our other ~~other~~ cases, the Mennonite Board had a regular event, the assessment of taxes, upon which to focus, in its effort to protect its interest. Further, approximately 95% of the mortgage debt outstanding in the United States is held by private institutional lenders and federally-supported agencies. U. S. Dept. of Commerce, Statistical Abstract of the United States: 1982-83, 511 (103d ed.).⁵ It is highly un-

⁵The Court holds that “a mortgage need not involve a complex commercial transaction among knowledgeable parties . . .” *Ante*, p. 7. This is certainly true; however, that does not change the fact that even if the Board is not a professional money lender, it voluntarily entered into a fairly sophisticated transaction with Moore. As the court below observed: “The

likely, if likely at all, that a significant number of mortgagees are unaware of the consequences that ensue when their mortgagors fail to pay taxes assessed on the mortgaged property. Indeed, in this case, the Board itself required that Moore pay all property taxes.

There is no doubt that the Board could have safeguarded its interest with a minimum amount of effort. The county auctions of property commence by statute on the second Monday of each year. Ind. Code §6-1.1-24-2(5). The county auditor is required to post notice in the county courthouse at least three weeks before the date of sale. Ind. Code §6-1.1-24-3(a). The auditor is also required to publish notice in two different newspapers once each week for three weeks before the sale. Ind. Code §6-1.1-24-3(a); Ind. Code 6-1.1-22-4(b). The Board could have supplemented the protection offered by the State with the additional measures suggested by the court below: The Board could have required that Moore provide it with copies of paid tax assessments, or could have required that Moore deposit the tax monies in an escrow account, or could have itself checked the public records to determine whether the tax assessment had been paid. Pet. for Cert. 27.

When a party is unreasonable in failing to protect its interest despite its ability to do so, due process does not require that the State save the party from its own lack of care. The balance required by *Mullane* clearly weighs in favor of finding that the Indiana statutes satisfied the requirements of due process. Accordingly, I dissent.

State cannot reasonably be expected to assume the risk of its citizens' business ventures." Pet. for Cert. 27, n. 9.

Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

W. T. O'

From: **Justice Marshall**

Circulated: MAY 12 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-11

MENNONITE BOARD OF MISSIONS, APPELLANT *v.*
RICHARD C. ADAMS

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

[May —, 1983]

JUSTICE MARSHALL, delivered the opinion of the Court.

This appeal raises the question whether notice by publication and posting provides a mortgagee of real property with adequate notice of a proceeding to sell the mortgaged property for nonpayment of taxes.

I

To secure an obligation to pay \$14,000, Alfred Jean Moore executed a mortgage in favor of appellant Mennonite Board of Missions (MBM) on property in Elkhart, Indiana, that Moore had purchased from MBM. The mortgage was recorded in the Elkhart County Recorder's Office on March 1, 1973. Under the terms of the agreement, Moore was responsible for paying all of the property taxes. Without MBM's knowledge, however, she failed to pay taxes on the property.

Indiana law provides for the annual sale of real property on which payments of property taxes have been delinquent for fifteen months or longer. Ind. Code §6-1.1-24-1 *et seq.* Prior to the sale, the county auditor must post notice in the county courthouse and publish notice once each week for three consecutive weeks. §6-1.1-24-3. The owner of the property is entitled to notice by certified mail to his last known address. §6-1.1-24-4.¹ Until 1980, however, Indi-

¹ Because a mortgagee has no title to the mortgaged property under

Reviewed

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*See my
letter to
Thurgood*

ana law did not provide for notice by mail or personal service to mortgagees of property that was to be sold for nonpayment of taxes.²

After the required notice is provided, the county treasurer holds a public auction at which the real property is sold to the highest bidder. § 6-1.1-24-5. The purchaser acquires a certificate of sale which constitutes a lien against the real property for the entire amount paid. § 6-1.1-24-9. This lien is superior to all other liens against the property which existed at the time the certificate was issued. *Ibid.*

The tax sale is followed by a two-year redemption period during which the "owner, occupant, lienholder, or other person who has an interest in" the property may redeem the property. § 6-1.1-25-1. To redeem the property an individual must pay the county treasurer a sum sufficient to cover the purchase price of the property at the tax sale, the amount of taxes and special assessments paid by the purchaser following the sale, plus an additional percentage specified in the statute. §§ 6-1.1-25-2, 6-1.1-25-3. The county in turn remits the payment to the purchaser of the property at the tax sale.

If no one redeems the property during the statutory redemption period, the purchaser may apply to the county auditor for a deed to the property. Before executing and delivering the deed, the county auditor must notify the former owner that he is still entitled to redeem the property. § 6-1.1-25-6. No notice to the mortgagee is required. If

Indiana law, the mortgagee is not considered an "owner" for purposes of § 6-1.1-24-4. *First Savings & Loan Assn. of Central Indiana v. Furnish*, 367 N. E. 2d 596, 600, n. 14 (Ind. App. 1977).

² Ind. Code § 6-1.1-24-4.2, added in 1980, provides for notice by certified mail to any mortgagee of real property which is subject to tax sale proceedings, if the mortgagee has annually requested such notice and has agreed to pay a fee, not to exceed \$10, to cover the cost of sending notice. Because the events in question in this case occurred before the 1980 amendment, the constitutionality of the amendment is not before us.

the property is not redeemed within thirty days, the county auditor may then execute and deliver a deed for the property to the purchaser, § 6-1.1-25-4, who thereby acquires "an estate in fee simple absolute, free and clear of all liens and encumbrances." § 6-1.1-25-4(d).

After obtaining a deed, the purchaser may initiate an action to quiet his title to the property. § 6.1.1-25-14. The previous owner, lienholders, and others who claim to have an interest in the property may no longer redeem the property. They may defeat the title conveyed by the tax deed only by proving, *inter alia*, that the property had not been subject to, or assessed for, the taxes for which it was sold, that the taxes had been paid before the sale, or that the property was properly redeemed before the deed was executed. § 6.1.1-25-16.

