Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

JONES *v.* FLOWERS ET AL.

CERTIORARI TO THE SUPREME COURT OF ARKANSAS

No. 04–1477. Argued January 17, 2006—Decided April 26, 2006

Petitioner Jones continued to pay the mortgage on his Arkansas home after separating from his wife and moving elsewhere in the same city. Once the mortgage was paid off, the property taxes—which had been paid by the mortgage company—went unpaid, and the property was certified as delinquent. Respondent Commissioner of State Lands mailed Jones a certified letter at the property's address, stating that unless he redeemed the property, it would be subject to public sale in two years. Nobody was home to sign for the letter and nobody retrieved it from the post office within 15 days, so it was returned to the Commissioner, marked "unclaimed." Two years later, the Commissioner published a notice of public sale in a local newspaper. No bids were submitted, so the State negotiated a private sale to respondent Flowers. Before selling the house, the Commissioner mailed another certified letter to Jones, which was also returned unclaimed. Flowers purchased the house and had an unlawful detainer notice delivered to the property. It was served on Jones' daughter, who notified him of the sale. He filed a state-court suit against respondents, alleging that the Commissioner's failure to provide adequate notice resulted in the taking of his property without due process. Granting respondents summary judgment, the trial court concluded that Arkansas' tax sale statute, which sets out the notice procedure used here, complied with due process. The State Supreme Court affirmed.

Held:

1. When mailed notice of a tax sale is returned unclaimed, a State must take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so. Pp. 4–12.

(a) This Court has deemed notice constitutionally sufficient if it was reasonably calculated to reach the intended recipient when sent,

see, *e.g., Mullane* v. *Central Hanover Bank & Trust Co.,* 339 U. S. 306, 314, but has never addressed whether due process requires further efforts when the government becomes aware prior to the taking that its notice attempt has failed. Most Courts of Appeals and State Supreme Courts addressing this question have decided that the government must do more in such a case, and many state statutes require more than mailed notice in the first instance. Pp. 4–6.

(b) The means a State employs to provide notice "must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane,* 399 U. S.*,* at 315. The adequacy of a particular form of notice is assessed by balancing the State's interest against "the individual interest sought to be protected by the Fourteenth Amendment." *Id.,* at 314. Here, the evaluation concerns the adequacy of notice prior to the State's extinguishing a property owner's interest in a home. It is unlikely that a person who actually desired to inform an owner about an impending tax sale of a house would do nothing when a certified letter addressed to the owner is returned unclaimed. The sender would ordinarily attempt to resend the letter, if that is practical, especially given that it concerns the important and irreversible prospect of losing a house. The State may have made a reasonable calculation of how to reach Jones, but it had good reason to suspect when the notice was returned that Jones was no better off than if no notice had been sent. The government must consider unique information about an intended recipient regardless of whether a statutory scheme is reasonably calculated to provide notice in the ordinary case. See *Robinson* v. *Hanrahan,* 409 U. S. 38, 40 *(per curiam),* and *Covey* v. *Town of Somers,* 351 U. S. 141, 146–147. It does not matter that the State in each of those cases was aware of the information *before* it calculated the best way to send notice. Knowledge that notice was ineffective was one of the "practicalities and peculiarities of the case" taken into account, *Mullane, supra,* at 314–315, and it should similarly be taken into account in assessing the adequacy of notice here. The Commissioner and Solicitor General correctly note the constitutionality of that a particular notice procedure is assessed *ex ante*, not *post hoc.* But if a feature of the State's procedure is that it promptly provides additional information to the government about the effectiveness of attempted notice, the *ex ante* principle is not contravened by considering what the government does with that information. None of the Commissioner's additional contentions—that notice was sent to an address that Jones provided and had a legal obligation to keep updated, that a property owner who fails to receive a property tax bill and pay taxes is on inquiry notice that his property is subject to governmental taking, and that Jones was obliged to ensure that those in whose hands he left his

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property would alert him if it was in jeopardy—relieves the State of its constitutional obligation to provide adequate notice. Pp. 7–12.

2. Because additional reasonable steps were available to the State, given the circumstances here, the Commissioner's effort to provide notice to Jones was insufficient to satisfy due process. What is reasonable in response to new information depends on what that information reveals. The certified letter's return "unclaimed" meant either that Jones was not home when the postman called and did not retrieve the letter or that he no longer resided there. One reasonable step addressed to the former possibility would be for the State to resend the notice by regular mail, which requires no signature. Certified mail makes actual notice more likely only if someone is there to sign for the letter or tell the mail carrier that the address is incorrect. Regular mail can be left until the person returns home, and might increase the chances of actual notice. Other reasonable follow-up measures would have been to post notice on the front door or address otherwise undeliverable mail to "occupant." Either approach would increase the likelihood that any occupants would alert the owner, if only because an ownership change could affect their own occupancy. Contrary to Jones' claim, the Commissioner was not required to search the local phone book and other government records. Such an open-ended search imposes burdens on the State significantly greater than the several relatively easy options outlined here. The Commissioner's complaint about the burden of even these additional steps is belied by Arkansas' requirement that notice to homestead owners be accomplished by personal service if certified mail is returned and by the fact that the State transfers the cost of notice to the taxpayer or tax sale purchaser. The Solicitor General's additional arguments—that posted notice could be removed by children or vandals, and that the follow-up requirement will encourage States to favor modes of delivery that will not generate additional information—are rejected. This Court will not prescribe the form of service that Arkansas should adopt. Arkansas can determine how best to proceed, and the States have taken a variety of approaches. Pp. 12–17.

359 Ark. 443, ___ S. W. 3d ___, reversed and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed a dissenting opinion, in which SCALIA and KENNEDY, JJ., joined. ALITO, J., took no part in the consideration or decision of the case.