In 1977 Elkhart County initiated proceedings to sell Moore's property for nonpayment of taxes. The County provided notice as required under the statute: it posted and published an announcement of the tax sale and mailed notice to Moore by certified mail. MBM was not informed of the pending tax sale either by the county auditor or by Moore. The property was sold for \$1,167.75 to appellee Richard Adams on August 8, 1977. Neither Moore nor MBM appeared at the sale or took steps thereafter to redeem the property. Following the sale of her property, Moore continued to make payments each month to MBM, and as a result MBM did not realize that the property had been sold. On August 16, 1979, MBM first learned of the tax sale. By then the redemption period had run and Moore still owed appellant \$8,237.19.

In November 1979, Adams filed a suit in state court seeking to quiet title to the property. In opposition to Adams' motion for summary judgment, MBM contended that it had not received constitutionally adequate notice of the pending tax sale and of the opportunity to redeem the property following the tax sale. The trial court upheld the Indiana tax

sale statute against this constitutional challenge. The Indiana Court of Appeals affirmed. 427 N. E. 2d 686 (1981). We noted probable jurisdiction, — U. S. — (1982), and we now reverse.

II

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314 (1950), this Court recognized that prior to an action which will affect an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment, a State must provide “notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Invoking this “elementary and fundamental requirement of due process,” *ibid*, the Court held that published notice of an action to settle the accounts of a common trust fund was not sufficient to inform beneficiaries of the trust whose names and addresses were known. The Court explained that notice by publication was not reasonably calculated to provide actual notice of the pending proceeding and was therefore inadequate to inform those who could be notified by more effective means such as personal service or mailed notice:

“Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper’s normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when as here the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention. In weighing its sufficiency on the basis of equivalence with actual notice we are unable to regard this as more than a feint.” *Id.*, at 315.

In subsequent cases, this Court has adhered unwaiveringly to the principle announced in *Mullane*. In *Walker v. City of Hutchinson*, 352 U. S. 112 (1956), for example, the Court held that notice of condemnation proceedings published in a local newspaper was an inadequate means of informing a landowner whose name was known to the city and was on the official records. Similarly, in *Schroeder v. City of New York*, 371 U. S. 208 (1962), the Court concluded that publication in a newspaper and posted notices were inadequate to apprise a property owner of condemnation proceedings when his name and address were readily ascertainable from both deed records and tax rolls. Most recently, in *Greene v. Lindsey*, — U. S. — (1982), we held that posting a summons on the door of a tenant's apartment was an inadequate means of providing notice of forcible entry and detainer actions. See also *Memphis Light, Gas & Water Div. v. Craft*, 436 U. S. 1, 13-15 (1978); *Eisen v. Carlisle & Jacquelin*, 417 U. S. 156, 174-175 (1974); *Bank of Marin v. England*, 385 U. S. 99, 102 (1966); *Covey v. Somers*, 351 U. S. 141, 146-147 (1956); *City of New York v. New York, N. H. & H. R. Co.*, 344 U. S. 293, 296-297 (1953).

This case is controlled by the analysis in *Mullane*. To begin with, a mortgagee possesses a substantial property interest that is significantly affected by a tax sale. Under Indiana law, a mortgagee acquires a lien on the owner's property which may be conveyed together with the mortgagor's personal obligation to repay the debt secured by the mortgage. Ind. Code § 32-8-11-7. A mortgagee's security interest generally has priority over subsequent claims or liens attaching to the property, and a purchase money mortgage takes precedence over virtually all other claims or liens including those which antedate the execution of the mortgage. Ind. Code § 32-8-11-4. The tax sale immediately and drastically diminishes the value of this security interest by granting the tax-sale purchaser a lien with priority over that of all other creditors. Ultimately, the tax sale may result in the

complete nullification of the mortgagee's interest, since the purchaser acquires title free of all liens and other encumbrances at the conclusion of the redemption period.

Since a mortgagee clearly has a legally protected property interest, he is entitled to notice reasonably calculated to apprise him of a pending tax sale. Cf. *Wiswall v. Sampson*, 55 U. S. 52, 67 (1852). When the mortgagee is identified in a mortgage that is publicly recorded, the county may employ notice by mail, personal service, or any other method equally likely to ensure that he is in fact notified.³ But constructive notice to a mortgagee does not satisfy the mandate of *Mullane*.

Neither notice by publication and posting, nor mailed notice to the property owner, are means "such as one desirous of actually informing the [mortgagee] might reasonably adopt to accomplish it." *Mullane, supra*, at 315. Because they are designed primarily to attract prospective purchasers to the tax sale, publication and posting are unlikely to reach those who, although they have an interest in the property, do not make special efforts to keep abreast of such notices. *Walker v. City of Hutchinson, supra*, at 116; *New York v. New York, N. H. & H. R. Co., supra*, at 296; *Mullane, supra*, at 315. Notice to the property owner, who is not in privity with his creditor and who has failed to take steps nec-

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³ In this case, the mortgage on file with the county recorder identified the mortgagee only as "MENNONITE BOARD OF MISSIONS a corporation, of Wayne County, in the State of Ohio." We assume that the mortgagee's address could have been ascertained by reasonably diligent efforts. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 317 (1950). Simply mailing a letter to "Mennonite Board of Missions, Wayne County, Ohio," quite likely would have provided actual notice, given "the well-known skill of postal officials and employees in making proper delivery of letters defectively addressed." *Grannis v. Ordean*, 234 U. S. 385, 397-398 (1914). We do not suggest, however, that a governmental body is required to undertake extraordinary efforts to discover the identity and whereabouts of a mortgagee whose identity is not in the public record.

essary to preserve his own property interest, also cannot be expected to lead to actual notice to the mortgagee. Cf. *Nelson v. New York City*, 352 U. S. 103, 107-109 (1956). The County's use of these less reliable forms of notice is not reasonable where, as here, "an inexpensive and efficient mechanism such as mail service is available." *Greene v. Lindsey*, *supra*, at —.

Personal service or mailed notice is required even though sophisticated creditors have means at their disposal to discover whether property taxes have not been paid and whether tax sale proceedings are therefore likely to be initiated. In the first place, a mortgage need not involve a complex commercial transaction among knowledgeable parties, and it may well be the least sophisticated creditor whose security interest is threatened by a tax sale. More importantly, a party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation. It is true that particularly extensive efforts to provide notice may often be required when the State is aware of a party's inexperience or incompetence. See, e. g., *Memphis Light, Gas & Water Div. v. Craft*, *supra*, at 13-15; *Covey v. Somers*, *supra*. But it does not follow that the State may forego even the relatively modest administrative burden of providing notice by mail to parties who are particularly resourceful.⁴ Cf. *New York v. New York, N. H. & H. R. Co.*, *supra*, at 297. Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the interests of any party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable. Furthermore, a mortgagee's knowledge of delinquency in the payment of taxes is not equivalent to notice

⁴ Indeed, notice by mail to the mortgagee may ultimately relieve the county of a more substantial administrative burden if the mortgagee arranges for payment of the delinquent taxes prior to the tax sale.

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that a tax sale is pending. The latter “was the information which the [County] was constitutionally obliged to give personally to the appellant—an obligation which the mailing of a single letter would have discharged.” *Schroeder v. City of New York*, *supra*, at 214.

We therefore conclude that the manner of notice provided to appellant did not meet the requirements of the Due Process Clause of the Fourteenth Amendment.⁵ Accordingly, the judgment of the Indiana Court of Appeals is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

⁵This appeal also presents the question whether, before the county auditor executes and delivers a deed to the tax-sale purchaser, the mortgagee is constitutionally entitled to notice of its right to redeem the property. Cf. *Griffin v. Griffin*, 327 U. S. 220, 229 (1946). Because we conclude that the failure to give adequate notice of the tax sale proceeding deprived appellant of due process of law, we need not reach this question.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS



May 12, 1983

Re: 82-11 - Mennonite Board of Missions
v. Adams

Dear Thurgood:

Please join me.

Respectfully,

Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 12, 1983

✓

Re: 82-11 -

Mennonite Board of Missions v. Adams

Dear Thurgood,

Please join me.

Sincerely,

BW

Justice Marshall

Copies to the Conference

cpm

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

✓

May 12, 1983

No. 82-11 Mennonite Board of Missions v. Adams

Dear Thurgood,

I will either write separately or await other writing. I had thought we should remand to determine whether the plaintiff below was entitled to relief. In addition, I am concerned about your suggestion on p. 7 that notice by mail is a minimum constitutional precondition to all proceedings. Finally, I am also concerned about any opinion which could be applied retroactively.

Sincerely,

Sandra

Justice Marshall

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

✓

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 13, 1983

Re: No. 82-11 - Mennonite Board of Missions v. Adams

Dear Thurgood:

Please join me.

Sincerely,

HAR.

Justice Marshall

cc: The Conference

May 13, 1983

82-11 Mennonite Board of Missions v. Adams

Dear Thurgood:

My vote at Conference was tentatively to affirm.

On the facts in this case, I may conclude not to dissent. As presently advised, however, I do not think I could join your opinion. The burden on the county is not limited simply to mailing notice. A county would have to have someone check the records to ascertain with respect to each delinquent taxpayer whether there is a mortgage, perhaps whether it has been paid off, and whether there is a dependable address.

Moreover, most mortgagees are in the business of lending money for investment purposes - as is true of appellant in this case. Such mortgagees are in a position to protect themselves, and usually do so by appropriate provisions in the mortgage instrument by requiring proof annually that taxes and insurance have been paid. In this case, the appellant itself prepared the mortgage.

Also, as Sandra has suggested, the statement on p. 7 that notice by mail is a minimum constitutional precondition to all proceedings goes well beyond my understanding of our prior decisions.

In sum, I will await further writing and possibly may write myself.

Sincerely,

Justice Marshall

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543



CHAMBERS OF
THE CHIEF JUSTICE

May 13, 1983

Re: No. 82-11 - Mennonite Board of Missions v. Richard C. Adams

Dear Thurgood:

I will await other writing in this case.

Regards,

Justice Marshall

Copies to the Conference

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 16, 1983

Re: No. 82-11

Mennonite Board of Missions
v. Richard C. Adams

Dear Thurgood,

Please join me.

Sincerely,

Justice Marshall

Copies to the Conference

lfp/ss 06/01/83

MEMORANDUM

TO: Mike DATE: June 1, 1983
FROM: Lewis F. Powell, Jr.

82-11 Mennonite Missions v. Adams

I was hoping that possibly that O'Connor would write a dissent in this case. Justice Rehnquist called me this morning to inquire whether we were doing a dissent, and said that he thinks it is likely that Justice O'Connor would join the majority.

We left it that I will call Justice Rehnquist next week - after each of us has a better opportunity to assess our positions - and advise whether I want him to write the dissent. My only hesitation is that, at my request, he is doing a dissent in Newport News Ship - which is a sort of dog of a case.

Speak to me about this case early next week, after you are in a better position to assess your availability. My recollection is that you have Container Corp., and I will give you something during the day - I hope - to polish up for me on Bradshaw.

L.F.P., Jr.

lfp/ss

In a conversation with Justice O'Connor, she agreed - cheerfully - to write a dissent in this case.

Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: JUN 6 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-11

MENNONITE BOARD OF MISSIONS, APPELLANT *v.*
RICHARD C. ADAMS

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

[June —, 1983]

JUSTICE O'CONNOR, dissenting.

Today, the Court departs significantly from its prior decisions and holds that before the State conducts *any* proceeding that will affect the legally protected interests of *any* party, the State must provide notice to that party by means certain to ensure actual notice as long as the party's identity and location are "reasonably ascertainable." *Ante*, p. 7. Applying this novel and unjustified principle to the ~~the~~ present case, the Court decides that the mortgagee involved deserved more than the notice by publication and posting that were provided. I dissent because the Court's approach is unwarranted both as a general rule and as the rule of this case.

I

In *Mullane v. Central Hanover Trust Co.*, 339 U. S. 306, 314 (1950), the Court established that the "elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." We emphasized that notice is constitutionally adequate when "the practicalities and peculiarities of the case . . . are reasonably met," *id.*, at 314-315. See also *Walker v. City of Hutchinson*, 352 U. S. 112, 115

(1956); *Schroeder v. City of New York*, 371 U. S. 208, 211-212 (1962); *Greene v. Lindsey*, 456 U. S. 444, 449-450 (1982). The key focus is the "reasonableness" of the means chosen by the State. *Mullane, supra*, 339 U. S., at 315. Whether a particular method of notice is reasonable depends on the outcome of the balance between the "interest of the State" and "the individual interest sought to be protected by the Fourteenth Amendment." *Id.*, at 314. Of course, "[i]t is not our responsibility to prescribe the form of service that the [State] . . . must adopt." *Greene, supra*, 456 U. S., at 455, n. 9. It is the primary responsibility of the State to strike this balance, and we will upset this process only when the State strikes the balance in an irrational manner.

From *Mullane* on, the Court has adamantly refused to commit "itself to any formula achieving a balance between these interests in a particular proceeding or determining when constructive notice may be utilized or what test it must meet." 339 U. S., at 314. Indeed, we have recognized "the impossibility of setting up a rigid formula as to the kind of notice that must be given; notice will *vary* with the circumstances and conditions." *Walker, supra*, 352 U. S., at 115 (emphasis added). Our approach in these cases has always reflected the general principle that "[t]he very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Cafeteria & Restaurant Workers Union, Local 473 v. McElroy*, 367 U. S. 886, 895 (1961). See also *Matthews v. Eldridge*, 424 U. S., 319, 334-335 (1976).

A

Although the Court purports to apply these settled principles in this case, its decision today is squarely at odds with the balancing approach that we have developed. The Court now holds that *whenever* a party has a legally protected property interest, "[n]otice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition

to any proceeding which will adversely affect the interest[] . . . if [the party's] name and address are reasonably ascertainable." *Ante*, p. 7. Without knowing what state and individual interests will be at stake in future cases, the Court espouses a general principle ostensibly applicable whenever *any* legally protected property interest may be adversely affected. This is a flat rejection of the view that no "formula" can be devised that adequately evaluates the constitutionality of a procedure created by a State to provide notice in a certain class of cases. Despite the fact that *Mullane* itself accepted that constructive notice satisfied the dictates of due process in certain circumstances,¹ the Court, citing *Mullane*, now holds that constructive notice can *never* suffice whenever there is a legally protected property interest at stake.

In seeking to justify this broad rule, the Court holds that although a party's inability to safeguard its interests may result in imposing greater notice burdens on the State, the fact that a party may be more able "to safeguard its interests does not relieve the State of its constitutional obligation." *Ante*, p. 7. Apart from ignoring the fact that it is the totality of circumstances that determines the content of the State's obligation to provide notice in particular cases, the Court also neglects to consider that the constitutional obligation imposed upon the State may itself be defined by the party's ability to protect its interest. As recently as last Term, the Court held that the focus of the due process inquiry has always been the effect of a notice procedure on "a particular class of cases." *Greene, supra*, 456 U. S., at 451 (emphasis added). In fashioning a broad rule for "the least sophisticated creditor," *ante*, p. 7, the Court ignores the well-settled principle that "procedural due process rules are shaped by

¹ In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314 (1950), we held that "[p]ersonal service has not in all circumstances been regarded as indispensable to the process due to residents, and it has more often been held unnecessary as to nonresidents."

the risk of error inherent in the truth finding process as applied to the generality of cases, not the rare exceptions." *Matthews v. Eldridge*, 424 U. S. 319, 344 (1976); see also *Califano v. Yamasaki*, 442 U. S. 682, 696 (1979). If the members of a particular class generally possess the ability to safeguard their interests, then this fact must be taken into account when we consider the "totality of circumstances," as required by *Mullane*. Indeed, the criterion established by *Mullane* "is not the possibility of conceivable injury but the just and reasonable character of the requirements, having reference to the subject with which the statute deals." 339 U. S., at 315 (quoting *American Land Co. v. Zeiss*, 219 U. S. 47, 67 (1911)).

B

The Court also holds that the condition for receiving notice under its new approach is that the name and address of the party must be "reasonably ascertainable." In applying this requirement to the mortgagee in this case, the Court holds that the State must exercise "reasonably diligent efforts" in determining the address of the mortgagee, *id.*, at 6, n. 3, and suggests that the State is required to make some effort "to discover the identity and the whereabouts of a mortgagee whose identity is not in the public record." *Ibid.* Again, the Court departs from our prior cases. In *all* of the cases relied on by the Court in its analysis, the State either actually knew the identity or incapacity of the party seeking notice, or that identity was "very easily ascertainable." *Schroeder, supra*, 371 U. S., at 212-213. See also *Mullane, supra*, 339 U. S., at 318; *Covey v. Town of Summers, supra*, 351 U. S. 141, 146 (1956); *Walker, supra*, 352 U. S., at 116, *Eisen v. Carlisle & Jacquelin*, 417 U. S. 156, 175 (1974).² Under the Court's de-

²In *Mullane*, the Court contrasted those parties whose identity and whereabouts are known or "at hand" with those "whose interests or whereabouts could not with due diligence be ascertained." 339 U. S., at

cision today, it is not clear how far the State must go in providing for reasonable efforts to ascertain the name and address of an affected party. This uncertainty becomes particularly ominous in the light of the fact that the duty to ascertain identity and location, and to notify by mail or other similar means, exists whenever any legally protected interest is implicated.

II

Once the Court effectively rejects *Mullane* and its progeny by accepting a *per se* rule against constructive notice, it applies its rule and holds that the mortgagee in this case must receive personal service or mailed notice because it has a legally protected interest at stake, and because the mortgage was publicly recorded. See *ante*, p. 6. If the Court had observed its prior decisions and engaged in the balancing required by *Mullane*, it would have reached the opposite result.

It cannot be doubted that the State has a vital interest in the collection of its tax revenues in whatever reasonable manner that it chooses: "In authorizing the proceedings to enforce the payment of the taxes upon lands sold to a purchaser at tax sale, the State is in exercise of its sovereign power to raise revenue essential to carry on the affairs of state and the due administration of the laws. . . . 'The process of taxation does not require the same kind of notice as is required in a suit at law, or even in proceedings for taking private property under the power of eminent domain.'" *Leigh v. Green*, 193 U. S. 79, 89 (1904) (quoting *Bell's Gap Railroad Company v. Pennsylvania*, 134 U. S. 232, 239

318, 317. This language must be read in the light of the facts of *Mullane*, in which the identity and location of certain beneficiaries were actually known. In addition, the Court in *Mullane* expressly rejected the view that a search "under ordinary standards of diligence" was required in that case. *Id.*, at 317.

(1890)). The State has decided to accommodate its vital interest in this respect through the sale of real property on which payments of property taxes have been delinquent for a certain period of time.³

The State has an equally strong interest in avoiding the burden imposed by the requirement that it must exercise "reasonable" efforts to ascertain the identity and location of any party with a legally protected interest. In the instant case, that burden is not limited to mailing notice. Rather, the State must have someone check the records and ascertain with respect to each delinquent tax payer whether there is a mortgagee, perhaps whether the mortgage has been paid off, and whether there is a dependable address.

Against these vital interests of the State, we must weigh the interest possessed by the relevant class—in this case, mortgagees.⁴ Contrary to the Court's approach today, this interest may not be evaluated simply by reference to the fact that we have frequently found constructive notice to be inadequate since *Mullane*. Rather, such interest "must be judged in the light of its practical application to the affairs of men as they are ordinarily conducted." *North Laramie Land Co. v. Hoffman*, 268 U. S. 276, 283 (1925).

Chief Justice Marshall wrote long ago that "it is part of common prudence for all those who have any interest in [property], to guard that interest by persons who are in a situation to protect it." *The Mary*, 13 U. S. (9 Cranch) 126, 144 (1815). We have never rejected this principle, and, in-

³The Court suggests that the notice that it requires "may ultimately relieve the county of a more substantial administrative burden if the mortgagee arranges for payment of the delinquent taxes prior to the tax sale." *Ante*, p. 7, 4. The Court neglects the fact that the State is a better judge of how it wants to settle its tax debts than is this Court.

⁴This is not to say that the rule espoused must cover all conceivable mortgagees in all conceivable circumstances. The flexibility of due process is sufficient to accommodate those atypical members of the class of mortgagees.

deed, we held in *Mullane* that “[a] State may indulge” the assumption that a property owner “usually arranges means to learn of any direct attack upon his possessory or proprietary rights.” 339 U. S., at 316. When we have found constructive notice to be inadequate, it has always been where an owner of property is, for all purposes, *unable* to protect his interest because there is no practical way for him to learn of state action that threatens to affect his property interest. In each case, the adverse action was one that was completely unexpected by the owner, and the owner would become aware of the action only by the fortuitous occasion of reading “an advertisement in small type inserted in the back pages of a newspaper . . . [that may] not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention.” *Mullane*, *supra*, 339 U. S., at 315. In each case, the individuals had no reason to expect that their property interests were being affected.

This is not the case as far as tax sales and mortgagees are concerned. Unlike condemnation or an unexpected accounting, the assessment of taxes occurs with regularity and predictability, and the state action in this case cannot reasonably be characterized as unexpected in any sense. Unlike the parties in our other cases, the Mennonite Board had a regular event, the assessment of taxes, upon which to focus, in its effort to protect its interest. Further, approximately 95% of the mortgage debt outstanding in the United States is held by private institutional lenders and federally-supported agencies. U. S. Dept. of Commerce, Statistical Abstract of the United States: 1982-83, 511 (103d ed.).⁵ It is highly un-

⁵ The Court holds that “a mortgage need not involve a complex commercial transaction among knowledgeable parties . . .” *Ante*, p. 7. This is certainly true; however, that does not change the fact that even if the Board is not a professional money lender, it voluntarily entered into a fairly sophisticated transaction with Moore. As the court below observed: “The

likely, if likely at all, that a significant number of mortgagees are unaware of the consequences that ensue when their mortgagors fail to pay taxes assessed on the mortgaged property. Indeed, in this case, the Board itself required that Moore pay all property taxes.

There is no doubt that the Board could have safeguarded its interest with a minimum amount of effort. The county auctions of property commence by statute on the second Monday of each year. Ind. Code §6-1.1-24-2(5). The county auditor is required to post notice in the county courthouse at least three weeks before the date of sale. Ind. Code §6-1.1-24-3(a). The auditor is also required to publish notice in two different newspapers once each week for three weeks before the sale. Ind. Code §6-1.1-24-3(a); Ind. Code 6-1.1-22-4(b). The Board could have supplemented the protection offered by the State with the additional measures suggested by the court below: The Board could have required that Moore provide it with copies of paid tax assessments, or could have required that Moore deposit the tax monies in an escrow account, or could have itself checked the public records to determine whether the tax assessment had been paid. Pet. for Cert. 27.

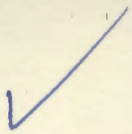
When a party is unreasonable in failing to protect its interest despite its ability to do so, due process does not require that the State save the party from its own lack of care. The balance required by *Mullane* clearly weighs in favor of finding that the Indiana statutes satisfied the requirements of due process. Accordingly, I dissent.

State cannot reasonably be expected to assume the risk of its citizens' business ventures." Pet. for Cert. 27, n. 9.



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR



June 6, 1983

No. 82-11 Mennonite Board of Missions v. Adams

Dear Lewis,

I enclose a copy of a proposed dissent in this case. I will welcome your suggestions. It has not been circulated at yet.

Sincerely,

Sandra

Justice Powell

Enclosure

*9 ll given
when she
circulates*

June 6, 1983

82-11 Mennonite Board of Missions v. Adams

Dear Sandra:

Please join me.

Sincerely,

Justice O'Connor

lfp/ss

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST



June 6, 1983

Re: No. 82-11 Mennonite Board of Missions v. Adams

Dear Sandra:

Please join me in your dissenting opinion.

Sincerely,

Justice O'Connor

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 8, 1983

Re: No. 82-11, Mennonite Board of Missions v. Adams

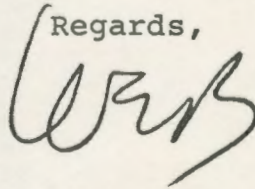
Dear Thurgood:

I think I can join you if you will insert something along these lines:

"If the mortgagee is identified in the mortgage of record, constructive notice by publication must be supplemented by notice mailed to the mortgagor's last known available address, or by personal service. But if the mortgagee is not readily identifiable constructive notice satisfies the requirements of Mullane."

This would replace the two final sentences, first full paragraph p. 6.

Regards,



Justice Marshall

Copies to the Conference

Justice White
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 9 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-11

MENNONITE BOARD OF MISSIONS, APPELLANT v.
RICHARD C. ADAMS

ON APPEAL FROM THE COURT OF APPEALS OF INDIANA

[June —, 1983]

JUSTICE MARSHALL, delivered the opinion of the Court.

This appeal raises the question whether notice by publication and posting provides a mortgagee of real property with adequate notice of a proceeding to sell the mortgaged property for nonpayment of taxes.

I

To secure an obligation to pay \$14,000, Alfred Jean Moore executed a mortgage in favor of appellant Mennonite Board of Missions (MBM) on property in Elkhart, Indiana, that Moore had purchased from MBM. The mortgage was recorded in the Elkhart County Recorder's Office on March 1, 1973. Under the terms of the agreement, Moore was responsible for paying all of the property taxes. Without MBM's knowledge, however, she failed to pay taxes on the property.

Indiana law provides for the annual sale of real property on which payments of property taxes have been delinquent for fifteen months or longer. Ind. Code §6-1.1-24-1 *et seq.* Prior to the sale, the county auditor must post notice in the county courthouse and publish notice once each week for three consecutive weeks. §6-1.1-24-3. The owner of the property is entitled to notice by certified mail to his last known address. §6-1.1-24-4.¹ Until 1980, however, Indi-

¹ Because a mortgagee has no title to the mortgaged property under

✓
five
joined
O'C's
dissent

ana law did not provide for notice by mail or personal service to mortgagees of property that was to be sold for nonpayment of taxes.²

After the required notice is provided, the county treasurer holds a public auction at which the real property is sold to the highest bidder. § 6-1.1-24-5. The purchaser acquires a certificate of sale which constitutes a lien against the real property for the entire amount paid. § 6-1.1-24-9. This lien is superior to all other liens against the property which existed at the time the certificate was issued. *Ibid.*

The tax sale is followed by a two-year redemption period during which the "owner, occupant, lienholder, or other person who has an interest in" the property may redeem the property. § 6-1.1-25-1. To redeem the property an individual must pay the county treasurer a sum sufficient to cover the purchase price of the property at the tax sale, the amount of taxes and special assessments paid by the purchaser following the sale, plus an additional percentage specified in the statute. §§ 6-1.1-25-2, 6-1.1-25-3. The county in turn remits the payment to the purchaser of the property at the tax sale.

If no one redeems the property during the statutory redemption period, the purchaser may apply to the county auditor for a deed to the property. Before executing and delivering the deed, the county auditor must notify the former owner that he is still entitled to redeem the property. § 6-1.1-25-6. No notice to the mortgagee is required. If

Indiana law, the mortgagee is not considered an "owner" for purposes of § 6-1.1-24-4. *First Savings & Loan Assn. of Central Indiana v. Furnish*, 367 N. E. 2d 596, 600, n. 14 (Ind. App. 1977).

² Ind. Code § 6-1.1-24-4.2, added in 1980, provides for notice by certified mail to any mortgagee of real property which is subject to tax sale proceedings, if the mortgagee has annually requested such notice and has agreed to pay a fee, not to exceed \$10, to cover the cost of sending notice. Because the events in question in this case occurred before the 1980 amendment, the constitutionality of the amendment is not before us.

the property is not redeemed within thirty days, the county auditor may then execute and deliver a deed for the property to the purchaser, § 6-1.1-25-4, who thereby acquires "an estate in fee simple absolute, free and clear of all liens and encumbrances." § 6-1.1-25-4(d).

After obtaining a deed, the purchaser may initiate an action to quiet his title to the property. § 6.1.1-25-14. The previous owner, lienholders, and others who claim to have an interest in the property may no longer redeem the property. They may defeat the title conveyed by the tax deed only by proving, *inter alia*, that the property had not been subject to, or assessed for, the taxes for which it was sold, that the taxes had been paid before the sale, or that the property was properly redeemed before the deed was executed. § 6.1.1-25-16.

In 1977 Elkhart County initiated proceedings to sell Moore's property for nonpayment of taxes. The County provided notice as required under the statute: it posted and published an announcement of the tax sale and mailed notice to Moore by certified mail. MBM was not informed of the pending tax sale either by the county auditor or by Moore. The property was sold for \$1,167.75 to appellee Richard Adams on August 8, 1977. Neither Moore nor MBM appeared at the sale or took steps thereafter to redeem the property. Following the sale of her property, Moore continued to make payments each month to MBM, and as a result MBM did not realize that the property had been sold. On August 16, 1979, MBM first learned of the tax sale. By then the redemption period had run and Moore still owed appellant \$8,237.19.

In November 1979, Adams filed a suit in state court seeking to quiet title to the property. In opposition to Adams' motion for summary judgment, MBM contended that it had not received constitutionally adequate notice of the pending tax sale and of the opportunity to redeem the property following the tax sale. The trial court upheld the Indiana tax

sale statute against this constitutional challenge. The Indiana Court of Appeals affirmed. 427 N. E. 2d 686 (1981). We noted probable jurisdiction, — U. S. — (1982), and we now reverse.

II

In *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 314 (1950), this Court recognized that prior to an action which will affect an interest in life, liberty, or property protected by the Due Process Clause of the Fourteenth Amendment, a State must provide “notice reasonably calculated, under all circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Invoking this “elementary and fundamental requirement of due process,” *ibid*, the Court held that published notice of an action to settle the accounts of a common trust fund was not sufficient to inform beneficiaries of the trust whose names and addresses were known. The Court explained that notice by publication was not reasonably calculated to provide actual notice of the pending proceeding and was therefore inadequate to inform those who could be notified by more effective means such as personal service or mailed notice:

“Chance alone brings to the attention of even a local resident an advertisement in small type inserted in the back pages of a newspaper, and if he makes his home outside the area of the newspaper’s normal circulation the odds that the information will never reach him are large indeed. The chance of actual notice is further reduced when as here the notice required does not even name those whose attention it is supposed to attract, and does not inform acquaintances who might call it to attention. In weighing its sufficiency on the basis of equivalence with actual notice we are unable to regard this as more than a feint.” *Id.*, at 315.³ /

³ The decision in *Mullane* rejected one of the premises underlying this /

In subsequent cases, this Court has adhered unwaiveringly to the principle announced in *Mullane*. In *Walker v. City of Hutchinson*, 352 U. S. 112 (1956), for example, the Court held that notice of condemnation proceedings published in a

Court's previous decisions concerning the requirements of notice in judicial proceedings: that due process rights may vary depending on whether actions are *in rem* or *in persona*. 339 U. S., at 312. See *Shaffer v. Heitner*, 433 U. S. 186, 206 (1977). Traditionally, when a state court based its jurisdiction upon its authority over the defendant's person, personal service was considered essential for the court to bind individuals who did not submit to its jurisdiction. See, e. g., *Hamilton v. Brown*, 161 U. S. 256, 275 (1896); *Arendt v. Griggs*, 134 U. S. 316, 320 (1890); *Pennoyer v. Neff*, 95 U. S. 714, 726, 733-734 (1878) ("Due process of law would require appearance or personal service before the defendant could be personally bound by any judgment rendered."). In *Hess v. Pawloski*, 274 U. S. 352 (1927), the Court recognized for the first time that service by registered mail, in place of personal service, may satisfy the requirements of due process. Constructive notice was never deemed sufficient to bind an individual in an action *in personam*.

In contrast, in *in rem* or *quasi in rem* proceedings in which jurisdiction was based on the court's power over property within its territory, see generally *Shaffer v. Heitner*, *supra*, at 196-205, constructive notice to nonresidents was traditionally understood to satisfy the requirements of due process. In order to settle questions of title to property within its territory, a state court was generally required to proceed by an *in rem* action since the court could not otherwise bind nonresidents. At one time constructive service was considered the only means of notifying nonresidents since it was believed that "[p]rocess from the tribunals of one State cannot run into another State." *Pennoyer v. Neff*, *supra*, at 727. See *Ballard v. Hunter*, 204 U. S. 241, 255 (1907). As a result, the nonresident acquired the duty "to take measures that in some way he shall be represented when his property is called into requisition." *Id.*, at 262. If he "fail[ed] to get notice by the ordinary publications which have been usually required in such cases, it [was] his misfortune." *Ibid.*

No corresponding duty was imposed on interested parties who resided within the State and whose identities were reasonably ascertainable. Even in actions *in rem*, such individuals were entitled to personal service. See, e. g., *Arendt v. Griggs*, *supra*, at 326-327. Where the identity of interested residents could not be ascertained after a reasonably diligent inquiry, however, their interests in property could be affected by a proceeding *in rem* as long as constructive notice was provided. See *Hamilton v.*

local newspaper was an inadequate means of informing a landowner whose name was known to the city and was on the official records. Similarly, in *Schroeder v. City of New York*, 371 U. S. 208 (1962), the Court concluded that publication in a newspaper and posted notices were inadequate to apprise a property owner of condemnation proceedings when his name and address were readily ascertainable from both deed records and tax rolls. Most recently, in *Greene v. Lindsey*, 456 U. S. 444 (1982), we held that posting a summons on the door of a tenant's apartment was an inadequate means of providing notice of forcible entry and detainer actions. See also *Memphis Light, Gas & Water Div. v. Craft*, 436 U. S. 1, 13-15 (1978); *Eisen v. Carlisle & Jacquelin*, 417 U. S. 156, 174-175 (1974); *Bank of Marin v. England*, 385 U. S. 99, 102 (1966); *Covey v. Somers*, 351 U. S. 141, 146-147 (1956); *City of New York v. New York, N. H. & H. R. Co.*, 344 U. S. 293, 296-297 (1953).

This case is controlled by the analysis in *Mullane*. To begin with, a mortgagee possesses a substantial property interest that is significantly affected by a tax sale. Under Indiana law, a mortgagee acquires a lien on the owner's property which may be conveyed together with the mortgagor's personal obligation to repay the debt secured by the mortgage. Ind. Code § 32-8-11-7. A mortgagee's security in-

Brown, supra, at 275; *American Land Co. v. Zeiss*, 219 U. S. 47, 61-62, 65-66 (1911).

Beginning with *Mullane*, this Court has recognized, contrary to the earlier line of cases, "that an adverse judgment *in rem* directly affects the property owner by divesting him of his rights in the property before the court." *Shaffer v. Heitner, supra*, at 206. In rejecting the traditional justification for distinguishing between residents and nonresidents and between *in rem* and *in personam* actions, the Court has not left all interested claimants to the vagaries of indirect notice. Our cases have required the State to make efforts to provide actual notice to all interested parties comparable to the efforts that were previously required only with respect to identifiable residents. See *infra*, at 6.

terest generally has priority over subsequent claims or liens attaching to the property, and a purchase money mortgage takes precedence over virtually all other claims or liens including those which antedate the execution of the mortgage. Ind. Code § 32-8-11-4. The tax sale immediately and drastically diminishes the value of this security interest by granting the tax-sale purchaser a lien with priority over that of all other creditors. Ultimately, the tax sale may result in the complete nullification of the mortgagee's interest, since the purchaser acquires title free of all liens and other encumbrances at the conclusion of the redemption period.

Since a mortgagee clearly has a legally protected property interest, he is entitled to notice reasonably calculated to apprise him of a pending tax sale. Cf. *Wiswall v. Sampson*, 55 U. S. 52, 67 (1852). When the mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagor's last known available address, or by personal service. But unless ^{the} mortgagee is not reasonably identifiable, constructive notice alone does not satisfy the mandate of *Mullane*.⁴

Neither notice by publication and posting, nor mailed notice to the property owner, are means "such as one desirous of actually informing the [mortgagee] might reasonably adopt

⁴In this case, the mortgage on file with the county recorder identified the mortgagee only as "MENNONITE BOARD OF MISSIONS a corporation, of Wayne County, in the State of Ohio." We assume that the mortgagee's address could have been ascertained by reasonably diligent efforts. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 317 (1950). Simply mailing a letter to "Mennonite Board of Missions, Wayne County, Ohio," quite likely would have provided actual notice, given "the well-known skill of postal officials and employees in making proper delivery of letters defectively addressed." *Grannis v. Ordean*, 234 U. S. 385, 397-398 (1914). We do not suggest, however, that a governmental body is required to undertake extraordinary efforts to discover the identity and whereabouts of a mortgagee whose identity is not in the public record.

to accomplish it." *Mullane, supra*, at 315. Because they are designed primarily to attract prospective purchasers to the tax sale, publication and posting are unlikely to reach those who, although they have an interest in the property, do not make special efforts to keep abreast of such notices. *Walker v. City of Hutchinson, supra*, at 116; *New York v. New York, N. H. & H. R. Co., supra*, at 296; *Mullane, supra*, at 315. Notice to the property owner, who is not in privity with his creditor and who has failed to take steps necessary to preserve his own property interest, also cannot be expected to lead to actual notice to the mortgagee. Cf. *Nelson v. New York City*, 352 U. S. 103, 107-109 (1956). The County's use of these less reliable forms of notice is not reasonable where, as here, "an inexpensive and efficient mechanism such as mail service is available." *Greene v. Lindsey, supra*, at 455.

Personal service or mailed notice is required even though sophisticated creditors have means at their disposal to discover whether property taxes have not been paid and whether tax sale proceedings are therefore likely to be initiated. In the first place, a mortgage need not involve a complex commercial transaction among knowledgeable parties, and it may well be the least sophisticated creditor whose security interest is threatened by a tax sale. More importantly, a party's ability to take steps to safeguard its interests does not relieve the State of its constitutional obligation. It is true that particularly extensive efforts to provide notice may often be required when the State is aware of a party's inexperience or incompetence. See, e. g., *Memphis Light, Gas & Water Div. v. Craft, supra*, at 13-15; *Covey v. Somers, supra*. But it does not follow that the State may forego even the relatively modest administrative burden of providing notice by mail to parties who are particularly resourceful.⁵ Cf. *New York v. New York, N. H. & H. R. Co.*,

⁵ Indeed, notice by mail to the mortgagee may ultimately relieve the

supra, at 297. Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will adversely affect the interests of *any* party, whether unlettered or well versed in commercial practice, if its name and address are reasonably ascertainable. Furthermore, a mortgagee's knowledge of delinquency in the payment of taxes is not equivalent to notice that a tax sale is pending. The latter "was the information which the [County] was constitutionally obliged to give personally to the appellant—an obligation which the mailing of a single letter would have discharged." *Schroeder v. City of New York*, *supra*, at 214.

We therefore conclude that the manner of notice provided to appellant did not meet the requirements of the Due Process Clause of the Fourteenth Amendment.⁶ Accordingly, the judgment of the Indiana Court of Appeals is reversed and the cause is remanded for further proceedings not inconsistent with this opinion.

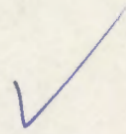
It is so ordered.

county of a more substantial administrative burden if the mortgagee arranges for payment of the delinquent taxes prior to the tax sale.

⁶This appeal also presents the question whether, before the county auditor executes and delivers a deed to the tax-sale purchaser, the mortgagee is constitutionally entitled to notice of its right to redeem the property. Cf. *Griffin v. Griffin*, 327 U. S. 220, 229 (1946). Because we conclude that the failure to give adequate notice of the tax sale proceeding deprived appellant of due process of law, we need not reach this question.

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE



June 15, 1983

Re: No. 82-11, Mennonite Board of Missions v. Adams

Dear Thurgood:

I join.

Regards,

Justice Marshall

Copies to the Conference

Mike

1. No address

2. If a notice
must be notified,
who else is notified?

mechanic's lien?
& argument?
Ind. Lien?

2. } prop. interest

New statute

3. Q - How much process
is due.

82-11 Mennonite Board v. Adams (Mike)

TM for the Court

1st draft 5/12/83

2nd draft 6/9/83

3rd draft 6/16/83

Joined by CJ, WJB, BRW, HAB, JPS

SOC dissent

1st draft

2nd draft 6/13/83

3rd draft 6/17/83

Joined by LFP, WHR